DE WITT'S "SPECIAL REPORT."

TRIAL

OF THE

HON. DANIEL E. SICKLES

FOR SHOOTING

PHILIP BARTON KEY, ESQ.,

(U. S. DISTRICT ATTORNEY, OF WASHINGTON, D. C.)

FEBRUARY 27, 1859.

PRECEDED BY AN INTRODUCTION GIVING SKETCHES OF THE PREVIOUS CAREER OF MANY OF THE PRINCIPAL PERSONAGES ENGAGED IN THE WASHINGTON TRAGEDY.

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THE WASHINGTON TRAGEDY.

INTRODUCTION.

On the afternoon of Sunday, February 27th, the city of Washington was suddenly thrown into a state of intense excitement on learning that Philip Barton Key, Esq., United States District Attorney, had been shot by the Honorable Daniel E. Sickles, Member of Congress from the Third District of New York.

The cause of the terrible affair was the discovery of a criminal intercourse between Mrs. Sickles and Mr. Key. During the whole of the session of Congress just terminated, he had been a constant visitor at the house, opposite the President's Square, was frequently by her side in society, and availed himself of every opportunity which would enable him to enjoy her presence.

Their intimacy was, at first, apparently of that nature which would result from the absence of guilt, and so free from any suspicious circumstances, and withal so open to public observation, that Key always received a warm welcome from Mr. Sickles, was regarded by him as a personal friend, and not a thought was entertained by him that the relations between the guilty pair were not the mere expression on her part of a girlish love of admiration, and of the vanity arising from a sense of power over a man of fine presence, graceful address, and a certain local renown in the District for high spirit, talent, and gallantry.

In the interval of the Congressional recess, Mr. Key made a visit to the Northern watering places, and on several occasions was a guest at their house, still without exciting any suspicion of impropriety in the mind of Mr. Sickles, although the social world of Washington,—always as quick to relish the details of private scandal, as it is lax in its judgment of the guilty—had already caught the drift of their intercourse and was busy with their names.

On the re-assembling of Congress, Mr. Key became more attentive than ever; and scarcely a day passed after the return of Mrs. Sickles to Washington, on which his tall figure, his white riding-cap, well-trimmed moustache, and iron-grey horse, might not have been seen, after the departure of Mr. Sickles for the Capitol, two or three times in the course of a morning, on the circuit of the President's Square, or at the door of her house.

Until Friday, the 25th inst., nothing had occurred to Mr. Sickles to make the matter of his wife's relations with Mr. Key, more than ordinarily prominent in his mind. So far was he, indeed, from manifesting anything like suspicion, that on Wednesday Mr. Key escorted Mrs. S. on Pennsylvania Avenue, and on Thursday evening, as was their custom every fortnight, Mr. and Mrs. Sickles entertained a large party at dinner. On these occasions Mr. Key, and his brother-in-law and sister, Hon. George H. Pendleton and lady, were, however, present. On the following day (Friday), Mr. Sickles received an anonymous letter, stating that his wife was in the habit of meeting Mr. P. Barton Key at a house on Fifteenth street, in the negro neighborhood. Through a friend he ascertained that Mr. Key had rented a house in that vicinity, and was in the habit of there meeting a lady, whose dress and appearance corresponded with that of Mrs. Sickles.

Possessed of these facts, Mr. S. on Saturday evening confronted his wife with his terrible

suspicion. At first she strongly denied her guilt; but when asked by her husband whether on the previous Wednesday afternoon she had not entered the house on Fifteenth street in a certain particular dress, she was overcome by her feelings, and exclaiming, "I am betrayed and lost," swooned away. On recovering her senses she made a full confession of her guilt in writing, from which it appeared that the criminal intercourse had been going on since May, 1858, sometimes under the roof of her husband, and at other times at the rendezvous above named.

It is not our place to describe the harrowing scene which must have ensued between the injured husband and the recreant wife, but is easy to imagine the desperation of a man already almost frenzied, on seeing the cause of his misery pass opposite the window of his wife's room, as did Key on the following day (Sunday), and with gay audacity wave his handkerchief—the usual signal for an assignation.

Mr. S. F. Butterworth of New York, an intimate friend of Mr. Sickles, having been sent for, was at the time in his house, but after some considerable conversation on the subject, left the premises and proceeded towards the Avenue. He had not gone far before he encountered Mr. Key, with whom he exchanged the usual salutations of the day, and then turned to leave him, but had walked only a short distance, when he heard Mr. Sickles, who in the meantime had advanced upon them from the direction of his residence, exclaim in a loud voice, "Key, you scoundrel, you have dishonored my home; you must die!"

Key instantly raised his hand to his breast as if to grasp a weapon, when Sickles drew a pistol from a pocket in the skirt of his overcoat, behind, and fired. The shot took effect in the groin. Key then grappled with Mr. S., but after a momentary struggle they became disengaged, and the former retreated backward up Sixteenth street; Mr. Sickles followed, and when within ten feet, fired the second shot, which passed through Key's body below the heart. At the third fire, the weapon being close to Key, the ball struck near the second wound, and slanted off; he then fell.

Mr. Sickles then desisted from firing, and in company with Mr. Butterworth proceeded to the office of Attorney-General Black, where he delivered himself into custody with the request that a magistrate should be sent for, and such disposition made of him as might be thought proper. Soon after, Mr. Sickles, accompanied by a number of friends, was conveyed in a carriage to the jail.

On the departure of Mr. S. from the scene of the affray, the body of Key was removed to the parlor of the Club House, but he was beyond all medical skill. A few faint gasps and the tragedy was complete. A coroner's inquest being held where the body lay, a verdict was rendered in accordance with the above stated facts.

The parties involved in this sad history all live in the immediate circle of daily Washington social life, and two of them were as well known in New York as in the Federal metropolis. Key was connected with some of the first and oldest families of Maryland. It is related of his grandfather and granduncle, John Ross Key and Phil. Barton Key, that during the Revolutionary War they were put under the control of one Dr. Scott. The Doctor was a wily Scotchman, and not knowing how the struggle was to terminate, but, anxious to have "a friend at court," obtained for one a commission in the British army, and had influence enough to send him to the East Indies, while the other received a commission in the American army, and faithfully served his country until the close of the war. Peace being declared, Phil. Barton, the British officer, returned to the United States, commenced the study of law, and in due time became a member of Congress, where his brilliant talents as an orator made him at once a conspicuous man. The other brother, John Ross Key, married a daughter of Governor Lloyd of Virginia, and retired to his estate where he lived in competency until his death. The result of this marriage was a son, Francis Scott Key, the author of the national song, "The Star Spangled Banner," and father of the late Phil. Barton Key, and a daughter, who became the wife of the present Chief Justice Taney of the Supreme Court.

Personally, Mr. Key was about six feet in height, forty-two years of age, and without being more than ordinarily prepossessing in appearance, his fine figure, fashionable air, and agreeable

address, rendered him extremely popular among the gentler sex. Owing to a heart disease from which he had suffered for two years, his face had assumed a sickly hue, and latterly he had become peevish, discontented, and fretful; but those who knew him best said that these eccentricities of manner covered a kind and generous heart. He was a widower, and leaves four children to mourn over the sudden and violent termination of a life whose future was bright with the promise of honor and reward.

Mr. Sickles is the Member of Congress from the Third District of New York, and a native of New York city. He was originally a printer by occupation; but a change in his circumstances enabled him to acquire what had long been the object of his ambition, namely, a thorough and liberal education. With this as a basis, he entered upon the profession of the law, pursuing his studies with the late Hon. Benjamin F. Butler, and became a prominent member of the New York bar. He is now nearly thirty-seven years of age, of good presence and graceful manners; form, not stout but well knit together, complexion fair, eyes blue and expressive, mouth firm, and his general bearing is thoroughly indicative of the unflinching determination which has characterized his whole career.

As a member of the State Senate, as well as in the House of Representatives, he was distinguished by an unusual coolness and self-possession, which gave him great advantages in debate, and he has won for himself a well-deserved reputation as a rising young leader of the Democratic party.

In 1852, Mr. Sickles was married to his wife, now ruined and heart-broken, then a young girl fresh from her school-life, and remarkable then as now for something especially soft, lovely, and youthful in the type of her very peculiar beauty. She is of Italian origin, and possesses all the Italian lustre and depth of eye, united with a singular candor and delicacy of feature.

Mr. Sickles had seen her grow up from childhood, and was attached to her with an almost idolatrous affection. Shortly after their marriage, Mr. Sickles was appointed Secretary of the American Legation at London, in the household of Mr. Buchanan, and his beautiful bride won universal admiration abroad, not more by her charms of person and manner than by the gayety and innocent joyousness of her character. On their return to America they resided for some time at Bloomingdale, near the city, in a charming house overlooking the Hudson river; and, on his election to Congress, Mr. Sickles took his present house on President's Square. It faces directly the Club House, to which was brought the corpse of the man who himself had slain all that made the life of that mansion, but a few days since so gay among the gayest, and so hospitable among the hospitable, of the homes of Washington.

Mrs. Sickles is twenty-three years of age, and has one child, a lovely daughter of five years. She is the daughter of Baglioli, the celebrated composer and teacher of music of Fourteenth st., N.Y. Few women were better calculated to win their way in polite society, or to contribute more to its vivacity; and though her imprudence has been the cause of a sacrifice of everything that once made life attractive, and involved the happiness of her husband and child, many a sympathising word will be uttered in her behalf, and she will be remembered more in pity than reproach.

The Criminal Court being in session on the Monday following the unfortunate affair, Mr. Sickles waived a preliminary examination before a committing magistrate, and preferred to wait until the Grand Jury should investigate the circumstances, and his act be pronounced upon finally by a jury of his country.

The Grand Jury was composed of the following named gentlemen, all well known and highly respectable citizens of Washington:—

Thomas Carberry, foreman; Samuel Bacon, Thomas Blagden, John P. Ingle, Benjamin C. Tayloe, S. D. Castleman, John M. Broadhead, Lewis Johnson, Chauncy Bestor, Edward C. Dyer, Stephen P. Franklin, Darius Claggett, Thomas Thornly, Erastus M. Chapin, Sayless J. Bowen, Edward M. Linthicum, David English, Valentine Harbaugh, Robert Beale, George Poe, Jr., George McCeny, Lewis Carberry, Robert White, and Robert Clark.

On Thursday, March 24th, after a thorough examination of the facts, Hon. Daniel E. Sickles was indicted for the murder of Philip Barton Key, and the trial set down for Monday, April 4th.

THE TRIAL.

FIRST DAY.—*Monday, April* 4, 1859.

The trial took place in the Criminal Court for the District of Columbia, before his honor T. H. Crawford.

The room was crowded to excess, nearly all the legal fraternity of Washington occupying the bar, the space without being filled by the citizens generally.

At twenty minutes to eleven o'clock, Mr. Sickles, accompanied by the Marshal and several of his friends, came into Court, and took his place in the dock. He was dressed with his usual good taste, and demeaned himself with ease and dignity.

The Court now being ready to proceed with the trial, Robert Ould, Esq., the U. S. District Attorney formally announced that J. M. Carlisle, Esq., of Washington, would act as his associate, during the pendency of the case, on behalf of the Government.

Mr. Sickles was represented by the following counsel: Messrs. James T. Brady and John Graham, of New York; E. H. Staunton, Esq., of Washington; Messrs. Ratcliffe, Clinton and Magruder, also of Washington, and the Hon. Mr. Phillips, late of Alabama.

The indictment was then read, and the prisoner, in response to the usual interrogatory, in a firm tone of voice, pleaded "Not guilty."

THE INDICTMENT.

District of Columbia, County of Washington, to wit: The jurors of the United States for the county aforesaid upon their oaths present, that Daniel E. Sickles late of the county of Washington aforesaid, gentleman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the twenty-seventh day of February, in the year of our Lord eighteen hundred and fifty-nine, with force and arms at the county aforesaid, in and upon the body of one Philip Barton Key, in the peace of God and of the said United States, then and there being, feloniously and wilfully, and of his malicious aforethought, did make an assault; and that the said Daniel E. Sickles, a certain pistol of the value of two dollars, then and there charged with gunpowder and one leaden bullet, which said pistol he, the said Daniel E. Sickles, in his right hand, then and there had and held, then and there feloniously, wilfully and of his malice aforethought, did discharge and shoot off, to, against and upon the said Philip Barton Key; and that the said Daniel E. Sickles, with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by force of the gunpowder aforesaid, by the said Daniel E. Sickles discharged and shot off as aforesaid, then and there feloniously, wilfully and of his malice aforethought, did strike, penetrate and wound him, the said Philip Barton Key, in and upon the left side of him, the said Philip Barton Key, a little below the tenth rib of him, the said Philip Barton Key, giving to him, the said Philip Barton Key, then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by the said Daniel E Sickles, in and upon the left side of him, the said Philip Barton Key, a little below the tenth rib of him, the said Philip Barton Key, one mortal wound of the depth of ten inches and of the breadth of half an inch; of which said mortal wound, he, the said Philip Barton Key, then and there instantly died. And so the jurors aforesaid, upon their oaths aforesaid, do say, that the said Daniel E. Sickles, him, the said Philip Barton Key, in manner and form, and by the means aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did kill and murder, against the form of the statute in such case made and provided, and against the peace and government of the United States.

ROBERT OULD, *Attorney for U. S.*

The Court here observed that it had been the practice of the Court to put such questions to jurors as were best calculated to insure an impartial jury. It was a practice which was familiar to the counsel, and, if agreeable to them, he would observe the same form as heretofore.

Mr. Stanton said that they desired in every respect to conform to the ordinary proceedings in such cases.

The first juror sworn was Mr. Joseph B. Bryan, to whom the Court propounded the following question:

Have you at any time formed or expressed an opinion in relation to the guilt or innocence of the accused?

Juror.—I have.

Mr. Phillips, of counsel for the defence (to the Court).—I propose, your Honor, to ask the juror the further question, whether the formation of that opinion was based upon rumor, or upon the mere knowledge derived from newspaper reports, or upon direct information derived from witnesses of the transaction; and then to follow it up by the further question, whether if the facts developed on the trial should be different from those which had come to his knowledge by mere rumor, he would not be able to render an impartial verdict.

The Court.—I understood the juror to say that he had expressed an opinion.

Mr. Phillips.—But the Court proposes that the juror should be dismissed upon that. I propose on the part of the counsel for the defence, to test the question, by asking if that opinion is founded upon rumor, or upon a knowledge of facts within his own observation; and if it has no other basis than these common reports, I contend that his mind is in that condition in which he can render a verdict between the government and the accused, and that he is a proper juror to be challenged by either party.

The Court.—No doubt the counsel have a right to propound the questions suggested. The Court was about to say that he intended to put the further question—have you entertained any impression which might prejudice your conduct as a juror in rendering a verdict? and to follow it up by the further inquiry—have you any bias or prejudice in your mind, in favor of, or against the prisoner? The object is, to obtain a jury entirely unbiased one way or the other. I do not want to see anybody on the jury who has expressed an opinion upon the subject, if it is possible to avoid it, and I believe it has been the practice of this Court for ten or twelve years to put these questions for that purpose.

Mr. Phillips.—The suggestions I made were with the view to prevent an unusual delay in getting a jury. In view of them, will your Honor state what is the action of the Court in reference to a juror on his answering that he has expressed an opinion.

The Court.—If the counsel desires to put those questions, I see no objection.

Mr. Phillips (to the Juror).—Did you form the opinion you have expressed, upon the current rumors of the day, or upon a direct knowledge of the facts derived from your own observation or intercourse with witnesses to the transaction?

The Juror.—I formed my opinion merely upon rumor.

Mr. Phillips.—If the facts on the trial should turn out to be different from those you have heard, would you be able to render an impartial verdict?

The Juror.—No, sir; my mind is biased in favor of the prisoner.

The juror, being thus disqualified, was discharged.

Samuel H. Howell (by the Court). Have you at any time formed or expressed an opinion in relation to the innocence or guilt of the prisoner?

The Juror.—I have not, that I can recollect.

Have you any impression on your mind which might

nfluence you in rendering a verdict upon the law and evidence?

Juror.—I have not.

Have you any bias or prejudice in favor of or against the prisoner?

Juror.—I have not.

By the District Attorney.—Have you any conscientious scruples against finding a verdict which might or would lead to capital punishment?

Juror.—None.

Challenged.

Charles M. Skippen in reply to similar interrogations had formed and expressed an opinion; was prejudiced, and did not think "he could render a fair and impartial verdict." He was accordingly discharged.

Joseph L. Savage had formed and expressed opinions upon newspaper reports, &c., and did not think he was qualified. Discharged.

Mr. Carlisle, for the United States, here said he believed that since the time of the trial of Aaron Burr, when this matter had been fully canvassed by the ablest lawyers in the country, it had been held, that where a juror had formed and expressed an opinion, it was conclusive against his being sworn, wholly irrespective of the manner in which that opinion had been formed.

He presumed that this was founded upon the general idea that where a man had upon any grounds whatever, formed and expressed an opinion, so that others knew he entertained it, justice would seem to require that such a person should not be sworn, lest perchance, pride or other motives incident to such an expression, should render his verdict otherwise than impartial. Heretofore, it had only been in cases where the first question, "Have you ever formed or expressed an opinion, &c.," was answered in the negative, that the Court had gone further and propounded other questions, and this, the speaker believed, was the first tim e that, after a reply had been made to the first question in the affirmative, any further questions had been admitted.

The Court stated that he did not exactly coincide with the views of the learned counsel, for he believed an opinion formed, constituted quite as strong an objection to a juror as an opinion expressed. In times of great excitement, as in the trial of Burr, it was impossible to find men who had not formed and expressed opinions, though they might be hypothetical. Human nature was weak at best, and men might be prejudiced without having formed any particular opinion as to the matter in hand. It was, therefore, proper that these questions should be propounded, to ascertain from what those opinions were derived, and how far the prejudice extended.

Henry M. Hurdle, being sworn, stated in reply to the questions by the Court, that he had not formed or expressed any opinion in reference to the guilt or innocence of the accused; that he entertained no impression which would influence his conduct in giving a verdict, and that he was not biased or prejudiced in favor of, or against the prisoner.

The Dist. Attorney.—Have you any conscientious scruples against finding a verdict which might or would lead to capital punishment?

Juror.—No sir.

Dist. Attorney.—Are you worth $800?

Juror.—I am not, sir.

Dist. Attorney.—That I submit, constitutes a disqualification.

Mr. Staunton, of counsel for the defense, stated that he desired to know whether the District Attorney of the U. S. intended to insist upon this point, as essential to the proper qualification of every juror? He did not understand that the law made it necessary to do so, but merely conferred upon the District Attorney the right to exercise his discretion in regard to it. The defense intended to make no such objection.

The Court stated that there was a law of Maryland which requires that a juror should hold property to the amount of $800, and that if the objection was introduced and urged by the District Attorney, there must be an end to the matter.

The juror was accordingly discharged.

John Scrivenir had formed and expressed an opinion, based upon a knowledge of the facts received from persons who saw the transaction. Discharged.

Rezin Arnold had formed and expressed no opinion in relation to the guilt or innocence of the accused; entertained no impression which would influence his judgment; had no bias or prejudice in favor of or against the prisoner; had no conscientious scruples against finding a verdict which might lead to capital punishment, and was worth $800.

The juror being properly qualified, was accepted and sworn.

Wm. Dawson had formed and expressed no opinion—was unbiased, and had no conscientious scruples in regard to capital punishment; and was worth $800. Challenged.

Jas. L. Davis being properly qualified, was accepted and sworn.

Lewis Brooks, in reply to the question as to whether he had formed or expressed an opinion, stated that he had done so from rumour; but that it had left no impression on his mind which would influence his conduct as a juror in rendering a verdict; and that he had no bias or prejudice in favor of, or against the prisoner, "except he had his sympathy."

The Court remarked that this was not unlike the instance of one of the jurors called in the case of Aaron Burr, of whom the Chief Justice said, he was not fit to sit on a Jury, because he had expressed an opinion as to his guilt. The case did not go to the same length, but in was the same thing in principle.

Mr. Staunton.—It seems to me that the question is one which refers rather to an impartial judgment, than to the heart. A man may have sympathy, and yet if his judgment is not biased, he will pronounce what he supposes to be a true verdict upon the law and the evidence. I apprehend that the legal objection would apply only to a case where a man's judgment has been preoccupied, or in such a degree operated upon by previous knowledge, or other circumstances as to prevent him from forming an unclouded and unbiased judgment on the facts. The sympathies of the heart cannot, according to my mind, be a disqualification unless they have gone to the extent of operating upon the judgment itself. The witness here states that they have not gone to that extent, and I therefore submit that he is properly qualified.

The Court.—I do not think after such a statement as the witness has made, namely, that his sympathies are in favor of one side or the other, he is properly qualified.

Mr. Phillips to the juror.—What did you say in answer to the question as to whether you had formed an opinion.

Juror.—I stated that I had formed and expressed an opinion from newspaper rumors.

Mr. Phillips.—If facts developed on the trial should be different from those which you have read in newspaper reports, could you then render a fair and impartial verdict?

Juror.—Most undoubtedly.

Mr. Phillips.—Is your sympathy of such a character as would at all cloud your judgment or prevent your finding a verdict?

Juror.—I think it would not, if the case was clear.

The Court having decided that the juror was not qualified, Mr. Phillips took exception to the ruling.

Lewis Wright had never expressed an opinion, but had partly formed one from information derived from one of the witnesses of the transaction. Discharged.

John E. Neale had formed an opinion from what he had heard in the streets, and seen in newspapers, but otherwise being properly qualified, was accepted and sworn.

Robert A. Griffin was properly qualified with the exception that he was not worth $800, and was accordingly discharged.

William M. S. Hopkins had formed or expressed no opinion, and had no prejudice; nor any scruple against capital punishment. Accepted and sworn.

John Smith had no opinion at all; prejudice was something that he never had in his bosom against any man; had no scruples against capital punishment. Challenged.

Thos. R. Brightwell had formed and expressed opinions from what he had seen and heard; did not think that he could render a fair verdict. Discharged.

Abraham Butler had formed and expressed opinions from rumor and from conversation with parties; he believed, however, that he could give a fair verdict; had no prejudice against the prisoner, but believed every person who committed wilful murder ought to be hung. Was acquainted with some of the witnesses, but never had any conversation with them in regard to the matter pending.

Mr. Staunton.—It seems to me that this juror is disqualified.

Mr. Carlisle.—All we desire is that the rule should be uniformly laid down that where a juror has formed or expressed an opinion, although based upon rumor and newspaper reports, it is enough to disqualify him; and I think there is no necessity for putting other questions after the juror has answered the first one which has been regularly propounded.

The Court.—As far as the Court is concerned, I think that the answer to the first question is conclusive, and under ordinary circumstances it would satisfy the Court; but taking the whole series of answers together, they have shown an unbiased and unprejudiced mind, and a disposition to render a verdict in accordance with the law and the facts. I think the present witness, however, goes a little further, and is therefore not qualified.

The juror was discharged.

Laurence Jardella had formed and expressed opinions based upon rumor, and did not think that he could render a fair and impartial verdict upon the law and evidence. Discharged.

N. Boyd Brooks had formed and expressed opinions; and did not think he could render a fair and impartial verdict. Discharged.

Daniel Hepburn had formed opinions from public newspapers and conversation generally; and did not believe that he could render a fair and impartial verdict according to the law and the evidence. Discharged.

Samuel R. Sylvester had neither formed nor expressed an opinion; entertained no prejudice against the prisoner; had no scruples against capital punishment; but was not worth $800. Discharged.

William Bond being properly qualified, was accepted and sworn.

Bennett Sewall had formed no opinion that would prevent his rendering an impartial verdict; was not prejudiced in favor of or against the prisoner; had no scruples about capital punishment; but "was worth less than nothing" (laughter). This witness was discharged as lacking the proper qualification.

Warren Lowe had formed or expressed no opinion; had no bias, and no conscientious scruples about capital punishment. Challenged.

Archibald White had formed and expressed opinions, and did not think that he could render an impartial verdict. Discharged.

Paul Stevens excused on account of old age and ill health.

George C. Kirk had formed and expressed opinions from information, gathered from the newspapers; did not think he could render a fair and impartial verdict, because of the relations which he "bore to the prisoner at the bar as a married man; would be afraid to sit on the jury. Discharged.

James Fullalove had formed and expressed opinions based upon rumor and conversation with the parties, and did not think he could render an impartial verdict upon law and evidence. Discharged.

Reuben Worthington also set aside, because of disqualification similar to the above.

Richard E. Simmons discharged from similar disqualifications.

The Clerk here announced that the regular panel of 90 jurors was exhausted, and the Court ordered the Marshal to summon 75 talesmen, to be present to-morrow morning at 10 o'clock. Previous to the adjournment of the court, Mr. Stanton, of counsel for the defense, stated that he desired to direct attention to what he considered a point of very great importance. The position of the prisoner's dock was such that it was utterly impossible for them to have access to him. The place where the prisoner should be was now occupied by bystanders, and though Mr. Sickles would doubtless most cheerfully yield them the privilege which his counsel now ask for him, if their relative position of prisoner and bystanders were exchanged, it was essential to his interest that under the present circumstances, there should be accorded to him such privilege as would enable his counsel to consult with him during the progress of the trial.

His Honor replied, it was a rule of the Court that the dock should always occupy its present position, but that he would so arrange matters as to enable counsel to have free access to the prisoner, and would direct the officers of the court to keep the passage open for that purpose.

Mr. Stanton expressed himself satisfied with such an arrangement.

Mr. Magruder, of counsel for defence, said that the prisoner, on every principle of fairness and justice, should be allowed every advantage for the defence of his life. So far as precedents were concerned, there were associated in the defence gentlemen from Virginia, Alabama, Pennsylvania, and New York, from whom he had learned it was the practice in their own States, and he believed it was in many others, to place the prisoner in such a position that he might readily communicate with his counsel. During the trial of Aaron Burr, the accused had even been permitted to sit at the table with his legal advisers, and was furnished with pens, ink, and paper, although he was arraigned for the worst crime known to our laws—high treason.

The Court said that it never heard of a man on trial for his life, being taken from the dock and permitted to sit on the floor of the court-room. In fact, he would go even further, and say that he had never read of a case in England where such a practice had been adopted, and he could not in this case deviate from the universal rule. As he had said before, he would so arrange the dock that the prisoner's counsel would find no difficulty in communicating with their client.

It is proper here to remark that the dock in which Mr. Sickles was seated, was so situated as to almost entirely screen him from the observation of those at but a short distance from him.

Mr. George C. Sickles, his father, together with many friends from New York, were present during the whole morning, and sat most interested spectators of the proceedings.

The court having adjourned, Mr. Sickles left the court-room, and proceeded across the common to the jail, on foot, accompanied by Marshal Selden, officers and friends.

SECOND DAY.—*Tuesday, April* 5, 1859.

Judge Crawford took his seat at half past ten.

The crowd of strangers and citizens was largely increased, and owing to the improved arrangements of the Marshal and his officers, much better order and quiet prevailed than on the preceding day.

In conformity with the understanding between the Court and the counsel for the defence, the prisoner's dock had been removed to the rear of the bar, behind the counsel, and immediately facing the bench—so that he could easily communicate with them.

Mr. Sickles was, as usual, self-possessed and calm, and the undisguised sympathy expressed by many of the jurors called and set aside, and by his friends generally, seemed to have a marked effect upon him.

Among the audience were Mr. Bajioli, the father-in-law of Mr. Sickles, Emanuel B. Hart, Esq., Chevalier Wikoff, Sidney Webster, the Private Secretary of the President, Thomas Francis Meagher, Peter Cagger, and other gentlemen, distinguished in law or politics, from the city and State of New York.

The five sworn jurors were now called and answered to their names.

The Court said that the ordinary custom in calling talesmen was to call them from the list; if the counsel on either side preferred, they could have them drawn by ballot.

The counsel for defense said they were willing to take the usual course.

Mr. Carlisle, for United States, said the course spoken of by the Court was not uniform, and asked that the talesmen be called by drawn ballot, which was ordered.

The first juror drawn was George J. Johnson. The same questions being put as yesterday, he answered that he had formed and expressed an opinion upon rumor, and did not believe he could render an impartial verdict.

William B. Jackson had formed an opinion, and could not render an impartial verdict.

John Garrett had expressed opinion so far that he thought Mr. Sickles was justified in shooting Mr. Key.

Charles Edmonston had formed an opinion upon rumor, and could not render an impartial verdict.

Thomas L. Potter had formed opinion from newspaper and other reports, and did not think he could render an impartial verdict.

George B. Barnard excused—not being twenty years of age.

Robert C. Brook had repeatedly expressed an opinion, and derived his knowledge from eye-witnesses.

Andrew P. Hoover had formed an opinion upon

newspaper ar 1 other reports, a id could not render an impartial verdict.

James G. Barret had derived his opinion from one of the eye-witnesses of the transaction.

Z. D. Gilman could not render a fair and impartial verdict.

George Rhodes, Jr., could not render an impartial verdict.

Benj. F. Middleton was afraid that his strong prejudices would interfere with an impartial judgment.

Mr. Phillips, for the defence, suggested that he did not understand the juror as expressing anything more than an apprehension; the Court, however, decided that as he was manifestly so fearful of trusting himself, he was not properly qualified.

Wm. H. Harrover had formed "a very decided opinion," and did not think he could render an impartial verdict.

James W. Sears could not render an impartial verdict.

Francis Miller had formed opinion and could not render an impartial verdict.

Joseph Gawler had formed an opinion.

Henry A. Clark, same.

Richard W. Carter. same.

Wm. R. Riley could not render impartial verdict.

Wm. H. Fenney had formed and expressed opinion.

Joseph B. Moore did not think he could render an impartial verdict.

Joseph W. Nairn had formed his opinion from evidence heard before the coroner's jury.

James Kelley had formed an opinion; had no bias or prejudice, and believed he could render an impartial verdict.

The Court thought, taking all the questions and answers together, he was properly qualified, and he was accordingly sworn.

Elias G. White had formed and expressed an opinion.

James A. Riley, same.

Theodore F. Boucher had formed opinion from statements made on the spot shortly after the occurrence by an eye-witness.

Thomas J. Galt formed and expressed an opinion.

William Baldwin, same.

Thomas Orme had "formed opinion, but didn't know that his bias was such as would prevent him from giving a proper verdict."

The Court.—Do you know it would not?

Juror.—I would rather feel freer. Set aside.

Samuel Duvall did not think he could render an impartial verdict.

Robert L. Sutton had formed a decided opinion that could not be changed by the evidence.

Comfort C. Whittlesey also had a decided opinion.

Esau Pickrell not being present, his ballot was laid aside.

Wm. Dowling had formed an opinion.

Richard H. Darnes had formed an opinion that could not be changed by the evidence.

John G. Dorsey could not render an impartial verdict.

Robert J. Hooe had formed an opinion from rumors and newspapers. and with the impressions he had, he preferred to be excused.

The Court thought it was sufficient to disqualify him as a juror.

Mr. Stanton, for the defence, contended they had a right to know what those impressions were, and whether or not they were of such a character as would influence his judgment in view of the evidence which would be presented to him. There were, he said, classes of opinions which might be entertained—one referring to the act and manner of killing, and the other to the justification of that act, or the circumstances leading to it; there was no intelligent man who read newspapers, who did not have his mind thus operated upon; but when those impressions were such as would yield to the superior weight of evidence when introduced to him in the jury box, he was, most assuredly, a qualified juror, and competent to sit on the case.

Mr. Carlisle for the prosecution, said that the juror had not yet come to the point of saying whether or not, after he had heard the evidence, he would render a verdict in accordance with it. Every man might be equally unwilling to go into a jury box under similar circumstances; but the question was, whether his impressions would prevent the operation of his judgment. In order to comprehend the effect of the juror's reply, the question should be borne in mind. First, he stated that he had formed and expressed an opinion. He was then asked how that opinion was formed, and whether his impressions were such that he could not render a fair and impartial verdict upon the law and evidence.

To that question, the juror had replied, "With my present impressions, I had rather be excused from serving in this case." The point was, not whether he ought to be excused from serving generally, but whether from the condition of his mind, he ought to be placed upon the jury.

His answer was only another form of saying that he entertained an impression, which, with every desire to do his duty, he was unwilling to carry into the jury box.

Mr. Phillips, for the defence, said that probably every man who was called, felt equally unwilling to serve upon a jury, and might have answered in the same manner. The only test of the qualification of a juror that could be made, would be as to the question, whether he was a *liber homo*—a free man; free from those impressions which would enslave him; and if the mind of the juror was in that condition in which he could discharge the duties imposed upon him by the law; his unwillingness to serve in a case, could have no effect whatever.

The Court stated that the juror had expressly declared, that owing to the impressions existing in his mind, he preferred not to go upon the jury, and this of itself, was a sufficient disqualification.

He was accordingly set aside.

John H. Wilson, had formed an opinion from conversation with an eye-witness.

Esau Pickrell, had formed an opinion from rumor, and "his sympathies were strongly enlisted in favor of the prisoner." Should be sorry to think he could not render an impartial verdict.

The Court stated that it was settled yesterday, that a man's sympathies either way, disqualified him as a juror, and the witness was accordingly set aside.

Benj. F. Guy had conversed with eye-witnesses.

Gilbert M. Wight formed an opinion.

James Goddard.—Same.

Charles E. Church.—Same.

John F. Bridget could not render an impartial verdict.

Wm. H. Craig had formed an opinion.

George M. Sothoron could not render an impartial verdict; was strongly biased in favor of the prisoner.

Thomas M. Perry could not render an impartial verdict.

Thomas Milburn had formed an opinion.

James B. Dodson, same.

Nathan C. McKnew had formed a decided opinion, and could not render an impartial verdict.

Hillary M. Orfutt, formed an opinion.

John W. Dyer had formed an opinion in relation to the quality of the act, and did not think it could be changed by the evidence.

Michael R. Coombs had formed an opinion.

Peter F. Bacon had expressed opinion in conversation, conditionally.

By the Court.—What do you mean by conditionally?

Ans.—If such and such be true or false that I have seen in the newspapers.

Court.—Would it prevent you from rendering an impartial verdict?

Ans.—It would not.

Challenged by the defence.

Wm. M. Morrison had formed an opinion.

Benj. B. Mayfield had formed a decided opinion as to the justification of the act, and thought it doubtful that he could render an impartial verdict.

E. Brison Tucker had formed a very decided opinion from rumor, and freely expressed it. Thought it would prevent an impartial verdict.

Joseph P. Jenkins had formed an opinion.

John T. Gibbin had formed an opinion, and sympathised strongly with the prisoner.

Edward Lenny had formed an opinion in reference to the justification of the act, which was so fixed that evidence would not change it.

A. F. Offutt had formed an opinion from conversation with eye-witnesses.

Anthony Hyde asked to be excused, on the ground that he was a member of the bar of the Circuit Court.

His request was granted.

John H. Smoot. Absent. Ballot laid aside to be called again.

Jonas B. Ellis had formed an opinion as to the quality

of the act, and should be afraid to trust himself as a juror.

John Moore had formed an opinion, and could not render a fair verdict.

A. L. Newton had formed an opinion based upon the circumstances leading to the transaction, and was too much biased to render an impartial verdict.

Alex. Minnitree, same.

Wm. C. Harper: all the knowledge he had was gathered from newspaper reports; did not think his impressions would amount to a decided opinion. Was unbiased, and had no conscientious scruples against capital punishment.

Accepted, and sworn.

Paul Hauptman had formed an opinion, and too strongly sympathised wfth the prisoner to sit on the jury.

Henry M. Knight had formed, but never expressed an opinion, was unbiased and had noscruples against capital punishment. Accepted and sworn.

Wm. Galt had formed an opinion.

James G. Smith had formed an opinion, and might have conversed with some of the witnesses.

John W. Ott had formed an opinion.

Ephraim Wheeler had formed an opinion founded on rumor; had no bias or prejudice towards the prisoner; he believed that he could discharge his duty as a juror; it might be possible that he had an impression which would influence his verdict.

The Court that if the juror had the slightest reason to believe that he had such an impression, he ought to be excluded.

Mr. Phillips opposed this point. The juror had said that he believed that he could render an impartial verdict.

J. W. Colley had formed and expressed a decided opinion, founded on rumor. Opinion was not so fixed that it could not be changed by the evidence.

G. G. Jillard had frequently and very decidedly expressed an opinion. Was on the spot a few minutes after the killing, and expressed his opinion there. His opinion was strongly in favor of one side, and could not be changed unless he heard evidence altogether different from that which he had already heard. Did not think that he could be a competent witness.

John H. Smoot was again called, but was not to be found. It having been proposed to send after this talesmrn, the District Attorney said that he would prefer to have him come with the next panel.

This Marshal said that Mr. Smoot was sick, and, therefore, not able to come.

On motion of Mr. Stanton, he was excused from attendance.

At this point the panel was exhausted, and the Court ordered the Marshal to summon a panel of seventy-five talesmen, to be ready at the meeting of the court tomorrow morning.

It will be observed that only three jurymen were obtained from the seventy-five talesman summoned yesterday.

The eight sworn jurors were cautioned by the Court not to allow any one to converse with them on the case now pending, and dismissed.

The Court then adjourned.

THIRD DAY.—*Wednesday, April* 6, 1859.

Judge Crawford took his seat at quarter past ten o'clock.

There was little or no variation in the general arrangements of the court-room, or in the number of spectators, and the prisoner being brought in, the clerk proceeded with the empanelling of the jury.

The first talesman called from the panel of seventy-five ordered yesterday was

Robert M. Coombs—had both formed and expressed opinions, and did not think that any evidence would change them.

Charles W. Tabler had formed opinion, and could not render an impartial verdict.

George W. Hinton, same.

Wm. H. Arnold had formed opinion, sympathised strongly in the case, and felt himself disqualified to act impartially.

George M. Goodall had expressed decided opinions.

Mr. Phillips desired to ask the juror if his opinion had been formed from rumor.

The District Attorney submitted that after a juror had so expressed himself it was unnecessary to go any further.

Mr. Phillips contended that the answer of the juror amounted to nothing, if upon his further examination it should appear that that decided opinion was formed upon mere rumor, and could be altered by evidence which would be adduced on the trial. In a case of this kind, it was to be expected that every thinking man in the community had formed an opinion, and it depended upon the temper of his mind to what extent it was a decided opinion. An impression formed upon a mere rumor, upon the gossip of the town, did not disqualify a juror, especially when he further added that he could render an impartial verdict upon the law and the evidence. The object of the defence was to secure a strictly impartial jury; but if every man was to be excluded who had formed an opinion, it would be impossible. The Judge himself might have formed an opinion upon the rumors which had reached his ears, and there was no principle of law or of common sense which should exclude a juror whose impressions had been formed upon the uncertain knowledge derived from the current reports of the day.

The Court thought where a man answered that he had expressed a decided opinion, it was sufficient to exclude him. There could be no impartiality under impressions so strongly expressed and carried into a jury box.

Mr. Stanton said the purpose of the defence was, by a cross-examination of the jurors, to ascertain whether they understood the real import of their own language in saying that they had formed opinions, and whether they were not such as might be overcome by testimony.

The Court still insisting that the juror was disqualified, he was set aside.

Adam Grinder had formed and expressed an opinion.

Thomas Parker could not render an impartial verdict.

Thomas E. Young, same.

James W. Coombs, same.

Hiram H. King had formed no opinion, expressed no impression, and had no bias in favor of or against the prisoner. Challenged by the defence.

Wm. G. Deale had formed an opinion upon the whole of the circumstances, and would try to act impartially, but owing to his prejudices preferred not to sit upon the jury. He would not like to trust himself.

The Court did not think the juror qualified.

Mr. Phillips said that he could not conceive what objection there was to the juror, since he had stated that he could act impartially.

The Court said he did not say that; he said "he would try to do what is right."

Mr. Phillips.—Could a man say more than that he would faithfully try to discharge the duties imposed upon him by the law. Admitting that he might be influenced by his impressions—his preconceived opinions, it was to be presumed, in view of his statements, that he would discharge the duties imposed upon him impartially, and render a verdict in accordance with the law and evidence. No man could safely say more, under such circumstances, than that "he would try to do his duty."

The Court.—That would depend upon what he was talking about; but in this case the juror had added that he would not like to trust himself, and this circumstance was, of itself a sufficient disqualification.

Jesse B. Wilson was afraid he had formed a decided opinion, but could render an impartial verdict, and had no bias for or against the prisoner. He preferred, however, not to sit upon the jury

The Court thought he was properly qualified, and he was accordingly accepted and sworn.

John A. Ruff did not think he could render an impartial verdict; was prejudiced.

John E. Leach had formed an opinion.

James Nokes had not formed opinion, but expressed a great deal of sympathy for both parties. Had no prejudice or bias, and "could do any man justice."

Mr. Ratcliffe, for the defence, desired to know how far a case like this, in which the sympathy of a juror was divided between the parties, would come within the rule previously laid down by the Court.

The Court ruled that where sympathy was expressed upon one side only, it was sufficient to exclude a juror, but where the sympathy was generally bestowed, as in the instance of the present juror, it did not amount to a disqualification.

Mr. Ratcliffe.—Challenged.

John McDermott had vague or undefined impressions from reading newspapers, but no decided opinion that

would affect his action as a juror; he could not answer how far his judgment might be influenced; would endeavor to act impartially, but preferred not to assume the responsibility of a juror; could not say whether his mind was biased or not.

The Court thought he was qualified, and he was accordingly accepted and sworn.

Leonidas Coyle had both formed and expressed an opinion.

Andrew J, Duvall, same.

Francis A. Tucker, same.

Francis Mattingly had conversed with a witness before the Coroner's jury.

William H Stamford had formed or expressed no opinion; was not biased for or against the prisoner, but had conscientious scruples in regard to capital punishment. Set aside.

Michael Green would render a verdict in accordance with the evidence; had formed and expressed opinions freely, that—

District Attorney.—That 'll do, sir.

The Court.—Have you any bias in favor or against the prisoner?

Juror.—I am for the prisoner as far as—

District Attorney.—No matter about that. (Addressing the Court)—I think that is a sufficient disqualification.

Mr. Phillips, for the defence—I do not think so, may it please your Honor, the juror has only formed an impression. The test is not what is the impression formed, or what the result of that impression would induce him to do. The juror has repeatedly stated that if sworn he would decide this case according to the evidence laid before him. This, I submit is all the qualification, independent of any direct bias or prejudice in favor of or against the prisoner, required of a juror. A prior impression one way or another, derived from mere rumor, could certainly have no weight in the case; and if he has strength enough to sit in the jury box and render a verdict in accordance with the evidence, most undoubtedly he is qualified for the position, and cannot be rejected because of impressions formed upon mere rumors.

Mr. Brady, of counsel for the defence.—If your Honor please, this is the first time that I have arisen to take part in the discussions incident to this attempt to empannel a jury, and I do so now with some little diffidence, but at the same time with a perfect understanding, as I believe, of your Honor's rules, and of the rules of law. I address your Honor now because I fear that the Court may not understand the last answer of this juror in the same manner as my learned associates. The expression of the juror was that "he is for the prisoner," giving that answer as if it were based upon what he had heard or read in reference to this affair. I would take the liberty of suggesting that it would be well if your Honor should be apprised whether the juror means by that, assuming that his statements be true, that he is biased in favor of the prisoner, or whether he is upon the evidence, ready to alter that opinion if necessary, and render an impartial verdict. Undoubtedly, the most intelligent members of the community, who, in walking the streets, has heard of this affair, or conversed with citizens in regard to it, has formed or expressed an opinion in favor of or against the accused; yet on being placed upon a jury, he might yield that impression to the stronger weight of evidence adduced. His impressions under those circumstances would be of a temporary and fleeting character one way or the other. Now I do not understand that this gentleman has said that upon any evidence his judgment is already determined in favor of the accused. I have had some little experience as a criminal lawyer, and I have become conversant to some slight degree with this matter of empanneling jurors. The first question which your Honor has put, while it embodies the sense and substance of the law in regard to the formation of an opinion—an opinion which must be in reference to the guilt or innocence of the accused—has been very properly followed by other questions calculated to remove any doubt that might exist. Now we have a gentleman who says that he could render a verdict according to the law, and the evidence, notwithstanding that he has formed an impression in favor of the prisoner; and as there is some doubt as to what that expression means, I would beg the Court to interrogate the juror, and ascertain what he intended by saying that "he is in favor of the prisoner," and to what extent his judgment is determined in his behalf. Should it turn out to be a mere temporary notion, based upon the incidents which have been made public—more newspaper and other reports—then I submit he is not disqualified to act as a juror.

The District Attorney.—If your Honor please, I understood the proposed juror to have stated in answer to your first question that he had formed and expressed an opinion. In addition to that, when the question was propounded to him whether he had any bias for or against the prisoner, he declared that he had. It does not follow that that is a merely temporary or fleeting expression, as my brother has called it; it may be fixed. The United States, then, in view of the answers to these two questions, has two difficulties to overcome; first, the formation and expression of opinion, which of itself is apt to warp or bias the judgment of men; and, secondly, the expression of the sympathies or bias for the prisoner personally, as it were, over and above the mere matter of private opinion. I understood your Honor to have ruled yesterday, that it was a sufficient disqualification if the proposed juror declared, in answer to any interrogatory, what were his present opinions, what were his present feelings. Now in this case we have a direct answer to the first question, and its confirmation under the question which followed as to the leaning or bias of the juror. I imagine, then, that not only from the reasons which have already in other cases, and in this case governed the decision of your Honor respecting the formation of the decision, but also on other accounts, your Honor has already decided, that if the party has declared he has a sympathy for the prisoner, he is disqualified, though in the same connection he may have confessed to only an impression as to his innocence or guilt. In this case, however, there is something stronger. There is a fixed opinion in the mind of the juror, in addition to his bias in favor of the prisoner, and I apprehend that he is therefore incompetent under the previous ruling of this Court, to sit on this question between the United States and the prisoner at the bar.

Mr. Graham, of counsel for the defence.—If your Honor will pardon me for the suggestion, as I understand it, the fabric of the criminal law rears itself upon the principle that every man is presumed to be innocent until proved guilty; and every juror is bound to enter that jury-box with that presumption in his mind. As I understand the structure of criminal law, its foundations are laid in mercy, and it is the duty of your Honor to commence this trial biased, if I may so speak, in favor of this prisoner; and if you carry out that legal presumption your Honor is not permitted under your official oath to deal with him as a guilty man. It would be pronouncing a verdict in advance of the trial, and there will be time enough for your Honor, in the discharge of your official duty, to look upon him with jaundiced eyes when he has been laid upon the altar of justice by a jury of his peers. Until that time arrives, we are surely to indulge the presumption which the law has written for us that he is innocent until proven guilty. I submit, therefore, that your Honor's mind must lean in his favor; for the two vital principles of law, as I understand them, are that all presumptions and prosecutions affecting the life of men are to be *in favorem vitæ*, and all presumptions and prosecutions affecting liberty are to be *in favorem libertatis*. And if your Honor is to commence these proceedings with a mind thus inclined in favor of the prisoner, I ask that you will allow the jurors also to enter the box with their minds charged in advance with the same legal presumption to do that duty which they are called upon to perform. If these jurors enter that box with the presumption that the prisoner at the bar is innocent, the first effort of the prosecution must be to overcome this conviction in their minds, and to build upon this legal presumption. The answer of this witness admits nothing but the indulgence of such a legal presumption, and every man who commences this case ought to entertain it, and provided it is not an absolute and unchangable opinion, carries out the presumption of the law and is strictly entitled to his seat in the jury box.

Mr. Carlisle thought it was plain from the answer of the juror to what conclusion he had arrived. From what he had heard and read he was for the prisoner This was not to be confounded with the legal presumption of innocence, based as it was, upon a partial knowledge only of the facts.

Mr. Brady said that there never was a human being sworn as a juror, in a criminal case, when that case presented any circumstance calculated to elicit from the human heart the thing called sympathy, who did not, the instant he looked upon the prisoner have some impres-

sion for or against him. Such an object did not exist in nature as an animated marble statue, that could move forward to the clerk's desk to be sworn, without some emotion. Yet that juror on hearing the case might decide according to the evidence.

He would like to have the Court ascertain what the juror meant by saying that he was for the prisoner whether he referred directly to the prisoner in person, or whether it was merely a general impression of sympathy, common to every one, and of such a nature as might be removed by the evidence.

Mr. Carlisle understood the ruling of the Court yesterday to be that where a juror had formed or expressed an opinion, and had felt some sympathy for the accused, even admitting that he could render an impartial verdict, he was disqualified from sitting upon the case. He believed that his Honor laid down this rule, that if it was apparent from the statement of the juror that he had reached temporarily, at least, certain conclusions, and was influenced by certain sympathies, if those sympathies were against the prisoner, the prisoner would be obliged to overcome them before he could reach the mind of the juror, and the juror was consequently not in that state in which he ought to be when he enters the jury box. So, if against the government, the government would be obliged to overcome that difficulty before it could approach a fair and impartial mind.

The Court.—The question first proposed to the juror by the counsel for the defence, was as to whether he could render a fair and impartial verdict, and his answer removed the effect of his having formed an opinion; but the juror went a great deal further: He said "he was in favor of the prisoner." If that was not a disqualification, the Court must confess that he could not see in what a disqualification consisted. In deciding upon these questions, he did not think that such nice distinctions should be applied as were attempted to be made by the counsel.

Mr. Ratcliff asked whether the Court would not permit the counsel to inquire of the juror whether or not that opinion was hypothetical. He supposed it had often been decided, and was a well recognized law that a mere hypothetical opinion did not disqualify a juror. The juror had said that he was biased in favor of the prisoner from what he had heard—conceding it to be true. And could not the defence be permitted to ask him if, when the testimony was presented before him in the jury-box, his opinion would not be modified in conformity therewith? and if he answered in the affirmative, then would he not be a competent juror?

The Court said that he had already decided the question.

The counsel for the defence took an exception to the ruling of the Court.

Job W. Angus had formed an opinion, but could render an impartial verdict in accordance with the law and evidence; his impressions, however, were in favor of the prisoner.

The Court thought that this was sufficient to disqualify the juror, to which ruling the counsel for the defence noted an exception.

Elijah Edmonston had formed and expressed an an opinion, and "should acquit the man if he were placed upon the jury." (Sensation.)

Charles H. Kiltberger had not formed an opinion, was not biased; "but if the prisoner was guilty, he would say, hang him as high as hell." (Sensation and laughter.)

Challenged peremptorily by the defence.

Alex. Lammond had formed and expressed an opinion fully and freely in favor of the prisoner.

Theodore Moses had formed an opinion, but his sympathies were with the prisoner.

Mr. Chilton desired that the question should be put, what the juror meant by sympathy.

The Court said the mere fact of existence of any sympathy on either side was a disqualification. In one of most remarkable cases on record, that of a negro who was tried before the New York courts for the murder of a whole family, and in which case Mr. Seward gained credit for his conduct of the defence, it was held that any sympathy or leaning whatever disqualified a juror. The Court had already made precisely the same decision twice to-day. Set aside.

George F. Varnell, had formed and expressed opinion.

Wm. H. Marlow.—Same.

John G. Robinson, had formed an opinion, but thought he could render an impartial verdict. Challenged by the defence.

Joseph Davis, formed an opinion.

William Hughes, had not formed an opinion "which would prevent a fair and impartial verdict." Was not prejudiced. Had no scruples against capital punishment, "when justice demanded it." Challenged.

James Skirving, had formed an opinion upon rumor, and did not think he could render an impartial verdict.

John H. Simms, had formed and expressed an opinion.

Benj. S. Kinsey.—Same.

Alexander Forrest.—Same.

John Pettibone, had expressed an opinion most decidedly, and could not be influenced by the evidence.

Alexander Bulley, was prejudiced in favor of the prisoner, and believed he could not render a fair and unbiased verdict.

Thomas G. Ford, did not think himself trustworthy; had conversed with an eye-witness.

Thomas E. Baden had formed an opinion.

John F. Dennis.—Same.

Zadoc Williams.—Same.

James T. McIntosh, could not find an impartial verdict upon the evidence.

Wm. Uttermuehle formed an opinion.

Wm. M. Moore, had formed an opinion, and saw nothing to prevent his giving an impartial verdict. Had had impressions, and entertained a bias, but did not think they would interfere with his judgment.

The Court thought that taking the questions together, he was qualified to act as a juror, and he was accordingly sworn.

Hugh Leddy had formed and expressed an opinion.

Thomas J. Magruder.—Same.

Joseph L. Venable, had formed a decided opinion, and "did'nt think any evidence would change his mind."

Samuel Pumphrey, would be afraid to trust himself, having formed and expressed decided opinions.

James B. Greenwell had formed and expressed opinions.

Robert Cohen had not formed or expressed an opinion; had no bias for or against the prisoner, and thought he could render an impartial verdict. Challenged by the defence.

James L. Barbour had formed an opinion

James S. Tophany.—Same.

Thomas C. Wheeler, thought that his sympathies were in behalf of the prisoner, and no evidence could change them.

Wm. H. Ball had formed and expressed an opinion.

Wm. H. Upperman.—Same.

J. F. B. Purcell.—Same.

Hiram Ritchie, had expressed an opinion as to what would be the result of the trial; could not form an opinion as to the innocence or guilt of the prisoner; always thought he could render an impartial verdict upon the law and evidence. Both parties stand the same to him in regard to prejudice. Had no bias for or against the prisoner. His sympathy was for the prisoner in a general way, and the same that he would entertain for any person in his situation. In speaking of the result of the trial, he had stated what *ought* to be the result, and not what it *would* be.

The Court under these circumstances, taking the whole of the questions and answers together, decided that the juror was not qualified, on the ground that an opinion expressed by a juror as to what *ought* to be the result of a trial of this kind, showed a prejudice in his mind which would interfere with the rendering of an impartial verdict. The juror was accordingly set aside.

Counsel for the defence took exception to the ruling.

Stephen Costar, had formed and expressed an opinion.

John R. Mitchell.—Same.

Harmon Burns, did not think he was competent to sit on the case, because of his very decided opinion and prejudices.

John Miller, had formed and expressed an opinion.

Reuben B. Clark.—Same.

Franklin Tenney, was opposed to capital punishment.

James P. Bartholow, formed and expressed opinions.

Daniel B. Clark, had a fixed opinion on all such cases; and did not think he could be an impartial juror. "If a justification of the act would make him an impartial juror, he should be one." (Laughter.)

Jeremiah Hepburn, had formed and expressed an opinion.

Wm. Cooper, had formed no opinion, was unbiased, and could render an impartial verdict.

Challenged by the defence.

The Court here remarked that a panel of seventy-six talesmen, instead of seventy-five, as ordered, having been summoned, the last name might be stricken off, so as to make the number correspond with the order of the Court.

Mr. A. S. Wright, had formed an opinion, but could render an impartial verdict on the law and evidence; had no bias for or against the prisoner, nor had he any scruples against capital punishment.

The District Attorney proceeded to inquire as to his property qualification.

Mr Stanton.—We propose to take an exception to the interrogatory which has been put by the District Attorney, and we might as well raise the point now as at any time. With all due deference, therefore, to the opinion of the Court, we respectfully submit that it is no objection to a juror that he does not hold property to the amount of $800; and I desire to state that the question has been made with the deliberation of counsel, and not out of any disrespect, either to the Court, or to the other side, but because it is believed to be law. When the question was first made on the opening of this case, the counsel for the prisoner was somewhat taken by surprise, because, although aware that a statute of Maryland, when a colony of Great Britain, in 1777, imposed such a qualification, we were not aware that the United States had ever, in any criminal cases, availed itself of any such objection. It appears that the District Attorney, for many years in this District, has not made a point of that qualification as a general rule; and that though the objection had been made for the purpose of getting rid of a questionable juror from time to time, yet the officers entrusted with prosecutions have not thought proper to make an objection so much at variance with the principles upon which the government rests. We are informed that in the practice of the District Attorney for the past four weeks, during which time he has had a large number of jurors before him, in not one solitary instance has he made that objection. We had supposed that the same rule would be applied to this case, but it seems that we are mistaken, and it has, therefore, become necessary and proper to consider what is the law upon that subject. In the first place it is true that there is a law of Maryland, of October, 1777, under which the District Attorney claims the right to make that challenge. Prior to that time, under the Colonial government of Great Britain, and under the opinions entertained by that government in regard to the qualifications of a juror, they had established those qualifications both in respect to the amount of personal estate and the character of that estate. Previous to that time, in the province of Maryland, freehold property was regarded as sufficient for a juror; and it was believed that not only was a man better qualified on account of property, but that he must have a particular class of property, and unless he had a freehold of a particular value, though he might own ten hundred thousand times more property in value than the individual who held land, yet there was virtue and quality in land which gave the landholder a right to be a juror, which the holder of personal property did not possess. As early as 1777, that idea had progressed so far, and the minds of men so far released themselves from the bondage of ancient error, that the absurdity of requiring the freehold qualifications was even at that day abolished, and it was provided that there should not be a freehold qualification by that act. Nevertheless, the mind had not relieved itself entirely from the bondage of ancient ideas, and there were still required to be a certain property qualification. But I need not pause here, and occupy the time of this Court in discussing the origin of this idea which supposed that those only were capable of passing upon questions of law, who had property at stake in the law.

Now, what are the laws of this District? This person is arraigned at this bar under the laws of the United States, under an act of Congress, which declares a certain act, of which he is accused, to be a crime; he is arraigned at this bar under the jurisdiction and sovereignty of the United States, and unless the jurisdiction and sovereignty of the United States have imposed a qualification upon its jurors, no qualification can be imposed upon them except the qualification recognized by the common law of the land—that they shall be free and impartial triers of the fact. Is such a qualification required by the laws of the United States?

The acts affecting this question will be found first in the general act of 1789, under the first section of which act the prisoner is here arraigned:

"In cases punishable with death a trial shall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at least shall be summoned from thence. And jurors, in all cases, to serve in the courts in the United States, shall be designated by lot or otherwise in each State respectively, according to the mode of forming juries therein now practised, so far as the laws of the same shall render such designation practicable by the courts or Marshals of the United States."

Thus far your Honor perceives that the law indicates the designation of jurors. Then it proceeds:

"And the jurors shall have the same qualifications as are requisite for jurors by the laws of the State of which they are citizens, to serve in the highest courts of law of such State."

Now that is all the qualification imposed upon the juror by the laws of the State in which the trial is to be had. Is this a State, or is it not a State? Are we now in a portion of the State of Maryland, and subject to the same qualifications and restrictions which were thought proper to be put upon its citizens while in a state of colonization and subjection, as in 1777? By no means. We are now in a portion of territory, geographically and politically, that has been withdrawn from any State, and belongs only to the United States, where the jurisdiction and sovereignty of the United States alone dwell.

But I shall be admonished that there is another statute vhich provides that laws shall be ignored in the District of Columbia (Brightley's Digest, p. 261, 16). Upon the organization of this District, it was provided that the laws of the the State of Virginia, as then existing, should be continued in force in that part of the District of Columbia which was ceded by the State to the United States, and by them accepted for a permanent seat of government; and that the laws of the State of Maryland, as they exist, shall be and continue in force in that part of the District which was ceded to the United States by that State, and by them accepted as aforesaid. Now this is the provision in regard to the civil laws of the State, not the criminal procedure of the State, because there was a criminal procedure adopted by Congress for this District.

That procedure was the act of July 20, 1840; and this act of 1840 is entitled "An Act to amend an Act approved May 13th, 1800." That act of May 13th, 1800, was the first amendatory act of 1789. "And jurors in all cases to serve in the courts of the United States, shall be designated by lot or otherwise in each State respectively, according to the mode of forming juries therein now practised, so far as the laws of the same shall render such designation practicable by the courts or marshals of the United States." Now that act found a certain practice prevailing in this District, and its operation was to give validity to that practice as then prevailing; but there was a further provision, as I before remarked, in the act of 1840, which undertook to prescribe the mode in which jurors should be designated and qualified in all the courts of the United States. Now, your Honor will observe the terms of that act: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that jurors to serve in the courts of the United States in each State, respectively, shall have the like qualifications and be entitled to the like exemptions as jurors of the highest court of law of such State now have, and are hereafter from time to time to be entitled to, and shall be designated by ballot, lot, or otherwise according to the mode of forming such juries now practised and hereafter to be practised therein in so far as such mode may be practised by the courts of the United States and the officers thereof, and for this purpose the said courts shall have power to make all necessary rules and regulations for forming the designation and empannelling of juries, in substance to the laws and usages now in force in such State; and further, shall have power by rule or order to conform the same to any change in these respects which may be hereafter adopted by the legislatures of the respectiv States or the State courts."

Now, the view which the counsel for the defence hav of this case is this: that Congress having provided the mode of qualifying jurors, and having imposed no qualification, it being against the rule and practice of Government in every other respect, there is no warrant whatever for this particular qualification in a case tried under the laws of the U. S., within a territory of the U. S. which forms no part of any State. I do not feel it necessary for me to do more than merely to present these views to the Court. I submit to your Hono

that there is no warrant under Congress, by any act of Congress, which makes an act of the Assembly of the Colony of Maryland in 1787 a law in the District of Columbia, the Capital of the U. S. at this time, after the termination of nearly a hundred years. As I said before, however, I mean no disrespect to the opinion of the Court, which seems to be settled on this question, and I have only taken the trouble to state these authorities and exhibit these statutes, to satisfy the Court that it is a point which counsel have examined, and they feel a strong belief that the prisoner has a right to be tried by free and unbiassed men without regard to the property qualification.

The District Attorney.—May it please your Honor, I shall not be drawn into a discussion of the propriety of this rule of the Maryland law, nor shall I discuss whether it be an ancient prejudice or a present propriety. The question for us to determine is, what is the law; not whether it be a good one or a bad one; a wise one or a foolish one. Now, what says the statute? I imagine after your Honor is shown the existence of a law requiring a certain course of procedure, that your Honor will not go behind that law for the purpose of inquiring into its wisdom or propriety, no matter how much it may be repulsive to your own private judgment and feelings. With that I have nothing to do. As to the matter of practice, I will state to the gentlemen on the other side, that it is true I have been connected in the prosecution of murder cases at another time in this court and that this rule was not insisted upon; and if the gentleman wants frankness and desires the reason why it has not been insisted upon, I will tell him: It was because I was not aware of the existence of the law at that time, and, therefore, could not put it in practice.

If I had been aware of the existence at that time. I should certainly have insisted upon it as a point of law.

But this is not the first time that this rule has been observed in court. The associates of the gentleman might have informed him that it has frequently been the practice here. It has been resorted to in many cases, and I think I may safely say that, so far as my own practice has been concerned, the deviations have been rather exceptions than otherwise. I know that it was resorted to at the instance of the United States where my associate was counsel for the defence. I know it was the practice of the former District Attorney, who sits behind me (Philip R. Fendall, Esq.), who, in every case, enforced the rule. I know, also, that it was the general practice of the late District Attorney.

By the first act of 1777, the freehold qualification, as far as the provincial court was concerned was dispensed with. Before that time it was a sufficient ground of objection to a juror that he had not a property qualification in the county where the court was held. Say the gentlemen, the law of 1777 is an old statute. One hundred years ago! It may be better or worse for that. As to that I shall not say. It is very true that at the time it was instituted it was about the era of our own Declaration of Independence, when it is to be supposed that our fathers knew something about the rights of people, and human rights in general; and if we were to retrace our steps in some respects to the maxims which they recognized and cherished and from which we have departed in these modern days, we perhaps would not be so much in error as we are. So stood the old law until the cession of the District of Columbia. In 1801, Congress enacted that the laws of Maryland now in force, till otherwise ordered, should become the laws of the District of Columbia. In other words, the act of Congress in 1801 made the act of 1777 an act of Congress to apply specifically and directly to the District of Columbia; now, then, if your Honor please, this statute fully and expressly prescribed the qualification of jurors. It is the law of the land, and the law of this case; and whatever might be the effect of a departure from it, I care not whether any advantage shall be taken of it at any subsequent step of this case; it is sufficient for me as a public prosecutor to know that it is law—and I stand upon it because it is law.

Mr. Stanton, in reply thought the importance of this question was never more manifest than now. He would inquire of Mr. Ould how long he had been practising law in this District?

Mr. Ould.—Since 1844.

Mr. Stanton.—About fifteen years. They had the declaration of the gentleman, who for fifteen years had been engaged in the practice of the criminal law, who had been appointed by the President of the United States, as a gentleman in every way qualified to enforce the laws of the United States, who had been confirmed by the Senate as such, who for thirty days or more had been performing the duties of his office, and yet had declared that until recently he did not know what were the qualifications of jurors in this District, and that a man ought to have eight hundred dollars before he could come into court and serve as a juror to pass upon the life or death of a fellow man. Where had this practice been hidden, that a man of intelligence didn't know it? Why had it been buried in the oblivion of a hundred years to be dug out for the trial of Daniel E. Sickles?

Mr. Stanton replied at some length to the remarks of the District Attorney, and strongly reiterated the points he had already made. He contended that the practice of the court must be the law of the court, and it must be a uniform practice; but where the public prosecutor was not aware of it, as by his confession he was not, then it is not the practice of the court, and the court ought not to allow it to prevail, especially where the life of a human being might be at stake. In addition to this, the defendant was to be tried under the law of the United States; he was to be tried under the common law forms, in which the property qualification was not to be found.

The Court.—Mr. O. S. Wright, a juror, having been sworn is asked several questions by the counsel. The District Attorney inquired of him whether he was worth $800? He has a right to put this question.

The county of Washington, which is this county, was a part of the State of Maryland; and the laws of Maryland were extended over the District by the Act of 27th of February, 1801, and are as much a part of the laws of the District as if Congress had enacted the laws in so many words. If the particular provision of the act of 1777, which has been referred to, has not been practiced and enforced uniformly, I know that it has been practiced and enforced in many instances since I have been on the bench; the reason why uniformity has not prevailed, is, I suppose, that the District Attorney did not choose to avail himself of that advantage. I think I heard the late District Attorney say, that the reason he did not avail himself of that advantage, was because a man did not always possess mind according to the weight of his pocket. Whether it is a wise law is not the question before the court, at all; the question is, whether the law exists? With the laws of Maryland, as enacted since 1801, we have nothing to do more than with the laws of California; with so many of the laws as have not been changed since 1801 we have everything to do. The people of Alexandria had certain rules of action founded on the laws of Virginia, while the people of this District were governed by the laws of Maryland of 1801. The very curious state of things remarked by the counsel for the defendant, therefore, did actually exist. I have myself tried men under the laws of Virginia, in Alexandria, and punished them, too, when convicted; and I am sure, and everybody knows it, that the laws of Maryland have been enforced here with great uniformity. The tribunals of this District have labored under a great mistake for 58 or 60 years, if the position taken by the counsel for the defence be correct. All the courts, and the judges who have held courts in this District have, with perfect uniformity, as far as I am informed, enforced those laws. They could not do otherwise, for Congress has distinctly said that they should be the law of this District. The law requiring a freehold qualification was amended by a subsequent law of Maryland, so as to make the non-holding of a freehold no cause of challenge, but still left an ownership of $800 as a prerequisite to a man's being sworn as a juror; and here his qualification or disqualification in this respect is based. The District Attorney or the counsel for the defence have a perfect right to enforce this law, and if they please, it may be done in the present instance.

The juror on being again questioned stated that he presumed he was worth more than double the amount named, but stated that his property was not in the District.

Some further discussion ensued as to whether the juror was qualified, his property not being here where he resided. A question arose as to whether the property was personal or real property.

The juror replied that it was personal property.

Mr. Stanton contended that personal property was in law drawn to the individual wherever he resided.

Mr. Carlisle desi ed tc know what the property consisted of, and the juror replied that it was in notes and debts due him. He had the notes here with him.

The Court said there was no objection in his mind to the competency of the juror.

He was accordingly sworn.

The Court stated that when the twelfth juror was obtained, near the time of adjournment, it had been the practice not to swear him till next day, in order that the eleven jurors sworn might have an opportunity to go home and make arrangements for their necessary absence during the trial.

Mr. Stanton objected and desired that the twelfth juror be sworn. He desired, on behalf of the prisoner, that the jury be sworn as soon as possible.

The Court was not particular about it.

Finally, Mr. Stanton agreed that if the jury desired to go home, they could decide for themselves (a juror having requested permission to retire, for the reason that he had made no arrangements for being absent), and he was willing to leave it to them.

Several of the jurors desired to be permitted to return to their homes for the night, and it was so agreed on all sides.

The jurors were then cautioned as in previous days, and dismissed. After a few moments' conversation with his friends, the prisoner was remanded to the jail, and the Court adjourned.

FOURTH DAY.—*Thursday, April 7, 1859.*

The Court convened at the usual hour.

A jury having been selected, public interest in the progress of the trial appear- to be on the increase. The space within the bar has been more densely crowded than heretofore, and without, every inch of room has been monopolized by the eager spectators.

Judge Crawford stated that after the adjournment of the court yesterday, one of the jurors came to him, and expressed some fears of not being able to sit impartially in the case, to which the judge replied that he could not excuse him. His Honor felt bound to make this statement publicly for the benefit of the parties concerned.

Mr. William L. Moore, the juror referred to, arose in his seat and said that he had been deeply impressed with the responsibility resting upon him, but on mature reflection, he felt perfectly satisfied with himself, and had no further objection to urge.

Mr. A. S. Wight, the twelfth juror, was duly sworn, and took his seat in the box.

The jury is composed as follows:

1. Rezin Arnold, farmer—county.
2. James L. Davis, farmer—county.
3. John E. Neale, merchant—city.
4. Wm. M. Hopkins, gent's furnishing—city.
5. William Bond, shoemaker—city.
6. James Kel y, tinner—city.
7. Wm. C. Harper, grocer—city.
8. Henry M. Knight, grocer—city.
9. Jesse B. Wilson, grocer—city.
10. John McDermott, coachmaker—city.
11. Wm. M. Moore, grocer—city.
12. Alpheus S. Wight, cabinet-maker—city

The indictment was then read, and Robert Ould, Esq., the District Attorney, rose and addressed the Jury as follows:

May it please your honor and gentlemen of the jury: The indictment which has just been read to you charges Daniel E. Sickles, the prisoner at the bar, with the wilful murder of Philip Barton Key. I shall narrate to you as briefly as I can the chief incidents connected with this tragedy, and as I believe the evidence will disclose them. The parties, I suppose, are well known to you all, at least by reputation, one being the representative in the Congress of the United States of a great commercial metropolis of the Union; the other, one who long and honorably filled the post of public prosecutor in this District; and perhaps in the hearing of several of you, he has discharged the duty which has to-day fallen to my lot.

The place where the crime charged in this indictment occurred was the city of Washington—the time, the 27th of February last. It was the Sabbath—a day which for more than eighteen hundred years has been set apart in commemoration of that Divine mission which brought "peace on earth and good wil to men." In the soft gush of that Sabbath sunlight, at an hour midway between morning and evening did he commit this act. At a time almost when the echoes of the church bells were lingering in the air, the deceased all unconscious of the tremendous woe that was then suspended over his house, was met by the prisoner at the bar, on one of the thoroughfares of the city. He must soon have seen, from the attitude, movement, and all those evidences of deliberate intent, which rounded into completeness that scene of horror, that the prisoner intended some deed of blood. All unarmed and defenceless as the deceased was, he used all the feeble means that were in his power to save his life. How ineffectual they were even in delaying the terrible fate that overtook him, the evidence in this case will show. The prisoner at the bar had come to that carnival of blood fully prepared. He was a walking magazine. He was not only fully provided in the number of his firearms, but had also taken care to supply himself with their different varieties, each one of which, doubtless, possessed its peculiar excellence for the murderous work. To a nice and close calculator the contingency of an anticipated collision might call into requisition both Derringer and revolver. If before the time of meeting any such idea passed through the mind of the prisoner at the bar, as would seem to be indicated not only from the number and variety of his firearms, but from the temporary armory with which he was provided, to wit, a convenient overcoat on an inconveniently warm day, it would seem that he did not reason carelessly. Against this moving battery which could place itself in any position like a piece of flying artillery on a field of battle, the deceased interposed nothing, and had nothing to interpose save the physical strength which when governed by presence of mind, ever was but feeble at best; a poor and feeble opera-glass, which, even when thrown with well directed aim, was comparatively harmless; and last of all, the piteous exclamations which, however they might have moved other men, in this case, let me state, fell upon ears of stone. The evidence in this case, gentlemen of the jury, will show to you from the first act in this tragedy down to its full fruition, through each and every successive scene of horror—not only that the deceased was unarmed, but that the prisoner at the bar knew such was the fact; That he must have known it when the first shot was fired at the corner; that he must surely have known it when, subsequently, the exclamations of the deceased were ringing in the air; and that, if possible, more certainly still he must have known it when he stood bravely over his victim, revolver in hand, seeking to scatter the brains of one who had already been mortally wounded in three vital parts, and whose eyes were being covered with the film of death. I say not this, gentlemen of the jury, for the purpose of inflaming your minds against the prisoner at the bar, but as an illustration of the common law, that homicide with a deadly weapon, perpetrated by a party who has all the advantage on his side, and under circumstances indicating cruelty and vindictiveness, is murder, no matter what may be the antecedent provocations in the case.

[The District Attorney here read from Wharton, on homicide, page 194.]

The evidence in this case, continued Mr. O., will show you, gentlemen, that no matter how revengeful may have been the feelings of the prisoner at the bar towards the deceased at the time of their meeting, yet a sufficient time elapsed between that moment and the close of the catastrophe to have allowed whatever passion had inflamed him, to subside. Not only was there sufficient time, but all the other circumstances of the case seem to have conspired to su h a result. I know not, gentlemen of the jury, how so bloody a purpose could have been entertained during such a length of time, and under such appealing circumstances, except that it was sustained by remorseless revenge, At least four or five shots were fired, or attempted to be fired, and an interval of time greater or less intervened between those shots. Earnest, perhaps frantic, entreaties—such as a man would make for his life—such, perhaps as a desire for an opportunity of self-vindication, or the recollection of the little ones that he had left clustering around his hearthstone may have brought to his lips, filled up a portion of those appeals.

The first shot that, in all probability, took effect upon the person of the deceased, wounded him severely in the groin. From that time, at least until he fell upon the pavement, he was in supplicating retreat, yet the

prisoner at the bar did not desist from his bloody attempt to kill, hidden in his heart, as he stood over the prostrate and dying form of the deceased. Nay, more, gentlemen of the jury, the evidence will show to you in this case that he was attempting to add mutilation to murder, when he was arrested by the parties who subsequently bore the lifeless form of his victim from the spot on which he fell.

Murder, gentlemen of the jury, as you will find the definition accepted by almost all the civilized world, is the unlawful killing of a human being with malice aforethought. Manslaughter—the unlawful killing of a human being without malice aforethought. The distinction between the two, although frequently made the subjects of controversy—tolerably well understood, I beg leave to impress your mind, by the citation of some of those general principles as recognized in the common law—the law that governs us here in the administration of criminal justice.

Mr. Ould then proceeded to read from Wharton, pages 38, 168, 177, 179, 182, 192, 197, and 199.

The rules, gentlemen, by which the crime of murder is tested, are not of to-day's or yesterday's growth. They have come down to us consecrated by time, and have met the approval of just, wise, and good men. While changes in other respects have been made in the law which governs and controls the relations of man to man, while the hand of reform and innovation has been busy in tearing down and remodeling other portions of the structure of human justice, the great, grand old foundations of the common law with respect to this offence, instead of being impaired, have been cemented and strengthened by time. Springing like an arch, as it were, over the vast chasm which separates the remote past from the present, they have become stronger by the pressure of centuries. The maxims of the common law relating to the crime of murder, are based upon common sense and common justice. However technical that common law may be in other respects, here it deals alone with the fact. All its features are essentially human. The figures of these great old masters, even our rough-hewn ancestors, as portrayed to us in the light of their own maxims, are revealed to us as living, actual men, like unto ourselves. These principles owe their entire strength, and I may say, also, their veracity, to their humanity—not the modern, sickly, sentimental humanity, but one that is God-fearing and men-loving.

And while thus they allow a sufficient toleration of the weakness of our common nature, they form as it were at the same time the very pedestal upon which rests the sublime figure of public justice. Whenever those principles are perverted, whenever they are warped for the purpose of shielding a criminal, whether he be humble or powerful, a blow is struck at both humanity and justice. Society, gentlemen, has its human cries, as well as the solitary prisoner, and if they come up to us in the swell of uncounted voices, they are no less wrong. The jury that sends its deliverance to the offender, whose stains are not washed off by the evidence in the trial, is itself morally derelict to the high obligations which humanity alone imposes on it. These practices, gentlemen, relating to the law of murder, have been proved by experience to be so evidently wise and just, that in no civilized court that I have heard of, has there ever been any essential departure from them. Innovation, even in its widest moments, has never yet suggested the propriety of allowing revenge, as either a justification or even a palliation of the crime of murder.

Human society could exist upon no such basis, civilization itself, would become an impossibility. The common law has the most sacred regard for human rights; so sacred that even the rankest criminal who has assumed unto himself the functions of judge, jury, and executioner, is himself given by that law the privileges of a fair and impartial trial It gives to-day, to Daniel E. Sickles, the prisoner at the bar, not only what he denied to his victim—an impartial jury, and an upright judge,—but, until he is proven guilty, clothes him in the spotless robes of innocence.

How long the facts that may be proven in the progress of this case, how long the presumption of innocence in his favor will control the facts of the case, as they may be given to you in evidence, is for you to determine. How soon, gentlemen, that presumption will be supplanted by another, terrible to the prisoner, is one which the law authorizes and commands you to draw—the presumption of murder arising from the evidence—is for you to judge. Whether in addition to this second presumption, the proofs in this case will show, further, an expressed malice on the part of the prisoner at the bar towards the deceased, is for you to decide.

You sit there, gentlemen, under the law of the land. No prince or potentate ever exercised a higher function than that you are called upon to perform. It is as solemn as death; it is as momentous as life. Your consciences have been purged by the ordeal of the court, and you have solemnly sworn you are competent to decide upon the guilt or innocence of the prisoner at the bar.

You sit there, gentlemen, as jurymen, and not as legislators. Whether the law be wise or foolish—whether it inflicts too severe or too mild a punishment, is no concern of yours. You are there to find the facts, and not to amend the law. You might as well annul the law which empannels you, as to attempt to alter or set aside the law which defines or establishes the crime of murder.

Nor, gentlemen of the jury, have you anything to do with the punishment which the law affixes to that crime. The responsibility rests alone with the law-making power, and the propriety of its exercise and administration is a question addressed exclusively to the wise discretion of the executive, who can sheath the sword of justice, or let it fall upon the guilty head.

Your duties and responsibilities, gentlemen of the jury, are solemn and momentous enough, without assuming others that do not belong to you. You sit there to try the issue between the prisoner at the bar, and the prosecution of the United States, which alleges that the law has been violated.

The issue thus made up, you are sworn to try. The responsibilities that attach to the consequences of that issue rest elsewhere. Nay, more, gentlemen of the jury, those consequences themselves, independent even of their responsibilities, are in the hands of the law and in the keeping of a wise, merciful, and just God.

I know not, gentlemen of the jury, what will be the peculiar line of defence in this case; if I did, it would hardly be proper for me to allude to it at this time. If, however, gentlemen, it be legal, and it be proved to your satisfaction, let the prisoner go free. Let him go free as the winds of heaven.

If, however, on the other hand, it be not legal, if it receive not the sanction of the law, or if, being legal, it be not proved, I charge you, gentlemen of the jury, by the duty that your owe to yourselves, to your God, and to your country, to smite the ready hand of violence everywhere by your verdict, and to proclaim to the four quarters of the now listening world that there is virtue yet left in a jury, no matter how high the position or lofty the pretentions of the offender.

Judge Crawford here stated that it had been the practice in this court for the defence to follow the prosecution in opening, prior to entering upon the testimony. If the defence, however, preferred to reserve their opening, they were entitled so to do.

Mr. Brady for the defence, stated that they preferred to open to the jury after the evidence for the United States should be given.

CALLING OF THE WITNESSES.

The witnesses far the prosecution were then called by the Clerk, when the following answered to their names. Viz.: Dr. Coolidge, Dr. Stone, Richard N. Downer, Francis Doyle, Thomas E. Martin, P. V. R. Van Wick, Joseph Dudrow, Abel Upshur, Edw. M. Tidball, Cyrus McCormick, John M. Seely, Jr., Jonah D. Hoover, Robt. J. Dillon, of N. Y., Thos. Woodward, Reuben Worthington, James N. Reed, Henry Hepburn.

The following (witnesses for the United States) failed to answer to their names: Eugene B. Pendleton, Hon. Richard Brodhead, of Pa., Hon. George Eustis, Daniel Dougherty, of Pa., Barry Hayes, of Pa., Ed. C. West, of N. Y., Hon. Hiram Walbridge, of N. Y., E. W. Cone, of N. Y., Welcome Beebe, of N. Y., C. K. Alburtis, of N. Y., Hon. J. B. Haskin, of N. Y., Ambrose G. Kingsland, of N. Y., snd James Pumphrey, of Washington City.

EXAMINATION OF WITNESSES.

The first witness called on the part of the government was James H. Reed, who being sworn, testified as follows: Was near by at the death of Mr. Key. Was passing up on the 22d of February last. As he got up near Madison Place, walking leisurely, heard loud talking, and saw two gentlemen on Gunnell's corner. They

were from four to six feet apart, and soon one of the men raised his arm gradually and steadily, and witness saw a pistol. At first it appeared to have a direct aim at the corner of the house, but in an instant witness saw it was aimed at the other man, who was trying to avoid the aim. He fired, and the parties moved forward some twenty feet. When they got twenty feet from the first position, the man shot at retreated, the other following him, and the former running round a tree crying "murder," "murder," and "don't shoot me." The man with the pistol then snapped his pistol, and it did not go off. When in the middle of the street the man fired the second time.

Just before the second fire, witness saw the man shot at throw something at the man with the pistol, which passed through the air slowly, and hit the man with the pistol, falling at his feet. Just at that moment the second shot was fired. The man shot at then cried something which witness did not distinctly hear, but the words "shoot me," or something like it, occurred. The third shot was then fired, and the man shot at twisted round on the pavement and fell. The other then went up to him, and snapped the pistol several times within two or three feet of his head.

At the first shot, the man shot at did not move more than two or three feet. After the first shot, the man with the pistol went some twenty feet westward, followed by the man shot at. Then the man shot at retreated, and the man with the pistol followed him back, when the man shot at got on the corner and got behind a tree; the man with the pistol snapped the pistol at him.

[Here the jury took a short recess, after which Mr. Reed continued his testimony.]

Mr. Key came out from behind the tree at the moment the pistol was fired the second time. After the second shot, the deceased gathered himself up and exclaimed that he was shot, and retreated to the pavement. Key's back was towards the man who fired when he retreated. When something was thrown by deceased, the parties were some ten feet apart, the man shot was east, and the man with the pistol west.

The third shot was fired after deceased reached the pavement, and after he cried out murder. When deceased fell, the man with the pistol got in front of him, and shot the third time while deceased was lying on the pavement. When the third shot was fired, deceased cried, "Don't shoot."

Between the third shot and the succeeding snapping of the pistol, but about two seconds elapsed. The next snapping followed more rapidly. Witness did not change his position all the time. Was standing on the opposite side of the street, south of the parties, all the while, some thirty or thirty-five paces off. Mr. Key fell some twenty-five or thirty feet from the lamp-post on the corner. All these occurrences transpired in the county of Washington.

Cross Examination by Mr. Brady.—Occupation that of buying and selling wood and coal. Have seen Key once at this bar. Did not know him at the time of this occurrence. During the whole affair, did not see the features of either so as to recognize them, and saw no person whom I knew either by sight or name. Saw one person going north; also saw one other man who was going eastwardly towards Riggs & Co.'s bank. Cannot say that this person had passed the corner of the avenue before the firing took place, but he was opposite Dr. Gunnell's door; did not see his face. Saw no others until several persons came running from the club house down Madison Place. Some of them were north of the club house, and some of them between the club house and the parties. Did not think the man who passed down Pennsylvania Avenue was in a position to see the parties when the firing occurred. There was no persons that he obsered who saw the first and second shots fired. The persons who came down Madison Street might have seen the second shot. Did not know Joseph L. Dudrow, Richard Dowler, Edward Delafield, Jr., or Francis Doyle. Did not understand the loud talking, and had no idea who was speaking. Could not tell what kind of a pistol was used. Witness did not alter his position during the whole affair. In turning about, the hand of the man who held the pistol was necessarily concealed from my view. After the first shot, Mr. Key did not advance upon Mr. Sickles or touch his person. Do not think it could have been done without my observation. saw nothing like what is commonly called a tussle. There were three shots fired, and three snappings of the pistol. No shot was fired when the parties were not facing each other. Their faces were towards each other on the occasion of each shot, though they might not have been exactly opposite. When Mr. Key threw something at Mr. Sickles, he was west and north from the second tree from the corner of Maynard's house, about twelve or fourteen feet from the tree. The article which Key threw at Sickles moved very slowly, and passed at right angles from where I stood, but I was not in a position to measure its rapidity. It touched the body of Sickles, but could not say where. The second shot was simultaneous with this throwing. They were then about eight or ten feet apart. The first parties who approached after Key fell, were those who bore his body away. Cannot say that I observed that either of these persons spoke to Mr. Sickles. The last that I saw of Sickles after the transaction, he was crossing Franklin Square. After the last shot, Mr. Sickles turned around and walked in a northerly direction up the street. Witness thought at the time, that the last shot had taken effect on the body of Key. Cannot tell positively what part of the person was wounded, but should judge that the shot struck him within this this circle [witness here described a circle from his throat to the lower part of his abdomen]. There were two snappings after the last shot, and Sickles was distant from Key on the occasion of each of these last two snappings four or five feet. The shortest distance between Mr. Sickles and Mr. Key, during either of the snappings or firings, was about two or two and a half feet. The last two shots were rapidly made. The whole affair lasted from a minute and a half to two minutes, but I am not positive; it is difficult to measure the time. Key fell on his side and elbow, with his face towards Sickles.

By the District Attorney.—When Key fell, I should think he was five or six steps from Sickles. The muzzle of the pistol was from two to three feet from Key's body at the last shot and last snappings.

Second Witness.—Philip V. R. Van Wyck, clerk in the Treasury Department, sworn.—Saw the killing of Mr. Key. Was on the north side of Pennsylvania Avenue, in front of Commodore McCauley's residence, and westward of Rigg's bank. Observed two gentlemen on Dunnell's corner apparently in conversation. Saw one of them retreat rapidly north, up Madison Street. Saw the other raise his arm simultaneously, and heard the report of a pistol. Commenced to run towards them. they both disappeared from sight, and on approaching the corner, saw one of them about the middle of Madison Street, near the corner, fire again. He disappeared from sight beyond the house. I still approached the corner, and on reaching there, observed a man lying upon the pavement motionless, and another standing between him and the fence which runs around the house, with a pistol in his hand, which he presented to the person lying down and snapped. Saw him cock it and present it again, heard it snap, but did not see it; turned my head away. Saw some parties approach the body, which appeared to be lifeless, and pick it up, and I then turned from the corner and saw no more of the killing. When I first saw the parties, they were apparently standing north and south, the one who fired being southerly. Could not judge how far apart they were, but could see a space between them. The one who fired had retreated. Should think the distance between the parties at the time of the firing about six feet. Could partly see the person fired at, and could entirely see the man who fired at him. He stood three or four feet from the corner lamp-post. I was walking westward. After the first fire, the man who I had partly seen disappeared, and the gentleman with the pistol also disappeared, as if following him. I was running at the time, and my attention was not directed altogether to the men. When I arrived at the corner, one man was lying on the pavement, and the other was standing with a pistol in his hand, which he presented and snapped at the head of the person lying down. I recognized the man who had the pistol as Daniel E. Sickles, the prisoner at the bar. Also saw there Mr. Butterworth, Mr. Martin, and Mr Upshur. I first observed Mr. Butterworth as I was approaching the corner. He appeared to have just come down Madison street. He stopped at the corner and looked up Madison street; but after the last shot was fired, saw him approach the railing and rest upon it. I observed Mr. Upshur and Mr. Martin, immediately after the pistol was snapped, leaning over the body, as if to pick it up.

By the District Attorney.—Did you see any shot except the first?

The witness.—I saw only two shots fired.

Mr. Brady appealed to the court that when a witness ad given a narrative of what he had seen, he should ot be submitted to further questioning with respect to the details.

The court said that it was the usual course here for the witness to give his narrative of the occurrences, and for the counsel afterwards to make whatever interrogatories might be necessary; but that it was not proper to indulge in a repetition of the testimony.

Cross Examination by Mr. Brady.—I was about fifty yards from Madison Place when I heard the first shot. Hurried to the spot as rapidly as I could. Could not tell how long it took to reach Madison Place; nor can I, at this distance of time, tell how long it was before I heard the second shot; but it was a short time only. Cannot say what time elapsed between the first and second shot. Should think it was about two minutes from the time when I started to run to Madison Place, after hearing the first shot. Heard three reports from a pistol, not in rapid succession, but with nearly an equal distance of time between the first and second and third shots. Should not think that the interval of time between the first shot and the last snap was more than two minutes. During the affair heard exclamations but could not understand them or distinguish from whom they proceeded. Think, however, that the exclamation came from the party who retreated. Saw no person speak to Sickles while Key was lying upon the ground. Saw a single barrel pistol lying on the ground, it was stocked to the end of the muzzle. Think it was a Derringer pistol. It was lying on the corner of the pavement about a yard from the corner, and in about the same position that the party who fired stood when the first shot was fired, and from ten to fifteen feet from the body of Mr. Key. Do not know what became of it. Saw no other article lying about there. Did not notice how Mr. Key was dressed till I saw him in the Club House, and cannot say whether he had on an overcoat or not. When he retreated, he retreated with his face towards Mr. Sickles.

Third Witness.—Edward Delafield, Jr., sworn.—Was present at the time and place of the death of Mr. Key. Was coming down Pennsylvania Avenue towards Madison street about two o'clock P.M., and when opposite the small gate near the President's house, on the south side, saw Mr. Sickles coming down the street on the Club House side, a little this side of the Club House. Did not take particular notice, but saw him address a gentleman on the corner. I continued to walk towards Madison Place. Heard the report of a pistol, and then saw both the gentlemen in Madison street near the crossing. The shot did not seem to take effect on Key, for he ran, and said "Don't shoot"—"don't shoot me,"—"don't murder me." After that, he got behind the second tree from the corner. Sickles followed him up, and as he got up to Key, he caught Sickles by the hand. Think it was the right hand. Sickles threw him off, and fired. This shot seemed to take effect. As he was lying on the pavement on his right arm, Sickles approached him and put the pistol to his breast, and fired. Key fell over as though dead. Sickles then cocked the pistol and put it near the head of Key, and pulled the trigger. The cap missed. Two gentlemen were running from the Club House. Sickles seemed to be putting on a new cap. One of the two gentlemen took him by the hand, when Sickles seemed to order him off. He then fired a third time. Mr. Sickles then joined a gentleman, and walked away up Madison Place. The whole affair occupied about a minute and a half or two minutes from the time when my attention was first directed to the firing. My position was two or three feet this side of the small gate in the President's ground, and nearly opposite the upper corner, or the corner nearest Georgetown on Madison street. Did not know Mr. Sickles personally, although he had been pointed out. Cannot say how he was dressed. I stood still after the first fire, till they took the body towards the Club House, when I crossed over. I did not notice Mr. Sickles before the firing any more than to simply say to myself, "There goes Dan. Sickles." Did not observe any gentleman standing at the corner before Sickles approached him, and did not know who it was.

By District Attorney.—Will you state distinctly what occurred on the corner?

Mr. Brady objected to the District Attorney's going over the whole ground again, any further than was necessary to make it intelligible, as it was a waste of time.

The District Attorney stated that his desire was simply to have a distinct impression of the facts made upon the minds of the jury, and he would confess for himself that he was not perfectly familiar with all the details, and was desirous to be informed by the witnesses.

Mr. Brady said that he certainly would not object to that.

(Witness resuming).—After the approach of the gentlemen to the corner, it could not have been more than ten seconds from the time the parties met at the corner, when the shot was fired which caused me to turn around; did not see the first shot; did not hear what was said between the parties at the time. After the first shot, Sickles followed Key up to the second tree from the corner, and after the first shot noticed the parties in the middle of the street. While there, Key was endeavoring to get out of the way, and exclaimed, "Don't shoot me!" "don't murder me!"

Cross examination by Mr. Brady.—I have been summoned before the coroner's inquest. Did not know Mr. Key till told who he was. Did not observe how he was dressed, and whether he wore an overcoat or not. Had heard that he was the man who rode a grey horse.

Mr. Brady here read from a copy of the *Washington Star* the evidence of this witness before the coroner's inquest, as follows:

"I saw Mr. Key at the corner of 16th street and the avenue. He was alone when they met. I supposed they were friends. They appeared so. There was no person with Mr. Sickles at the time. I heard the report of the pistol just as Mr. Key and Mr. Sickles were in the middle of the street. The first shot appeared to have no effect on Mr. Key. He threw up his arms."

Mr. Brady.—Is that so?

The witness.—Yes, he did so, and made an exclamation.

Mr. Brady continued the reading as fellows: "Key then got away from Sickles, and got behind the tree."

The witness.—Is that the *Evening Star*?

Mr. Brady.—It is.

The Witness.—Then that is not a correct report of what I said before the coroner's jury. Mr. Sickles followed him up, and was aiming a pistol at him, when Mr. Key caught his arm, as if to prevent him from shooting.

Mr. Brady.—Is it true that Key reached the tree, and Sickles followed him there, and made a show of shooting at him, and that Mr. Key took hold of Mr. Sickles before he fired?

The witness.—Yes, sir; he then fired. I presume the shot took effect in the groin, because he fell to the pavement, and put his hand there. The third shot took effect in the breast. The third shot and the fifth shot are the only ones that appeared to strike him in the breast. The first missed, the second struck him in the groin, the third took effect in the breast, the fourth missed, and the fifth took effect in the breast. Did not observe the pistol he had in his hand. Did not know that it was a revolver, but judge that it was, from his cocking it several times. Could not see the weapon. There was no great interval of time between the first and third shots. The second and fifth also seemed to be at equal intervals. The five shots seemed to be fired out of one pistol. The last explosion appeared to be a shot, and not a snap. Heard no snap after the last discharge. I do not think I am mistaken in regard to Sickles being on the Club House side. Am as sure of that as of anything I have stated—as sure as any body can be who saw the transaction. Sickles was nearer the avenue than the Club House, between the tree and the Club House. When they met, he had passed the second tree, and was on the corner. Did not observe from what direction Key came, but suppose he came up Pennsylvania Avenue. Saw no other person near the parties. When I first observed them, there was no person in Madison street. I did not know Butterworth by sight, until I met him at the coroner's inquest. Did not know any of the previous witnesses who have been examined. When first I saw the parties, a shot had been fired. Saw the pistol at the coroner's inquest.

By the District Attorney.—Saw no other persons about the neighborhood until after the third shot, and then saw gentlemen coming down from the Club House. Did not see any gentleman on the south side

of the avenue. Have not the remotest idea of what was the distance from the place witness was standing and the place where Key fell upon the pavement. I was standing about the centre of the sidewalk, on the President's side near the small gate.

Fourth witness —Joseph Dudrow sworn.—On the 27th day of February, I was walking up Pennsylvania Avenue, going west. After passing the south-east corner of Pennsylvania av. and Madison Street, I heard the report of a pistol. I looked around and saw Key jump one side. As he did so, Sickles raised a pistol to fire a second time, and Key jumped to him and grabbed him in such a manner that he could not fire. They scuffled for a moment or two, when they separated, and Sickles ran across to the flag-stone. Key followed him up, apparently trying to grab him and to keep him from shooting, but he did not succeed in catching hold of him. After they got near the flag-stone, Sickles turned on Key, when Key retreated backwards, crying, "don't shoot me." Sickles then fired. Key rather jumped, but whether the shot struck him I do not know. He then cried, "murder," and ran across the street to the place where he had come from. Sickles followed him to the second tree, and fired while he was standing. Key then fell, and Sickles put the pistol to his head to fire again, but the cap only snapped. Sickles fired but three shots to the best of my knowledge. I do not know what was the distance from the muzzle of the pistol to Key's head, but it appeared to be very close. I kept my position until after the second shot, when I ran across the street where I should judge that I was thirty-five or forty feet off in the Avenue when the second shot was fired. I have no recollection of but three shots, and one snap. After he had snapped the pistol at Key's head, some gentleman—I do not know his name—came from the direction of the Club House, aud took him by the arm. Sickles slewed himself around, and jerking his hand away, drew back two or three steps. I heard Sickles say some words, but could only distinguish the words, "my bed." Key was on the pavement. I did not see any other persons until after the report of the pistol. When the second shot was fired, Sickles was standing on the crossing, aud Key in Madison place. Sickles was standing south and Mr. Key north. I did not see anything that transpired prior to the first shot. There was nothing between me and them to obstruct my view. I should think that the distance between them when the second shot was fired, was fifteen or sixteen feet, though when my attention was first arrested by the pistol, I should not think they were more than three or four feet apart. I suppose they could have shaken hands with each other. Immediately after the first shot, as near as I can get at it, Key jumped one side, and as he did so, Sickles raised his pistol. Then Mr. Key sprang up and they had a scuffle for a moment. Sickles ran to the flag-stone, and Key followed him, apparently to lay hold of him. Sickles then stopped, and Key retreated with his face towards Sickles, crying, "don't shoot." He then ran across to the tree.

Cross-examination by Mr. Brady.—I do not know Mr. Butterworth, or any person that I saw there from the beginning to the end of the affair; nor do I remember seeing either of the gentlemen summoned as witnesses here. I cannot tell exactly what part of Mr. Sickles' person was seized, or attempted to be seized, by Mr. Key; think that Key used both hands, and from where I stood, should judge that he took hold of Sickles about the waist; did not see what Sickles was doing with his hand during the scuffle, which lasted for a minute or two. At the time Sickles put the pistol to the head of Mr. Key, he was lying on his right side on the pavement near the second tree. I saw Mr. Key lifted up and carried away; did not see any pistol lying on the pavement, nor did I see anything thrown from Mr. Key, though I have the impression that I did. I do not give it as evidence that I did so. That has been my impression before to-day, and it is an impression formed in my mind independent of any reports in the newspapers or elsewhere; it was formed on the spot. I should think it was thrown just before the scuffle. All the shots were fired, to the best of my recollection, before Mr. Key fell; there were three fired altogether, and one snapped. I do not think he could have snapped the pistol twice at Key without my observing it.

Richard M. Downer sworn.—I am a resident of this District. I was not present at the time of Mr. Key's death, but was standing on the corner of 15th street and New York avenue, when I heard the report of a pistol. I saw some persons stop on the avenue, as it appeared to me, about opposite 16th street. I ran across the street, and by the time I got to Corcoran & Rigg's corner, I heard a second report of a pistol. I still ran ahead, and before I had got up to Maynard's, there was another report. I was about to turn the corner when I heard a snap, but thinking I was near enough, I did not go around the corner. After the shooting stopped, I went around the corner to where Key was, and saw him lying on the pavement. I knew Key by sight and by reputation. Mr. Key was lying on his back. Mr. Sickles was about fifteen feet from him north of the spot where he was lying. As I turned off I heard him make a remark, though I do not know what it was, but something to the effect—"Is the damned scoundrel, or is the damned rascal dead?" Saw a pistol in Mr. Sickles' hand. Do not know what it was, but it looked to me like a revolver. Twenty-five minutes after the occasion, perhaps, I picked up a single-barrelled pistol, of the kind known as the Derringer pistol. I examined it, but not very thoroughly. It was not loaded. There was an exploded cap upon the nipple, I did not observe whether there were any other marks of its having been fired. I saw a gentleman put a penholder in it to ascertain if it was loaded. I handed the pistol to the coroner. I did not see the shots fired, as the corner of the brick house was between me and the parties.

Cross-examination by Mr. Brady.—I handed the pistol to the coroner, and, so far as I know, he has it now.

C. H. McCormick sworn.—I reside on the corner of Pennsylvania avenue and Madison place, near Maynard's house. My attention was first attracted by the report of a pistol. I rose and stepped to the window. Upon getting there, I discovered two persons upon the stone walk between Maynard's corner and the corner of the square, moving westward. They seemed to be running, and I remarked that it was a street fight. They got near the corner of the square, and then I saw Mr. Key standing near the middle of Madison place, some little distance from the avenue. Sickles advanced diagonally towards him and fired. Mr. Key then went in the direction of the second tree from the corner. Sickles followed in the same direction Key, with one hand, had hold of the tree, and partially fell into the gutter against the curb. Sickles in the meantime got to the tree, and in that position fired at him. Being inside of the house, I am not certain whether there was a snap of the pistol or not, but heard none. Sickles either shot once as Key was falling, or after he was down. When I first saw the parties they were moving at a rapid pace, and it was my impression that it was a street fight. I was at the window on the second floor of my house, the third from the corner. After I first saw the parties, I turned my head to speak to some one in the house, and I have no recollection how the parties stood in relation to each other, until I saw Key in the middle of the street, and Sickles approaching him to fire.

This witness was not cross-examined.

Thomas G. Martin, Clerk in the Treasury Department, sworn.—I was in the vicinity on the occasion of the death of Key; I left the club-house on the day referred to, and was walking towards H st. when I heard what seemed to be the report of a pistol; I turned, and recognized Key, Sickles and Butterworth; Sickles had apparently just fired a pistol. Butterworth was leaning against the railing; Sickles and Key had moved out towards the middle of the street, and then came back towards the pavement; I was very much shocked, and hurried on towards them, stopping at the club-house for a moment to announce that Sickles was shooting Key. When I went into the club-house, Key was in a falling position near the second tree. I proceeded down to the spot. Mr. Key had got to the pavement and lay on his back, with his feet towards the club-house. Sickles was standing with his back to the railing, he pointed a pistol at him and exploded the cap. I passed in between Key and Sickles, took hold of Key, and looked up inquisitively into the face of Mr. Sickles, and heard him say, "he has dishonored my bed," or "violated my bed."

The Dist. Attorney.—No matter about that, sir.

Mr. Brady submitted that the witness had a right to continue his narrative unmolested.

The District Attorney contended that this should not come out on the part of the government, but he acknowledged that the defence had a right, if they chose

to exercise it, to put any questions on that point that they may deem necessary and proper.

The Court thought the witness might give this as a part of his narrative, and that being sworn to tell the whole truth and nothing but the truth, it was his duty to tell everything that he knew in regard to the transaction.

The witness resuming—I heard Mr. Sickles make the remark, "you have violated my bed." Key was then extended on the pavement on a line with it, resting, I think on his elbow. I took hold of him, and called on those who were near to aid in carrying him into the club-house, which was done. He was breathing when we arrived there; I placed my hand over his heart and found that it was still pulsating; supposing that he might have something to say explanatory of the occurrence, or a word for his children, I asked him accordingly, but he did not seem to understand, and made no response. Dr. Coolidge came in shortly afterwards, and I left the room; do not know how many shots were fired during the transaction, but suppose there were three or four. When I went into the club-house, Key was by the second tree in the street, in a falling position, and near the gutter; the three persons were on the corner; were all near together, and thus situated: Key was on the corner, Sickles was near the club-house, and Butterworth was near the railing. I knew them all as soon as I turned around; they were in full view. The remark made by Sickles was after the snapping of the pistol. Butterworth was separated from Sickles nearly the width of the pavement, and did not see any other persons. There was no one between the position where I was and the parties. Immediately after the snapping of the pistol, Butterworth approached; they withdrew apparently together, and I lost sight of them at that moment, my attention being concentrated upon the body of Mr. Key. I should think that there were three or four shots, and they were fired rapidly in succession. Key was dressed in a grey suit of clothes, and I think had an overcoat on; heard no other expression except that which I have already mentioned.

Francis E. Doyle, clerk, sworn. I was in the back room of the Club-house when Mr. Martin came in. I immediately went out, and on looking in the direction of the avenue saw Barton Key lying on the pavement, and Mr. Sickles a few feet from him, standing with a pistol in his hand, apparently attempting to shoot him in the head. I ran with the other gentlemen and heard Key cry "murder," "don't shoot," or something like it. When I arrived near enough, I placed my hand on Sickles' shoulder and begged him not to fire. I think he almost immediately desisted from firing. He turned round, and as if to justify himself, said "He has defiled, or dishonored my bed," I do not know which. Butterworth, who was standing on the avenue, within a few feet of the corner, then approached, took Sickles by the arm, and walked up the street as far as Commander Wilkes' house. I saw them until they arrived in the vicinity of Mr. Taylor's house. My attention was then called to the condition of Mr. Key, whom the servants of the Club and the gentlemen were about taking into the Club-house. I am not aware of any other exclamations made by Key except those already stated. Did not particularly observe the dress of Mr. Sickles; think that he had on an overcoat, but am not positive. I think that the day was pleasant, not particularly warm. Mr. Key died almost immediately after being taken into the Club-house, and laid upon the floor. He breathed only once. Don't remember whether that was previous or subsequent to the arrival of Dr. Coolidge.

Cross-examination. By Mr. Brady.—Don't remember whether I wore an overcoat that day. I presume that I did, however, for, not being in good health, I usually do. Did not notice at the time whether a pistol or anything was picked up by any one. Don't remember whether Mr. Sickles made any other remark than the one already stated.

Abel Usher, clerk, Navy department, sworn. I was present at the death of Mr. Key. I had been to church in the morning. Had returned home and afterwards gone to the Club-house, and there met with Messrs. Doyle, Titball and Martin. After conversing a few minutes, Mr. Martin went out to go home, and in a minute rushed back, and told us what had occurred. We instantly went out and just before we got out of the door, I heard the report of a pistol. On going outside of the door, I saw the position of the gentlemen. Key was down and Sickles over him. We rushed toward them, and when within ten or fifteen feet saw the pistol snapped. On reaching Mr. Sickles, Mr. Doyle touched him on the left shoulder, and Mr. Titball on the right hand. Before we heard the pistol snap, we heard Mr. Key cry out murder. Mr. Sickles desisted immediately on the approach of the gentlemen, and turned to us and observed that Mr. Key had dishonored his bed. We then took Mr. Key up and carried him into the Club house. Cannot say whether the remark of Mr. Sickles was addressed to me directly, or to us all. Sickles had some kind of an overcoat or cloak on. Did not remember whether it was a warm day or not. I assisted in carrying Key's body into the Club house; he never spoke afterwards.

Cross-examination, by Mr. Brady.—I am in the habit of wearing an overcoat, and had one on that day. Did not see anything picked up there, and heard no other remark from Mr. Sickles.

Edward M. Titball sworn. I was present on the occasion referred to. Was at the Club house with Messrs. Upshur and Doyle, about two o'clock. Mr. Martin had been with us only a short time before. When we came out of the Club house, near the avenue, I saw Key on the ground, and Sickles standing near him, towards his head, with a pistol pointing in that direction. I was about half way there, when I heard the pistol snapped. I continued running towards the parties, and on reaching them touched Sickles on the shoulder; he immediately drew back and exclaimed that Key "had dishonored and defiled my bed." I do not remember the precise expression. At that moment a gentlemen approached from the corner, whom I recognized as Mr. Butterworth, and taking Mr. Sickles' arm they walked away together. We took the body of Mr. Key to the Club house, laid him on the floor, and put a chair under his head. I then went for the doctor.

After getting him into the Clut house, he never spoke at all. Sickles' dress on that occasion, was, I think, a brown overcoat and light pantaloons and hat. It was rather a long overcoat. It was a pleasant day, and I had found it quite a warm walk down to the National Hotel and back. The occurrence took place about two o'clock in the afternoon, possibly a few moments before that hour.

Cross-examination, by Mr. Brady.—I think that I wore an overcoat that day. Sickles spoke in rather a loud voice, when he made use of the expressions referred to. I should be apt to have remembered any other remark if it were made, and did not see any pistol picked up, but I afterwards saw a pistol lying on the ground on my way after a physician. It is difficult for me to determine where it was, and I did not stop to pick it up, because I was in a hurry. I did not observe the pistol particularly, but which seemed to be a single barrel pistol, with a dark stock.

The hour of adjournment having arrived, the Court announced to the jury that quarters had been provided for them at the National Hotel, where the Court expressed the hope they would be comfortable.

The Court then adjourned.

FIFTH DAY.—*Friday, April 8.*

The first witness called was Eugene Pendleton.

Mr. Pendleton did not answer.

The District Attorney represented to the Court that Mr. Pendleton was an important witness. He did not make his appearance here yesterday, nor is he here today. He (the District Attorney) understood from his brother that Mr. Pendleton was slightly ailing at his residence in Georgetown. He was, perhaps, the only other witness he would examine as to the facts of the transaction. If he was sick he would not insist his being present, but he was a very important witness, and he (the District Attorney) was very anxious to have his testimony, and therefore asked that an attachment might issue.

Judge.—If the District Attorney promised to do so—

Mr. Chilton informed the District Attorney over the table that Mr. Pendleton was sick.

The officer who served the subpena informed the Court that Mr. Pendleton had been in attendance since he was summoned.

The attachment was ordered.

Mr. Chilton informed the Court that a neighbor of Mr. Pendleton stated that he was at his brother's house last night, and that he knew he was sick.

The District Attorney had no objection to the Court

instructing the Marshal to report the condition of Mr. Pendleton's health.

Mr. Carlisle.—The certificate of his physician will be satisfactory.

The Judge.—The better course is to issue an attachment. If he is not able to come, that report can be made—if able, his attendance should be compelled.

Thomas Woodward, Coroner, was next called, but he was not in attendance, and was sent for. He came into Court and was examined by the District Attorney. He testified as follows—Is Coroner of the county. Held the inquest on the body of Mr. Key. On that occasion a pistol was delivered to his keeping [produces it]. It is a Derringer pistol, stocked to the muzzle, plated, and about seven inches long, with a wide rifle bore. Ramrod absent. The maker's name (J. G. Syms) is on the lock. Mr. Downer delivered it to him. Examined the body and clothes of Mr. Key. Have the clothes here if the District Attorney wants them. [Unties a handkerchief and takes from it two keys and the case of an opera-glass. Cannot say whether the case was open or closed. [The counsel for the defence examined the keys. They are ordinary brass door-keys, about three inches long.]

Witness.—This handkerchief was also in the pocket. I examined the body of the deceased. One ball had entered his side; another the thigh, near the great artery, and there was a bruise on the right side; also, a slight wound on the hand. [Unfolds the bundle containing the clothes, and produces a white shirt, blood-stained, and a grey pair of striped pantaloons]. There is where the ball entered the right thigh. The place is stiffened and stained with blood (deep sensation in court). He has not the vest or coat. (Witness leaves the stand to produce the vest and coat, but comes back without them, and says he cannot get the vest and coat.)

District Attorney.—We can do without them.

Q.—Was there any evidence in the vest or coat of penetration?

Mr. Stanton.—We object to that; let us have the clothes.

District Attorney.—Very well; you will have them.

After some time the clothes were procured.

Witness.—This, sir, is the vest; there is the hole made by the ball, on the left side. (Sensation.)

Q.—Is there any other mark in the vest?

Witness.—Yes; here is another hole on the right side.

Judge.—Both are on the right side, are they?

Witness.—No, sir; one is on the left.

District Attorney, to the jury.—I suppose you can see those marks, gentlemen.

Judge.—If they wish it, the vest can be handed to them.

The vest was here handed to the jury. It is of grey, striped material, same as the pants.

Witness.—Here is a hole in the side of the coat. (Holds it up to the light.)

The coat is of tweed material and of a brownish hue.

Mr. Brady.—I do not see the materiality of this examination.

District Attorney.—We are through with this witness.

Mr. Brady asked to suspend the cross-examination as to clothes till he had time to examine them.

The judge said that course might be taken.

Mr. Brady (on suggestion of Mr. Stanton).—Never mind; we will go on now.

Cross-examined by Mr. Brady.—I found one handkerchief in Mr. Key's pocket. Think I found the case of an opera glass in the side pocket of the coat (Mr. Stanton examines the coat); there was one inside and one outside breast pocket, and two side skirt pockets.

Q.—What pockets were in the pantaloons?

Witness.—Two pockets and a small watch pocket. In the vest there were four pockets, two on each side, above and below. Found nothing else than the keys, the opera glass case, the pistol and the money. Found no letters or papers. Might have seen a small porte-monnaie, which was delivered up. Think there was a bunch of keys on the ring, which he handed to the clerk of the court, Mr. Smith.

Q.—Was there anything else on the person of Mr. Key which you have not produced?

Witness.—Nothing else, sir. I first saw his body at the club house. He was dead at that time. Am not positive whether his coat was on then. Cannot say positively that this is his coat, but believe it is. All the money and effects in his pocket I took out and delivered to the clerk of the court. I have got a list of the witnesses examined before the coroner (hands it to the Judge); there were a great many present when I arrived at the club house. There were about one hundred in and about the house, and fifteen or twenty in the room. Knew most of them. Some were strangers. I do not know that any person had particular charge of the body. It was between three and four o'clock when I arrived. I had been at home in Georgetown. A gentleman from New York came for me in a hack. I think this person's name is Alexander. It may have been Francis Doyle. I accompanied him immediately.

The examination of the witness was here closed, and he was directed to hand the clothes of deceased to the marshal.

Eugene Pendleton, the witness who had been absent in the morning, appeared and was sworn and examined. He was not present on the occasion of the death of Mr. Key, but was near the place where he was shot, and saw two of the shots fired; he was walking on the south side of the avenue, and had got near the east gate leading to the President's house, when his attention was attracted by the report of a pistol; he turned his head and saw two persons near the corner of Sixteenth street, apparently in a scuffle: one was attempting to rid himself of the other; one was retreating, the other following him up; the one nearest me succeeded in freeing himself from the other and ran into the middle of the street, followed closely by the other, who at the same time threw something from his hand; I afterwards recognized the one who retreated as Mr. Sickles; Mr. Sickles soon turned and brought down a pistol on the other, who was then about ten feet distant from Mr. Sickles, and the other exclaimed "Murder! Murder! Don't shoot!" Mr. Sickles fired; the shot seemed to take effect; the gentleman shot swooned, or wilted, as it were, with his hands in this manner (pressed to his sides); he turned and started for the pavement; he either fell or laid down on the pavement; Mr. Sickles followed him up, and, standing over him, fired a second time as the other lay at his feet; Mr. Sickles presented a pistol again in the vicinity of the other's head or shoulders; the pistol snapped; I heard the explosion of the cap; at that time some one approaching from the Club House placed his hand on Mr. Sickles' shoulder; Mr. Sickles turned round suddenly; there seemed to be some words passing between them, but I was not near enough to hear what was said; then some one came and took Mr. Sickles' arm, and they walked off up the street; I continued walking on; very soon persons began to collect, and took up Mr. Key, and conveyed him to the Club House; when I arrived there the body had been taken in, and then I saw that the person was Barton Key; I turned to walk home, and discovered a man on the opposite side of the street fishing out an opera glass; that was about fifteen or twenty yards from the avenue, up Sixteenth street; it was nearer the west side of the street; think it was a little above the second tree.

Q.—Was that opera glass the article you saw thrown?

Witness—I cannot say.

Q.—Were the parties when you saw it thrown in such a situation as to allow it to fall where it was found?

Witness—I cannot say.

Q.—At what time was this thrown?

Witness—It occurred just as Mr. Sickles freed himself from the other and got into the middle of the street; just as he got into the street this article was thrown: he was going from near the second tree to the corner. It was not on the avenue. Witness continued to walk. He first saw them, and had just passed the small gate when the second fire took place. Did not see any pistol in the hands of Mr. Key. The first time I saw a pistol in Mr. Sickles' hand was at the time of the second fire. Did not see the first fire. Did not see whether Mr. Sickles had a pistol in his hand at the time of the scuffle. Was not sufficiently near to see what kind of a pistol it was, whether one barrel or more. Heard reports of three pistols. Saw two of them. When he heard the third report thought that Key was on the ground.

(The Judge here retired for a few moments.)

Witness resumed—The tussle lasted till one party overpowered the other, and was of short continuance; it took place near the corner, and witness thought it was immediately off the pavement; did not recollect more than one snap.

To Mr. Brady—My attention was drawn to the parties by hearing the report of a pistol; did not go into the club-house.

To Mr. Ould—Did not see any other persons near those parties until the gentlemen came from the club house; a good many were standing near where he was; there were a number of women on the street running, one gentleman was very much excited; don't know who he was.

Dr. Cooledge sworn—Made two examinations of the body; only a partial one at the club house; when I first saw the deceased his clothes were on—coat, vest and pantaloons; I did not remove any of the clothing entirely from the body, but opened the clothes to see where the wounds were; the deceased had not ceased to breathe when I saw him first; at that partial examination I saw one wound on the left side, between the tenth and eleventh ribs, the ball having evidently traversed the body three and a half inches above the hip bone on the left side, and seven inches from the centre of the back around the chest, and under the clothing on the opposite side above the hip bone. I felt two inches below the groin another wound: the ball passed entirely through the thigh and came out in the groove of the buttock and the thigh; that is all I saw at that partial examination; after the coronor summoned me the clothes were removed from the body by Dr. Stone and myself, in the presence of the coroner and the jury; in removing the clothing a wad was found on the left side, and in the immediate vicinity of the wound on that side, but whether that wad was between the coat and waistcoat, or between the waistcoat and shirt, I do not know; I first saw it as it was falling on the floor.

Q.—On the left side you say?

Witness.—There was one on the left side; I handed it to some one of the jury; after stripping the body I discovered in the immediate vicinity of the ball, about the eighth rib, a slight contusion or abrasion of the skin; on examining the coat and waistcoat I found them perforated by a ball, which, in my opinion, made the abrasion of the skin; it could not be made from the contusion from the inside by the first ball; I also thought that I found a wad there, and I may have said so at the time, but it proved to be a piece of cotton with which the waistcoat was stuffed, and which was probably black and white; whether it was blackened or not by the passage of the ball I cannot say. The following morning, eighteen hours after death, a full post mortem examination was made by Dr. Stone and myself. We found that there was no injury about the head. The injuries about the body, externally, are those I have described. There was a slight abrasion on the side of the middle finger of the left hand.

Q.—Was there any blood about it?

Witness.—No, the blow of a hammer might have done something of the kind, or something passing through the fingers might have cut the skin. There was no blood seen. On opening the body found a large quantity of blood in the cavity of the belly, and subsequently found the course of the ball. It entered the left side, below the eleventh rib, under the edge of the spleen, and cut that portion which lies near the back bone. It made a slight groove under its lower surface. It made a much deeper groove across the whole upper part of the body of the left kidney. It did not injure the great blood vessels of the body, but the two of the left kidney. It did not injure the two great trunks, nor did it wound the intestines of the stomach. It entered the large lobe of the liver. Anatomically it was within half an inch of the great vein of the liver at its traverse fissure. I do not know that I can describe it without using a little technical language. It transversed the whole thickness of the lobe of the liver, and entered the right cavity of the chest without wounding the lungs. It broke the eighth rib, and lodged under the skin. The left side of the chest contained a large quantity of blood—a quart at least. Altogether the amount of blood was between three and four quarts.

Q.—Was that a mortal wound?

Witness.—It was. I examined the heart. There was a somewhat unusual amount of fatty deposit on the left side of it, but the structure of the heart itself was healthy.

Q.—You have minutely described the course of this ball passing through the body—what do you infer, as a scientific gentleman, must have been the position of the deceased at the time the wound was given?

Mr. Stanton objected, saying that was a question for the jury to try.

The District Attorney argued that the question was proper.

Mr. Brady denied that any physician was permitted to express an opinion on a matter not purely relating to, and circumscribed within the boundary and limits of, science.

Mr. Carlisle argued in favor of the propriety of the question.

Judge.—The question is, substantially, whether from the organs wounded and those not wounded the deceased must have been in an erect or recumbent position. I think the question is competent.

Exception taken.

District Attorney to the witness.—From the course and direction of the ball, please state what was the position of the deceased at the time the shot was fired.

Witness.—I beg permission to premise my answer by saying that the course of pistol balls is at times very tortuous and difficult to trace, but my opinion, formed at the time in this case is, that the body must have been in a semi-recumbent posture; in other words, that Mr. Key must have been lying on his right side, the body turned a little over to the right, and the shoulders a little higher than the hips. I cannot understand how the spleen of the kidney and the liver could have been wounded in the precise manner they were, unless the body was in that position; but I can understand that a ball may have escaped the intestines, and stomach, and great artery, in a different position, although the probabilities are that, lying in that position, somewhat turned to the right, the stomach and intestines fall forward, making the probability of their escape from the ball the greater. Am connected with the army of the United States as Assistant Surgeon. Measurably familiar with gunshot wounds. Have no doubt that this wound was inflicted by a pistol-shot, but in our language we call all wounds by firearms gunshot wounds.

Q.—Could you give an opinion as to the style of pistol with which this wound was inflicted?

Mr. Brady objected

The District Attorney argued that the question was proper.

The Judge ruled against it.

The witness cut out the ball himself, and thinks he could recognize it. It was marked. (Pistol-ball handed to witness.)

Q.—Is that it?

Witness.—To the best of my knowledge and belief, it is. It has the mark made on it, in my presence, by Dr. Stone, or one exactly like it.

Q.—To what particular classification of pistols does that ball commonly belong?

Mr. Brady objected. He did not know that a physician is an expert in the manufacture of firearms.

District Attorney.—Certainly, if he is a physician in the army. If not, he cannot discharge his duty.

Mr. Brady.—I think he can discharge his duty without discharging firearms. (Laughter.)

Witness (to Mr. Carlisle).—This is the ball we extracted from the right side. It is the only ball we found. The ball in the groin passed through. [This ball, on being applied to the Derringer pistol in court, and which has a large bore, is found to be too large for it, so that there must have been a third pistol, the bore of the revolver being still smaller.] Witness described the nature of the wound in the groin, saying, among other things, that it was near the main artery, and just above the largest branch. The only vessel wounded was an external vein—a flesh wound. Its severity would depend on after consequences. Ordinarily such a wound would not be severe, but might have left lameness for a long time.

By Mr. Brady.—Witness's attention was called to Mr. Key by the shots he heard No person came for him. Went into the Club House and found him breathing his last. Not more than six or seven persons were there, including two colored men. To the best of his belief the white persons were Messrs. Doyle, Martin, and Upshur. Was not certain that he saw Tidball. There was no person having charge of Mr. Key, strictly speaking. Was present when Mr. Key's pockets were searched. Took the opera case from the left side pocket of his coat. His impression was that the case was closed and empty. He saw two keys, but could not identify those exhibited. In pulling down the pantaloons to ascertain the nature of the wound he felt some loose money and the keys. He thought everything was

handed to the coroner. He knew no characteristic presented by itself which could determine from the abrasion the course pursued by a ball.

Mr. Brady inquired whether there were indices which would infallibly determine that an abrasion was made with a ball or firearms.

Witness.—The holes in the right side coat, waistcoat, linen and flannel shirt, settled the matter in his mind; but this opinion was not infallible. He merely assumed that the hole in the clothes was made by the ball.

Mr. Brady.—Did you ever see anything else that could make such a hole?

Witness.—No. I judge from the frequency I have seen clothing pierced by shots.

Mr. Brady.—What is the peculiarity of a hole in a vest or other clothing, made by a ball?

Witness.—You asked my opinion. The marked peculiarity I cannot describe. You have asked my opinion.

Mr. Brady.—You have said that the course of a pistol ball is frequently tortuous. Is there any law which regulates such a course?

Witness.—None at all. The ball does not necessarily go in the line of projection. There is nothing but a post mortem examination to tell the course of a ball.

After further interrogations upon those points the witness said he thought Mr. Key and Mr. Sickles were nearly of the same height. Key was, probably, five feet eleven inches.

Mr. Brady.—Suppose two men are engaged in a scuffle, or tussle, each endeavoring to overcome the other, and struggling for life or death, one attempting to throw the other, or one discharging a pistol, is there any possible position of the parties which would show the shot could produce such a course?

Witness.—The position of the body must have been on the right side, with the shoulders a little more elevated than the hips, the body inclined to the right. Whether the body was supported by the arm and not by anything else, I don't know. The course of the ball must have depended on the position of the body, as I have described it.

Dr. Stone, who assisted at the post-mortem examination, testified as to the character of the wounds, identifying the ball which was taken from the body.

The jury took a recess at one o'clock for five minutes.

After recess Mr. James N. Reed, who was examined yesterday, was recalled by the District Attorney. You stated yesterday that when you saw these parties at the corner, that you saw a pistol in the hand of the party at the south. Was any pistol in the hands of the other party?

Witness.—No, sir; nothing in his hand.

P. V. R. Van Wyck, recalled.—Could not from where he stood distinguish what was in the hand of either party to the contest.

Mr. Stanton objected to this recalling of witnesses.

The District Attorney submitted that no damage could be sustained by the defence, as they had not entered on their case, and he had not examined these witnesses on this point before.

Mr. Phillips contended that it could not be done, as the matter was not brought out on the cross-examination.

The Judge.—On general rules the practice is objectionable; but if the District Attorney, through inadvertence, omitted to ask the question, the witness certainly might be recalled and the question be asked. It was a matter of discretion.

Mr. Stanton wanted the District Attorney to state to the Court that he had, through inadvertence, omitted to ask the question. If the District Attorney did not come up to that point they would object.

The Judge would not require the District Attorney to make that statement. The Court in its discretion would permit the question.

The witness repeated that he could not distinguish from where he stood whether either party had pistols in their hands.

Chas. H. Wilder examined.—Was present at the Club House at half-past two o'clock on the day of Mr. Key's death; went into the room where Mr. Key was lying, and remained there till the close of the Coroner's examination; I assumed a sort of charge of the body till the Mayor came, when the Mayor requested Mr. White to take charge; witness and Mr. White kept charge till the Coroner came; everything was taken from the pockets of Mr. Key; these were, the case of an opera glass, some keys and some money; they were passed over to the Coroner and by him handed to Mr. Smith: these were all the articles taken, except a pair of sleeve buttons and a ring, which were taken by Mr. Taylor, a connection of Mr. Key.

This witness was not cross-examined.

The District Attorney proposed to offer in evidence the Derringer pistol, which had been identified, and the ball.

Mr. Brady.—On what ground do you offer these as evidence?

District Attorney—Because they are the implements of death.

Mr. Brady.—Who proves that?

District Attorney.—The doctors prove as to the ball.

Mr. Brady.—I beg your pardon.

District Attorney.—Certainly; they have identified that ball as having been taken from the wound.

Mr. Brady.—The pistol was not identified.

District Attorney.—We offer the pistol on a distinct ground, as having been found near the spot where the killing took place.

Mr. Brady.—So far as the ball being offered in evidence, it was wholly irrelevant. Nobody denied that Mr. Key died of that wound.

District Attorney.—We did not know what would be denied or admitted.

Mr. Brady.—The prosecution is in the same condition as the defence. They would make no question as to Mr. Key's dying of the wound described. What then did the presentation of the ball prove? Nothing at all. As for the pistol, what was the evidence? That it was found in the street, and delivered to the coroner in the Club-house. Whom it belonged to or who discharged it, no witness had informed the Court, and no witness had expressed an opinion as to whether there was any connection between the ball and the pistol. As to the pistol seen in the hands of Mr. Sickles, all the witnesses agreed that it was a revolver. If this pistol is admissible in evidence, it must be on the ground that its being found in the vicinity made it part of the *res gestæ*. He objected, however, to its being connected with the prisoner. The District Attorney contended that it was matter for the jury. The pistol was found at about the place where the party stood at the time the first report of a pistol was heard. It was for the jury to measure that circumstance, and give it its due weight. As to the ball, if it is admitted that it inflicted a mortal wound, it was right that it should go to the jury as being the instrument of death. Mr. Brady simply wished to be informed by his Honor of the rule under which the pistol should go to the jury.

The Judge.—The pistol having been found at the place where the mortal wound was inflicted, or about that place, and the ball having been taken from the body of deceased, it is for the jury to draw an inference as to what use was made of the pistol, by whom, and with what effect. It is a part of the whole transaction, and I am clearly of opinion that the pistol and ball may properly, and ought properly to be exhibited to the jury.

Mr. Brady.—Your honor considers, then, that it is part of *res gestæ*.

The Judge.—Certainly. Whether the prisoner used the pistol or not, is a matter of fact for the jury to decide.

The District Attorney here announced that the United States had closed its testimony in chief.

Mr. Ratcliffe had a word to say to the Court. The defence proposed to ask your Honor to require the District Attorney to call certain witnesses not yet put on the stand. Among these were Samuel F. Butterworth, Robert J. Walker, and George D. Wooldridge. It might be a question of policy whether the government should be compelled to call all persons who witnessed the transaction. He would not therefore argue that, though it struck him that the prosecution should call every honest man who knew anything of the transaction. He should deal with what he understood to be his Honor's ruling in other cases. He referred particularly to the case of the United States against Edwards, where the point was fully argued, and where the facts were precisely similar to the facts in this case. That case happened in the suburbs of this city, at a house occupied by two women, who had rented it from the defendant Edwards. A party came to this house at night, and disturbed these women. One of them slipped out and went to Edwards. He came down with a gun, and one person was shot and another wounded. The two women, Garcia and Raymond, were

examined before the Coroner, and confined as witnesses, and sent before the Grand Jury.

The prosecuting attorney, finding that these two women were in favor of the defendant, their names were not placed on the indictment, and on the trial of Edwards his Honor was asked to compel the prosecutor to produce these two women. His Honor did compel their production, expressing his opinion as to the obligation of the prosecutor to call on the stand every person who knew about the transaction, so as to give the defence an opportunity of cross-examining. In Herbert's case a similar application was made; but his Honor drew a proper distinction between it and the Edward's case; for in Herbert's case the witness which the prosecution was asked to produce had not been examined before the coroner, but had been examined as a witness for the defence on habeas corpus. His Honor was therefore right in not compelling that witness to be produced, as there was no analogy between the cases. But here Mr. Butterworth and Mr. Walker were examined before the Coroner, and Mr. Walker and Mr. Wooldridge were examined before the Grand Jury. The counsel would ask the District Attorney whether that was so.

The District Attorney did not know whether it was or not.

Mr. Carlisle suggested that witnesses sometimes go before the Grand Jury and are sometimes sent.

Mr. Ratcliffe asked the Clerk of the Court to examine the records as to that fact. If there is any dispute about it, he would have one of the Grand Jury present, by the authority of this Court; they were not volunteers before the Grand Jury, but were subpenaed to attend, and they did attend and testify. As to the case as Mr. Butterworth, it was an extraordinary one, and the counsel had never seen an instance of the kind in all his practice. It was proved on this trial that that gentleman saw the whole transaction, and was a witness before the Coroner; and yet he has not been produced by the Court. He asked the Court to compel the District Attorney to place Mr. Butterworth, Mr. Walker and Mr. Wooldridge on the stand.

The District Attorney opposed the motion to compel him to produce these three witnesses. He contended that it was not the duty of the District Attorney to nose about the Grand Jury and find out whether the witnesses were examined before them. Besides, those whose names appear on the presentment, and the names of these three witnesses, did not so appear. He had placed on the back of the indictment only the names that appeared on the back of the presentment, and in that he did his duty. He had good reasons why he did not summon Butterworth before the Grand Jury; and these reasons he intended to keep within his own breast now and hereafter. He imagined, however, that these reasons were very well known to the gentlemen for the defence.

Mr. Ratcliffe would mention as an additional fact, that from the entry in the jail-book it appeared that Mr. Sickles was committed to prison on the testimony of Mr. Butterworth, among others.

The District Attorney asked whether the mere examination of a witness before the Coroner made him, in point of fact, a witness of the United States; for, unless that could be shown, this application could not stand. He contended that such was not so. To be made a witness of the United States, he must have been examined by the prosecution. Suppose the Grand Jury had indicted Mr. Butterworth, would it be said that because he was examined before the Coroner he should be also examined on the trial of himself?

Mr. Magruder desired to inform the District Attorney that he held in his hand an affidavit made by one of the Grand Jury, since the argument commenced; to the fact that Mr. Walker and Mr. Wooldridge were examined before the Grand Jury. That affidavit would be offered in evidence.

Mr. Carlisle.—It would have to be seen what right the Grand Juror had to make such an affidavit.

The District Attorney had been of the opinion that Mr Walker and Mr. Wooldridge were summoned before the Grand Jury, not in the matter of the prusecution of Mr. Sickles, but of the prosecution of another party. As to the certificate from the jail docket, he submitted that it was competent for the Court to inquire into the facts of a case; if a man delivered himself up to the jailor and a friend, it gave his name as a witness to the offence, he imagined it would hardly be contended that the friend would by that act be constituted a witness for the United States. He submitted that on all the facts and law of the case, neither of these witnesses should be put on the stand at the instance of the defence, and on the part of the prosecution.

Mr. Magruder continued his argument in support of the motion.

Mr. Carlisle replied in opposition. The decision of this motion could have no effect, except, perhaps, to consign Mr. Butterworth to the pleasant cross-examination of the counsel for the prisoner, and protect him from what might be the unpleasant cross-examination of the counsel for the prosecution. Who was Mr. Butterworth? He was said to be a gentleman who coolly looked on the whole transaction, and then politely stepped up to Mr. Sickles, took his arm and walked away. If Mr. Butterworth had ever made an oath charging Mr. Sickles with the murder of Mr. Key, counsel would like to hear it.

Mr. Magruder.—Here it is. An affidavit that Mr Sickles shot and killed Mr. Key.

Mr. Carlisle.—That is not the charge here. The charge is that Mr. Sickles murdered Mr. Key. A man is taken with a pistol in his hand—his red right hand—standing over the body of his victim, and by his side stands his confederate. That confederate is examined before the Coroner's jury, and there it is clearly shown that he is a confederate, and yet the argument here is that the government is hopelessly wedded to the testimony of that confederate. It struck him (Carlisle) that it was not necessary to argue the absurdity of that proposition. The matter was in the discretion of the Court. The rule of law was *cessante ratione cessat lex* (where the reason does not exist, the rule ceases to apply). The cases cited in the books are mere instances in which the Court, for the purposes of public justice, had exercised its discretion in compelling the production of a witness. Was this a case to induce his Honor to exercise that discretion? He apprehended it was not.

He referred to the case of Edwards, and argued that the ruling in that case did not apply to this. The two women concerned, were, in common parlance, strumpets. The Grand Jury who examined them, did not deem them worthy of credit, and their names were not placed upon the stand where they were cross examined by his then colleague, Mr. Ratcliffe, and a more tender cross examination he had seldom witnessed. This, he repeated, was a matter for the exercise of his Honor's discretion. If his Honor thought, that, for the purposes of public justice, the motion should be granted, they were not here to deny it. They wanted merely that the granting or denying of the motion should be in the interest of public justice.

The Judge.—It is proposed by the counsel for the defence that the Court direct the prosecution to summon to the stand Mr. Butterworth, Mr. Walker, and Mr. Wooldridge, so as to give the defence an opportunity to cross-examine them. This court never has gone further than it did in the case of Edwards, which has been mentioned. That was a case where the witnesses—two women, named Garcia and Raymond—were committed to jail in default of their recognizance to appear and testify for the prosecution. They were held in jail on that original commitment at the time the motion was made. In that case, the Court did say that it thought that it was a wise exercise of discretion to direct the District Attorney to put these persons on the stand. The next case that followed that was the case of Herbert, where a man named Gardiner, an intimate associate of Herbert's, went from his room across to the hotel where the homicide was committed, and was with him (Herbert), and was examined on the part of the defence. To be sure, on the hearing of the habeas corpus before me to admit Herbert to bail, the Court refused in that case to put Gardiner on the stand. Mr. Butterworth being before the Coroner, does not, in my judgment, entitle the defence to have him called by the United States. In the first place, the Coroner's inquest, in this case, held within one hour and a half or two hours after the death, was held without any legal advice, so far as was known; the Coroner, in the exercise of his judgment, thought fit to bring Mr Butterworth before the inquest. I do not think that action binds the United States to the course asked to be enforced in this case.

It is said, however, that the prisoner was committed on the affidavit of Mr. Butterworth. The evidence in the case shows that when the melancholy affair took place, Mr. Butterworth was present, and that after it was all over he took the arm of the prisoner, or the

prisoner took his arm, and they retired together. I think it is not going too far for the Court to say that it is a fair presumption that the affidavit he made at the jail was an act friendly to the prisoner; that it was done to prevent, probably, a thorough examination at that time; and it may have been wisely done; the prisoner had the right to withhold any entering into an examination of the case then. This case strikes me as being something like the case of Gardiner; he, too, was an associate of the prisoner, Mr. Herbert. So far as the Court can judge from the evidence before it, Mr. Butterworth was a friend of the prisoner.

I therefore am not inclined to require, nor do I think the purposes of justice require, that he should be placed on the stand by the United States. With respect to Messrs. Walker and Wooldridge, so far as the evidence shows, they were not present; that alone is sufficient reason for rejecting the motion. But besides that, there is no evidence whatever, that when they went before the Grand Jury, they went there to testify as to this case at all; it may have been as to some other matter which the Grand Jury were inquiring about. The order for the subpœna is general, that certain witnesses shall be summoned; it does not specify for what, nor is there any reason on which the Court can found the opinion that it was to testify as to this particular matter. It may have been in regard to something else altogether. I decline, therefore, to grant the motion as to either of them.

Mr. Brady—I understand from the District-Attorney that the testimony for the prosecution is closed.

Judge—Yes, Sir; so they say.

Mr. Brady—And it seems from some of your Honor's decisions in past cases, that the rule applies here that the prosecution must exhaust the affirmative proof.

Judge—Its proof in chief, oh, yes.

Mr. Brady—And hereafter it is to give nothing but rebutting testimony.

The judge—That is so.

It being now half past 3 o'clock, the court adjourned.

SIXTH DAY.—*Saturday, April* 9, 1859.

The court opened at ten and a quarter o'clock.

After some delay the prisoner was conducted into court and placed in the dock, where he conferred with Mr. Brady, Mr. Stanton and Reverdy Johnson.

The jurors were called and answered to their names

Counsel for Mr. Sickles proceeded to address the jury, amid the solemn silence and attention of the whole court. He said:—

SPEECH OF JOHN GRAHAM, ESQ.

May it please the Court and gentlemen of the Jury—This is to me the time for solemn thoughts, and I rise to address you laboring under a severe struggling of feeling. It is a beautiful sentiment, better expressed in the Latin than in the translation, "*amicos res opimæ pariunt adversæ probant*" (prosperity is the parent of friends: bad fortune is the fire in which they are tried) Friendship is the most sacred of all artificial, as distinguished from our natural attachments. It stands nearest to those which by the hand of nature have been interwoven with the objects which she herself creates. On the altar of that relation I cast my present offering. It carries with it the unction of a warm heart. May it prove to be an efficacious tribute in favor of my client.

I have been the companion of his sunshine, and am now called here to participate in the gloom of his present affliction. Trouble is a mysterious visitor; it seems to be the unshunable doom of man. It has been well said that "although affliction cometh not forth from the dust, neither does trouble spring out of the ground," "man is born to trouble, as the sparks fly upward," "behold, happy is the man whom God correcteth; therefore despise not thou the chastening of the Almighty; he maketh sorrow and he bindeth up; he woundeth and his hands make whole; he shall deliver thee in six troubles—yea, in seven; there shall no evil touch thee."

A few weeks since the body of a human being was found in the throes of death in one of the streets of of your city. It proved to be the body of a confirmed and habitual adulterer. On a day too sacred to be profaned by worldly toil—on which he was forbidden to moisten his brow with the sweat of honest labor—on a day when he should have risen above the grossness of his nature, and though on no other days he had sent his aspirations heavenward, he should on that day have allowed them to pass in that direction, we find him besieging with the most evil intentions that castle where for their security and repose the law had placed the wife and children of his neighbor.

That same great influence which has impressed the laws on all the departments of creation—which has studded the heavens with their fires and ordained the boundary line between the day and the night—that same great influence which stretches over the face of nature, verdures the green mantle and again supplants it for the less pleasing dress of winter—that same great influence which has designated the time for the dropping of the leaves and the falling of the sparrows, is the will which guides and the hand which holds the rod with which in this life we are punished. As we pass from the proceedings in which we are here engaged, may we be permitted to repeat over the result which I confidently antictpate as a congratulation to this defendant for the severe ordeal through which he has passed. Had the deceased observed the solemn precept, "Remember the Sabbath day to keep it holy," he might at this day have formed one of the living. The injured father and husband rushes on him in the moment of his guilt, and under the influence of a frenzy executes on him a judgment which was as just as it was summary.

The issue which you are here to decide is whether this act renders its author amenable to the laws of the land. In the decision of that issue, gentlemen of the jury, you have a deep and solemn interest. You are here to fix the price of the marriage bed; you are here to say in what estimation that sacred couch is held by an honest and intelligent American jury. You are favored citizens; you live in a city which constitutes the city of our federal govnrnment; a city consecrated to liberty above all others, but not of the liberty of the libertine; a city bearing the name of the illustrious Washington, the father of his country, of whom it has been emphatically and truly said, that he was the first in war, the first in peace, and the first in the hearts of his countrymen.

You may feel a pity, in reviewing this occurrence, for the life that has been taken; you may regret the necessity which constrained that event; but while you pity the dead, remember also that you should extend commisseration to the living. That life, taken away as it was, may prove to be your and my gain. You know not how soon the wife or daughter of some one of you would have been—in fact you know not but she had been—marked by the same eyes that destroyed the marriage relations of the defendant; you know not how soon the gardens of loveliness over which you now preside, had that life been spared, would have been called upon to supply their flowers to satisfy the insatiable appetite of the deceased. An interference with the marriage relations must strike every reflecting mind as the greatest wrong that can be committed on a human being. It has been well said that affliction, shame poverty and captivity are preferable, and I do not know that I can express the sentiment more ably that in reciting the lines which the great dramatist has placed in the mouth of the Moor on the supposed discovery of the incostancy of his Desdemona:-

OTH. Had it pleased heaven
To try me with affliction; had he rais'd
All kinds of sores, and shames, on my bare head;
Steep'd me in poverty to the very lips;
Given to captivity me and my utmost hopes;
I should have found in some part of my soul
A drop of patience. But (alas!) to make me
A fixed figure for the time of scorn
To point his slow unmoving finger at—
O! O!
Yet could I bear that too; well, very well;
But there where I have garner'd up my heart;
Where either I must live or bear no life;
The fountain from the which my current runs,
Or else dries up to be discarded thence!
Or keep it as a cistern for foul toads
To knot and gender in! turn thy complexion there!
Patience, thou young and rose lipp'd cherubim;
Ay, there, look grim as hell!

You are here to decide whether the defender of the marriage bed is a murderer—whether he is to be put on the same footing with the first murderer, and is to be

presented in his moral and legal aspects with the same hue of aggravation about him. Gentlemen, the murderer is a detestable character, and far be it from me to defend him before this or any other jury. Society cannot, it ought not, to contain him. Calm, cold and calculating, he saves his malice as the miser saves his treasure—his bosom is the vault in which he deposits it—age possesses no claim for his consideration, nor does sex interfere with him in the execution of his bloody purpose—in the very air he sees his weapon, and it motions him the way he must go—he selects some object of innocence for his victim, and he chooses some lonely spot for the perpetration of his horrid deed—in the drapery of the night, he wraps himself—at that hour when over half the world nature seems dead, and wicked dreams abuse the curtains of sleep, he steals forth to the accomplishment of his bloody design—afraid of his own movements, he is compelled to address the very earth itself in the language of supplication, and entreat it to "hear not my steps, which way they walk, for fear the very stones may prate of my whereabouts." If between the act which has placed the defendant in his present condition and the act of a criminal like that you can trace any similarity, it will be for you to institute and perfect the comparison; it is not in my power.

There are some other matters, gentlemen, to which I shall briefly allude, before I proceed to the discharge of the important duty which has been cast upon me by the concurrence of my learned associates on the part of the defence; and the only regret I can experience in entering on the discharge of this duty is, that I shall be called upon to impose on you a heavier tax than under other circumstances would be reconcilable with propriety. There are some features of this trial, gentlemen, which are to be borne in mind by you at this time. In the first place, a most extraordinary occurrence transpired in the empannelling of the very body which is constituted by yourselves.

You have heard the explanation of the learned prosecutor in accounting for the course he then pursued when you were compelled to witness the spectacle. The court had no alternative but to administer the law. The objection was a matter entirely for the breast of the District Attorney himself. You were called upon to witness the moving spectacle of the son of misfortune being thrust from his rights for no other reason than because he had had the misfortune to be unfortunate. Another feature of this case you will remenber. The learned counsel for the government, in questioning one of the witnesses, asked him to describe what he saw at the time of the occurrence which led to the death.

You will remember that the witness to whom the question was put desired to spread before the Court and jury all he saw and heard. The learned counsel arose and protested against the witness stating what was not responsive to the question, and the gentleman made an admission, in the hearing of Court and jury which seems at all events unfortunate as far as the prosecution is concerned. The learned counsel for the government stated he put the question intending the witness should discriminate between what he saw and what he heard. You will remember the honest Judge on the bench—I will never forget the occurrence to the latest moment of my existence—his words were not in a spirit of severity, but of kind reproof, saying, when a witness is put on the stand, no matter how the questions are put, he must tell the whole truth, and nothing but the truth, and that it was the duty of the Court to see that the witness was protected in stating all the knowledge that he had obtained.

Is there anything in this case that it should be tried in the way it has been? Why were all but property holders excluded from the jury? Why did the counsel for the prosecution examine the witnesses in a particular way, so as to exclude from the jury particular facts which might, in the examination of the case, go in favor of the defendant? It must be for you to account for these extraordinary features in the prosecution. Another strong feature about the trial is the appearance of assistant counsel on the part of the prosecution.

I am informed that this extraordinary counsel was not assigned by act of the government, and it will be for you to say how far this case justifies it. Another feature is the extraordinary character of the opening of the learned counsel, which was an eloquent production, reflecting credit on the mind from which it emanated, and was stamped by a high order of ability; but it will be for you to say, when you pass upon it in review, what degree of consequence shall be given to it. You will notice his extraordinary expressions, such as "the prisoner coming to the carnival of blood"—"a walking magazine"—"adding mutilation to murder"—"as though he had a dagger in his hand, ready to plunge it in his bosom."

But why did it not occur to the learned counsel to describe also the weapons in possession of the adulterer? For it appears he had an opera-glass and a white handkerchief—articles just as certain of causing death to the adulterer as the weapons of the defendant causing death to him. Counsel then proceeded to define the crime of murder, from the highest authorities, and also drew the distinction between that and manslaughter; the difference being that the one is committed with deliberation, with malice aforethought, and the other is committed in a state of heat, but the heat of passion that ought to be, but is not, controlled, and without malice aforethought.

He would show that passion which could not be controlled did not place a man within the pale of accountability to the criminal law. But the great question is, what was the state of defendant's mind at the time he slew the man who had contaminated the purity of his wife? It is perfectly immaterial how death was inflicted—whether by one or three shots, whether the man was killed standing up or lying down. The question is, what was the influence of the provocation on the mind of the man who slew him? What was the mental condition of the defendant at the time he took the life of the deceased?

After reading from legal authorities, the counsel added: If you can find a verdict against the husband who slays him who violates the marriage bed, then I address gentlemen who are different from what I suppose them to be. I have given you the definitions of the crimes of murder and manslaughter. It will be for you to say whether this case comes within either of these definitions, and is indicative of a criminal heart. If it be a crime for a husband to defend his humble family altar, and death is visited on him for defending it, then the highest honor which can be conferred on any man is to compel him to die such a death. The counsel then stated the following positions, namely: First, human laws do not shield us from the enjoyment of human rights; secondly, love by divine law is perfect, though not regulated by human law; third, the divine law attaches responsibilities, to execute which do not constitute crime. The first two are properly considered together.

Our legal system does not reach every case. There are certain wrongs which are not punished, and therefore the only law in such events is that traced in the human bosom by the finger of God—the law of human nature and instinct. When the law does not protect us, we are thrown on our own instincts, and have the right to defend ourselves from wrong. Self-preservation is nature's first great law; and this he proceeded to illustrate. He maintained that, by the law of God, the adulterer is allowed to be slain. If he should know by the Bible that man has a natural right to protect his wife against contamination, it is not in the power of human law to take away that right. In this District you have provided no protection against adultery. The inevitable result is, that you are thrown upon the principle of self-defence to protect yourselves and your own. Do you not wish to be safe against the housebreaker? How much more against the adulterer!

The law tells you, when you have been disturbed in your repose at night, you may take the life of the burglar; but it still permits your house to polluted by the tread of the adulterer. The reason why society has not provided against adultery is that it considers it right that every man should defend himself against the adulterer, and that right is perfect under the Divine law. There is nothing in this doctrine that is revolutionary or subversive of the peace and good order of society. There is no law in this District which robs you of your domestic rights. As to the heinousness of the crime of adultery, it is stamped on the act by God himself. It was not necessary to justify man in killing the adulterer that he should catch the offender in the act, but only that he should be so near the truth as to leave no doubt of his guilt. We regard this as a very important point.

I say that if society has not protected you in the chastity of your wives, it is proof conclusive that you have a natural right to protect them as much as you have to protect your own lives. It would be an outrage on decency to compare felony with adultery. We

learn from the Bible that one of the most serious of crimes is that of adultery. It might be said that Sickles had a civil remedy against Key, if the latter had deflowered his wife, and that although Key could not be proceeded against criminally, he might possibly be pecuniarily recompensed. The wounds of what husband could be staunched by dirty money from the pockets of him who had defiled his wife?

If a man come into your house against your will and lie on your bed, that is a trespass, and you can put him out by force; and yet if he lies down by your wife, and takes from her that which cannot be restored, according to the hypothetic position of the prosecution, he is not entitled to any redress at all. There are certain relations to which the law attaches the greatest responsibilities, and which it invests with commensurate powers; these are the relations of parent and child, husband and wife—the most hallowed and cherished. The attachment which connects brother with sister is that of love, because they come from the same relations; but the connection between parent and child, and husband and wife is founded on divine law, and she being the weaker vessel, it is his duty and right to defend her; it is his duty to protect her against frailty as much as against the violence of the robber.

It has been well said, "Frailty, thy name is woman." A man who obtains the affections of another's wife is as guilty as him who deflowers her by ravishment. It is the husband's duty to control her affections, and see that they are not stolen from him by the act of the adulterer. It is as high an offence, though she consents, as if she were made a victim by positive violence. In England, up to the thirteenth statute of Edward the First, adultery and fornication were common law offences; but they were then transferred to the cognizance of the spiritual court There is the declaration of the British Parliament that adultery is a deadly sin, to be ecclesiastically punished for the safety of the soul.

At the common law of Maryland, derived from Britain—and which now prevails in the District of Columbia—adultery is not an offence. Therefore a statute is needed to make adultery an offence to be punished by the legal tribunals here Four States of the Union nave made adultery a punishable crime—Massachusetts, Virginia, Ohio, and Pennsylvania. In the first it is punished by imprisonment for two or three years, but this is inadequate

You, gentlemen, are sitting there to pronounce the estimate of an American jury on the value of a husband's bed. This is the great principle of your verdict, and on this principle you will say whether you will strike terror into the heart of the adulterer, or whether you will embolden him in his course, and send him out to repeat his crime. If he is told that a man who dares to take his life shall forfeit his own, you strike the deepest blow at the heart of morality ever given on this continent by an American jury.

It is a well settled legal principle, that every man's house is his castle—sacred to himself and family. The term castle is the term of the law. It does not mean embattled walls. It is a figure to denote that even the humblest hut is as much a fortress for the protection of a man's family as a fortress for defensive purposes If you invite a man to your house, and he lusts for your wife and daughter, he is as great a trespasser as though he had entered against your will. You would have a right to eject him. If he enters with an impure heart, he abuses your license.

One of the aggravated features of the case was that Mr. Key entered the abode of Mr. Sickles as a friend. We will show that they stood almost as close as do those two human beings, the Siamese twins, who now stand connected by a link which renders them indissoluble. The hearts of these two men have beaten almost against each other. Their hearts seem to have alternated in their pulsations, so far as personal acquaintance was concerned. When, therefore, Mr. Sickles invited Mr. Key into his house, and Mr. Key entered for the purpose of accomplishing the downfall of his wife, he was as much a trespasser as if he entered it without an invitation; for when a husband invites a friend to visit his house, he in effect invites him to keep back all uncleanness.

The person or body of the wife is the property of the husband, and the wife cannot consent away her own purity; and if she does, he has the same right against the adulterer as if he ravished her. He quoted from second Wheeler's Criminal Cases, the People vs. Ryon, saying where the wife's own virtue does not keep off the adulterer, let her interpose the fear of her husband. He referred to other authorities in this connection, showing that in defending his wife, the husband defends himself.

There were seven points he proposed to argue, namely:—As to how far the government is bound to make out the case against the defendant, and what amount of proof should satisfy the jury; second, how far the old rule of malice was presumed to prevail at the present time in the administration of criminal justice, and how far it is controlled by the fundamental presumption that every one is supposed innocent till proved guilty; third, the heinousness of the crime, as declared by the Bible; fourth, the reason or principle of the old rule that palliates the act committed by the husband who discovers the adultery; fifth, what was the effect of the rule which lowered the offence to manslaughter, and made it equivalent or tantamount to an acquittal; sixth, how far the provocation of the deceased to the defendant acted on or affected the defendant's mind to shield him from all the legal consequences; seventh, as to whether sufficient time had elapsed for his passion to cool.

We, he said, attack the theory of the prosecution. The case must be made out by the prosecution, by proof, not by presumption. We say the old rule of law, that a killing was presumptive evidence of malice, no longer belongs to the law. It is on facts, and not on presumption, that a man must be condemned for an offence involving his life and liberty. The jury cannot convict unless they conscientiously believe that the facts are embraced in the presumption. He understood the argument of the District Attorney to be that the law presumed when the mere act of killing was proved against a man, that there was the *malicia cogitata* in his heart. That was not the presumption of the law. For himself, he would rather presume, where no motive was shown, that the killer was insane. On this point he referred to a decision in the case of the People vs. McCann, in Smith's reports. It was the duty of the prosecution to prove their case. If they alleged that the killing was mere wantonness they must prove it. They had not done so. Justice Brown, in the case referred to, ruled that the proving of malice or motive was primarily necessary on the part of the prosecution.

The rule of presumption originated in a time when the property of a felon reverted to the crown, and when it was the interest of the government to procure convictions. He contended that the sanity of the offender's mind was to be made out affirmatively by the prosecution. He insisted that they could stand before the jury this morning, and demand the acquittal of Mr. Sickles. There is enough, he said, in the case now to melt the heart that is not cut from the unwedgeable gnarled oak; for in the agony of his mind, when the deed was done, and he was relapsing into his insanity, in the midst of his grief he exclaimed, "He has soiled, he has defiled my bed!" That was the dominant sentiment of his bosom. Twelve Indians, on whom the light of civilization never broke, would repel with indignation the idea of convicting a man on the testimony that is placed before you on the part of this prosecution.

The cardinal presumption of the law is that every man is to be supposed innocent till proved guilty. Not so, says the prosecution; the law must presume Mr. Sickles to be a murderer, because it is proved he discharged his pistol in the breast of his victim. Was not the prosecution to prove that the prisoner was at the time in sound mind and memory? He held that they were. The utmost effect of such presumption was to prevent the prosecution being nonsuited.

The oath of a juror was that he should a true deliverance make upon the evidence. Not so, says the counsel for the government; the jury is to act on the presumption of law. But the oaths of a jury could not be redeemed unless they could look their Maker in the face, and say that every fact found in their verdict was a fact firmly proved in the testimony of the case. He passed to the second question which he proposed, namely, whether the rule that the law presumes malice from the mere fact of killing is now a part of the criminal jurisprudence of our country. In denial of that, he referred to volume xvii. of State Trials, page 60, Mawgridge's case; to one in Blackstone, page 302; and again in the case of McCann, volume ii. of Smith's Report, pages 65 and 66, in the State of New York; where the District Attorney proved nothing but the killing, the Court would direct the acquittal of the prisoner.

Was there anything proved in this case that quadrates with Blackstone's definition of murder? He held that there was not. In the decision in McCann's case it was stated by the Judge, that to constitute the crime of murder, the will must join with the act. In this case, did the will join with the act, or was Mr. Sickles, at the time of the homicide, such a mere creature of instinct, of impulse, that he could not resist, but was carried forward, like a mere machine, to the consummation of that so-called tragedy? It may be tragical to shed human blood; but I will always maintain that there is no tragedy about slaying the adulterer; his crime takes away the character of the occurrence. The adulterer dies as justly as those men died who were executed within the limits of the State of Maryland yesterday. They were condemned by law. What was their offence? They had shed human blood. It was no higher than the offence of this deceased, for he turned over the divine institution of marriage, created and reared by the hand of the Almighty.

Counsel understood the rule to be that where the prosecution proved the declaration of a prisoner, that declaration was held to be true till it was proved to be false. The declaration by the prisoner here was that Key had defiled his bed, and that under the influence of that wrong he had killed Key. It was for the prosecution to show that Key had not polluted the wife of Daniel E. Sickles. Had they shown that the declaration was false, or had they thrown themselves on the jury? Conceding that that was the reason of the act, it would put a speedy period to this investigation to admit that that was the fact.

I submit, said he, that that is sound law, and that the fact is now proved in this case, that Phillip Barton Key seduced the wife of Daniel E. Sickles, and that for that, in a transport of frenzy, Daniel E. Sickles sent him to his long account. That is the way the case stands before this jury. We might, therefore, submit this case to the jury on the testimony as it now stands; for the rule is well settled, that a declaration of a prisoner, when proved by the prosecution, is held true until the prosecution has shown, *aeunde*, that the declaration was false. That was the secret of our learned friend's ingenuity. Is Daniel E. Sickles to be fitted and cut into a conviction of murder? Is it by cutting out this part of the truth, and that part of the truth, or is it on the morality of this case that we stand in this court to await the action of this jury? How would you feel if the law could tie a handkerchief on your eyes and compel you to render a verdict when your senses or faculties are not convinced? There is no such duty exacted from you on this occasion.

The prosecution started in a slough. The defence is not bound to show the adultery, although it could place it before the jury in its most disgusting details. We could show that not only was Key an adulterer, but that he was the professed friend of Daniel E. Sickles, and that he deflowered the confidence of his own friend. His was a double crime. The treachery of a friend is bad enough, but when that perfidy reached the wife it became doubly damned.

I believe in the maxim—*de mortuis nil nisi bonum.* (Speak not of the dead except you mention them favorably.) It is said that "the evil that men do lives after them; the good is oft interred with their bones." That saying is verified here; but it is not brought into this case for the purpose of aspersing the memory of the deceased gratuitously. I would leave him where he slumbers; but as he is a fact in the case, and as his conduct is a fact in the case, it is necessary that it should be reviewed. There is a duty here to be performed to the living. This brings me to the third question, which is, the heinousness of the crime of adultery, and how the law esteems it as a provocation and how it regards it in connection with an act caused by it.

If I trespass too long on the patience of your Honor, or of the jury, I hope I may be rebuked, for I have no pride to gratify here. If I can accomplish the delivery of my friend, the measure of my gratification will be not only full, but overrunning. If I have ambition, it is not the incentive to my action on this occasion. I will consider first, the heinousness of adultery as declared by the Bible, and second, as estimated by the common law. When the Almighty caused a deep sleep to fall upon Adam, and took one of his ribs and from it made a woman. He brought her unto Adam:—

"And Adam said, This is now bone of my bones, and flesh of my flesh; she shall be called Woman, because she was taken out of man

Therefore shall a man leave his father and his mother, and shall cleave unto his wife; and they shall be one flesh."

The Saviour, when in the coasts of Judea, used almost the same language, when the Pharisees sought to tempt him on the subject of divorcement:—

"Wherefore they are no more twain, but one flesh. What, therefore, God hath joined together, let no man put asunder."

When Abraham went into Egypt on account of the famine, Sarai, his wife, passed as his sister. He feared death on her account. The princes of Pharaoh saw her, and commended her to Pharaoh, and she was taken into his house. The Lord plagued Pharaoh and his house with exceeding great plagues:—

"And Pharaoh called Abram, and said, What is this that thou hast done unto me? why didst thou not tell me that she was thy wife?

Why saidst thou, She is my sister? so I might have taken her to me to wife? now, therefore, behold thy wife, take her and go thy way."

So when Abraham sojourned in Gerar, Sarah passed as his sister, and Abimelech the king sent and took her;

"But God came to Abimelech in a dream by night, and said to him, Behold, thou art but a dead man, for the woman which thou hast taken; for she is a man's wife.

But Abimelech had not come near her; and he said, Lord, wilt thou slay also a righteous nation?

Said he not unto me, She is my sister? and she, even she herself, said, He is my brother: In the integrity of my heart, and innocency of my hands have I done this.

And God said unto him in a dream, Yea, I know that thou didst this in the integrity of thy heart; for I also withhold thee from sinning against me: therefore suffered I thee not to touch her.

Now, therefore, restore the man his wife: for he is a prophet, and he shall pray for thee, and thou shalt live: and if thou restore her not, know thou that thou shalt surely die, thou, and all that are thine."

The Seventh Commandment says:—

"Thou shalt not commit adultery."

And the Tenth Commandment says:—

"Thou shalt not covet thy neighbor's wife."

So in Leviticus, chapter 20, verse 10, the punishment for adultery is declared:—

"And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbor's wife, the adulterer and the adulteress shall surely be put to death."

And again, in Deuteronomy, chapter 22, verse 22:—

"If a man be found lying with a woman married to an husband, then they shall both of them die, both the man that lay with the woman, and the woman; so shalt thou put away evil from Israel."

Moses died in the year 2,553 of the world, 1,445 years before the birth of Christ. He was succeeded by Joshua. Joshua read to the people on Mount Ebal a copy of the law of Moses, written on tables of stone, and that law was affirmed by the people:

"Then Joshua built an altar unto the Lord God of Israel in Mount Ebal,

As Moses the servant of the Lord commanded the children of Israel, as it is written in the book of the law of Moses. An altar of whole stones, over which no man hath lifted up any iron; and they offered thereon burnt offerings to the Lord, and sacrificed peace offerings.

And he wrote there upon the stones a copy of the law of Moses, which he wrote in the presence of the children of Israel.

And all Israel, and their elders, and officers, and their judges stood on this side the ark and on that side, before the priests the Levites which bare the ark of the covenant of the Lord, as well the stranger as he that was born among them: half of them over against Mount Gerizim; and half of them over against Mount Ebal; as Moses the servant of the Lord had commanded before, that they should bless the people of Israel.

And afterwards he read all the words of the law, the blessings and cursings, according to all that is written in the book of the law.

There was not one word of all that Moses commanded which Joshua read not before all the congregation of Israel, with the women and the little ones, and the strangers that were conversant among them."

The jury would recollect that at this time the Jewish

government was theocratic, that is, God ruling. They continued so until between 1095 and 1065 before Christ, under Saul, the first king. When the Israelites besieged Rabbah, David tarried at Jerusalem. He there committed adultery with Bath Sheba, the wife of Uriah the Hittite. He directed Joab to place Uriah in the foreground of the hottest battle before Rabbah, and then retire from him, that he might be smitten and die. This was done, and Uriah was killed. Bath Sheba had a child, which was struck sick by the Lord, and died. Nathan was sent to David, who reproved him in the parable of the "rich man with many flocks and herds, and the poor man with his single ewe lamb:"

"Now therefore the sword shall never depart from thine house: because thou hast despised me, and hast taken the wife of Uriah the Hittite to be thy wife."

David repenting, Nathan said:

"The Lord hath also put away thy sin; thou shalt not die"

David wrote the fifty-first Psalm on this.

"The sacrifices of God are a broken spirit; a broken and a contrite heart, O God, thou wilt not despise."

Amnon ravished Tamar:

(Counsel here recited the whole of the story as recorded in 2 Samuel xiii. 1-39, after which he continued as follows):

Two full years afterwards Absabom got Amnon into his power and ordered his servants to kill him. They did so, and Absalom fled to Geshur, where he was three years, and returned to Jerusalem. He dwelt two full years in Jerusalem and saw not his father's face. When the king called for him he came to him, and the king kissed Absalom. The fate of the seducer is here shadowed forth; it is the same as that of the adulterer. There is no cooling off after such an offence. Talk about the cooling of the provocation of defiling a man's wife! A mere personal indignity can be cooled over; but if Mr. Sickles is cool now he is more than human. I refer also in this connection to the case of Dinah, who was ravished by Shechem:

"And Dinah the daughter of Leah, which she bare unto Jacob, went out to see the daughters of the land.

And when Sechem the son of Hamor the Hivite, prince of the country, saw her, he took her, and lay with her, and defiled her.

And the sons of Jacob came out of the field when they heard it; and the men were grieved, and they were wroth, because he had wrought folly in Israel in lying with Jacob's daughter, which thing ought not to be done.

And it came to pass on the third day, when they were sore, that two of the sons of Jacob, Simeon and Levi, Dinah's brethren, took each man his sword, and came upon the city boldly, and slew all the males.

And Jacob said to Simeon and Levi, Ye have troubled me, to make me stink among the inhabitants of the land, amongst the Canaanites and the Perizzites; and I being few in number, they shall gather themselves together against me, and slay me; and I shall be destroyed, I and my house.

And they said, Should he deal with our sister as with a harlot?"

Malachi, the prophet, who lived four hundred and thirty years before Christ, in the delivery of the work of God, says:—

"And I will come near to you to judgment, and I will be a swift witness against the adulterers."

Under the New Testament dispensation, the Saviour enjoins the precept in these express terms:—

"And, behold, one came and said unto him, Good Master, what good thing shall I do, that I may have eternal life.

And he said unto him, Why callest thou me good? there is none good but one, that is, God: but if thou wilt enter into life, keep the commandments.

He saith unto him, Which? Jesus said, Thou shalt do no murder, Thou shalt not commit adultery, Thou shalt not steal, Thou shalt not bear false witness.

Honor thy father and thy mother: and, Thou shalt love thy neighbor as thyself.

The young man saith unto him, All these things have I kept from my youth up: what lack I yet?

Jesus said unto him, If thou wilt be perfect, go and sell that thou hast, and give to the poor, and thou shalt have treasure in heaven; and come and follow me.

But when the young man heard that saying, he went away sorrowful; for he had great possessions.

And when he was gone forth into the way, there came one running, and kneeled unto him, and asked him, Good Master, what shall I do that I may inherit eternal life?

Thou knowest the commandments, do not commit adultery, do not kill, do not steal, do not bear false witness, honor thy father and thy mother."

Adultery in the heart is reprobated in the Sermon on the Mount:—

"Ye have heard that it was said by them of old time, thou shalt not commit adultery.

But I say unto you, that whosoever looketh on a woman to lust after her, hath committed adultery with her already in his heart."

The man who has lusted for his neighbor's wife has committed a sin calling for the justice of heaven just as much as if he had soiled her body; so that the policy of the Bible is to arrest that crime in its bud, and to make the very nursing of an intention towards another man's wife an offence in the sight of heaven. It is but a short step between the intention and the deed, and therefore to keep back the deed the law aims itself at the motive to the deed. The apostle urged this precept. St. Paul, in his Epistle to the Romans, chapter xiii., verses 8 and 9, says:—

"Owe no man anything, but to love one another; for he that loveth another hath fulfilled the law.

For this, Thou shalt not commit adultery, Thou shalt not kill, Thou shalt not steal, Thou shalt not bear false witness, Thou shalt not covet," and if there be any other commandment it is briefly comprehended in this saying, namely, "Thou shalt love thy neighbor as thyself."

Had Mr. Sickles any worse foe on earth than Philip Barton Key? Had Key come to him and sunk his stiletto in his bosom, he would have been merciful to him He wraps himself in the habiliments of friendship, and under that garb, supposing that he is masked, commits the most frightful, and at the same time the most sneaking of all crimes. These citations from the Bible show that female purity, in connection with the marriage relation, is an object in divine law of the greatest concern; that the sanctity of the family altar must not be desecrated; that it is impiety to Heaven to violate it, and that it is piety to heaven to defend it.

And this brings me to the second aspect of the question—the heniousness of adultery at the common law. It is strange that though adultery is twice forbidden in the decalogue, no human law has caught up and carried out the spirit of the divine law. What is the reason of that? Do you suppose that society means that adultery should go unpunished? No; it throws you on the law of your heart—there is the repertory of your instincts; go by them and your reflect the will of Heaven, and when you execute them you execute the judgment of Heaven. If that is not the reasoning of society, then society has not fulfilled its compacts with Daniel E. Sickles.

What was his compact with society? It was that he would give up so much of his natural liberty as society gave him back a consideration for the surrender of. Did he when he joined society take his wife beyond the protection of the law? Did he leave her at the mercy of this confirmed adulterer? No, society knew that this thing would take care of itself, and it left the adulterer where the law of God has left him—to be the victim of that judgment which is executed upon him by Heaven through man as its instrument- If you are going to pronounce the verdict that there is no other protection for your home than a nasty action for damages growing out of criminal conversation between your wife and an adulterer, then, gentlemen, your wives live in a very perilous atmosphere. If that is all the protection that is over your houses, let the infamy come and let the coins of the adulterer soothe your wounded feelings. That is a doctrine which does not prevail out of this District, and it is a doctrine which ought not to prevail in this District.

The liberty of this District, above all other sections of the country, should be a model and an exemplar of liberty to all other parts of the country. The *jus gladii*, the right of the sword resides somewhere. Is it with the Omnipotent, or is it confined to the hands of the injured? But though the law does not punish adultery as a crime, does it not stay its vengeance when invoked against the husband who turns his own avenger?

Counsel then proceeded to consider the estimation in which adultery is held as a provocation at the common law, and referred to Maddy's case; vol. 1 Ventris,

p. 153; vol. 2 Keble, p. 829, and to T. Raymond's Rep., p. 212. Maddy's case was decided under the auspices of Chief Justice Hale, who was the greatest lawyer of his age, and whose great rule was "That in the administration of justice I am entrusted by God, the king and the country."

He referred also to Mawbridge's case, vol. 17 State Trials, p 70; Carnagre's case, same volume, p. 79; Chetwynd's case, vol. 18 State Trials, p. 306; Hawkins' P. C., vol. 1, chap. 31, sec. 36; Foster's Criminal Law, p. 298; vol. 1 East's P. C., p. 234; vol. 1 State Trials, p. 83; pages 4 and 5 of Elmyn's Preface; Wharton's American Criminal Law, pages 983 and 984; and Greenleaf on Evidence, vol. 3, sec. 1, p. 22. Counsel had also read the case which was tried in this very court a year or two ago, the case of a brother indicted for the murder of his sister's seducer, in which the Judge told the jury that the *status* of the prisoner's mind was a matter entirely for them—a charge which was the law and which was creditable to the humanity of the Court, and in that case the jury, in fifteen minutes after the case was given to them, set the prisoner free.

He referred to these texts for the purpose of showing that the greatest provocation a man can give another is to pollute his wife. Whom does the adulterer rob? He puts a spurious issue into your family; he compels the offspring of your loins to mingle with bastards. He puts his bastards to mingle with your lawful children. Is not that enough to madden any man's brain who thinks upon it? Says Lord Holt, "An adulterer is more than a burglar, for he robs a man's posterity." Think, said the counsel of the District Attorney of this Court prosecuting thieves and burglars, and then going out of this court and compelling heaven to turn its face from him in disgust at the enormity of his crimes; refusing to protect Daniel E. Sickles' house against the greatest malefactor that walked the face of the earth, himself keeping the burglar out in order that the adulterer might pass in. Why, the burglar could not compare for a moment in point of aggravation with the heinousness of his crime.

The question which I present to your mind is this:—Whether when a man receives provocation which excites in him an amount of frenzy which he cannot control, he is responsible for what he does under the influence of that frenzy? It is folly to punish a man for what he cannot help doing, if you concede that the transport is such that he cannot control it. You cannot make him criminally responsible for what he does under the influence of that transport. To stab an adulterer was not to draw a weapon within the meaning of the statute of James I., even though the adulterer had no weapon, because the statute was never meant for the protection of the adulterer. Emlyn says that when the Roman Empire became Christian—that is, when it was established on the principles of Him who spoke as never man spake, and who preached humility and meekness on earth, under the reign of Constantine, adultery was made a capital crime, and so continued till Justinian's time, and long after.

Some are of opinion that it was so even when the empire was heathen. But when society becomes Christian, then it is Christian to punish adultery with death. This brought him to the fourth question, the reason of the rule as to killing an adulterer or an adulteress being manslaughter. Is it confined to the discovery in the fact? Will nothing else do? Is not the man who discovers some sign after the admission of guilt by his wife, corroborating her statement, as much the victim of passion as he who surprises them in the act? Is a man to wait until he can detect the actual coition before he is within the rule? Such a thing may happen; but if a husband has never the right to stay the adulterer until he catches him in coition with his wife, he will never have the right at all. It has been said that the wren goes to it, and the small gilded fly does lechery in our sight, but that is the only instance of coition that occurs under our eye.

Now our position here is this—that to catch the adulterer in the fact means to catch him so near the fact as that there is no doubt of his guilt. If you caught the adulterer turning out of the same bed in which your wife was, would you not have a right to kill him? If you caught him coming out of the room where she was in such a state as to indicate what he had been doing, would you not have a right to kill him? The question is this—not how you catch them, but are the parties guilty, and are you satisfied and confident of their guilt? No matter how the proof comes home, it is the provocation that works on the human breast. Whether the fact actually takes place before the eyes of the husband, or he becomes satisfied of it by irrefragible proof, is perfectly immaterial. The provocation is what the law looks to.

We therefore say that the rule reducing the killing to manslaughter is figuratively expressed. It is but saying that the man who kills another for adultery, if he does it when the proof strikes home, under the passion then excited, and when it is uncontrollable, incurs no higher than this nominal criminality at the common law. The same great dramatist from whom I quoted this morning makes the caitiff Iago inflame the Moor against the supposed but unreal infidelity. The Moor demands proof of her guilt, and Iago is made to say—

> Would you, the supervisor, grossly gape on?
> * * * * *
> It is impossible you should see this,
> Were they as prime as goats, as hot as monkeys,
> As salt as wolves in pride, and fools as gross
> As ignorance made drunk. But yet, I say,
> If imputation and strong circumstances—
> Which led directly to the door of truth—
> Will give you satisfaction, you may have it.

That is all that any husband can expect. The imputations and circumstances leading to the door of truth; and if he is never invested with right till he has more than that, then the right is denied to him entirely. By the law of England it is treason to defile the Queen consort or Queen regnant. We have no Queen here. We have no government here except the government of families. But is not the diadem of the family honor as dear and as costly as that which ever graced a monarch's brow? Where is the man who does not contemplate the honor of his family as it flows from father to son, with the same reverence and attachment with which he would contemplate the honor of the crown as it is passed from the hands of the incumbent to future successors? All of you know the loyalty of an Englishman to his government. Allegiance is never more strongly portrayed than it is in the loyalty of the English subject to the sovereign. If attachment like that can grow up between individuals and the government that grinds them down, how much stronger must be the attachment that grows up between the members of the same family! Let the same sanctity which attaches to the nation's Queen, attach to the queen of every family altar.

Shall one's lawful children mix in company with the living monuments of his wife's inconstancy? Shall the offspring of another man's loins divide with one's lawful children their patrimony? Shall every door be swung open to the adulterer? As thrones and crowns do not go with us by birthright, let the ægis of the law extend itself around every family castle. Cuckold! Who would live to have the word written on his back? What man is made of flint, that he can walk in the presence of his fellow men and feel that some person was secretly smirking or smiling at him, because he knew, if he did not enjoy, his wife's inconstancy.

What is the choice for the wounded husband in the moment of his anger and despair? The choice is, to lay violent hands on his own life, and leave the course free to his wife's seducer, or to lay violent hands on the life of him who has justly forfeited it. Remember that we were made in the image of the Great Creator. Man was made to walk erect on the face of the earth, and when the immortal soul was breathed into his nostrils he was invested with dignity of character; he was invested with the instincts to protect that dignity of character, and he was told in the same way in which his internal sense tells him that his God lives to defend that dignity, even to the extent of his own or his neighbor's life.

This brings me to the last consideration in connection with this subject, what was the effect of the rules which lowered or reduced such a killing to manslaughter? It was to make it equivalent or tantamount to an acquittal, and I propose to show that the rule at the common law which made such an act manslaughter was, in effect, declaring that that was no offence, or so light an offence as not to be worthy of punishment. Counsel argued that the extension of the form of punishment known at common law as the *privilegium clericale*, under which a husband convicted of the homicide of an adulterer was marked with a slight burning of the hand, and the statute law having provided no substitute for it, there is no course left but the complete

acquittal of a person arraigned under such circumstances. He referred to vol. 4 Blackstone, page 364 to 375, and to Foster, page 288.

This brought him to the sixth question, how far the provocation furnished by the deceased to the defendant acted upon or affected the defendant's mind in reference to exhonorating him from all legal consequences for or by reason of the killing in question; whether, while the influence of the provocation remained it did render the defendant for the time being insane; whether it did not operate such a state of mental unsoundness as to relieve the defendant's alleged act of and from all criminality, supposing the act to have been immediately and directly prompted or occasioned by it. In other words, whether the case is one of pardonable or excusable unsoundness of mind, or of wanton or ungovernable passion; whether the defendant, not being to blame for the provocation, the frenzy or its results, can be holden for a crime. This, gentlemen of the jury, is regarded as one of the most important items in this prosecution. We mean to say, not that Mr. Sickles labored under insanity in consequence of an established mental permanent disease, but that the condition of his mind at the time of the commission of the act in question was such as would render him legally unaccountable, as much so as if the state of his mind had been produced by a mental disease. In other words, the proposition we argue to this jury is this:

It is no matter how a man becomes insane; is he insane, that is the question? Whether it results from disease of mind or body or sudden provocation, it is perfectly immaterial, and the privileges of accountability attach as much in the one case as in the other. Disease is a most mysterious visitor. They oftentimes saw a man taken in a fit without any premonition, and that was the character of the aliments of the mind. A sudden transition will destroy the equilibrium of the body; and it is precisely the same with the mind—the reaction is as strong in the mind as in the body.

Under the old law, the doctrine of insanity was based on a narrow foundation. He referred to Hale, vol. 1st, page 30, to show the difficulty of defining the causes of unsoundness of the mind. They denied that this case presents an instance of ungovernable passion. That implied a passion disproportional to the provocation. He again referred to the case of Mawbridge for illustrations of ungovernable passion. This case might be put to them by the prosecution as one of ungovernable rage on the part of Mr. Sickles, and he had wished to anticipate that he had shown to them that the highest provocation a man can have is the pollution of his wife; and he had read to the jury the opinions of learned jurists on the point of provocation. How hypocritical would it be to allow the man who kills another under the passion evoked by contumelious language, to be put upon the footing of a man who kills the pollutor of his wife; and yet the first was held to be provocation at common law, and diminished the killing from murder to manslaughter.

The English law on this subject was a very uncertain one; it had fluctuated much. Counsel gave several references on this point—Chetwynd's case, Foster and others. They could concede on that part of the defence that life taken in cold blood, or under the influence of excitement not proceeding upon an adequate provocation, is criminally taken. But how did that affect Mr. Sickles? He did not act in cold blood. If he did, he is more or less than human. He knew when he met Mr. Key on the afternoon in question, that Mr. Key was at his house to make an assignation with his wife; he knew that Mr. Key had hired a house but a few blocks from his own mansion, where in the indulgence of his beastliness he polluted the body of his wife; he knew that Mr. Key, by the aid of a park, and a Club House, and an opera glass, could at any distance from his castle easily tell whether it was safe for him to approach. This thing was well considered.

Mr. Key hired this house in a part of the city where he knew no witnesses could come against him; he hired it, as I understand, in a part of your city populated chiefly by blacks, supposing, from his legal knowledge, that facts which were seen by them were not seen at all. He reasoned upon perfect impunity for his offence. He availed himself of that park which was between the Club House and Mr. Sickles' mansion, and when it was not safe to be seen in the park, he was to be found in this Club House, to which he could gain access at all hours, looking from its windows by the aid of his opera glass, into the very centre of Mr. Sickles' family circle.

All the weapons that Mr. Key as an adulterer required he had by him on the afternoon of that fatal occurrence. He wanted no Derringer to accomplish his end, although there is no proof before you to show that Mr. Key himself was unarmed on that fatal afternoon. One of the items on the part of the defence will be that he was a man who was in the habit of carrying arms. There is no evidence to show that he was not armed that afternoon. He was provided no doubt with all that was necessary to protect his life in case of detection. At all events he was provided with all appliances—his pocket handkerchief and his opera glass—that were necessary to aid him in the pursuit of his adulterous intention.

Mr. Sickles knew that Mr. Key had hired this house; he knew that he was in the habit of carrying his opera glass and of availing himself of that park which stood between the Club House and his own mansion; he knew that he was in the habit of retiring into that Club House when it was not safe for him to be outside of it; he knew that he had been seen about there constantly for the purpose of getting up an assignation with his wife; he had no knowledge that Mr. Key was coming there that afternoon he saw him, or the purpose for which he was there.

What, then, must have been the condition of his mind? Mr. Sickles did not invite Mr. Key to that vicinity; he did not know he was coming there that fatal afternoon; he saw him as the result entirely of accident—but when his eyes accidentally fell upon him he associated him at once with the facts which he previously knew, and in the transport which was then excited he went forward to the consummation of that scene. There will be more testimony on this point; but I state it here in order that you may have some appreciation of the testimony in regard to the motive or cause for the state of mind in which Mr. Sickles must have been at that time.

Could Mr. Sickles, under these circumstances, have acted in cold blood? Was it possible for him, knowing what he knew in regard to Mr. Key, to look upon him even accidentally and still preserve his equanimity? Well, if he was excited, was it a case of passion unduly excited? If he was in a state of perfectly white heat was that too great a state of passion for a man to be in who saw before him the hardened and unrelenting seducer of his wife?

Mr. Key yielded not to temptation in an erring moment. It was not while any sudden fit was on him that he deflowered the wife of his friend. He took a separate spacious house for the purpose of effecting his guilty purpose in security. Though he has passed from the scenes of the living, and though he is entitled to be kindly remembered when he is remembered gratuitously, still so far as he forms a subject matter of this inquiry, his faults are to be exposed in their proper hues and with all their aggravations.

Had Mr. Sickles any hand in originating his own passion? If he had been under the influence of liquor; if he had first provoked Mr. Key and been then provoked by him the case might stand differently. The provocation originated entirely with Mr. Key, because he deflowered the wife of his friend, and attempted to keep his guilt from the detection of his friend. Intention is the soul of crime. It must be either a cool sedate intention, or a passionate intention; but when the mind is in a state of frenzy it is capable of no passion, and human nature is divested of its immortal part; it goes forward as submissive to the impulses which set it on as though all its power was in its mere physical structure.

On this point counsel contended that Mr. Sickles, at the moment of the occurrence, was laboring under such a state of frenzy as deprived him of accountability for his act. He quoted Lord Erskine as having established the insanity of delusion on one or more subjects—that is, partial intellectual mania. He divided mania into two species—intellectual and moral—and argued that Mr. Sickles was acting under the influence of moral mania. He quoted Deane's Medical Jurisprudence, pages 488 to 510. He denied and spurned the idea that Mr. Sickles' mind was in a mere state of passion. He must have been transported at once when he saw the man who had wronged him, and knew that he was around his house to lay his train of pollution to it. The proposition of the defence, he said, was that if the provocation given by the deceased was of the aggravated character conceded by the law, and if, as the conse-

quence of it, the defendant for the time being, and while under its influence, was in the same state of mental unsoundness as if the result of disease, would excuse his act or exonerate him from accountability, he is equally unaccountable under the circumstances of this case.

The cardinal inquiry was, was the deceased in the peace of God and the United States when killed, and was Mr. Sickles moved and seduced by the devil when he killed him. That, said the counsel, is the language of the indictment. Remember that if you convict him under this indictment, you have got to find that Satan set him on, and that he did not act under the ennobling influence of his nature. What an atrocious verdict that would be to declare on the oaths of a jury that when Philip Barton Key met his death he was in the peace of his God and this community, while the fact is that he was on the mission of an adulterer, and that Daniel E. Sickles, the injured and outraged husband, when he slew him under this provocation instead of yielding to instincts which he could not resist, was tempted and set on by the devil. That is the finding which this prosecution ask you to record against the defendant.

This is no figurative language, because unless the devil sets him on, he committed no crime. If he was set on by the instincts with which his Maker had invested him, he yielded to the control of the highest of all influences, and an influence which he could not resist. If he had no other crime to answer for at the great Judgment Seat, his atonement would be light indeed.

The hour for adjourning having arrived, counsel here paused in his address.

SEVENTH DAY.—*Monday, April* 11, 1859.

The Court convened at the usual hour.

Mr. Graham, of counsel for Mr. Sickles, resumed his argument. He said:

He was fast approaching the close of his present duty. If there were no other reasons to admonish him to do so his own exhaustion would be such a reason. The interest he felt in the prisoner must be the excuse for the tax which he had imposed upon the Court and jury. He would briefly recapitulate the arguments which he had submitted. He had shown that human law did not reach all cases of wrong; that the omission to provide against this wrong was simply to turn us over to our instincts, as regulated by the law of nature. He had suggested that as to the relations between husband and wife and parent and child, nature had created duties of protection which it was not only not criminal to discharge, but which we were bound to discharge. He had suggested that an invitation to a man's friend or neighbor to partake of the hospitality of his house implied an understanding that all lust or uncleanness in regard to his wife or daughter would be repressed or banished from the bosom, and that to come in the guise of a friend while at heart a foe, constituted an abuse of the license to enter. He had also suggested that whether the wife consented away her chastity or not, as between the husband and the adulterer or ravisher, the husband's rights were the same; that, morally speaking, the wife was the property of the husband, and, as against him, possessed no dominion over her person in favor of another.

He had then considered how the Bible and how the common law regarded adultery. While the Bible made adultery so high a crime, it was fair to presume that our minds were framed with corresponding perceptions—in other words, that when the Almighty had portrayed adultery as so heinous an offence, he invested us with that quality of mind which enables us to look upon it in the same heinous light in which he himself had exhibited it. As I understand the law of all reasoning, it is this: that the power which creates the duty, gives the ability to understand and appreciate it. Counsel referred to what the old judges had said: that jealousy is the highest rage of man, and adultery the greatest provocation that can be given to him. In regard to the criminality of Mr. Sickles' act, counsel understood the basis of all accountability to be the possession of that amount of reasoning which enables a man to see the right way, and that amount of will which enables him to pursue it. The intention or will is the principle which gives life to crime. It was impossible to separate this intention from the *corpus delicti*, or body of the offence. Although in this case a human being was slain, nevertheless, there was not that will or intention on the part of the slayer that rendered him amenable to criminal justice. It was no matter how the unsoundness of mind was produced, provided it was produced.

Mr. Sickles was not a party to the origin of the provocation which acted upon him. He stood entirely clear of the conduct of the adulterer. He had never connived at it, and the first intimation he got of it was the ruling motive which induced him to commit the act for which he was now arraigned. Counsel had shown that wherever mental soundness was set, the question for the jury was whether the cause which produced mental unsoundness was sufficient to produce it. This question had already been before the learned Judge on the bench. He referred to Judge Crawford's directions to the jury in the case of the United States against John Day. There the defendant was charged with slaying his wife.

The defence set up was insanity, the cause being the mortification of the prisoner at a child being born to him within three months after his marriage. The Judge ruled that if, from the evidence, the jury found the fact as to the birth of the child, and as to the fact of the prisoner's sense of injury increasing in intensity till his mind became diseased thereby; and if, in such paroxysms of causeless rage, his power of distinguishing was destroyed or superceded, and he committed the act with which he should be charged—he was not guilty of murder—in other words, if shame acted upon him to that extent as to render his mind diseased, he was not guilty of murder. Shame was only one of the emotions crowding Mr. Sickles' mind; that was the law which the defence intended to enforce on this jury.

Counsel also referred to his Honor's ruling on the second trial of Day. When the Judge had submitted the same propositions to the jury, "the jury would perceive that the shame of having a child born to a man under such circumstances could not compare with the mortification and shame of having a man's wife deflowered." The Judge there ruled if, from any predisposing cause, such a state of mind was produced, the prisoner was not responsible for his act. The counsel also referred to the Judge's decision in the case of Jarboe, who was charged with murder in slaying the seducer of his sister. Infuriated by the conduct of the seducer, this brother slew him upon the spot. The learned Judge there said that the statement of facts made a case of murder, but the state of the prisoner's mind at the time was a matter for the consideration of the jury. Under that instruction the jury held that the brother was excused. Counsel asked if a brother, who voluntarily assumes to redress the wrong of his sister, stands excused by the verdict of a jury from the consequences of his act because the provocation was too much for him to bear, on what principle could a difference be indulged or a distinction drawn in the case of a husband interceding to avenge the outrage on his marriage relations?

The question for the jury was, how far, in the commission of this act, the mind of the defendant coincided with the tests? You, said the counsel, can answer this question as men; you can answer it as husbands and fathers. We need no books here to tell you with what affections the human mind is endowed; that is a matter which can be as well passed upon in the verdict you may render on your own innate feelings as it can be passed upon by you, after any enlightenment which I might be able to throw upon it. It is for you to say what must have been the frenzy of Mr. Sickles at the time he encountered Mr. Key, under the circumstances leading to his death, because—remember this—there was no deliberation on the part of Mr. Sickles in meeting Mr. Key. If Mr. Sickles had thrown out a bait—if he had invited Mr. Key to that vicinity, in order that he might go forth from his mansion armed, as he was represented to be by the learned counsel for the prosecution, to the end that he might slay him, then there might be a feature in the case which might appal us. But there is no such feature here. Mr. Key was in the neighborhood of Mr. Sickles' mansion, following the bent of his own impious and wicked inclinations. The very ferocity of this attack as represented on the part of the prosecution—the very murderous character which they have tried to impart to it, shows most completely what was the state of mind which prompted him to the commission of the act. This is a speaking fact. Mr. Sickles encounters Mr. Key without any expectations whatever. He meets

him as casually as though he had met the veriest stranger and the very ferocity with which the witnesses say he went at Mr. Key, and slew him, is indicative of the irresistible impulses which drove him on, and against which it was impossible to oppose any resistance. There is, therefore, nothing like deliberation in the case. The ferocity of the assault, as portrayed in the testimony, is the very fact, above all others, on which I would rely to show the frenzied mind of the man who was the author of the act. As I have already said, grief, despair and revenge, and all these feelings are excited by such a provocation, not appealing to any particular one, but exciting all these elements of the mind, in the strife and contest for supremacy.

Under these circumstances will the jury say that reason exerted any sway amid such a battle of passions, when it was impossible that the ear of his mind could listen to the audience of reason or conscience? He referred the Court to the case of Major Robert Ownsley, 17, State Trials, and the Queen against Fisher, in illustration of the present case. There wat no cooling time; there would be no cooling within the compass of a life time: as often as reminiscence shall recall the wrong of his wife his excitement will blaze up with all its fury. He referred to the case in English trials were a father slew another for committing sodomy—a crime so horrible in its character as not to be named among Christians; the lad, fourteen or fifteen years of age, yielded himself to the unhallowed lust of a man; the father, hearing of the crime, hunted him out and pursued him for a whole night, and having found him, deliberately slew him. Would any jury say there were any such feelings of purity in this case as those which attach to a wife? It was of the essence of human nature to love woman with a tenderness which does not identify itself with any other passion. This forms the most enthusiastic, the most maddening passion which clusters around woman and invests her with her claims to protection. The more the offence is contemplated the more it maddens. Although the father deliberately slew the man who perpetrated the horrible crime, and although the Judge charged the jury that they must convict him of murder, yet the jury, in the face of the law, convicted him only of the crime of manslaughter. A parallel might be drawn between the two cases. In the first, the father, after spending all night in pursuing the offender, executed vengeance. In this the adulterous conduct of Mr. Key thrust itself upon Mr. Sickles as he passed him; in a moment the train exploded; and because the wronged husband summarily slew him, he is arraigned here as a criminal. Mr. Sickles, unlike the father referred to, had no time to manifest such indication of mental unsoundness as those which attach themselves to offences of this kind; he could not call in witnesses to see the craziness under which he committed the act; but under such a state of mind as these circumstance would naturally produce, Mr. Sickles committed the act for which it is sought to deprive him of existence.

Now, gentlemen, a very brief narrative of this case, and I shall submit it to you, so far as the opening is concerned. Let us ask who were the parties to this transaction? As I have said before, I shall speak no unkind word of Mr. Key; I shall put the facts before you, and leave them to speak to you as humanity always will speak under circumstances like the present. Mr. Key was a man of about forty years of age, as I am informed; he had been a married man, and at this very time he had the monuments of that sacred relation daily before him to warn him of the wickedness of his conduct; he himself had assumed the marriage vow, and knew the solemnity of it; he could tell himself what would be his own feelings if his own bed had been violated, and he could very well conceive to himself how he would act if he had discovered the author of that violation. His profession, too, was such as should have imparted some gravity to his character.

There are some occupations which do not interfere with the frivolity of human nature; but if there is any profession in this world short of the pulpit which can and ought to sanctify, if I may so speak, the human mind, and communicate a gravity to it which is not its natural vestment, it is the profession to which I belong—it is the profession to which Mr Key belonged. The very business of our profession is to study out the rights of other men, and to have them observed. The first of all the duties which are cast upon us, and the last of all that we can be excused from, is the performance of the studying out of the social and the personal relations of man to man; and the duties that attach to those relations is the first office and the principal business of our profession, and therefore a lawyer, above all others, before every tribunal, whether it be erected in the arch of heaven or upon the face of the earth, is entitled to the least charitable consideration.

What, too, was his position? He was the prosecuting officer of this District. He was selected to conserve the cause of public morality and public decency. It was his business to see that your homes were protected against seducers, adulterers, and every other species of criminal; and yet he wrapped himself in the garb of hypocrisy, came into this court and hunted down, with an almost unparalleled success, the mere worms that crawl upon the face of the earth, while the full grown man of crime, such as he himself was, was permitted to stalk through your community, not only not punished, but not even admonished for it. Now, this is the character of this adulterer. Is there a word here that is not strictly true? Who was the woman with whom he committed this adultery? Young enough to be his daughter. What her disposition may be I know not; but reasoning from her years, and from our knowledge of the mental structure of woman, it is not too much to suppose that all the frivolity that surrounds a woman at that age environed her; that she was susceptible to flattery; that she was susceptible to the attentions of men, and looked upon them as so many offerings cast upon the shrine of her beauty.

At her period of life the marriage vow had not impressed itself with all its gravity upon her mind; she did not experience fully the meaning of the terms by which she had surrendered herself, body and soul, to the ownership and control of her husband. If there ever was a case in which a man was tempted by a woman, he should have imitated the example of Joseph, who left his garment in the hands of Potiphar's wife. This was a case above all others in which a man, ere he fell under the dominion of his lust, should have left behind him some proof which by the mendacity of the woman might be tortured into evidence of his guilt.

Who was the husband in this case? He is a man not quite of the same age with Mr. Key; he was accredited to your city as a member of the councils of the nation; he came from the great commercial metropolis of our continent, that city upon which every part of this Union looks with pride, and which, however objectionable some of its features may be, nevertheless, every American heart will concede is the first city of our Union; he was here in the sphere of duty; and by way of showing Mr. Key and you the confidence he placed in the protection which was guaranteed to him by the laws of your District, in bringing within its precincts his wife and his child, he threw them and himself upon you and the laws of this District for protection.

Now, what were the relations of Mr. Key to Mr. Sickles? We shall show you what those relations were. So far as Mr. Sickles was concerned they were those of sincere friendship. So far as Mr. Key was concerned they were those of professed or avowed friendship. It has been said by the Psalmist "for it was an enemy that reproached me; then could I have borne it; neither was it he that hated me that did magnify himself against me; then I would have hid myself from him; but it was thou—a man mine equal, my guide and my acquaintance; we took sweet counsel together, and walked into the house of God in company." The wrong of a stranger may be borne with patience, but the perfidy of a friend of itself becomes intolerable.

We will show you, gentlemen, on the part of this defence, that Mr. Sickles had interceded to have Mr. Key appointed to the very position which his private life has disgraced; that all the influence which he could wield to secure to him the elevated position of prosecutor at the bar of this court was thrown into the scale, for the purpose of enabling him to attain that object of his ambition. We will show you that Mr. Sickles had sent him private clients; and will show you that on one occasion when Mr. Sickles had occasion himself, in consequence of a difference relating to the hiring of his house, to employ professional services, he secured those of this Mr. Key as his counsel in opposition to the valuable services of the learned senior counsel for this prosecution. So that there were not only friendly but professional relations between them, which sinks any man to the lowest depths of baseness who would think of compromising his acquaintances under such circumstances.

Mr. Key pretended that he was in bad health—I say pretended, because, although he had not strength

enough to encounter the sphere of duty which awaited him here, nevertheless he had strength enough to carry out his designs in reference to the wife of his neighbor. Had he expended in this Court the same physical exertion which he expended in the prosecution of his adultery, he would have been physically, as he was mentally, adequate to the discharge of every duty which devolved upon him. But while he had not strength enough to meet the exigencies of his duties here, he had that strength which was necessary to sustain his powers of virility elsewhere. He became a visitor at the house of Mr. Sickles. The acquaintance dates so far back, I believe, as six years since.

Mr. Sickles is a man in public life; he is compelled to trust to the purity of his wife; he is compelled often and for considerable intervals to be away from his family mansion, and to leave his wife to the guardianship and protection of her own chastity. Mr. Key goes under the appearance of a friend, and he exhibits those attentions which gallantry is ordinarily supposed to prompt, but which in his case was the foundation on which the adulterer sought to rear his destructive power.

We will show you that, as early as the 26th of March, 1858, it was reported that this Mr. Key was dishonoring him; Mr. Sickles sends for him; he (Key) stands upon his honor as a man; he denies the truth of the impeachment; he demands the author, and from one to another he sends and passes notes; and when he is unable to discover the author of what he represents to be a calumny, he then addresses Mr. Sickles, speaking of it as a ridiculous and disgusting calumny, and yet within a few days after this very note which he sent to Mr. Sickles, in which he sought to restore Mr. Sickle's confidence, we will be able to show you that if the intimacy did not exist at the time of the note, at all events it occurred within a few days after.

Now, gentlemen, see the cunning of this Mr. Key: he feels how base he is. When he is charged with treacherous designs towards Mr. Sickles, he says, "It is the highest affront which can be offered to me, and whoever asserts it must meet me on the field of honor, at the very point of the pistol." He cuts off all communication on the part of the world to Mr. Sickles; and that was the reason why, for a period of nearly one year, although he was, no doubt, almost daily in the practice of his treachery on his friend, until the developements came upon him, as I shall presently state, Mr. Sickles never harbored a thought of suspicion against him. We will show you that from that time until the 24th of February, 1859, the relations of Mr. Sickles and Mr. Key stood perfectly friendly, and that Mr. Sickles manifested the usual confidence in him.

On the 10th of February, two weeks before his death, Mr. Key is one of a dinner party at Mr. Sickles' house; and whom does he take there but his own sister; he takes his sister to the house of his prostitute—for that is the only term that can be applied to the woman who deceives her husband—he actually accompanies his own sister and her husband to the house of a woman with whom he was cultivating and prosecuting these wicked relations. Is there any brother who would calmly and coldly place his sister in the same atmosphere, to make her the companion of the woman with whom he was prosecuting an illicit intimacy, no matter what Mrs. Sickles' position before the world was?

Now, on the Thursday before Mr. Key's death, Mr. Sickles has another dinner party at his house. Mr. Key is not invited to that; he is not there. After dinner Mrs. Sickles accompanies some friends to Williard's Hotel, to a hop; Mr. Sickles goes there after her; when he enters the room he finds Mr. Key sitting by her. As soon as Mr. Key sees him, he abruptly leaves the wife. There was nothing but his own internal sense of baseness which could have prompted him thus to separate himself from the wife of Mr. Sickles. Mr. Sickles returning home, on opening his letters for the day, opens an anonymous letter, which was the origin of the discovery, and which will be placed in evidence before you. The substance of that letter is that Mr. Key and Mrs. Sickles were in the habit of meeting at a house in Fifteenth street, between K and L streets; that Mr. Key had hired the house for the purpose, and that he had just as much of the person of Mr. Sickles' wife as Mr. Sickles himself had.

Now, the nature of Mr. Sickles would never permit him to trust to any anonymous letter, if formed as these are ordinarily formed—he is a man of noble character, and would treat it with contempt. But there is a degree of circumstantiality about this letter—it enters so much into detail—for it tells where the house is, and gives such an inkling of faith, that it satisfies him there is something requiring investigation, and he becomes satisfied of all but the identity of the persons visiting the house. It turns out that there is a house where this is described as being; that Mr. Key hired that house, and that he was in the habit of going there with, but oftener to meet a female who went in before or after him. The only question left for Mr. Sickles to solve was whether this female was his wife.

Now, gentlemen, behold again the cunning of Mr. Key in selecting a house; it was necessary for him to get one in a secluded place, or at all events one in a section of your city in which witnesses could not rise up against him, and which was sufficiently near to Mr. Sickles' house to enable him to comply with his lusts as often as he desired; hence he goes down to a part of your city which is chiefly populated by blacks.

But for the disability beyond the possibility under which the law has rendered that kind of testimony, the infamy of Mr. Key would be run before you in a stream which would disgust and sicken you; there is evidence enough, however, to get over this disability, and to connect him unmistakably with the author of all this ruin and disgrace; on the first day after Mr. Sickles commissions Mr. Wooldridge to inquire into the identity of the woman who accompanied Mr. Key to the house in question, Mr. Wooldridge goes to the neighborhood in Fifteenth street, and arranges with the persons in the house opposite to give him a room on the next day While there on Friday he understood that the woman had last been seen at the house on Thursday. He informed Mr. Sickles of this, and on the following Saturday went and watched the house for five or six hours, but not discovering anything went to his boarding house, and while there learned that Mr. McCloskey had been to the house with a note for him. While he is there at his boarding house Mr. McCloskey returns and delivers the note. In that note, Mr. Sickles still unwilling to believe in the guilt of his wife, writes to him to be exceedingly tender in the prosecution of his inquiries, for he has reason to believe that his wife is innocent. As soon as Mr. Wooldridge gets this note he goes to the Capitol and sees Mr. Sickles, and was under the necessity of disabusing the mind of Mr. Sickles and of destroying the hopes which Mr. Sickles indulged of his wife's fidelity. He tells Mr. Sickles that while opposite this house on Saturday he had learned that it was on Wednesday that the woman had been there last with Mr. Key, and not on Thursday. Of course Mr. Sickles having, by inquiry, satisfied himself that his wife was not at this house on Thursday, when the time of her visit came to be fixed to the true day, all his confidence in the matter was entirely taken from him, and he became convinced that the woman thus seen was his wife. Mr. Wooldridge described to him the articles of dress which the woman who accompanied Mr. Key wore on the occasion of her last visit. Mr. Sickles at once recognized the apparel of his wife. Conviction more and more fastened itself upon him. He returns home; he puts her guilt to his wife in such a way as she thought she had been exposed, and under the supposition of the discovery of her guilt, she acknowledges her dishonor, and gives him a written confession.

Mr. Wooldridge having had a note sent to him that night, from Mr. Sickles, which, as he was not home till midnight, he could not attend to until the next morning, called the next day between ten and eleven o'clock; finds Mr. Sickles a perfectly frenzied man, and is shown by him his wife's confession.

The counsel described Mr. Sickles' agony of grief consequent on the discovery; the sending for Mr. Butterworth to take his wife to her parents in New York; the overwhelming anguish experienced by Mr. Sickles in being obliged to proclaim his shame to his friends; Mr. Butterworth's leaving the house; Mr. Sickles' servant man descrying the adulterer passing the house, and as was his habit when passing in that neighborhood, waving and whirling his handkerchief; the servants exclaiming, "There goes Mr. Key," and Mr. Wooldridge looking out and finding that it was so. Now, the counsel continued, you will perceive that Mr. Key was perfectly desperate this Sunday. He had not seen Mrs. Sickles since Thursday. He had not been able to get any communication or signals to her or from her. He had hired his house for nothing. Days had gone by, and he had not violated the casket of his friend's affection and love. Like all libertines, he was eager

for the fray of his passions. He was carried headlong; he was shamelessly, "in the soft gush of a Sabbath sunlight," watching the castle of his neighbor.

You can account for the conduct of Mr. Key in no other way. Mr. Butterworth, after a time, leaves the house; he returns to the house; a remark is made by Mr. Wooldridge, "Why, Key has been seen to pass the house." You did not tell Mr. Sickles that; no, Mr. Wooldridge and Mr. Butterworth were resolved to conceal from Mr. Sickles, if they could, that this man was prowling outside the house with dishonorable intentions towards him; so after a while Mr. Sickles comes down stairs; he is then in a perfect state of frenzy.

Mr. Key had been seen to pass the house on the opposite side in company with a lady and gentleman, and to wave his handkerchief, under pretence of waving it at a little dog, which waving was the signal for these assignations. Mr. Sickles now knew that his wife had been dishonored by Key; he saw this man in the neighborhood of his house waving this disreputable signal, he rushes down in a perfect frenzy. So close and compact was the occurrence that the inmates of the house did not know till they heard that Key had been shot that Mr. Sickles was outside of the house; Mr. Wooldridge saw Butterworth go out of the house alone, and while he was arranging a stereoscope on the window sill of the library, he saw persons running, and some who came in the direction of the house informed him of the occurrence.

Now, take the mind of Mr. Sickles. The night before his wife had acknowledged her guilt; he had passed the night without sleep—he had sighed and sobbed it away. As his friends came in the following day he was compelled to unbosom to them the story of his wife's dishonor, and, to crown all, he saw the adulterer with his flag floating, as it were, under his eyes, for the purpose of seducing his wife from the mansion which ought to have protected her. It is for you, then, to say, gentlemen, from these facts, as we shall place them before you, what must have been the condition of Mr. Sickles' mind at the time he went to the scene which resulted in the death of Mr. Key. One or two other facts and I have done.

Why was Mr. Key constantly in the vicinity of Mr. Sickles' house? He lived far away from that house; he was in the habit of riding by it on horseback; he was in the habit of showing himself off to the greatest advantage, practising all those blandishments which adulterers cultivate for the purpose of reaching the target which they have set before them. How did Mr. Key have his assignations? He took advantage of your parlors; if he encountered Mrs Sickles in the President's mansion, he made an assignation with her there; if he encountered her in the mansion of some senator, he made an assignation with her there; he tainted with his own foul appointment the atmosphere which your wives and daughters were compelled to breathe.

Here behold another strong indication of his character. Wherever he met her, the whole object of his acquaintance was the gratification of his lust; he followed her wherever she went; she could scarcely go more than a few hundred feet from her house before he was by her side; if she was walking, he was a-foot; if she was riding, the carriage was stopped and he got in, and he would ride with her two or three hours, the directions being that the carriage be drawn through back streets. He became the subject of kitchen comment; he was called by the servants "Disgrace," that was the name given him by the kitchen department of Mr. Sickles' house. The District Attorney of the county of Washington had become a by-word, a reproach, in the the kitchen of one of the houses of the district; as soon as he was seen coming near Mrs. Sickles the remark was, "Here comes Disgrace to see Disgust." Even the servants felt the pressure of his infamous attentions to Mr. Sickles' wife.

Counsel related the evidence that the defence would be able to give in reference to the visits of Mr. Key and Mrs. Sickles to the house in Fifteenth street, and said that Mr. Key was seen with Mrs. Sickles and his daughter on Pennsylvania avenue the Thursday before his death, and that he was then reading a letter, which letter was similar to the one that had been sent to Mr. Sickles, apprising him of the danger in which he stood, on account of the discovery of his relations with Mrs. Sickles. The defence would show by one or two servants of the house that Mr. Key and Mrs Sickles were heard in their adulterous intercourse in the library, and that on one occasion Mr. Key was known to be in the house as late as four o'clock in the morning, while Mr. Sickles was absent in New York

The defence would also show that Mr. Key, like all men who go on in this way, was in the habit of carrying weapons. And now, continued the counsel, an effort has been made in this case on the part of the prosecution to turn Mr. Sickles over to the Executive clemency; it has been in effect said to you, "render your verdict and Mr. Sickles can appeal to the interposition of Executive clemency." I ask you not to divest yourself of your rights as jurors in this case. You never occupied a position which was surrounded with the honor which environs your present position. You were never called upon to declare so solemn and important a verdict as is expected of you in the decision of the issue here presented to you.

The same feelings that could prompt the Executive to reverse or annul your verdict are the feelings which should warn you against and turn you from its rendition. If the Executive should interfere at all it could only be on the ground that Mr. Sickles, at the time of the commission of this act, was an instrument in the hands of his God for the purpose of executing in a summary way the judgment of his Maker. That is the very question on which you are to pass here—was or was not Mr. Sickles an involuntary instrument in the hands of some controlling and directing power for putting an effective termination to the adulterous career of Mr. Key? When this question or a similar question has been presented to other juries, they have not sought to evade the responsibility.

Counsel referred in this connection to the following cases:—The woman tried in Essex for murdering Mr. Errington, vol. xxix. State Trials, page 13 to 26; the case of Wood, tried in Philadelphia, for the murder of his daughter because she had married a libertine; the case of Singleton Mercer; the Myers case in Virginia; Amelia Norman's case, tried in New York; and Jarboe's case, tried in this Court. Counsel proceeded—Thus you have your own immediate citizens and the citizens of other States, where justice is not sold, and where justice cannot be bought, putting the discharge of their oaths on the principles on which, in one aspect of it, we pillar this defence. Will you renounce your allegiance to these principles? Will you refuse to yield yourselves to them? Or will you rather follow the wake of these precedents, to render which will accord with perfect justice, and which will, at the same time, be consonant with the nature of the offence? What is the effect of a doctrine that a pecuniary compensation is the only mode of smoothing the bleeding wounds of a husband? It opens every house in your city as a brothel. It tells every man that if he will pay the price which a jury may set upon his adultery or his seduction, he can enter any house he pleases and rifle the purest bed that stands in it of its purest contents. Is that to be the doctrine of your locality?

Are we to have a mere tariff of rates or a tariff of charges? Is the lower order of the brothel to fix one rate and the higher order to fix another? In the case of the lower order, shall the price be fixed by those who keep it, and in the case of the more respectable mansions, shall American juries say what an adulterer and a seducer shall pay for the gratification of his lusts in them? The very moment that you act on that principle, you resolve every house in your district into a house of prostitution, and you tell those who are hardy enough to think of entering them that all they have got to do is to count the pecuniary cost, and that if they are ready to foot the bill to be presented in the verdict of an American jury, they shall stand cleared of all human and divine accountability.

In God's name repudiate that principle from your bosom! It is your inestimable privilege to sit in a city under the immediate protection of the fire which burns on that great altar at which all the other torches of our government are lighted; you are here at the seat of our federal government; you are overshadowed by the halo of the name of Washington; let the recollection of that name inspire you with fitting and becoming thoughts; be reluctant and loth to incorporate in your verdict a principle which, if it be the principle on which you act, will have a more demoralizing effect than any other principle that could be sustained or acted upon by an intelligent jury.

Counsel resumed his seat amid suppressed indica-

tions of applause, and was complimented by many of those who were within reach of him.

The Court took a recess for a few minutes.

After the recess, Mr. Brady said—We want you to admit the handwriting of Mr. Key to some papers.

Mr. Ould and Mr. Carlisle having examined them, admitted the handwriting.

Mr. Brady remarked that the first is directed by Mr. Key to Mr. Sickles, and dated March 26, 1858, and endorses six letters—one of them written by Mr. Key, and the others written by different persons to him.

Mr. Ould—We object to them.

Mr. Brady—On what grounds?

Mr. Ould—The first letter purports to be from Mr. Key to Mr. Sickles, inclosing certain other communications addressed to various parties, one to Mr. Wooldridge and his reply, one to Marshall J. Bacon and his reply, one from Mr. Key to Mr. Beekman and his reply, all in the handwriting of Mr. Key, and all, except the first, purporting to be copies of other letters. The date of nearly all of them is the 26th of March, 1858. The first letter from Mr. Key to Mr. Sickles says: "Send by Jonah D. Hoover the correspondence had to-day, etc.," alluding to certain matters, portions of which have been detailed to-day in the expected evidence of the defence. The objection is that this correspondence at present seems to be in no manner connected with the issue the Court and jury are now trying, besides the note from Mr. Key to Mr. Sickles is dated a year ago, and as it must relate to transactions before the jury, it must be excluded, in point of time, from the *res gestæ*. Another objection is that it shows no relation, direct or indirect, to the matter before the jury. I should like to know on what peculiar grounds the correspondence is to be offered as evidence.

Mr. Brady—I will state it The learned District Attorney, in opening the case, told the jury that the government speaking through him could ascribe the act of Mr. Sickles in killing Mr. Key to no other impulse than remorseless revenge. He painted Mr. Sickles as an assassin. There is no proof before the jury that Mr. Key and Mr. Sickles met each other before the time of that fatal occurrence. The jury have nothing on their minds as to their former personal relations. The cause of their meeting, and the relations and circumstances, are left to such inferences as the jury must necessarily draw from them in the absence of this testimony. We do not propose offering the testimony to prove the adulterous act on the part of Mr. Key, but to show the friendly relations between the deceased and the accused. His Honor said, in the case of Jarboe, the declarations of the defendant in his own favor are admissible in murder, and only in murder; but must be declarations of kind feelings, to acts of a friendly character, or such like, towards the deceased prior to the commission of the crime with which he is charged; and understand this correspondence between the two gentlemen is of such character as to show that their relations were of a friendly character and that Mr. Key treated Mr. Sickles as his equal and friend at that day.

Mr. Ould—There is no communication on the face of the papers from Mr. Sickles to Mr. Key; no expression of either a kindly or a hostile feeling. There was only a note of Mr. Sickles, in which their relations are not substantially touched on at all. There was nothing to show that their friendship continued through the year previous to the killing.

Mr. Brady replied, claiming the admission of this testimony on the same ground as was decided in the Jarboe case. The question was is such evidence competent? and this being admitted, its value was to be determined by the jury. When the prosecution charged Mr. Sickles with deliberate assassination of Mr. Key in broad daylight, the law gives us the right to prove that Mr. Sickles is not an assassin, and that his hands are not polluted by blood. Did not the District Attorney say that Mr. Key's letter to Mr. Sickles does not contain an expression of good will? The jury will determine that; but the letter commences "Dear sir," and ends "Respectfully and truly yours." If we show friendly relations in 1858, the law would presume continuous relations of friendship until something interrupted them. We claim the letters are admissible on another point, namely, as showing by Mr. Key's own admission he had most intimate relations with Mr. and Mrs. Sickles, and that they believed his intimacy of an innocent and honorable character; and we claim they are admissible as showing the origin of the peculiar relations between Mr. Key and Mrs. Sickles.

Mr. Carlisle said that this was a case in which the doors should be thrown open to what was not evidence, but they should confine themselves to the mode of proof which the law assigns in this case—they should go no farther than public justice requires. Your Honor would perceive the actual use which it was proposed to make of this testimony—you have heard in what manner this correspondence is to be connected with this unhappy catastrophe in the way of blackening the character of the deceased. On that ground it could not be received. The eloquent address of the learned gentleman for the defence warrants us in believing it was offered for that purpose. It is offered first to bear on the question whether this act of homicide was an assassination. My learned colleague, although he did not use the word, painted it as one of assassination, and for the purpose of showing it was not an assassination my learned brothers offer to show there was continuous friendship between the accused and deceased by the production of letters written seven months prior to the collision—not written by the deceased to the prisoner, but by certain other parties, and enclosed in a note written by deceased. An assassination is no less an assassination because the deep motive or passion which led to it—whether it be gold, or ambition, or vengeance—for a great or an inconsiderable wrong; it is still an assassination, and no power of human eloquence can paint it in any other colors.

Mr. Brady—These letters go to prove the fact of Mr. Key's friendly relations.

Mr. Carlisle—I was coming to that.

Mr Brady further explained the object of offering these letters, insisting there was a state of facts which prevents Mr. Sickles from being convicted of any crime.

Mr. Carlisle, resuming, said that when he used the word assassination he quoted from his learned opponent He (Mr. Carlisle) asserted that the evidence did not tend, if admissible, to show that the case was not one of assassination: and secondly, if this kind of evidence of previous friendly relations were admitted to show it was not an assassination, certainly evidence reaching back nearly a year before the transaction was not evidence: that it tends to shed no ray of light which any reasonable mind can perceive on the question. He further replied to Mr. Brady.

Mr. Phillips said the relations the parties bear to each other is pertinent to the issue, because the issue is not the killing of the deceased, but his murder, in which is implied that malice by which the law designates the offence. The presumption may be contradicted, and one of the modes by which it may be done is to ascertain the relation which the parties bore to each other. This may be demonstrated by acts of friendship or correspondence. In the present case we propose to demonstrate it by the latter mode. The only question for the Court is the competency of such testimony. which may be as dust in the balance, but its effect and weight for the jury, as to point of time, we may trace back acts of friendship and intimacy, and run back to the days of boyhood, proving such relations from infancy to the present time. The length of time, instead o weakening, strengthens the argument that he was no killed by malice. We are called on to give the order of time. This is but one link of the chain of circumstances to show the friendship which existed between the parties prior to the date of the tragedy, and which continued down to within a few days of the commission of the act.

The Court said the object of the defence was to show the relations of the parties to each other. The law undoubtedly is that when a man is on trial for murder, previous expressions of good will and acts of kindness towards the deceased may be proved. On this ground the Court understood these letters to be offered. The one he had read was simply courteous, and had no bearing on the issue. The letters are not evidence.

Mr. Brady took an exception to this ruling, and then to a ruling which excluded Mr. Key's letter, apart from the inclosures.

The following are the letters:—

MR. KEY TO MR. SICKLES.

WASHINGTON, March 26, 1858.

HON. D. E. SICKLES:—

MY DEAR SIR—I send by Jonah Hoover a copy of a correspondence had to-day, and you will perceive any effort to fix the ridiculous and disgusting slander on

me of the parties concerned, was unsuccessful. Respectfully and truly yours,

PHILIP BARTON KEY.

The following are the copies of the letters referred to:

MR. KEY TO MR. WOOLDRIDGE.

WASHINGTON, March 26, 1858.

GEO. B. WOOLDRIDGE, Esq. :—

SIR—Will you please state in writing what communication you made to the Hon. Daniel E. Sickles concerning me, and also give me your authority for making such communication. My object is to ascertain the source of a base calumny. Most respectfully your obedient servant. PHIL. BARTON KEY.

MR. BACON TO MR. KEY.

March, 29, 1858.

P. BARTON KEY, Esq. :

MY DEAR SIR: Your note has just been handed me by Mr. Hoover, with a copy of a note from Mr. Wooldridge. In reply I have to state that, in the main, his statement is correct, though some points go beyond what I said, as I told Mr. W. and now repeat to you. Mr. Beekman was my author I stated at the time to Mr. Wooldridge and now repeat, that I did not believe there was any truth in the statement, and went on in the conversation to give my reasons for such disbelief, and that I deemed it a fabrication. Respectfully yours, M. J. BACON.

MR. WOOLDRIDGE TO MR. KEY.

P. B. KEY, Esq :

DEAR SIR: Marshal J. Bacon informed me on Tuesday afternoon, March 23, that Mr. Beekman said that Mrs. Sickles had been out riding on horseback three different times with Barton Key during Mr. Sickles' last absence to the city of New York, and that they stopped at a house the road towards Bladensburg, and that Mrs. Sickles had a room there and remained one hour and a half; also that she took off her habit, and that he had no doubt there was an intimacy between Mr. Key and Mrs. Sickles.

There was much more of the same kind of conversation; and Mr. Bacon told me also in a manner that assured me it was so, that Mr. Key boasted that he only asked thirty-six hours with any woman to make her do what he pleased. Yours, etc.,

G. B. WOOLDRIDGE.

March 26, 1858.

MR. KEY TO MR. BACON.

WASHINGTON, March 26, 1858.

MARSHAL J. BACON, Esq. :

SIR: Herewith I send you a copy of a note from G. B. Wooldridge, Esq., which you will be pleased to read and answer in writing, whether you made the statement as contained in Mr. Wooldridge's note, and if you did make it, state upon what authority you made it. This will be handed to you by my friend, J. D. Hoover, Esq., and you will please answer it immediately. Respectfully, your obedient servant.

PHIL. BARTON KEY.

MR. KEY TO MR. BEEKMAN.

WASHINGTON, March 26, 1858.

MR. BEEKMAN:—

SIR—I send herewith a copy of a note addressed to me from G. B. Wooldridge, Esq., and also of one from Marshall Bacon. You will be pleased to read them and answer in writing if the statements are correct, and if you are responsible for the vile calumnies contained therein. This will be handed you by my friend Mr. Hoover, and you will please give him an immediate answer. Respectfully your obedient servant,

PHIL. BARTON KEY.

MR. BEEKMAN TO MR. KEY.

SIR—I have received yours of to-day through Mr. Hoover, together with notes from Mr. Wooldridge and Mr. Bacon, and in reply to your inquiry whether I am the author of the foul calumnies contained in Mr. Wooldridge's statement, I say that I disavow that I was ever their author, and pronounce everything therein as a lie, and also the statement of Mr. Bacon that I was their author. Very respectfully, yours, &c.

S. B. BEEKMAN.

These letters are all copied in Mr. Key's handwriting—a small, scratchy and cramped hand—upon buff note paper, stamped at the top with his crest and initials. The crest is the head of a dragon, or some other monster in heraldic lore, holding in its beak a key.

TESTIMONY FOR DEFENCE.

William Badger was the first witness called for the defence. Examined by Mr. Brady.

Resides in Philadelphia. Is Navy Agent of the United States at the Navy Yard there. Has been in that situation for two years. Knew the deceased very well, and knew Mr. Sickles equally as well. Have known Mr. Sickles since his return from the Court of St. James, as Secretary of Legation.

Q.—Do you know what the relations between Key and Sickles were in regard to friendship or association?

Witness—Their relations were, as far as my knowledge extended, of the most intimate character.

Q.—Did you know the wife of Mr. Sickles?

Witness.—I knew her very well indeed.

Q.—Were you at a dinner party given Mr. Sickles on the 10th of February last, shortly before the decease of Mr. Key?

Witness.—I was.

Q.—At Mr. Sickles' private residence in Sixteenth street?

Witness.—Yes.

Q.—Wes Mr. Key at that dinner party?

Witness.—He was.

Q.—The guest of Mr. Sickles?

Witness.—Yes.

Q.—Was Mrs. Sickles at the table?

Witness.—Mrs. Sickles was at the table, and Mr Sickles also.

Q.—What other persons were there as guests?

Mr. Carlisle thought this not material.

Mr. Brady wanted to show that Mr. and Mrs. Pendleton, members of Mr. Key's family, were at that dinner party, and on friendly relations with Mr. Sickles' family.

Mr. Carlisle held that that was extending the matter beyond its proper limits, and argued against the admissibility of the evidence. The names of those who had already suffered too much in this matter should not be unnecessarily brought into this inquiry.

Mr. Brady argued as to its admissibility, on the ground that evidence of acts of friendship between the parties might be offered, and quoted Judge Crawford's ruling in the case of Jarboe. He disclaimed all intention of harrowing unnecessarily the minds of the family of Mr. Key. None could sympathize with them more than he; but where a man is on trial for his life, his counsel would not be true to their duties if they failed to offer such evidence as is admissible. He offered this evidence with a view, also, to the effect which this lately remembered act of friendship must have had on Mr. Sickles' mind when he learned of Mr. Key's perfidy. He must have thought, as Julius Cæsar thought as he fell at the foot of Pompey's statue, exclaiming, as the blood dropped from the point of his friend's poignard, "*Et tu Brute!*"

The Judge—It is proposed to prove that members of Mr. Key's household were guests of Mr. Sickles at the dinner party, at which Mr. Key was present, on the 10th of February, with a view to prove the intimate social relations that existed between the parties. The rule, as I have always understood it, and as I understand it now, is that expressions of good will and acts of kindness must be confined to the parties immediately concerned. Mr. Key's being there is evidence to the jury of an act of kindness on the part of Mr. Sickles towards him; but I do not see, and cannot perceive, how the presence of his sister or his sister's husband there can go to prove the same thing. It appears to me that the evidence should not be received.

Mr. Brady—Did you remain there until the company left the table, and did Mr. Key also remain?

Witness—Yes.

Q.—About what time did the company separate?

Witness—Approximating to eleven o'clock, I should think.

To the Court—This was on the 10th of February, I think.

Q.—Did Mr. Key leave before you did?

Witness—Do not think he left before I did; he left about the same time; do not think I saw him again that evening; the last time I saw Mr. Key was when he was a guest of mine at a hop at Brown's Hotel, where I stopped.

Q.—When was that?

Witness—The 11th of Februrary, think—the next day after the dinner; Mr. Key was there, and Mr. and Mrs. Sickles, as guests of my daughter.

Q.—Did Mr. Key come there with Mr. and Mrs. Sickles?

Witness—No; I think he came a short time before or after them.

Not cross-examined.

John B. Haskin called; examined by Mr. Brady—Where do you reside?

Witness—In Westchester county, New York.

Q.—You are a member of the House of Representatives?

Witness—Yes, sir.

Q.—How long have you known Mr. Sickles?

Witness—Between fifteen and twenty years.

Q.—Did you know Mr. Key?

Witness—I did; I think I was introduced by Mr. Sickles to Mr. Key in the month of March, immediately after the inauguration of President Buchanan.

Q.—Did you become well acquainted with Key?

Witness—Quite so.

Q.—So as to ride out with him?

Witness—Yes.

Q.—You know Mrs. Sickles?

Witness—I do.

Q.—How long have you known her?

Witness—About twelve years.

Q.—Did you visit frequently at the house of Mr. Sickles?

Witness—I did frequently during the session previous to the last. My lady visited there, also, when she was in Washington.

Q.—Did you meet Mr. Key there?

Witness—I did.

Q.—Was he frequently there?

Witness—He was.

Q.—When did you last see Mr. Key?

Witness—I last saw him at the Opera, when Piccolomini performed. I think in the month of February last.

Q.—How long before his decease?

Witness—Two or three weeks.

Q.—Was he alone?

Witness—I think he was.

Q.—Do you remember having any conversation with him that evening?

Witness—I do not.

Q.—Do you recollect a whist party at which Mr. Key was?

Witness—I do.

Q.—At whose house was it?

Witness—At Marshal Hoover's. This was shortly after the inauguration of President Buchanan. Mr. Key and Mr. Sickles were there. It was a party of gentlemen exclusively. All the gentlemen were acquainted with each other.

Q.—Was there any remark made by Mr. Sickles to Mr. Key at that time about Mr. Key's office?

Witness—Sickles on that occasion mentioned and urged his reappointment to the office which he held at the time of his death, and said that he believed the President would reappoint him.

Q.—What did Mr. Key say to that?

Witness—Mr. Key thanked him for his intercession, and hoped he would persist in urging his claims for a reappointment.

Q.—How would you characterize the relations between Mr. Key and Mr. Sickles, as to degree of intimacy?

Witness—Very much like the degree of intimacy existing between myself and Mr. Sickles. That of the closest and nearest and dearest character.

Q.—Had you a conversation at any time with Mr. Key about a correspondence between him and Mrs. Sickles?

Witness—I had.

Q.—When was that?

Witness—I think the Sunday night following the correspondence. It was in the month of February or March, 1858.

Q.—What was the conversation?

[Objected to and allowed.]

Witness—This conversation was one of Mr. Key's seeking, and was at my residence on Third street, in this city, just after a correspondence had taken place between Sickles and Key; it was in relation to a story inquired into by Mr. Sickles; Messrs. Key and McElhone called on me at my residence; the topic of conversation was this correspondence; it was introduced by Mr. Key, on which occasion he stated—

The District Attorney objected to the witness stating this.

Mr. Brady argued that the evidence was proper. He wanted to show that this correspondence did not interrupt the friendly relations of the parties. The prosecution had kept the defence in ignorance of their course, and he did not know but that it might be argued that this correspondence had interrupted their friendly relations. He would put the question, however, in this shape: What did Mr. Key say of Mr. Sickles' acts of friendship or kindness towards him?

[Objected to, and objection sustained.]

Q.—After that conversation did you ever see Mr. Key and Mr. Sickles together?

Witness—I think I have.

Q.—Do you remember the last occasion?

Witness—It was the night of the Opera, to which I have referred.

Q.—Was Mr. Sickles with him at the Opera that night?

Witness—No, sir; I saw them both there; Mr. Sickles came in late.

Q.—Was Mrs. Sickles there?

Witness—She was.

Q.—Who was with her?

Witness—Miss Badger, and Mr. Hart of New York.

Q.—Did Mr. Sickles speak to Mr. Key that night?

Witness—I think a recognition passed between them; they bid each other the time of day.

Mr. Chilton—Did you at any time communicate to Mr. Sickles any expression of kindness made by Mr. Key in regard to him? If so, state whether Mr. Sickles uttered any expressions of friendship, and what they were.

Objected to, and question put in this shape:

Q.—Did you communicate to Mr. Sickles the conversation?

Witness—I did, a part of it; not the whole.

Q.—Did he make any remark indicative of his disposition towards Mr. Key?

Witness—He replied that he believed Mr. Key was an honorable man; that he had been long his friend; this conversation was in relation to the correspondence that had taken place; he said they were mutual friends, and that he had no objection to Mr. Key visiting his house when he was invited by him.

This witness was not cross-examined.

Peter Cagger was called, but he did not answer.

Daniel Dougherty was then examined by Mr. Brady, making the following replies to questions put to him:—I am a member of the bar of Philadelphia; I have been so since the second of May, 1849; have had the pleasure of enjoying intimate acquaintance with Mr. Sickles since the time of President Pierce's inauguration.

Q.—Were you acquainted with his wife?

Witness—I was. I met Mrs. Sickles first on the 5th or 6th of March, 1857, immediately after the inauguration of President Buchanan.

Q.—Did you visit at the house of Mr. Sickles?

Witness—I did, both in New York and Washington.

Q.—Did you know Mr. Key.

Witness—I did. I first met him in September last year, in New York. For the short time I knew him, I became quite intimate with him. Was at a large dinner party at Mr. Sickles' house on the Thursday before Mr. Key's decease.

Q.—After the dinner party was over did Mr. Sickles and Mrs. Sickles, or either of them, go out?

Witness—After we had retired from the table to the drawing room, and after spending some time there, Mrs. Sickles, I recollect, went to Willard's Hotel. I presume it was about ten o'clock at night. I also went to the hop, but I did not go in the same carriage with her; about an hour afterwards Mr. Sickles came in alone.

Q.—Did you see Mr. Key at the hop?

Witness—I did.

Q.—In whose society?

Witness—I cannot distinctly recollect; think he was first in conversation with Mrs. Sickles; afterwards saw him in conversation with Mrs. Dougherty; my wife was promenading the room.

Q.—What part of the evening was he with Mrs Sickles?

Witness—I think it was before Mr. Sickles came in. Did not see him with her after that.

Q.—How did you make Mr. Key's acquaintance in New York?

Witness—It was on the occasion of the Cable celebration, on the 1st of September. Cannot say who introduced him to me, as Broadway was alive with people. I saw Mrs. Sickles go down the street in a carriage. Went down to where she was, and not having a good place there I asked her to accompany me to the Metropolitan Hotel, where she could have a better place, and where Mr. Sickles was. I there met Mr. Key in one of the private parlors, and, if I mistake not, Mr. Haskin was there too.

Q.—Did you see Mr. Sickles' father and mother in that parlor at the same time?

Witness—I cannot say whether I saw them in the room where Mr. and Mrs. Sickles were, but they were certainly in the building, I think that at the time the procession was passing they were up stairs in another room.

Q.—What was the last time you saw Mr. Key?

Witness—I presume it must have been about twelve o'clock on the Saturday before the day of his death: I was starting from Mr. Hoover's house to pay my respects to Mr. and Mrs. Sickles before leaving Washington, as I was leaving Mr Hoover's house I met Mr. Key, and he accompanied me up the avenue, I thought he was coming to Mr. Sickles' house but he turned into the Club House very abruptly and left me, I then went to Mr. Sickles' house, after remaining there some time I was going down the avenue again, when I met and passed Mr. Key, he had left the Club House and was passing towards Mr. Sickles' house, I passed him in the avenue, nearly in front of the Jackson statue, and bid him good bye.

Q.—What time of the day was that?

Witness—About twelve o'clock.

Q.—Were you at a reception at Mrs. Sickles' house?

Witness—On the Tuesday before that I was at a reception at Mrs. Sickles' house, I saw Mr. Key there, that was the 22d of February.

To Mr. Carlisle—I think I was ten days in Washington at that time, left here that Saturday and arrived in it that Wednesday week, I had not been in Washington for a year before.

To Mr. Brady—My wife and Mrs. Hoover were with me at that reception: there were also a number of ladies and gentlemen there.

Mr. Brady asked Mr. Carlisle whether he would admit that Mr. Key had been counsel for Mr. Sickles' in a case where Mr. Carlisle was on the other side.

Mr. Carlisle admitted that Mr. Key acted as counsel for Mr. Sickles in a matter in regard to Mr. Sickles' house, it was in September or October of 1858, he had three interviews with Mr. Key on that subject.

John J. McElhone was called, but did not answer.

Peter Cagger was again called, but did not answer, and as it was now a few minutes of three o'clock, the court adjourned.

EIGHTH DAY.—*Tuesday, April* 12, 1859.

The Court convened at the usual hour.

John J. McElhone was the first witness called for the defence, and was examined by Mr. Brady.

Witness—Resides in Philadelphia; is one of the reporters for the Congressional *Globe*; has known Mr. Sickles two or three years; has known Mrs. Sickles more than a year; visited Mr. Sickles frequently, and was on terms of friendship with him; witness is not married; has not been at the reeeptions given by Mrs. Sickles; they occurred during the hours of his business at the House; knows Mr. Haskins; knew Mr. Key very well; has known him for seven or eight years; had frequent opportunities of knowing the relations that existed between him and Mr. Sickles.

Q.—What were they?

[Objected to. Question modified.]

Q.—What acts or facts do you know on the part of Mr. Sickles towards Mr. Key showing a friendly disposition towards him?

Witness—When I saw them together they always held towards each other the language and appearance of good friends; Mr. Key frequently expressed his friendship for Mr. Sickles; I do not know what particular acts took place, but from all I saw and from my acquaintance with both of them, I concluded in my own mind that they were friends.

Q.—Do you recollect a ride which took place to the Falls of the Potomac?

Witness—I do.

Q.—When was that?

Witness—Some time during the spring or summer of last year.

Q.—Who were the parties?

Witness—Mrs. Sickles, Mr. Key, Mr. Haskin, and myself.

Q.—Where was Mr. Sickles at that time?

Witness—I am not certain whether in Washington or New York.

Q.—When did you last see Mr. Key?

Witness—Eight or ten days before the affray took place.

Q.—Do you remember a hop at Willard's?

Witness—Yes, I think it was the Thursday preceding the decease of Mr. Key; saw Mrs. Sickles there and Mr. Key.

Q.—Was he in her society at any time?

[Objected to and waived for the present.]

Jonah D. Doover was next examined by Mr. Brady—Resides in Washington, and was formerly United States Marshal; Mr. Key was my most intimate and cherished friend for ten years or more; I first became acquainted with Mr. Sickles sometime after the inauguration of President Pierce; I became intimate with him; I have known Mr. Sickles and wife for four years; in March, 1857; Mr. and Mrs. Sickles stopped at witness' house two or three weeks as guests.

Q.—Do you know who introduced Mr. Key to Mr. Sickles?

Witness.—I think I did, either at Willard's or at my own house. The relations which existed between Mr. Key and Mr. Sickles were relations of friendship. Mr. Sickles was the friend of Mr. Key for reappointment to his office at the time Mr. Buchanan came into power.

Q.—Did you know at the time it occurred of a correspondence between Mr. Key and Mr. Sickles?

Witness.—I was privy to it, and to everything relating to it—everything.

Q.—Being at that time friend of both parties?

Witness.—Yes.

Q.—What was the date of that correspondence?

Witness.—The 26th of March, 1858.

Q.—After correspondence did you have conversation with Mr. Key concerning the letter received by him from Mr. Sickles?

Objected to, and question argued on both sides—counsel for defence stating that they had given notice to the prosecution to produce that letter, and that they now intended to give parole evidence of its contents.

Mr. Carlisle stated the prosecution knew nothing of the letter referred to.

Mr. Brady argued as to the admissibility of the evidence.

The Judge had no doubt that the letter itself was evidence, but did not think the evidence had gone far enough to be able to give parole evidence of the contents.

Mr. Carlisle stated that he should not require the defence to take up time in sending for the administrator of Mr. Key to ask about this letter.

Q.—What did Mr. Key say on the subject of that letter?

Witness.—I bore the correspondence referred to yesterday, accompanied by a note from Mr. Key to Mr. Sickles. Afterwards Mr. Key told me that he had received a note from Mr. Sickles, telling him that so far as that affair was concerned he was perfectly satisfied, and that he hoped their relations would continue as previously.

Q.—Do you remember Wednesday, the 23d of February?

Witness.—I do.

Q.—Was Mr. Key at your house on that day?

Witness.—He was.

Q.—Who came with him?

Witness.—He brought with him Laura, the daughter of Mr. Sickles. He came to the door between 11 and 12 o'clock and left the child and went away. Came back to the house two or three hours afterwards to inquir for the child. Did not see him again that day. Saw him again the day before his death, near 12 o'clock.

Q.—When he came on Wednesday did he speak to you?

Witness.—Yes. I met him at the door and conversed with him.

Cross-examined by Mr. Carlisle.

Q—Were you frequently at Mr. Sickles' house during the past winter.

Witness.—I was as frequently at his house as I was at

the house of any other friend. Frequently met Mr. Key there.

Q.—During the whole winter was Mr. Sickles' family there, including Mrs. Sickles?

Witness—I think so, with the exception, perhaps, of a few days, I met Mr. Key paying spontaneous visits and attending receptions.

Q.—Did Mr. Key say that in that letter Mr. Sickles had said he had no objection to Mr. Key's visiting the house when invited?—that he made any such qualifications?

Witness—He said that Mrs. Sickles wished their relations to be as friendly as heretofore; there was no qualification of the kind.

Q.—You think Mr. Sickles was here the whole winter, from the beginning of December down to the death of Mr. Key?

Witness—There were intervals sometimes of a week or a fortnight, during which I did not visit Mr. Sickles' house, and Mrs. Sickles may have been absent in such intervals.

To Mr. Stanton—Cannot tell how often, during the winter, Mr. Sickles was in New York.

To Mr. Carlisle---After the occurrence the relations between Mr. Sickles and Mr. Key were represented to be as friendly as theretofore; Mr. Key told me that he had received a letter from Mr. Sickles desiring their relations to continue as theretofore.

Q.---And so far as you know they did continue as friendly as before?

Witness---I think so; do not think I ever heard Mr. Sickles say that he desired Mr. Key to visit his house only on invitation: he desired their relations to continue about the same as before.

Q.---Was there any limitation or qualification?

Witness---No, sir: never said there was.

Q.---When you met Mr. Key at Mr. Sickles' house was Mrs. Sickles always there?

Witness---To the best of my recollection she was: I do not recollect Mr. Key visiting Mr. Sickles while Mrs. Sickles was out of town; Mrs. Sickles' receptions were on Tuesdays; witness did not attend them regularly.

Question by Mr. Brady---Had you a conversation with Mr. Sickles on the subject of his relations with Mr. Key?

Witness---I had; it was on the occasion of presenting the correspondence from Mr. Key.

Q---State what occurred at that interview. (Objected to, argued, and the question modified.)

Q.—In your interview with Mr. Sickles, what expression of kindness towards Mr. Key did he use?

Witness—He said he had always liked Mr. Key; that he thought him a man of honor, that this thing shocked him when he first heard of it, but that owing to Mr. Key's and witness' assurances, he was willing to meet him as formerly.

Q.—What was the transaction said to be which occasioned this interview between you and Mr. Sickles? (Objected to.)

The Judge ruled that no evidence of this character could be received, except the declarations of kindness on the part of the prisoner towards the deceased; that was the limit of the circle of inquiry.

Mr. Brady wanted to show that the relation between Mr. Key and Mr. Sickles was a trivial incident, which could have left no unpleasant impression on the mind of Mr. Sickles.

Q.—Did you know the circumstances of Mr. Sickles employing Mr. Key as his counsel in a dispute about the term for which his house was to be occupied?

Witness.—I did.

John H. Goddard, Chief of Police examined.

To Mr. Brady.—I am chief of police in this district. Have in my possession an opera glass, handed to me by Mr. Sickles on the day of his arrest. I have it in my pocket. (Produces it in court—a small black opera glass.) It was handed to me in the jail at the time of the commitment of Mr. Sickles. I went to Mr. Sickles' house on the day of the occurrence, and I committed him.

To Mr. Stanton.—The mud and dirt on the glass was on it when I received it. It is in the same condition as when I received it.

Rev. Mr. Smith Pyne was next examined.

To Mr. Brady.—I am a clergyman of the Episcopalian church. I reside in the city of Washington, and have resided here fourteen years. I know both Mr. Sickles and his wife. I made their acquaintance twelve months ago.

Q.—Did you and your lady visit their house?

Witness.—We did not.

Q.—Did you?

Witness.—I visited it on one occasion, and know the person of Mr. Sickles.

Q.—Did he attend your church?

Witness.—I believe he did. I saw him the Saturday preceding the day of Mr. Key's death. It was about five o'clock in the afternoon. I was coming from the capitol in a carriage, with my son. As we were passing Lafayette Square my attention was called by my son to Mr. Sickles, who was passing and going eastward. I was struck by his appearance, and called my son's attention to it.

Q --What was it?

Witness—I do not know that I can very accurately define it now; the impression made on me was that his appearance was very peculiar; perhaps, in attempting to define it, I might mix up my subsequent impressions with those I had at the time, but it was certainly very peculiar.

Question—Do us the favor to describe it in the best manner you can, from present recollection of it.

Witness—I thought there was a wildness about Mr. Sickles' appearance on that occasion; he seemed to be like a man who was in some great trouble of some kind or other: I do not know that I can accurately draw a line between my impressions then and those which I have now; I said to my son, how very bad, or how very strange he looks! I do not recollect the precise words; it was enough to show that my attention was called specially to the peculiarity of his appearance.

Q —You have described it since, I presume?

Witness—I have no doubt I have.

Q.—The language in which you describe it while fresh in your memory would be appropriate language now?

Witness—I have spoken of it several times; the impression produced on my mind certainly was that there was a kind of mingled defiant air about him; a desolate air; I do not know how otherwise to define it.

Cross-examined by the District Attorney.

Witness—I was driving in front of the President's house homeward; he was walking the opposite way in front of the President's house; we saw him approaching; he was walking rapidly.

Q.—Did he address you?

Witness—No; I do not know that he saw me.

Q.—How many times had you seen him before?

Witness—As a public man, my attention was directed to him frequently.

To Mr. Carlisle—Was at Mr. Sickles' house on one occasion. It was, in a sense, a professional visit; found at my house a card from Mrs. Sickles, requesting me to call on her. It was in the season of Lent, and after I came from church I called on Mrs. Sickles.

Mr. Brady—It was about the baptism of her child was it not?

Witness—It was.

To Mr. Brady—When I met Mr. Sickles his head was thrown back; he looked towards me, but he did not address me.

Mr. Stanton called the attention of the Court and jury to the fact that the opera glass fitted the case exactly.

Robert J. Walker examined—I have resided in this District many years. I was in the city on Sunday, the 27th of February. I had known Mr. Sickles several years, but had not seen him for six or eight months prior to that date. It was either three, or twenty minutes after three, o'clock I saw him in his own house on the afternoon of that day, in the back room of the first story. As he came in his manner appeared excited. There was something strange and unusual about it. His voice was somewhat different from the manner in which I had usually heard him speak. He advanced and took me by the hand. I think he then said, "A thousand thanks for coming to see me under these circumstances." He had scarcely repeated these words, when I saw a great change in his appearance He became very much convulsed indeed. He threw himself on the sofa, covering his face with his hands. He then broke into an agony of unnatural and unearthly sounds, the most remarkable I ever heard—something like a scream, interrupted by violent sobbing. From his convulsed appearance he was in the act of writhing. His condition appeared to me very frightful, appalling me so much that I thought if it lasted much longer he must become insane. He was indulging in exclamations about dishonor having

been brought on his house, his wife and child. He seemed particularly to dwell on the disgrace brought upon his child. Should think this continued ten minutes. Endeavored to pacify him, I turned from him to go for a physician myself, but he seemed to stop a little these violent exclamations, and finally they broke down. The spasms became more violent till they ceased. I think I must have been there something over half an hour. I accompanied him from there to the jail. Mayor Berrit, Captain Goddard, and perhaps Mr. Butterworth, were there. I was still alarmed at his condition, not knowing when the convulsions would recur. I believe I drove with him in Dr. Gwin's carriage, with whom I came to Mr. Sickles.

Cross examined.—At first I do not think any person was present but Mr. Butterworth; I was very much excited myself, but I will not be certain; I think Butterworth and Goddard came in; when these terrible convulsions occurred, I think no one was present but Butterworth, besides myself. I remained talking with Butterworth four or five minutes, when Sickles came in alone, and stayed with us some little time. I was, from a variety of causes, much excited. I never was more so than on that occasion. When the convulsions came on I thought I would go for a physician.

AFFECTING SCENE IN COURT—MR. SICKLES OVERCOME AND TAKEN OUT.

At this point Mr. Stanton, who was near the prisoner, asked that the cross-examination be discontinued for the present, in order that the accused might retire for a few minutes.

Mr. Sickles, during the statement of this witness, was violently affected—breaking out into sobs and profusely shedding tears. E. B. Hart and Isaac Bell, one on each side, and Mr. Sickles, senior, together with others, accompanied him from the court room. The witness particularly, and many of the spectators, were moved to tears. The scene was one of deep interest. In some few minutes Mr. Sickles was brought back into court, his countenance still indicating extreme mental suffering, and the desolateness of his whole appearance awakening strong sympathy in the breasts of all who saw him. His father was much affected by his condition.

The cross-examination of Mr. Walker was resumed by the District Attorney.

Witness.—I do not know who sent for Goddard, the Chief of Police. My impression was that it was Sickles or some of his friends. After a time, Sickles became calmer, but did not resume his natural appearance. He quitted sobbing and crying for some time.

To Mr. Carlisle.—Could compare Sickles' condition to nothing but an agony of despair. It was the most terrible thing I ever saw in my life. He was in a state of frenzy at the time, and I feared if it continued he would become permanently insane; his screams were of the most frightful character; they were unearthly and appalling, and were interrupted by something between a sob and a moan. Sometimes he would start and scream in a very high key. He appeared in a state of perfect frenzy.

Q.—What do you mean by that? Do you mean a passion of grief?

Witness.—It was much stronger than grief. It exhibited more alarming symptoms than any grief I had ever witnessed before. I had seen a man a long time ago under similar circumstances in Pittsburg, Penn., but his grief was not so strong as this. Mr. Sickles' exclamations of grief were more about his child than anything else. I remained there for about half an hour. Had moved to the door to go for a physician, but there was some cessation in these paroxysms, and I did not go. He gradually grew calmer. My impression is that it was Mr. Butterworth who sent for the magistrate.

Q.—Do you recollect that Sickles grew calm and said he was ready to go with the magistrate?

A.—I do; when I say calm, I mean comparatively calm. I went with him to the jail, because I feared a recurrence of his paroxysms of grief and despair. I remained at the jail from one to two hours. No physician saw him during that time to my knowledge. There were few persons at the jail; none but the magistrate, Mr. Goddard, Mr. Butterworth and one or two others; it could not have been more than four or five minutes between these paroxysms and the coming in of the magistrate. The first part of this scene was witnessed only by Mr. Butterworth and myself. I never was so much excited as I was on that one occasion; should think that about ten minutes transpired during which Butterworth, Sickles and myself were in the room together; I first went into the front room and afterwards into the back room. There were several persons in the front room, but could not name one of them; the rooms communicated by folding doors, and I think they were closed. I went through these doors into the back room. The persons in the front room could not witness this scene, as the doors were closed, at least during part of the time. My impression is the next person I saw in the back room was Mr. Berrett, the Mayor.

Q.—Where is Mr. Butterworth now?

Witness—I do not know.

Q.—When did you see him last?

Witness—Some day towards the close of last week.

Q.—In this city?

Witness—Yes.

Q.—You have not seen him since?

Witness—No; I saw Mr. Blair on the occasion, at Mr. Sickles' house. Cannot recollect speaking to him that day. I have not remained in Washington all the time since the death of Mr. Key. I remained till the close of that week.

Q.—Did you visit and see the prisoner frequently during the time you remained here?

Witness—I do not think I saw him more than two or three times. Am quite uncertain about the hour I visited Mr. Sickles' house. Remained there about half an hour.

Mr. Brady—You knew Mr. Key well?

Witness—Oh yes. I knew him since boyhood.

Q.—Intimately?

Witness—Yes very intimately.

Q.—Your families were acquainted with each other?

Witness—Yes.

Q.—On reaching the jail did Mr. Sickles have any recurrence of these paroxysms?

Witness—He did some time afterwards, on that day.

Q.—Of the same description?

Witness—They were not so violent.

Q.—Were they accompanied with any writhings of the body?

Witness.—Yes, but not so violent—not of so long continuance.

Mr. Carlisle.—Who was present on that occasion?

Witness.—That is more than I can tell you.

Q.—Where did they take place?

Witness.—In the front room of the jail.

Q.—Were any of the officers of the jail present?

Witness.—I think not.

Q.—You were alone with Mr. Sickles?

Witness—I think I was. Probably Mr. Butterworth was present. I do not think Mr. Goddard was.

Q.—How long was that after the examination?

Witness—Not many minutes.

Q.—The commitment was then made?

Witness—It was. The paroxysms, the second time, were not of a character that alarmed me at all.

Q.—Was it anything more than a natural burst of grief?

Witness—It was a violent outburst of grief, but not so violent as the first—nothing compared to it at all—nothing like it.

Q.—How long did it last?

Witness—I think about five or six minutes.

Q.—You saw the prisoner this morning very much affected—was it similar to that?

Witness—No, it was deeper than that. The sobs were much more violent, and there was an approach to convulsions. His person got rigid. His hands were to his head. He bent them down, and sobbed bitterly. He wept—wept and sobbed.

Q.—You remained there an hour or an hour and a half?

Witness—I think I did.

Francis Mohun examined by Mr. Brady.—I reside in this District, and have resided here since 1820. Was introduced to Mr. Sickles before he took his seat in Congress, about three years ago, and have ever since known him. Was not particularly acquainted with him, but familiar with his person and manner.

Q.—Did you see him on the 27th of February last?

Witness—Yes, sir.

Q.—About what time of day?

Witness—It was near sundown.

Q.—State under what circumstances.

Witness.—I was standing immediately in front of a house which I own on the avenue, near Adams' Express

office. Mr. Sickles came along, and I observed him for, I suppose, fifteen or twenty feet before he got immediately opposite where I stood. He looked to me in a very excited condition. I looked at him very steadily. His whole appearance, though I cannot exactly describe, how it affected me, did affect me very seriously at the time. I thought there was some very high excitement operating on his mind at the time. I thought no more of it till I heard next day of this occurrence. I then spoke of observing him in that excited condition. I said I thought he was crazy or insane. That was the recollection I had, and the impression I had, however undefined it may have been.

Cross-examined by the District Attorney.—What time of the day was that?

Witness.—Fifteen or twenty minutes before sundown.

Q.—What way was he proceeding?

Witness.—He was going west, coming from the Capitol, as I supposed.

Q.—You recollected this circumstance next day, and stated you thought he was insane?

Witness.—Yes, sir.

Q.—If you had not heard of this occurrence, would his appearance have made that impression on you?

Witness.—It might not. But his wild appearance excited my attention then. I did not see Mr. Sickles after that till I saw him in the Court House at this trial. He was walking quite rapidly at the time, more rapidly than I ever observed him before. There seemed to be a strange movement about his person and head. I confess that I heard rumors about the city which perhaps made me observe him the more closely.

Bridget Duffy—I live in Mr. Sickles' house in the capacity of nurse and lady's maid, and partly chambermaid; have been living there since November last a year; knew Mr. Key a short time after I came to Washington; we came to Washington this year between Christmas and New Year's; I remember the Saturday before Mr. Key's decease Mr. Sickles came home in the evening, between five and six o'clock; there was no set time for dinner; sometimes it was at five, and other times at half past five; Mrs. Sickles was at home that afternoon; I did not see him at the dinner table; he went down stairs to dinner; at night my attention was called to Mr. Sickles; there was some unhappy feeling between Mr. and Mrs. Sickles; Mr. Sickles went down stairs; he did not eat, but returned to his bedroom; he asked me to fetch him up something to eat, which I did; his manner and appearance seemed troubled; I saw him half or three quarters of an hour after I left the dinner for him; Mrs. Sickles was in her bedroom; I then went down to get my dinner; I returned to my bedroom and stayed there a considerable time; I heard loud talking between Mr. and Mrs. Sickles; their door was partly open; this was after six o'clock; I continued to listen a few moments and then went to the kitchen; twenty minutes or half an hour afterwards I again went up stairs; they were still in the bedroom; their bedroom was in the front of the second story; my room was on the other side, nearly opposite; when I went in it was about seven o'clock; I think I went in to fix the fire, or take away the waiter.

Mr. Brady—Mr. Phillips, I will hand a paper to the witness.

Mr. Phillips was the medium for this purpose.

The witness, after looking at one of the signatures, said it was her "handwrite," adding, I signed this paper in the bedroom when Mr and Mrs. Sickles were present. I signed at Mrs Sickles request. Miss Ridgely signed it in my presence. I don't know what then became of the paper.

Mr. Brady—I'll take that paper. [It was handed back to him.] Q.—Do you know Mrs. Sickles' handwriting?

Witness—Yes.

Mr. Brady—Is that hers?

Witness—To the best of my belief it is. I saw her write a paper, which I signed my name to. I did so at her request. I went to sleep about twelve. Mr. and Mrs. Sickles were, I believe, then in their own room. I don't know whether Mr. Sickles went to bed that night. I don't think Mrs. Sickles went to bed. She lay on the floor all night, having gone into an adjoining room, where I saw her on Sunday morning. She was sitting on the floor, with her head on a chair. Mr. Sickles was down stairs when I saw Mrs. Sickles. That was about eight o'clock. Mrs. Sickles stayed in that room all day. Before I went to bed I heard exclamations and sobbing. I heard Mr. Sickles cry. Also Mrs. Sickles. In the morning I met Mr. Sickles on the stairs. He was crying. I was going down stairs. It was about half-past eight when I met him. He held his face in his hands, and was crying and sobbing and in great trouble. I was very sorry to see him in trouble. I commenced crying. I heard crying in the study before I saw Mr. Sickles. I believe Mr. Wooldridge was in the study, but did not see him. Mr. Sickles was going up stairs.

Mr. Brady—I will hand this paper to the counsel on the other side. We propose to read it in evidence. It is Mrs. Sickles' statement to her husband:—

THE CONFESSION OF MRS. SICKLES.

The following is Mrs. Sickles' written confession, which was offered in evidence:—

I have been in a house in Fifteenth street, with Mr. Key. How many times I don't know. I believe the house belongs to a colored man The house is unoccupied. Commenced going there the latter part of January. Have been in alone and with Mr. Key. Usually stayed an hour or more. There was a bed in the second story. I did what is usual for a wicked woman to do. The intimacy commenced this winter, when I came from New York, in that house—an intimacy of an improper kind. Have met half a dozen times or more, at different hours of the day. On Monday of this week, and Wednesday also. Would arrange meetings when we met in the street and at parties. Never would speak to him when Mr. Sickles was at home, because I knew he did not like me to speak to him; did not see Mr. Key for some days after I got here. He then told me he had hired the house as a place where he and I could meet. I agreed to it. Had nothing to eat or drink there. The room is warmed by a wood fire. Mr. Key generally goes first. Have walked there together say four times—I do not think more; was there on Wednesday last, between two three. I went there alone. Laura was at Mrs. Hoover's. Mr. Key took and left her there at my request. From there I went to Fifteenth street to meet Mr. Key; from there to the milk woman's. Immediately after Mr. Key left Laura at Mrs. Hoover's, I met him in Fifteenth street. Went in by the back gate. Went in the same bedroom, and there an improper interview was had. I undressed myself. Mr. Key undressed also. This occurred on Wednesday, 23d of February, 1859. Mr. Key has kissed me in this house a number of times. I do not deny that we have had connection in this house, last spring, a year ago, in the parlor, on the sofa. Mr. Sickles was sometimes out of town, and sometimes in the Capitol. I think the intimacy commenced in April or May, 1858. I did not think it safe to meet him in this house, because there are servants who might suspect something. As a general thing, have worn a black and white woollen plaid dress, and beaver hat trimmed with black velvet. Have worn a black silk dress there also, also a plaid silk dress, black velvet cloak trimmed with lace, and black velvet shawl trimmed with fringe. On Wednesday I either had on my brown dress or black and white woollen dress, beaver hat and velvet shawl. I arranged with Mr. Key to go in the back way, after leaving Laura at Mrs. Hoover's. He met me at Mr. Douglas'. The arrangement to go in the back way was either made in the street or at Mr. Douglas', as we would be less likely to be seen. The house is in Fifteenth street between K and L streets, on the left hand side of the way; arranged the interview for Wednesday in the street, I think, on Monday. I went in the front door, it was open, occupied the same room, undressed myself, and he also; went to bed together. Mr. Key has ridden in Mr. Sickles' carriage, and has called at his house without Mr. Sickles' knowledge, and after my being told not to invite him to do so, and against Mr. Sickles' repeated request.

TERESA BAGIOLI.

This is a true statement, written by myself, without any inducement held out by Mr. Sickles of forgiveness or reward, and without any menace from him. This I have written with my bed-room door open, and my maid and child in the adjoining room, at half past eight o'clock in the evening. Miss Ridgeley is in the house, within call.

TERESA BAGIOLI.

LAFAYETTE SQUARE, Washington, D. C., Feb. 26, 1859.

Mr. and Mrs. Pendleton dined here two weeks ago last Thursday, with a large party. Mr. Key was also here, her brother, and a my suggestion he was invited,

because he lived in the same house, and also because he had invited Mr. Sickles to dine with him, and Mr. Sickles wished to invite all those from whom he had received invitations; and Mr. Sickles said "do as you choose."

TERESA BAGIOLI.

Written and signed in presence of C. M. Ridgeley and Bridget Duffy.

FEB. 26, 1859.

ARGUMENT OF COUNSEL ON ITS ADMISSIBILITY AS EVIDENCE.

Counsel for prosecution examined the paper and conferred about its admissibility.

The District Attorney objected to its being put in evidence, and the paper was laid before the Judge.

Mr. Brady would state, in a general way, the ground on which they offered it as a communication to Mr. Sickles, affecting his mind, and producing or continuing the excitement under which he labored; they had fully consulted the authorities as to its admissibility in that point of view.

The Judge read over the papers slowly but attentively.

The District Attorney argued that the evidence was inadmissible on many grounds; it struck at the root of several of the most cardinal rules of evidence; in the first place it was hearsay, and therefore objectionable; it was a communication passing between husband and wife—parties who were excluded from being witnesses for or against each other. This rule not only extended to direct testimony, but it went farther, and prevented frequently and generally collateral matters between husband and wife being given in evidence. This evidence, he understood, was not offered on the ground of justification, but on the ground that the statement produced temporary insanity. If the husband was thrown into a state of insanity by this communication, that fact could be distinctly proved without the communication itself being put in evidence; his insanity could be proved by the conduct and movements of the prisoner, but could not be proved by the character of any communication made to him. Its necessary tendency was not to produce insanity; some minds would be affected more and some less by such a communication, and therefore it could not be put in evidence to prove insanity.

Counsel for defence argued the admissibility of this confession. It was offered for the purpose of accounting for the state of mind in which the defendant was at the time of the homicide. It helped to constitute that irresistible pressure under which he acted; in reference to either murder or manslaughter, the state of mind was all-important. How far that confession would act on the prisoner's mind would be a matter for the jury to decide; but the relevancy or competency of the evidence was entirely another question. It was not alleged by the other side that this confession was got up by collusion between the wife and husband. If that allegation was made, it would be a matter for the jury to pass upon as to whether it was true or not.

It was not disputed that the statements of the wife were made in good faith, nor was it disputed that they were true. The defence did not seek to show that the prisoner's insanity was produced by this confession, but that he drained a cup of bitterness filled and furnished to him by the hand of the wife, which might well account for the madness of any human being. Counsel referred to vol. iv. Kernan, p. 562, to a decision in the New York Court of Appeals, in the case of the People against Eastwood. He held that if this cup of bitterness, even though it were false, were presented to him by one in whom he had a right to have confidence, and if it hurled reason from its throne, it was evidence in the case. A husband was not bound to institute a trial into the truth of a communication made by his wife. The husband who acts upon the information of his wife is not responsible for the truth or falsity of that statement. They offered this confession as having instilled madness into the mind of the husband, and as having led him to commit the act for which he stands indicted.

If a wife informed her husband that she had been assaulted or insulted in the street, and if the husband rushed out, and in an affray with the offender, hurt or killed him, would it be held that the husband was to be deprived of the right of giving in evidence the communication which led him to the commission of the act? In the case of Jarboe, decided in this court, had not prisoner acted on the statement of his sister, and was not that hearsay evidence as much as this?

So in the case of Singleton Mercer. In that case the prisoner was permitted to show, by his sister, that she had been seduced, and that she informed her brother of it. But for that, Singleton Mercer would have died upon the scaffold. In the case of Amelia Norman the same principle was held. But the prosecution here contended that the statement of a wife to her husband was inadmissible, because it came within the rule which forbids a wife to be a witness for or against a husband. But the defence did not propose to place Mrs. Sickles on the stand, or to make her, in the technical sense, a witness.

Counsel referred to Greenleaf on Evidence, section 62, showing that in collateral matters not striking at the material interests of both, the declaration of either husband or wife was admissible. Waive the privilege. it is the husband who seals the mouth of his wife, and the wife who seals the mouth of her husband. This privilege was held as a privilege in favor of the relation and the parties to it. But if the husband chose to waive that privilege, and permit his wife to open her mouth, on what principle of law is he to be denied that right? Besides, this confession was part of the *res gestæ*.

On this point he referred to 1 Greenleaf, section 108, showing that there are other declarations which are so connected with the principal fact as to cease to be hearsay. As to the time that intervened between the confession and the homicide, it made no difference at all. Although made the night before, this statement, counsel proceeded, loaded every breath that came from the defendant from the time he first saw or heard of it, down to the moment when the act was committed, which placed him in his present condition. The grief he went through has been painted by the artless servant girl before this jury. It was the burden of his wailing and the heavy weight of his lamentation all through the night; every moment his eyes read it; the tongue of his wife repeated it in his ears; it never became still, and time in no way took from the freshness of the provocation.

If, therefore, the fact that it stood the interval of twelve or fifteen hours until the commission of the homicide is relied on as excluding it, then we say that the constant recollection of it haunting the memory of the defendant, his uninterrupted grief during that ever-to-be-remembered night, constitutes the bridge which covers over the chasm, and connects the homicide with this statement as one of the moving or superinducing causes. Where is that curtain to drop? Will the law assume an hour of the day as a period behind which we cannot go in our inquiries, and up to which we can go? Will your Honor, as a matter of law, say that we shall take the hour of ten o'clock on that Sunday morning, that we shall question up to that time, but shall not go behind it? Why shall we not go to the hour which stood before that, and to the hour which stood before that, and so on till we travel back through the vigils of the night, and come to the very moment when the contents of that document were poured into the ears of that afflicted and distressed husband? If throughout that long line we have to trace back this homicide to the moving cause, I ask on what principle can your Honor exclude this statement, even though it may have come into being a few hours before the occurrence of the principal fact? Has it come to this, that the accountability of the defendant shall rest on any other foundation than the working of his own soul at the time he committed the act in question? Is he, I say again, to be cut and fitted into a conviction in despite of the truth and in violation of all justice? Is the law become a bed where the principles of justice are cut off, or lengthened, so that the cruel end proposed here, may be inevitably accomplished? That is the question before this Court. Who lighted the flame in the breast of the husband we now propose to show. The materials are always there; they are in your Honor's bosom; they are in every man's bosom, and only require the application of the torch to burst into a complete conflagration. If the wife applied the torch to the temple of the husband's happiness, if it was consumed as a consequence of the avowal and confession of his dishonor, I ask, why should this husband suffer, when he rose in obedience to the instincts of his nature, and perpetrated an act for which he must receive the approval of every intelligent and reflecting man? This anguished man, when he was interrupted in the first moment of the act, turned to those who interfered and said "The man I have slain has defiled my marriage bed." Al-

though his wife told him the story the night before, she told it to him then, she told it to him every moment, from the time he first heard it down to the happening of that fatal event; her words were ringing in his ears her statement was before his eyes; her body was polluted in his presence. These are the facts which we seek to put into the act—the act for which it is sought to obtain a conviction against him before this Court and jury.

It seems to me, therefore, that even though this statement may have been divided by an interval of twelve or fifteen hours from the occurrence of the main fact, the homicide, nevertheless the evidence before the Court of the sobbing and wailing of the husband throughout the night, and of his having at the very moment of the act declared the cause which led him to perpetrate it, placing it in part on this statement, entitles this defence to the benefit of the evidence.

The District Attorney rose to reply.

The Judge suggested it was now within ten minutes of the hour of adjournment.

The District Attorney merely wished to say that he had understood erroneously that the application for the introduction of this testimony was put on the ground of insanity, and not on the ground of provocation, and that he had confined himself exclusively to the point with regard to insanity.

Mr. Brady—Will still adhere to this as the only ground and purpose for which this statement is offered in evidence, and we do not propose to invite or to engage in any discussion at this time on the question of provocation or the law which controls that. I repeat, that we offer this statement exclusively as a communication made to the accused, exciting him to that condition of mind in which we allege he was at the time of the decease of Mr. Key.

The District Attorney—The material question before your Honor is whether it is contended on the other side that the prisoner was thrown into a state of mere mental excitement by this communication, or into a state of insanity. If the former, then the course of argument on the part of the United States will be very different from what it has already been. I understand that so far from that being the allegation on the part of the defence, it was that the party was thrown into a state of insanity. If it is contended that it threw him into a state of excitement, or even of frenzy, as that seems to be the expression preferred, we have authorities to cite on that point which it would be perhaps well enough to put into the possession of the defence.

Mr. Brady suggested that this was not a proper time for the prosecution to discuss that point. The defence, in regard to the testimony now offered reposed on his Honor's ruling in the case of Day, where his Honor went into the general question of insanity, and also into the broader question, that of the state of mind; one condition of which was, to use his Honor's language, being unhinged. Counsel referred to Wharton's Criminal Law, edition of 1857, sections 66, 3 and 4, where, under the head of "Information going to make up the *bona fides* of an act," it is said:—

"That there are several qualifications to the rule by which hearsay evidence is excluded, and that the information and circumstances on which a man acted, whether true or false, become subjects of inquiry, and are material and original evidence."

If it became necessary to prove that a man had been afflicted with a headache which was so intense as to affect his reason, the only way to show it would be by his own declaration. Not all the physicians of the world could determine whether a man had a headache or not. It could only be known by his own statement. The same writer on evidence, in one of the sections quoted, says:—

"That letters and communications addressed to a person whose sanity is disputed, being connected in evidence with some act done by him, are admissible for the purpose of showing whether he was insane or not."

What was the point here? It was the condition of Mr. Sickles' mind; and what did they propose to show? The cause exciting that mind to a condition which made him irresponsible for his acts. Counsel put several hypothetical cases illustrative of the necessity of admitting such evidence and quoted Judge Crawford's ruling in the cases of Day and Jarboe.

The Court adjourned.

NINTH DAY.—*Wednesday, April* 13, 1859

The names of the jurors having been called, and all having answered to their names, Mr Carlisle proceeded to argue against the admissibility of the confession of Mrs. Sickles.

Mr. Carlisle presumed that the Judge had already consulted the authorities and had made up his mind on the point, but still, he (Mr. Carlisle) would not have discharged his duty fully did he not oppose the offer. It was of the first importance—an importance which went the length of determining whether justice was to become a contemptible sham—that his Honor, if he admitted the evidence at all, should expressly limit the uses to which it was to be applied. It struck him that there was not entire concord in the minds of the counsel for the defence as to the purpose for which the evidence was offered, and for which it was admissible. The counsel who offered it proposed it for one purpose, and the counsel who succeeded him offered it for another. It was offered as bearing on the *status* of the prisoner's mind and not as proving the facts stated in it; but his colleague, showed that he meant to maintain that the fact appealed to was a fact which ought to be legally appealed to for the ascertainment of the condition of the prisoner's mind at the time of, and anterior to, the homicide. Not content with that, he claimed that the fact in question was a fact proper, with other facts to show the irresistible impulse under which the prisoner moved forward to the consummation of the scene.

Counsel for Mr. Sickles thought this fact was admissible, as tending to show something short of insanity in respect to the prisoner's mind, and appealed to his Honor to relax still further the rules of evidence on such a point. He argued that as it may be proved in a particular case that the prisoner quaffed the intoxicating bowl, so in this case it might be proved that the prisoner drained to the dregs a figurative cup filled with the bitterest draught. This was rhetoric, but was not law. In all cases the question is not whether the prisoner drank liquor enough to make him drunk, but whether, in point of fact he was drunk, either from little drinking or much drinking. Mr. Brady, however, had indicated, while confining himself to strictly legal language, that he had some enlarged ideas about the question of insanity, and referred to a case where his Honor had spoken of a prisoner's mind as being somewhat hinged. He (Mr. Carlisle) regarded that to apply not to an exhibition of passion, but to unsoundness of mind—to insanity. As to all the grounds distinctly taken, and the arguments incidentally made, he submitted that they must all come down to the test of the law and resolve themselves into the single question of insanity. Now, he had not heard any of the counsel claim that the prisoner was insane at the time of the homicide, and he submitted that before the evidence could be received it must be proposed on the single ground that the prisoner at the time of the commission of the homicide was insane, and when it was proposed on that ground the prosecution would be prepared to meet it. The question was, Whether adultery could be given in evidence in mitigation of the crime of murder to the grade of manslaughter? Such a case was decided in the Court of Appeals of one of the States.

Mr. Phillips.—That was the case of a slave.

Mr. Carlisle—It was; but that makes no difference. We all are, or ought to be, slaves to the law. Now, what was the instrument in evidence here? and what was the fact offered in evidence as tending to prove insanity? The instrument of evidence purports to be a formal, written, deliberate and particular statement in the presence of her husband, concluding with a species of attesting clause, signed by two witnesses, and with an additional clause showing that the confession was made without any fear or hope of reward. This formal, deliberate, solemn deed of renunciation of marital rights is offered to be given in evidence. The prosecution objected to it at first because it was the work of the prisoner's wife in his presence, and evidently to be inferred at his instance or directly under his control. Nobody disputed the general rule, unless, indeed, counsel, to be that the husband and wife are incompetent to be witnesses the one either for or against the other in any cause, civil or criminal, to which either of them is a party. Mr. Graham seemed to think, however, that the age of progress had modified the law, and that the rule was a species of regulation for the benefit of the husband, and which he

may waive. That is not so. The wife is as incompetent to testify in favor as she is to testify against her husband. Counsel referred to a case where this Court, in the case of a double indictment, refused to allow the wife to testify in favor of the person who was on trial, because her testimony might have its effect on the case of her husband. This was not an offer to bring the wife into court as a witness, but to produce her declaration. What was the answer to that? First, that declarations are an inferior sort of testimony, and second, that where a witness is inadmissible, the declarations of that witn ss are inadmissible.

Dying declarations are exceptions to this general rule. But was the fact itself competent to be received? If it be admissible in evidence it is because it tends to prove something in issue. It might be admissible if offered to make up the defence of insanity. If not a link in the chain of evidence by which it is proposed to make out the chain of insanity, on what principle is it offered now? He submitted that the wife could not be permitted to contribute one grain of sand towards the building up of any defence for her husband. If there were any law of decision to the contrary he would like to see it.

Counsel for Mr. Sickles would call attention to authorities on that point, viz: Walton and Green, vol. 1, Carrington and Paine, p. 621; Avison and Kinnerd, vol. 6, East, p. 188; Thompson and wife vs. Trevanyon. p. 402, Skinner and Gilchrist and Bates, vol. 8, Watts, p. 355. In all these cases the declarations of the wife were admitted in evidence.

Mr. Carlisle should liked to have had an oportunity of examining these cases. If there be any one of them which goes to impugn the principle laid down by his Honor in the case of Sullivan it had escaped his attention. Where was the case wherein the testimony or declaration of a wife was admitted as a defence for her husband? He submitted that there was no such case. Either the fact sought to be introduced here was material for the defence, it could not be drawn from the wife. Her declaration was in law the declaration of her husband. Unless it could be shown that the prisoner's declaration was admissible, it could not be shown that his wife's declaration was. On this point of the identity of husband and wife, he should, if he had the power of the counsel on the other side, reproduce that eloquent argument they had heard the other day, when they were told that "Husband and wife were one flesh."

If this declaration were to be allowed they should have no rule on the subject, except that each particular case should stand on its own circumstances. The rulings on similar points have been various. Roscoe's Criminal Evidence showed that contrary decisions had been made in the English courts; but none of them covered exactly the point involved here. These were all civic cases. Counsel referred to the case of Hewitt *vs.* Brown, where the question of admissibility of the wife's deposition came up. It was an action to recover the value of property in a wife's trunk, which had been lost, and her deposition was offered to prove what its contents were, while the court held that even where a husband might *ex necessitate* be allowed to testify in his own case, the wife could not be allowed to do so under any circumstances, because she was *sub protestate viri.*

Mr. Magruder suggested that there was a dissenting opinion in that case.

Mr. Carlisle answered, that where there were several judges there was likely to be assent, but he was happy to have but one judge in this case, as there could be no dissenting opinion. But this declaration was also offered as a part of the *res gestæ*, and the counsel for Mr. Sickles had on that point referred to First Greenleaf. Mr. Carlisle read section one hundred and eight from this writer, where it is laid down that the admissibility of matters claimed to be *res gestæ* was a matter for the discretion of the judge. This, then, was a matter which addressed itself to the sound discretion of his Honor. The only tests that were laid down by Greenleaf were, that it must be contemporaneous with the matter, and must be so connected with the main facts as to illustrate its character. What was all the evidence connected with the subject? It was the testimony of the Rev. Dr. Pyne and Mr. Francis Mohun, who saw the prisoner on the evening of the 26th of February. There was conflict between them as to the time; one having seen Mr. Sickles come from his house about five o'clock, and the other having seen him going from the Capitol about sundown; and between them and Bridget Duffy, the servant, who testified to the prisoner's being in the house at dinner time and during the evening.

At the end of the extraordinary interview between Mr. Sickles and his wife, this remarkable document was produced, and his Honor was asked to say that that paper—not the oral declaration of the wife, but this paper—was without parallel in the history of man or woman! What sort of *res gestæ* was that? It was contemporaneous with the principal fact; and if it were, it was of such an extraordinary nature as, in his judgment, to require it to be excluded. Where, then, was the fact so connected with the principal fact as to illustrate its character? If it had been offered by the prosecution, for the purpose of showing the motive of the prisoner, he would not say what would have been the argument made against its admission. Did that paper tend to show that the act committed next day was either justifiable homicide or manslaughter? He submitted that it did not, unless his Honor held to the doctrine laid down by the other side—that no time was sufficient to cool down the mind of a man under such provocation, and render him observant of the law of God and man—it could not be admitted in that light. It was for the court to draw the line here, and say whether this declaration of the wife formed part of the *res gestæ*, and was so connected with the principal transaction as to be evidence to reduce the grade of that offence from murder to manslaughter. One point more, and he would close his argument. Was this declaration evidence to show the prisoner's insanity? As his colleague, the District Attorney, had said, the question really was, was there insanity?—not was there cause enough to produce insanity. It was true that the "great dramatist," who was so great a favorite with his brother counsel, had spoken of "ministering to a mind diseased," but he would like to see what expert would declare that such a declaration as this would tend to produce insanity in all or in a majority of cases. It would depend upon the moral and intellectual condition of the person. There were two classes of the community on whom he submitted it would have no such effect. One class, he said, is that body of lowly and humble men who, with fear and trembling, walk after the footsteps of their ascended Lord—who have listened to the precepts of the blessed Gospel, and who, with all the infirmities of human nature about them, with prayer and watching, seek at least to walk in the path which the Gospel has marked out for them. They are those who may truly quote that beautiful passage from the Scriptures, recited the other day, "Blessed is the man whom the Lord chasteneth"—they are those who see in the afflictions that come upon them here in the severing of life, that there is but one loss in the loss of children—(counsel was here affected to tears)—even in shame which is not the result of our own shamefulness; who see and feel in all these things the hand of the Father, and who hear his voice through faith, saying to them, "My son, this is not your abiding place; better to suffer here in this transitory scene, where you are but a pilgrim and a sojourner, as all your fathers were; better to suffer here, to have all your suffering here; I will call you to a place where sorrow never enters, where all tears shall be wiped away from your eyes, where everything connected with you shall be pure and holy, love and peace." In the vigils of the night the smitten heart of the good man hears "that still small voice" in his affliction, his first movement is to go into the secresy of his closet, and on his knees poor out his supplication to Him who alone can bind up the broken heart. Insanity! Why, sir, rather is it the brightening of the mind, the quickening of the sight, which pierces through all the gloomy shadows of this world. He sees the reward of the good man, the comfort of the afflicted man, waiting for him. That is one class. There is yet another class—safe, quite safe from insanity, from such a blow as that—the confirmed adulterer, the open, shameless profligate—the man nurtured in brothels, the man breathing all his life the atmosphere of adultery and seduction: if there be such a man, he is certainly safe from the visitation of insanity because his familiar plaything has turned and wounded him. Now, to offer evidence of the fact of the adultery with the prisoner's wife as the ground to impute to him insanity, necessarily opens inquiry of the sort I have indicated; and although in this case the counsel might—for I am putting a supposition case only—be willing to go into such a question, it was not the option of parties to go or not to go into such inquiries. But he submitted, that if the

introduction of such testimony be necessary to these inquiries, what sort of moral dissecting room would the court not be converted into? If such a declaration were admitted, the Court would have to go further: for the presumption thus raised would like any other presumption, have to be contested and rebutted by facts. He had not intended to trespass so long on his Honor, and he submitted the matter with all confidence, hoping the Court would exclude from its consideration any matter which it might deem not pertinent to the argument.

The Court here took a few minutes' recess.

DECISION OF JUDGE CRAWFORD.

After recess, the Judge delivered his decision. He said—The proposition that has been debated at considerable length is, to introduce the statement of a wife to her husband, for and on behalf of her husband. It is said that the paper is not offered to establish the facts contained in it, but as an exciting cause, or one of the exciting causes for that frenzied state of mind in which it is said he acted when the homicide took place. I cannot see the distinction between evidence which goes directly to exonerate the husband by the proof of a principal in a criminal cause, and evidence which would tend to exonerate him by showing that he was not in a condition to commit any crime. In either event the effect must be the same—acquittal. The *res gestæ* are the circumstances which surround the principal facts, which is in this case undoubtedly the homicide. On this assumption, or principle, it was that the declaration of the prisoner, that "his bed was defiled," or "dishonored," or "violated"—for all three expressions are testified to, was received. From that has followed much of the evidence we have heard. I do not now intend to say further what are the *res gestæ*. Declarations of a wife or husband, for or against each other, stand on the same footing as though it was testimony given on the stand. Suppose the wife of the defendant were in court at this moment, could she be put upon the stand? Could she be heard? Certainly not. Her testimony, or the statement sought to be used as such, is evidence, and would be in any proceeding evidence of her own criminality, and on an application for divorce might be used against her. Put it would not, in my judgment, have been receivable in an action for damages against the deceased, or in any other proceeding which might have been instituted against him. I am very clearly of opinion that the statement is evidence. It would violate well-established principles and rules to admit it. It would have a most injurious effect upon the relations of husband and wife, in destroying their confidential identity. The proposition is therefore rejected.

Exception taken by the defence.

The examination of Bridget Duffy was suspended, and Miss C. M. Ridgley was called. She testified as follows:

Reside in Washington, corner of Fifteenth street and New York avenue, with my mother, Mrs. Hyde. Became acquainted with Mr. and Mrs. Sickles 1st of January last. Visited at their house frequently. Was at their receptions every Tuesday, and two or three times in a week to dinner. Was there on the Saturday previous to the death of Mr. Key. Mr. Sickles came to the dinner table, but ate nothing. Then went up stairs, and sent for something to eat. Supposed this was at half-past five, not sure. I had noticed a change in his manner ever since the Thursday preceding, when he came from the capitol. Was at Willard's hop. Mr. Key was with Mrs. Sickles the first part of the evening. Mr. Sickles came afterwards, there not having been room in the carriage. She was then with Mr. Wikoff. After we returned from the hop I noticed a change in his manner. The change was more particularly observable on Friday. Mr. Sickles had a very wild, distracted look, especially on Saturday. [At this stage the witness suddenly stopped, and seemed to be in the act of fainting, but a glass of water soon restored her, and she continued.] The change was noticed after he returned from Congress. I read some time in my bedroom, and then went to Mrs. Sickles' room, where I saw her writing. After finishing, she asked me to sign my name to the paper, which I did. I retired to rest at about half-past eleven or twelve o'clock. Mrs. Sickles passed the night in the same room I did. She sat on the floor, her head leaning on a chair. I went to sleep. Saw Mr. Sickles the next morning, at about half-past eight. Immediately after I dressed myself I went down. He did not eat with me. I breakfasted alone. I have not words to express his exhibition of grief. He was very much agitated. While sitting at the breakfast table I heard sobbing. He was going up stairs. I could hear him all over the house. He uttered fearful groans. They seemed to come from his very feet. They were unearthly, and continued for some time. He was on the bed, with Mr. Butterworth by his side, when I last saw him, on Sunday.

Cross-examined by Mr. Ould.—Spent much time at the house of Mrs. Sickles. Sometimes stayed over night. At times I would be out with her, and then go home with her and stay over night. On the Thursday before Mr. Key's death I went there to a dinner party, and from the Thursday before Mr. Key's death till the Tuesday after, I stayed there. No one but myself and servants were there. Miss Campbell came to see Mrs. Sickles for a few moments. I always found Mrs. Sickles at home when I went there. Sometimes two or three days would elapse before I would visit Mrs. Sickles, and she would call to see me. I don't know that Mrs. Sickles was away any portion of the month of January. I suppose I would have known if she had been. I have seen her four times a week. Sometimes oftener. On the occasion referred to I breakfasted with Mrs. Sickles' little daughter. Mr. Sickles' sobbings were often. He seemed overwhelmed with grief.

Bridget Duffy, re-called, and questioned by Mr. Brady.

Witness.—After she had signed the paper on Saturday night, to the best of her knowledge, she thought Mr. Sickles remained in his room. I saw him on Sunday when I went to take Laura to dress. She slept in her father's bed. I again saw Mr. Sickles on the stairs. I had previously heard him crying and sobbing. I did not see him again till after I returned from nine and a half o'clock church. This was about twenty minutes before eleven. I went up stairs to make up Mr. Sickles' room, when I saw him come into the room crying aloud, his hands tearing his hair, and in a state of distraction. He called on God to witness his troubles, and cried and sobbed. I heard the door locked. Mr. Butterworth came up stairs, and asked where Mr. Sickles was. The last time I saw Mr. Sickles, before I heard of Key's death, was on the stairs, doing something as though he was washing his hands. Every time I saw him him he was in the same state of mind. The first time I saw Key, on Sunday, he came through the park as if from the club house. That was between eleven and twelve o'clock. He had come out at the corner of Pennsylvania Avenue and went towards Georgetown. The next time I saw him he was returning, apparently, to the club house, through the park. Twenty or twenty-five minutes passed between these times. The third and last time I saw him he was coming along with a lady and gentleman, who seemed to be coming from church. That was about one o'clock. he was in company with them. I did not see him leave them. When I saw him on the last occasion, I was at the kitchen window, when he passed the house on the opposite side. I saw him take out a handkerchief and wave it, as he passed, three or four times. He was outside the park, on the sidewalk, with the lady and gentleman.

Witness, by request, described the waving of the handkerchief—a slow, rotary movement. I do not know exactly where Mr. Sickles then was, but he was in the house, as was also Mrs. Sickles.

Cross-examined by Mr. Carlisle.—I was in the kitchen, which is in the lower part of the house, in front, near Pennsylvania Avenue. I was sitting at the window. This was about one o'clock, had been there about half an hour. Saw Mrs. Sickles once from the time I came from church till I went down into the kitchen. Saw her in the bedroom. Mr. Key whirled his handkerchief round three or four times. I did not see any object at which he was whirling his handkerchief. I saw the dog that belonged to Mr. Sickles cross over and fawn upon him, and then pass the house; Mr. Key, when the dog fawned, waved his handkerchief, and also after the dog left him.

Mr. Carlisle.—You are positive of that?

Witness (spiritedly and indignantly).—Sure, and you don't think I would lie? (Laughter.)

Mr. Carlisle (smiling).—Don't fire up so Bridget—there is no occasion for it.

Mr. Brady (soothingly).—He does not mean anything of that kind.

Witness (in calmer mind) repeated the story about the dog.

Mr. Carliste.—I understand the waving of the handkerchief was one continuous act or whirl?

Witness.—It was not a continuous whirl; it was so—so—so. (At the same time describing the act.)

Mr Carlisle.—About as fast as you would turn the handle of a coffee-mill?

Witness (seriously, if not indignantly).—I am not in the habit of turning coffee-mills. (Laughter.)

Mr. Phillips, Deputy Marshal.—Silence—silence, gentlemen, in court. (Ha! ha!)

Mr. Carlisle then asked her a question, when she replied, "I did not say any such thing."

Mr. Carlisle.—Repeat what you have said.

Witness.—I have repeated it twice already, and that ought to be sufficient. The dog fawned on Mr. Key, who waved his handkerchief at that time and afterwards. Mr. Key did not look after the dog to see how far he had got from him, but kept whirling the handkerchief. Did not observe whether the gentleman who was with Mr. Key turned and looked after the dog.

Q.—How came you to take particular notice of where the dog was when Mr. Key whirled his handkerchief last?

Witness—Because I saw the dog at the house; that is the only reason I can give for it; I cannot exactly say the certain spot where the dog was at the fourth whirl, but I know he had got to the house; the lady and gentleman, to the best of my belief, turned around and looked at the dog, when he first came out and fawned upon Mr. Key; Mr. Key might or might not have turned to look after the dog. The time immediately before that, when I saw Mr. Key, was after I had returned from church, not much after eleven o'clock. Witness was then in the nursery, which is on the second story, next Pennsylvania avenue; it has two windows, one looking into the Park, the other looking towards the avenue; Mr. Key went up the avenue towards Georgetown. Saw him till he got to the side of the street on which Mr. Sickles' house is, I there lost sight of him, in about twenty minutes or more, saw him coming back; he was in the Park crossing over towards the Club House. Witness was then in the kitchen. That would have been between twelve and one o'clock.

Question—How long between that time and the time you saw him walking with the lady and gentleman?

Witness—To the best of my belief, about an hour; he was then directly in front of Mr. Sickles' house; witness was still sitting at the kitchen window.

Q.—At what time was it that you saw Mr. Sickles when he was as if after washing his hands?

Witness—After one o'clock.

Q.—Was it after or before you had seen the lady and gentlemen pass with Mr. Key?

Witness—It was after they had passed.

Q.—Did you continue at the kitchen window after they passed, or did you go up stairs?

Witness—I saw Mr. Key as if parting from the lady and gentleman, and going through the Park towards the Club House, never saw him after that, he was on the nearest walk to the railing on Pennsylvania avenue, and I lost sight of him near the Club House. Went up stairs immediately after I lost sight of Mr. Key, and in going up, met Mr. Sickles, he was in the act of wiping his hands, met him near the bottom of the stairs, he had nothing in his hand but a towel, could not describe his dress. Mr. Wooldridge was in the study at that time, the study is on the first floor, it is a front room next Pennsylvania avenue, the parlor is to the side of the house, with a door leading from the study to it. Saw Mr. Wooldridge in the study, after I came home from church; did not see him anywhere else. Believe Mr. Butterworth was in the study. Did not notice whether Mr. Sickles was sobbing and crying when I saw him wiping his hands, there was nothing particular in his appearance to attract my attention, do not know whether Mr. Sickles had any breakfast that morning.

Q.—After you signed that paper you spoke of yesterday, where did you go?

Witness—I went to my room: the child had gone to bed at that time; the child was in the parlor, with Miss Ridgeley: Miss Ridgeley sat on the sofa in the bedroom while witness signed her name to the paper; the child was down stairs then; heard Mr. Sickles cry before and after I had signed that paper; he was crying before he asked me to fetch him his dinner; when I was signing the paper he walked around the room as if crying; the time of signing that paper was somewhere about seven o'clock; Mr. Sickles seemed as if crying and in great trouble; did not see him crying till the next morning; do not recollect saying yesterday that I heard Mr Sickles crying after I went to bed; did not lie awake to listen to anything; the door of the bedroom was partly open when I went to the door to speak to Mr. Sickles; do not know whether it remained open; when I went up to fetch the dinner tray I do not remember whether the door was open; it was open when he asked me to fetch his dinner; and before that I heard Mr. and Mrs. Sickles talking; Mrs. Sickles did not leave her room to my knowledge that day, when Mr. Sickles came home from the Capitol on Saturday he went up stairs; Mrs. Sickles did not dress that day, and did not come down stairs.

Q.—Was she down stairs the previous day?

Witness—I cannot say.

Q.—Where was she during Saturday?

Witness—In her bedroom; I took Mr. Sickles' dinner up to that bedroom; Mrs. Sickles was there; cannot recollect whether they dined together on Friday.

Q.—After you saw Mr. Key the last time, did you go up stairs immediately?

Witness—I did, and then met Mr. Sickles on the stairs wiping his hands.

Q.—Did you see Mr. Sickles engaged at anything else that day?

Witness—I do not recollect; when I came from church he was in the study: the door of the study was shut, I heard talking, do not know who else was in the study, I came on with Mrs. Sickles and child from New York, it was sometime between Christmas and New Years' day—we were here New Year's day, we left New York one day, stopped in Philadelphia one night, and got here the next day—we left New York on Tuesday afternoon, and Philadelphia the next afternoon, and got here Wednesday night—Mr. Sickles came on with us, I remained all the time with the family, neither Mrs. Sickles nor I went back to New York till after the transaction.

Q.—At what hour and where did you see Mr. Sickles after you heard of the death of Mr. Key?

Witness.—I think, between two and three o'clock. Did not hear the pistol-shots. Heard of Mr. Key being shot from Mr. Ridgley's girl. Suppose it may have been immediately after it. Did not see Mr. Sickles leave the house. Saw a crowd of people come, and saw Mr. Sickles go out of the study. Do not recollect his dress. He only remained five or ten minutes in the study. There were three or four gentlemen and officers with him. Did not recognize any of those gentlemen. Believe Mr McBlair came in after Mr. Sickles came into the house but do not know whether it was after or before Mr. Sickles left. I was probably up stairs, I think, when I saw them come. Mr. Sickles seemed very much excited. I do not say that he was shedding tears. Cannot say that I heard sobs and exclamations from him then. After remaining in the study ten minutes, Mr. Sickles went up stairs. There were two officers on the stairs as he went up. He remained up stairs three or four minutes. He went out of the room where Mrs. Sickles was lying on the floor. After he came down he went into the study. Did not observe his dress. Cannot say whether he was crying when he came down. There were one or two police officers in the entry. Do not know who went away with him. There were gentlemen with him.

Q.—From the time he came in till he went away, how long was he in the house altogether?

Witness.—Think it was about twenty-five minutes.

Q.—How long of this time was he in the study or parlor after having come down stairs?

Witness.—Probably from five to eight or ten minutes. Did not then see him sobbing or crying.

To the District Attorney.—Mrs. Sickles' reception day was Tuesday. Her receptions did not begin right away after we got here. Do not know whether she had any during the month of January. When I observed Mr. Key waving his handkerchief he seemed to be in conversation with the lady and gentleman.

To Mr. Brady.—When Mr. Key was passing the house he turned his eyes on all occasions to the house. The dog is a little Italian greyhound, called Dandy. When Mr. Sickles came in and went into the study, I went to the kitchen for Laura. The dog was usually kept in the house.

Q.—Was he acquainted with Mr. Key? (Laughter.)

Witness.—The dog knew Mr. Key, and fawned upon him as a dog usually fawns on a person he knows.

Wm. W. Mann examined by Mr. Brady—Resides in Buffalo, N. Y.; am a lawyer; was in Washington the day of Mr. Key's decease; arrived here on the 14th of

February, and remained till the 2d of March; knew Mr. Key by sight for three or four years; was not at all intimate with him; it was merely a passing acquaintance; I saw him that Sunday not far from two o'clock.

Mr. Brady—State where you saw him, and the circumstances connected with it.

Witness—I saw him in the square, opposite the President's house, where the Jackson monument is; I had entered the park from the street at the far end, at the southwest gate; I came up towards the monument, and met Mr. Key walking alone; I passed the time of day with him; stated to the person with me who he was; this person made some remark about his manner of dress.

The District Attorney—Never mind that.

Witness—We turned around and saw him leaving the park by the southwest corner.

Mr. Brady—What did you see him do?

Witness—I saw him whirling a handkerchief as he went along; he had the handkerchief first in his two hands, this way, and he drew it out and waved it so [illustrating, backwards and forwards]; I made a diagram last night; and marked on it where I saw Mr. Key; this is it [explains it]; do not know Mr. Sickles' house; the gate through which Mr. Key was going was that nearest the War Department, and nearest to Georgetown on Pennsylvania avenue.

[The diagram handed to the Court.]

Witness—That is a mere surmise as to the relative distance; when I first saw Mr. Key I think he had no handkerchief in his hands; observed none till we turned to look after him.

To Mr. Carlisle—First saw Mr. Key nearly midway between both blocks; he was coming from the direction of the monument; he appeared to be sauntering along, as it was a pleasant day; there was nothing in the character of the waving of that handkerchief to attract my attention; would not say that he twirled the handkerchief round in a circle; do not know what it meant, but it attracted my attention from a circumstance—

Mr. Brady—What was the circumstance which called your attention to it at the time?

Witness—We looked particularly at Mr. Key, from the fact that the gentleman with me asked me who he was, and I told him that he was Philip Barton Key, the District Attorney, and he said——

Mr. Carlisle—Never mind what he said.

Mr. Brady held that it was competent evidence as part of the *res gestæ*.

Mr. Stanton—I will put the question in this way:—Was anything said at the time in relation to its being a signal?

Mr. Carlisle—That is more objectionable than the other.

The question was argued, and the Judge decided that the conversation between the witness and his companion was not evidence.

To Mr. Brady.—There was a remark made which drew my attention to the act of whirling the handkerchief.

Q.—Was there any other fact independent of the remark, which did so?

Witness.—I do not know that there was; the handkerchief was twirled in the manner I have described; I remember how, from the circumstance that on my return I went to dinner at Willard's, which was at two o'clock; I was one of the first at the table.

Q.—Was there anything in the act of whirling the handkerchief connected with the remark which drew your attention to it.

Objected to, and question withdrawn.

To Mr. Stanton.—There was a remark made about the waving of the handkerchief, and that remark, and the things that followed it, impressed it on my attention.

Dr. Thomas Miller called.

Mr. Brady stated that he called this witness simply to discover whether any article had been taken from the person of Mr. Key besides those produced.

Witness was accidentally in the room where the body of Mr. Key lay. A gentleman present examined some of the pockets and removed some scraps of paper, or folded papers, which seemed to be of very little importance.

Mr. Brady—We do not ask about their importance.

Witness—There was also an old card case, with one or two visiting cards. This person was Mr. Doyle, who was examined as a witness. These were handed to me. I did not examine them, but I put them into an envelope and directed them to Hon. Mr. Pendleton with the compliments of Dr. Miller. I handed them to Dr. Stone, to be delivered to Mr. Pendleton.

The Judge suggested that as the hour for adjournment had nearly arrived, and as he was somewhat indisposed from the oppressive atmosphere of the court room, no other witness should be called to-day.

Mr. Brady said that the counsel for the defence consulted the wishes of his Honor.

The court then, at a quarter before three, adjourned

TENTH DAY.—*Thursday, April* 14, 1859.

The case was opened this morning at about the usual hour, but did not get to business till half past ten.

It is stated that the prosecution was prepared, if Mrs. Sickles' declaration had been received, to have given in evidence the fact that in January last Mr. Sickles and a lady, not his wife, remained during a night in Barnum's Hotel at Baltimore. The register of the hotel was in court for that purpose. It appears, however, from this register, that there is first the entry of Mr. Sickles' name in his own writing, then the names of several other persons, and about ten lines below the name of Mrs. Daniel E. Sickles, in a different handwriting. This preparation shows that if Judge Crawford had let in this confession, a vast quantity of scandal on both sides would have been brought on the trial involving persons not yet mentioned in the affair.

George B. Wooldridge was the first witness called for the defence—examined by Mr. Brady.

Witness—I reside in Magoff Valley, Sullivan county, N. Y.; on the 27th of February last I resided at No. 534 Twelfth street, Washington; came here in the latter part of November to be here at the organization of the House of Representatives; was a clerk under the Clerk of the House; knew Mr. Key at that time; never spoke to him but once or twice; on Saturday, the 26th of February, I was in Fifteenth street from very close to ten o'clock till three; I saw Mr. Sickles that afternoon between four and five at the Capitol.

Q.—What was at that time his appearance and condition?

Witness—When I went first to him he appeared different from what he had been the day before. He appeared more like himself. He was in the hall, near the Speaker's chair. We had a conversation. I got him to go into a retiring room and there parted with him, after endeavoring to pacify him. He was very much affected and distressed. There was no one with him in that room when I left him. I saw him no more that day. The time I left him was at five o'clock. Saw him the next morning at about ten o'clock, in the library of his own house. His eyes were bloodshot and red. He approached me, and told me he had sent for me to come there.

Interrupted by the District Attorney.

Witness resumed—His face denoted that he had been weeping. I remained in the house till all the strangers had left it, in the afternoon.

Q.—What was his condition during the day?

Witness—He acted like a man in great sorrow and distress. So much so that I watched for his coming and going constantly.

Q.—Why?

Mr. Carlisle—That is not material.

Witness.—There was a strange manner about him. He would go up stairs and then come down stairs again. Then he would talk about matters and go up stairs again. Every time he came into the room where I was, he pressed his hands to his temples, and would go over to the secretary and sob. He appeared as if he was in great distress. Every time these fits came upon him he would clasp his temples and lean over this way (illustrating it). He would sob and cry so much that I told him to give vent to his tears, as they would relieve him. He would raise his hands and exclaim. Sometimes these fits would take him before he could get to the secretary, where he went as if to hide himself, and then he would bow down his head as if his stomach was giving way, and he would be hardly able to reach the secretary for support.

Q.—Did you see Mr. Key that Sunday?

Witness.—I did, twice.

Q.—Where and when?

Witness.—The first time between ten and eleven

o'clock, going out of the gate of Lafayette square, on the corner of Seventeenth street and Pennsylvania avenue, near the War Office, on the street Mr. Sickles' house is in.

Q.—In what direction did he go?

Witness.—He crossed the street and went up the avenue, I presume. I did not observe in what direction he turned his glance. The second time I saw him was about a quarter to two o'clock, directly in front of the library window of Mr. Sickles' house. There was a lady and gentleman with him then. He was on the side towards the curb stone. The lady was next the railing. The three were in a direct line. Mr. Sickles was up stairs at that time. He had left the library and gone up stairs.

Q.—Did you observe Mr. Key do anything while passing?

A.—I saw him take a handkerchief out of his pocket and wave it three times; while doing so his eyes were towards the upper window of Mr. Sickles' house; he kept his eyes from the gentleman, as he did not wish him to see what he was doing; he parted with the lady and gentleman at the corner, entered the park, and proceeded in direction of Madison Place; some five minutes before that Mr. Sickles had gone up stairs; saw him enter the library door; two minutes after heard some one coming down stairs very rapidly and come into the library; he said, 'That villain has just passed my house."

District Attorney—Do not state what he said.

Mr. Brady.—What did he do?

Witness.—He was very excited, and talked for a moment with Mr. Butterworth, who endeavored to calm him; he appeared to resist these attempts to calm him, and threw Mr. Butterworth off, and turned into the hall; he had not his hat on at that time; that is the last I saw of him until he came into the house with the police officers; Mayor Barrett was there and Capt. Goddard; Mr. Walker, Mr. McBlair, Mr. Cluskey, and some other gentlemen; I was then sitting on an easy chair near the library window; Mr. Sickles came into the library, turned round, and then went out as if to go up stairs; knew he was in the parlor after that; saw Mr. Butterworth and Mr. Walker go into that room; the door between the rooms was closed; I remained in the library.

Q.—Did you hear his sobbing and so forth?

Mr. Carlisle—That is a leading question.

Mr. Brady did not know that they would be held down to mere matter of form. Did you hear anything of Mr. Sickles while in the parlor?

Witness—No, sir; my attention was directed to the persons in the room with me. I was very much excited. I never want to see such another day as that.

Mr. Brady proposed to prove what produced the state of mind in which Mr. Sickles was when the witness saw him at the Capitol on Saturday and asked the latter whether he made any communication to him at the time.

Mr. Ould objected, saying it was proposed not only to prove the nature of the communication, but that the entire subject matter should be given in evidence to the jury in connection with the excited state of the prisoner's mind. Insanity is a fact distinctly capable of proof. If the communication is offered in evidence to show the insanity of the prisoner, it is uncertain, and leads to no fixed and sure conclusion. Whatever the nature of the communication, it does not follow as a matter of course and reason that insanity necessarily or probably took place. It does not rise to the dignity of secondary evidence. The only proper evidence would be a manifestation of the mental disease given by the prisoner either at the time the communication was made, or subsequently, up to the commission of the homicide. The question was, whether this evidence could be given for any other purpose than to show a state of mental disease on the part of the prisoner at the bar. Could it in any sense be offered for the purpose of satisfying the Court and jury that there was provocation of any kind?—that the prisoner was entirely and properly under the influence of a heated or excited mind, which inflamed it to anger, or drove him to revenge? Could it be offered for any such purpose as that? All the authorities clearly show that it was incompetent for any such purpose. Even adultery does not offer an excuse or a justification, unless the husband catches his wife in the act. Then the offence is reduced from murder to manslaughter.

Mr. Brady said his learned opponent might argue on adultery as long as his convenience, taste or judgment might permit on that point. We, he said are quite as well prepared as the learned and eminent counsel—for they are both eminent—may be. We do not propose to discuss any such question now. I thought I had given my friend a distinct understanding to that effect.

Mr. Ould replied—He was aware of that; but it necessarily shut out the evidence it was now proposed to offer. He understood the proposition of the defence to be this:—That on Saturday a certain communication, connected with the adulterous intercourse with the prisoner's wife, was made to the prisoner at the bar, which threw him into such a state of mind as demonstrated insanity, or a state of excitement which had some relation to insanity or rage, or frenzy. Evidence which stops short of insanity is inadmissible. If insane, the prisoner could not be made to suffer. The counsel then quoted from North Carolina decisions, 8th Iredell's Reports, the State against John, in which the prisoner's counsel insisted that a knowledge or belief of adulterous intercourse mitigated the crime from murder to manslaughter. The Court rejected the evidence. The counsel then offered to prove, not that the deceased was found in the fact of adultery at the time the homicide was committed, but that adulterous intercourse had at some time occurred between the parties; and, as he had before said, the counsel insisted that a knowledge, or even such belief by prisoner, would mitigate the crime from murder to manslaughter. All the authorities—Hale, Foster, East, Russel, Blackstone, &c.—are against the course now proposed; and Mr. Ould further argued, to extenuate the offence, the husband must find the deceased in the act of adultery with his wife. The rule of Judge Battle was on the admissibility of the evidence. The proposition was that such evidence was competent to be offered, because, if the jury believed the evidence, they could reduce the offence from murder to manslaughter. The decision was against this; for, if the evidence fell short of showing that the parties were caught in the fact, it was incompetent for any such purpose. Was not this identically the same case? It was merely proposed to offer a certain statement made by the witness to the prisoner at the bar not under the solemnity of an oath. After further argument, he said it seemed to the counsel for the United States that the statement was entirely and totally incompetent as evidence.

Mr. Stanton replied—The evidence offered presented one proposition entirely different from that argued by the public prosecutor. At the moment of the act of homicide the prisoner declared that the deceased had violated his bed. On the previous day he is found terribly excited. To a clergyman of this city, who met him the same evening, he appeared defiant and desolate; and in the same condition he is traced down to the moment of the homicide and afterwards.

No one who heard the testimony of Mr. Walker would ever forget it.

The defence here proposed to prove, as partly accounting for this condition, that a certain communication was made to the prisoner. The public prosecutor objects to that, and, following the argument of his associate yesterday, intimates that there are two classes of men on whom that communication would produce insanity. Who was to be the judge of that? Not the Court, but the jury. They are to determine as to how this communication would act on the reason of the prisoner. The public prosecutor had, however, undertaken to argue that the offence of slaying an adulterer cannot be reduced from murder to manslaughter, unless the husband had ocular demonstration of the fact. He denied that that was law; he denied that it had ever been so decided, and he denied, in the name of humanity, that it would ever be so decided. Counsel wanted it understood and held in mind, that although the prisoner at the time of the homicide declared that deceased had dishonored his bed, yet the correspondence between the prisoner and deceased in reference to prisoner's wife, had been excluded. But yet counsel did not complain of that ruling.

So, too, a communication from the wife to the husband, which was enough to induce the prisoner to sacrifice, not one life, but a whole hecatomb of lives, was excluded; and here a communication from a third party, of a character to affect the prisoner, is offered to be proved, and the prosecution object. The case cited by the public prosecutor in 8th Iredell's (N. C.) Reports was the case of a slave wife. Was it true that the condition of a freeman's wife was the condition of that of a slave?

He denied it, and there was not a man within sound of his voice who would not wade knee deep in blood to gainsay such a proposition. If Philip Barton Key had owned a married woman as a slave, he might place a halter around her neck and lead her to the shambles; but could he do so with a free woman?

The prosecution, in their thirst for blood, had forgotten the instftntion of slavery, for the judges had laid down the principle that no civil rights are acquired by a slave on account of marriage.

But the very evidence, which in that North Carolina case was excluded on the point of justification, was admitted on the point of showing the prisoner's state of mind. That was all they claimed in this case. They only demanded for the prisoner at the bar the same right which is accorded to a North Carolina slave. He would show that never in England, since the time of Charles II., in a case adjudged by Lisdale, one of the most corrupt judges of a corrupt age, had a man been punished for slaying the man who had desolated his hearth; and now it was to be seen whether that was American law. If it was, his Honor would be the first Judge in this country who had held that the man who had slain his wife's adulterer was a murderer, and was not to place in evidence the justification of his act. I will show you, moreover, counsel proceeded, that never in this land has it been so held; that never on the civilized earth has it been so held; that never, by any judicial tribunal anywhere, has it been so held. When that question comes up, I shall shake hands with this prosecution, and meet them upon it here.

Your Honor, you have to say whether this evidence is to be shut against a free man who has vindicated the honor of the marriage relations; if it be, your Honor will be the first to say that a man shall be punished who, under the influence of passions excited by outraged honor, humanity, nature, feeling, has slain the corruptor of his wife, the adulterer, the violator of his bed, and the dishonorer of his home. The counsel then referred to Judge Crawford's ruling in Jarboe's case, and in Day's case, and claimed that those rulings covered the ground here, and authorized the introduction of the evidence proposed. He asked, then, that on these principles the ordinary feelings of humanity should be recognized and the ordinary rules of evidence followed, and that this evidence should not be excluded in order that vengeance might obtain the blood of this prisoner, who was so fiercely hunted.

Mr. Ould responded—Counsel for the defence had insinuated that the public prosecutor was actuated by thirst for blood, and that he hunted down the prisoner for vengeance.

Mr. Stanton disclaimed making such charge.

Mr. Ould replied, he could let his argument and conduct in this case go before the Court and before the world in contrast with the disreputable rant which this counsel (pointing to Stanton) had exhibited. There was no place where gentlemanly feelings could be better shown than in a forensic contest of this nature, and so there was no place where vulgarity and rudeness could be better exhibited. There seemed to be divisions assigned to counsel for defence—to some, high tragedy; to some, comedy; to some, the part of walking gentlemen; and one gentleman appeared to fill the office of clerical supe, to set the theological part of the house in order. One of the counsel had carried out the part, whether assigned to him or not, of the bully and the bruiser. [Sensation in Court.] No one had a greater dislike to personal antipathies and personal controversies than himself—no one an intenser scorn of the person who gets them up, or of the method in which they are got up. He stood here under the solemn responsibility of his oath, and had endeavored to discharge his duty faithfully as a public prosecutor. He had not now, and never had a prejudice or ill-feeling against the prisoner at the bar. If, however, he believed that that prisoner at the bar had imbued his hands in a fellow-creature's blood, he would not restrain from declaring it. He should not call murder gentleness, or malice good feeling. He had only risen now for the purpose of relieving himself from an aspersion which had been wantonly, and he believed vindictively, made against him. The exigencies of this case, perhaps, had demanded that before this he should have vindicated himself from the aspersions made against him in the course of the case. He was glad of having the opportunity of doing so now.

Mr. Stanton (who sat beside Mr. Ould during the latter's remarks) rose earnestly, saying—I know my duty to my client, to the cause, to society, to myself, too well to allow myself to be drawn aside by any such personal considerations. I am not to be drawn from the principle of law by any such resort of the counsel for the prosecution. I will leave his course to be judged of by the whole world. If his course is justified by his being public prosecutor, be it so. I say the law he presents here is not adapted to our state of society. I say the law, on the principle on which he claims it, would lead my client to the gallows by those who are malignantly seeking for his blood. I have not the honor of his acquaintance, and, after his language just uttered, do not desire it. [This sentence was followed by the stamping of many feet by the auditors without the bar, but the Marshal and officers soon restored order.] Mr. Stanton resumed, by repeating that such law as that insisted on would conduct his client to the foot of the gallows, and that there were private prosecutors here. I cannot, he said, reply to the counsel's remarks. I defy them. I scorn them. I don't fear them. (Much sensation.)

Mr. Carlisle closed the argument for the prosecution. He would address himself simply and briefly to the question of law pending. If he had no other motive for being brief, he was admonished to be brief by the heated air of this court room, which was already testing his strength. He was at a loss to know on what distinct ground this evidence was offered.

Mr. Stanton—It is offered to account for the state of mind in which the prisoner was shown to be.

Judge—So it is understood.

Mr. Carlisle would then inquire whether it was admissible for that purpose? It was not competent to prove insanity by the declarations or communications of other parties, but by the acts and declarations of the prisoner himself. If any of the progresistas of the law could show that any other principle had ever obtained, he should like to have the case pointed out to him. Whatever communication this witness, like Iago, poured into the ear of his friend—if he might be permitted to refer to a play which seemed to be special property of his friends on the other side—was not important—the effect which that communication produced on the prisoner's mind was the only thing that was important. As to the acts and declarations of the prisoner himself, the widest latitude had been given to paint his state of mind through the descriptions given by the witness for the defence. Counsel referred to the case of the State against John, 8 Iredell. He was much surprised that the counsel, who had admonished him the other day not to introduce slavery into this matter, had undertaken to denounce that decision because it was made for slaves and the wives of slaves, not for freemen, or the wives of freemen. They knew that no distinction was made in the rules of evidence as between slaves and freemen.

Mr. Stanton—In that case how did Flora, the wife, come to be examined?

Mr. Carlisle did not deny that there was some peculiar laws in the States were slavery existed. In North Carolina the wife of a slave might be examined against her husband.

Judge—It must be so, because slaves cannot contract marriage.

Mr. Stanton—Precisely, that is the point.

Mr. Carlisle.—At the same time, the natural relations between the slave husband and wife are recognized. Whoever else might have expected to be affected by the denunciation of the law made for a slave man as applied to a free man, his Honor would not be affected by it. He knew how much it was worth. In that case of John, the court said that not only the evidence was inadmissible on the point of reducing the offence from murder to manslaughter, but that there was the plainest implication that it was not admissible on the point of insanity. In that case the offer was not to prove that the prisoner had been informed that the adultery had taken place, but the offer was to prove that adultery itself, and the evidence was rejected. A bill of exceptions was taken, and the Court of Appeals decided that no evidence which the prisoner was entitled to introduce was rejected. How could they say so, if the fact of the adultery having been committed could affect the sanity or insanity of the prisoner? Do gentlemen mean to say that, if the evidence was immaterial, either in point of justification or in point of insanity, the Court of Appeals would not have declared it admissible? It was the duty of the Judge, if he sees that the evidence, susceptible of having any operation on the defence, had

been rejected, to remand the case, and order the evidence to be admitted. North Carolina, however, was not so fast a State as New York, but the rules of law there had a soundness of foundation which he confessed he liked. The judges there had not arrived at the point of admitting evidence, not that a man was mad, but that he ought to have been mad. That was the point here. Gentlemen might use all their ingenuity, but they could not escape this precise issue, "was the prisoner insane?" not "ought he to have been insane." If the effect was shown, *qui bono*, investigate whether there had been sufficient cause to set him mad. Let them prove, if his honor thought it material, not that the prisoner had been informed of a certain state of facts, but that the facts did really exist.

Mr. Stanton read part of the case of John in Iredell (referred to in the argument), to show that the evidence, which was rejected under the head of justification, was admitted under the head of insanity. As the relations of counsel to slavery had been referred to, he would state here that he had the blood of slaveholding parents in his veins: his father had been a North Carolinian, and his mother a Virginian.

Mr. Carlisle.—That is an interesting fact, which I hope will be chronicled like all other things that take place here, so that when the gentleman comes to have his biography written, that fact may be mentioned in connection with the doctrine which he has expressed and maintained in this case.

Mr. Stanton.—The doctrines which he has maintained here in defence of homes and families will be the proudest legacy he will leave to his children. (Suppressed applause.)

Mr. Carlisle.—No doubt of it; no person can doubt the earnestness of the gentleman as to his doctrines; but unless the earnestness and fire with which these these conclusions are announced are to be taken as indications of their soundness, I shall beg leave to consider them as opinions and declarations in themselves. Of the manner and vehicle in which they are brought to notice, I do not agree with the gentleman, and I am sure he does not expect me to agree with him.

Mr. Stanton.—Certainly not; I appeal to the hearts of other men.

Mr. Carlisle.—There are a great variety of human hearts in this world.

Mr. Stanton.—Yes, sir, and some of them very bad ones.

Mr. Carlisle.—And I am happy to say that mine does not contain many things which seem to exist in the hearts of some other people, though, like all other human hearts, I suppose it is filled with much that would be better out of it.

Mr. Stanton.—It would be better were something else in it.

The Judge.—Really, gentlemen, this thing must be interrupted.

Mr. Carlisle.—I am addressing myself to your Honor, and I shall say no more about this, because I really feel quite indifferent to the observations made, and shall take no further note of them.

Mr. Stanton.—Then proceed with your argument.

Mr. Carlisle closed his argument against the admissibility of the evidence.

The Judge.—The proposition, as I understand it, is to receive the evidence of a communication made by the witness on the stand to the prisoner, to prove, or to aid in proving, the insanity of the prisoner at the time of the commission of the offence. That is the distinct and single ground on which the prosecution is now put.

Mr. Stanton.—Precisely.

The Judge.—I wish that to be marked, because my opinion might vary in particular aspects, and I do not want to commit myself more than is necessary.

Mr. Stanton—That is the precise point we occupy.

The Judge—I think this evidence offered as a link in the chain to prove insanity is not receivable. The jury are to judge how far insanity exists, strengthened by evidence of acts, soch as usually characterize derangement of mind, if proved; but the communications of A. B. to the prisoner, or any number of persons offered in regard to insanity, cannot, I think, go to the jury.

Exception taken.

Mr. Stanton—Will your Honor be good enough to explain a little further, so that we can understand how to meet your Honor's views on that point. Your Honor says it cannot be admitted on the point of insanity.

The Judge—As tending to produce insanity, or as a cause that would probably induce insanity.

Mr. Stanton—But if coupled with evidence of insane acts, what then? All that we desire is to get in evidence that will save the prisoner's life. Of course the jury are to be the ultimate determiners of the facts. If there be any view in which we can get it in, we would be glad to be informed of it by the Court.

The Judge—I go no further than to give this particular opinion, because I foresee that there will be a grea many discussions on this point, and I do not choose to commit myself incidentally.

Mr. Stanton—Can your Honor suppose any given state of facts, which connected with this proof, would render it admissible?

The Judge—I will not touch that.

Mr. Stanton—Then your Honor will allow us to go on and find it out.

The Judge—Whenever you reach a stage where you think any particular piece of evidence is admissible, you can offer it, and the Court will decide it.

Mr. Stanton—Your Honor will recollect that we are trying to get in evidence to save the prisoner's life.

Mr. Brady—In order to prevent it being said hereafter that the change of Mr. Sickles' mind on Saturday was produced by a communication referring to some subject other than that which was in point of fact made, we offer it in a distinct form, to prove this: that this witness had communicated to Mr. Sickles that on the Thursday (the 23d of February) preceding the decease of Mr. Key, Mr. Key had gone with Mrs. Sickles to a house in Fifteenth street, in Washington, which was hired by Mr. Key for the exclusive purpose of having there adulterous intercourse with her; that Mr. Sickles having investigated that statement, made by Mr. Wooldridge, ascertained that Mrs. Sickles had not been there on Thursday, but had been there on Wednesday with Mr. Key, and they were seen by the whole neighborhood; and that it was the revelations by Mr. Wooldridge to Mr. Sickles of the fact that he had made a mistake in the day, that removed from the mind of Mr. Sickles the presumption that his wife was innocent, and produced the conviction that she was guilty.

The Judge made a memorandum of the question, and read it to Mr. Brady, who said it was substantially correct.

Mr. Wooldridge was set aside, to be hereafter cross-examined.

John Cuyler sworn—Knew the late Mr. Key for three or four years. Knew where Mr. Sickles resided. Saw Mr. Key in the vicinity of the house the week before his death.

Mr. Carlisle said that, having been informed that the counsel on the other side intended to interrogate the witness about the handkerchief, the counsel for the United States objected to the question. They did not see its relevancy, either on the question of provocation or the question of insanity, or any other question arising out of the case.

The Court—It is now too late to shut the door to that kind of evidence.

Mr. Carlisle—This evidence has relation to something which occurred the week before the event.

Mr. Brady—We want to know whether Mr. Key waved the handkerchief to excite the admiration of the dog, or anything else. (Laughter.)

Witness resumed—As I entered the corner gate of Lafayette Square, I saw Mr. Key enter the centre gate proceeding to the front of the Jackson statue. He took a seat on the iron bench, and rested his head on the left hand, then pulled out a pocket-handkerchief and waved it. I went behind the statue, and watched him. He waved his handkerchief in this way, and then looked at the house of Mr. Sickles. (Laughter.) There was no dog about at the time. This was between twelve and one o'clock. I left him in the square as I went out of the northeast gate to go home. I left him sitting there. When I returned that way he was gone. I have often seen him loitering back and forth in the square. For two months he had been attracting my attention. I never saw him waving his handkerchief but on one occasion.

Mr. Stanton—Was that when the members of Congress were at the Capitol?

Witness—Yes.

Mr. Carlisle—That is an argumentative question.

Mr. Stanton—That's all.

The Court—The inquiry whether that was before or after Congress was in session is not proper.

Mr. Stanton—Congress met about eleven o'clock. I think it is important as to the time. The signals must

have been made when Mr. Sickles was out of his house.

The Court—I can clearly see what you mean by it.

Mr. Stanton—Don't your Honor decide the question. We will come to that by and by.

Cross-examined by Mr. Ould—I saw Mr. Key waving his handkerchief while I was going home to dinner; I work first at one place and then at the other; I was then working on Seventeenth street, below the War Department; had been at work there three or four days; I never took count of how many times I saw Mr. Key in the square as I went through it; I have seen him in the square on the avenue, near the Club House; I can't state the day; it must have been about the middle of the week, about a week before the killing.

Cross-examined by Mr. Carlisle.—I saw Mr. Key while I was either going to or returning from dinner; I sometimes passed there at one or half past one.

Mr. Brady.—What is your business?

Witness.—A plasterer; I carry on that business.

Jeremiah Boyd sworn.—I have known Mr. Key for four or five years; I saw him on the Sunday of his decease; it was half past ten, at the Treasury building; he walked on before me; I went to Mr. Pyne's church; coming from the church I saw Mr. Key on the pavement, near the Club House, his face toward Lafayette square, looking toward the house of Mr. Sickles; since then I have been at the place and could see the house from there; he was standing on the edge of the pavement; he attracted my attention as I was passing on the other side.

Cross-examined by Mr. Ould.

Witness.—Mr. Key had his head up looking towards the house; he was turning his head about as if looking out; this was about one o'clock; I don't know how long he remained there; when I was going to church he went into the club room; it was when I came back that I saw him in front of the Club House; when I passed him near the corner; I looked back and saw him still there.

To Mr. Stanton.—His back was to the Club House, and his face towards Mr. Sickles' house.

A. Young sworn.—Reside in the District of Columbia; knew Mr. Key for only three or four months, and only when I saw him; saw him suddenly on Sunday, immeately after breakfast, between nine and twelve; he was opposite the President's house on the avenue, going up towards Georgetown; I did not observe him till after he passed, and if he had not been pointed out, should not have seen him.

Charles G. Bacon sworn—I was acquainted with Mr. Key for eighteen months; I knew him so as to speak to him; I saw him on the 23d of February, the Wednesday preceding his death; I saw him between ten and eleven o'clock in the morning; he was then at the middle gate of Lafayette square; he went near the statue; he took out his handkerchief, and twirled it two or three times; he gathered it in a clump so (illustrating) and let it fall out in this way (illustrating); some hours after I saw him walking with Mrs. Sickles, Miss Ridgeley, and a gentleman; this was between three and four o'clock; had seen him wave his handkerchief between the 14th and 17th of February; he was opposite the house of Mr. Sickles; he waved his handkerchief two or three times; I have seen him on the President's side of the avenue near the west gate, at the crosswalk leading to Mr. Sickles' house, waving his handkerchief; I cannot say whether there is a window in the gable end of the house: there is a window in the library from which this spot can be seen; he seemed to clasp his handkerchief, let it fall, clasp it again, and catch it before it could fall any distance.

Cross-examined—The first time I saw Mr. Key was between 10 and 12 o'clock; I was sick, and had left the office; I intended going back; as I came up I saw him; I cannot name the second time, I passed there so frequently; I think it was in the afternoon I saw him the third time; my impression is, he went towards the War Department; I simply saw him waving his handkerchief.

S. S. Parker was next examined—Have seen Mr. Key in the vicinity of Mr. Sickles' house; the last time on the Sunday he was killed, near half past one o'clock; he passed me near Fourteenth street, on Pennsylvania avenue, above Willard's; I slowly passed up Fifteenth street; he walked very rapidly; when near Nair's drug store he was entering the middle gate of Lafayette square; I lost sight of him as he entered the square; I saw him the Sunday before the shooting; I saw Mrs. Sickles on the platform of her residence, her hand over the shoulder of a little girl, apparently trying to keep her from falling over the steps; directly after I saw Mr. Key at the southwest gate of Lafayette square; when he came out in full view, he took out his handkerchief with hat in hand, put his hat on his head, bowed to Mrs. Sickles, and twice waved his handkerchief.

Question—At what hour of the day was that?

Witness—Between 10 and 11 o'clock in the morning; he moved off in the direction of Georgetown, and I ost sight of him; had seen Mr. Key often before.

To Mr. Ould.—Never saw Mr. Key use his handkerchief in that manner before; saw him twice the Sunday of his death; I was standing with the Mayor at Willard's when he came out of the barber-shop; he spoke to the Mayor, and bowed to me; the Sunday previous, when I saw him come out of the southwest gate, I was on the Avenue, directly in front of the Jackson monument. I watched him walking very rapidly till he got out of my sight. He generally walked very fast.

To Mr. Stanton.—The first time I saw him the day of his death was between ten and eleven o'clock in the morning, at Willard's.

Mr. Stanton.—I ask you whether when you saw him the second time, your attention was not directed to him by a remark made when you first saw him?

Witness.—It was.

Mr. Stanton.—Was that remark in reference to Mr. Sickles killing him?

Witness.—It was.

Mr. Carlisle attempted to object to the last question, but it was answered before he had time to do so.

Wm Ratley examined by Mr. Brady.—I reside in this District, have known Mr. Key by sight for two or three years. I last saw him two or three days before he was shot; it was on the Avenue between Seventeenth and Eighteenth streets. He was alone and going up the Avenue. The Thursday preceding his death I saw him in front of Green's, the cabinetmaker's, with a letter in his hand; Mrs. Sickles and the child were with him; she left him and went into the shop, and when she came out they walked together up the Avenue, he reading the letter. Mr. Wilson was with me, and he crossed the Avenue and said he wanted to get a good look at them. (Laughter.)

Question.—Was there anything in the manner of reading that letter which fixed your attention on the incident?

Witness.—Not mine. I think he handed the letter to her between Eighteenth and Nineteenth streets. Do not recollect what she did then. When I first saw them she was going into Mr. Green's. He was standing outside with the letter in his hand.

To Mr. Ould.—I was standing on the opposite side, at Mr. Wilson's office. That was about fifty or sixty yards from them. The letter was on letter paper. Do not know whether it had one or two leaves, or on how many sides it was written.

To Mr. Stanton.—The paper I saw in Mr. Key's hand appeared to be about that size of paper.

This was spoken in reference to the anonymous letter which Mr. Sickles received, the theory being that the letter which Mr. Key was reading was an anonymous letter written by the same person who was the author of that to Mr. Sickles.

Witness, to Mr. Stanton.—I did not see any envelope.

Frederick Wilson, examined by Mr. Brady.—I am the person referred to by the last witness as being present when he saw Mr. Key and Mrs. Sickles.

Q.—State what you saw on this occasion referred to.

Witness.—I saw Mr. Key, Mrs. Sickles and the little girl coming up the avenue. They were near the corner of Seventeenth Street when I first saw them. They came up to Green's furniture store. Mrs. Sickles and the little girl went into the store. Mr. Key stood outside reading the letter. I did not notice the letter particularly until Mr. Key stopped. I then walked across the street, probably fifty or seventy-five feet above Green's store, and stood there till they passed me. Mr. Key was then reading the letter. As he got opposite to me he opened the sheet and went on. I walked back again to the south side of the avenue. In about fifteen minutes afterwards they came back on the south side; Just as they passed me he put the letter in the envelope and they walked on down the avenue.

Q.—What was the color of the envelope?

Witness.—It was a yellow envelope something like

this. (The envelope covering the anonymous letter to Mr. Sickles.)

To Mr. Brady.—Do not know where Mr. Key separated from Mrs. Sickles. They stopped at the newspaper store near the corner of the avenue. After Mr. Key put the letter in the envelope, I did not notice what he did with it. When I first noticed the letter, he was standing still, reading. Mrs. S. and the child were in the store, and when they came out, Mr. Key walked along, and he continued to read it. Did not hear him read aloud. He made some remark to Mrs. Sickles. I think the remark was, "he had little to do"——

Interrupted by the District Attorney.

To Mr. Stanton.—Could not say whether the letter was written on three sides. When they first came in view I was standing near the corner of Eighteenth Street on the avenue. I crossed over the street to get a view of them. I waited to observe them. I waited to observe them closely.

Q.—What was said to Mrs. Sickles about that letter?

Objected to, and disallowed.

To Mr. Ould.—Knew Mrs. S. before this. They went up the avenue to Nineteenth Street, on the north side, crossed the avenue there, walked up to Twentieth Street on the south side, and then passed back down the avenue. Had seen Mrs. Sickles a dozen times before.

Mr. Stanton.—Why did you cross over to get a good look at them?

The Judge shook his head deprecatingly.

Mr. Stanton explained that he wanted to show that the witness' curiosity was excited by having seen Mr. Key prowling about the house of Mr. Sickles.

Witness.—I saw Mr. Key there a great number of times; nearly every day.

Q.—He appeared to be making a business of it?

Witness.—Yes, sir (laughter); between the hours of twelve and one I usually found him there; it appeared to be quite a regular business. (Laughter.)

The Court suggested that this course of questioning was improper.

Witness.—The Saturday three weeks before the death of Mr. Key, was the last time I saw the handkerchief waved.

Thomas J. Brown examined by Mr. Brady.—I reside in the city of New York; in pursuance of instructions from you (Brady) I obtained a certain lock; Mr. Brady hands the witness a sealed package, the witness breaks the seal, opens the package and produces a common door lock.)

Q.—From whom did you procure that lock?

Mr. Carlisle did not see the point of the examination.

Mr. Brady simply wanted to identify an article which he would bring in evidence hereafter.

Witness identifies the lock, and said he procured it from Mr. Wagner, Pennsylvania avenue, opposite the Treasury Department, who took it from the door of 383 Fifteenth street.

Not cross-examined.

Jacob Wagner examined by Mr. Brady.—I reside in Washington; I am a locksmith; I delivered this lock to Mr. Brown, the last witness; I took it off a house in Fifteenth street, No. 383; it was John Gray, the black man's house; there were three or four gentlemen there when I took it off; Mr. Pendleton was one of them; I saw him in court yesterday; I believe he was a member of Congress; the colored boy came after me; this was about a week after Mr. Key's death; I have seen some of the gentlemen in court who were present; the colored man paid me for taking it off.

Q.—What was said on that occasion? Objected to.

Mr. Stanton proposed to show that the lock was taken off for the purpose of destroying evidence.

Mr. Ould said if that was the view he had not the slightest objection to have the question put.

Mr. Stanton wanted to know whether it was the persons engaged in the prosecution who tried to destroy this evidence. There were two prosecutors here—a public prosecutor and a private prosecutor.

Mr. Carlisle wanted to know whether Mr. Stanton meant to be understood as intimating that he (Carlisle) had any knowledge of this attempt to destroy evidence.

Mr. Stanton—None in the world. God forbid I should believe you would do it.

The Judge—I must take this opportunity to say that this is an exceedingly grave case, and must be conducted with a great deal more regard to dignity, and order, and decorum, than has been observed hitherto. I cannot permit this.

Mr. Stanton—I ask the witness what I asked him before.

The Judge—But it must be done in an orderly manner.

Mr. Stanton, standing in the aisle between the counsels' table, and thinking that the Judge's remark had reference to the tone of voice in which he spoke, said that if his client was kept away from his counsel, he could not avoid raising his voice. His client had not heard half the testimony given where he was on trial for his life and he (Stanton) had not heard one-fifth of his Honor's observations, but took it they were all right.

The Judge—I am not objecting to your tone of voice. That is a matter of taste, with which I have nothing in the world to do.

Mr. Stanton—It is a matter of necessity.

The Judge—What I objected to is the manner of doing business, the interruptions that take place. This is a mighty grave affair, and ought to be conducted with all the proprieties that belong to the profession.

Mr. Stanton—The circumstances arise from the necessity of the case in view of where I am placed, and nobody feels more seriously than do I the responsibilities that attach themselves.

To witness—What was said about this lock at the time, and who said it?

Witness—The colored man said it.

Q.—Were the other persons present at the time?

Witness—No, sir.

Q.—What time was it?

Witness—About eleven o'clock.

Q.—While you were taking the lock?

Witness—Yes.

Mr. Carlisle—Were there other persons present at the time?

Witness—Not that I know of, I think they were up stairs.

Mr. Ould—I understood that it was proposed to show that certain persons connected with the deceased had given orders that this lock should be secured and kept out of the way. I have no objection that that fact, if true, should be given in evidence, but the evidence must tend to that.

The Judge—It must come through the regular channel.

Mr. Stanton to witness—I want to know whether these persons were in the house at the time.

Witness—They were.

Q.—How long were you engaged in taking it off?

Witness—Ten minutes.

Q.—What door was it taken off?

Witness—The front door.

Q.—Was there another lock put on that door?

Witness—There was.

It being now three o'clock, the Court adjourned.

ELEVENTH DAY.—*Friday, April* 15, 1859.

The Court was opened at half-past ten o'clock, and soon after the prisoner was brought in, looking less careworn than hitherto.

Jacob Wagner, the locksmith, re-called, and examination continued by Mr. Brady, who said he understood the witness wished to make some correction of his testimony.

Witness—No one spoke to me but the colored man. I heard Mr. Pendleton's name mentioned. This gentleman (pointing to Mr. Lee Jones, a lawyer, who sits by the side of the prosecuting counsel) is the man I took to be Mr. Pendleton. (Mr. Jones gave a nod of assent).

Cross-examined—It was the colored man who sent for me. I went in by the back door. The front door was locked. I tried to unlock the back door, and found it was unlocked. The lock had not been broken. This was about a week after Mr. Key's death. The gentlemen I spoke of were up stairs, I think. I do not remember their coming down, nor did I go up stairs. I saw them in the yard, and saw them go up stairs. They did not superintend taking off the lock, nor did they give me any directions.

To Mr. Brady—The lock I put on was quite a different kind of lock from that I took off.

To Mr. Carlisle—I know John Gray, the colored man. He was there. Do not know whether it was he or one of the gentlemen who told me to take it off. I

saw the two gentlemen look around the lower part of the house, and then go up stairs.

John M. Seeley was next examined by Mr. Brady—I reside in this district, and am a painter. I reside on L street, thirty yards below the corner of Fifteenth. The immediate connection between the back gates of my house and that of 383 Fifteenth street, is about forty-five feet apart. I witnessed the taking off the lock. Saw opening of the back door, and heard the order given to take the lock off the front door, because, as I thought, the key had been lost. Mr Chas. Lee Jones, and Mr. Pendleton were present. One of them directed the locksmith to remove the lock off the front door. I know a gentleman named Poole, he went with me into the back yard. When the locksmith went to work to remove the lock, the two gentlemen went up stairs. I heard nothing of the character of the new lock.

Cross-examined by Mr. Ould—That was the first time I had been in that house after Mr. Key's death, it was between the 5th and 8th of March, the locksmith got into the yard through the lot of a yellow woman; I was inside the yard when he came up; the locksmith seemed to try the back door, and he said he found it unlocked; I do not know of my own knowledge, only from rumor, that any other parties had been there after Mr. Key's death; up to that time we walked into the room slowly towards the front door; do not know which of the gentlemen gave the direction about replacing the lock with a new one, and I presumed that

Mr. Brady—Never mind that.

Witness—These gentlemen stayed some twenty or twenty-five minutes about the house; did not hear any other remark made about the lock, nor any order given as to the change of it or what was to be done with it; the remark, I understand, was, that the lock had better be taken off, and a new one put on in place of it.

Louis Poole was next examined by Mr. Brady.

Witness—I lived, in February last, on L street, between Fifteenth and Sixteenth streets, in the house of the last witness; I know the brick house 383 Fifteenth street, and was present when the lock was taken off; I think it was the Monday or Thursday week following the death of Mr. Key; Messrs. Pendleton, Jones, Seeley, the colored man and myself were present; Mr. Pendleton ordered the old lock to be taken from the door and replaced by a new one.

Cross-examined by Mr. Ould—Can you recollect the identical language made use of by Mr. Pendleton on that occasion?

Witness—I cannot exactly say, but he directed the old lock to be removed and a new one put on.

(The curtness of this witness' style of response elicited laughter, which was suppressed by the officers.)

Witness—After this order Messrs. Jones & Pendleton went up stairs and examined that portion of the house; I had never been in that house up to that time.

Q.—Did you know that others had been?

Witness—No, sir; I knew that Mr. Key went there, and I knew that Mrs.—

District Attorney interrupting—I did not ask you about that. (Laughter.) My question had reference to the time subsequent to Mr. Key's death.

To Mr. Carlisle—Mr. Seeley and I did not go there with Messrs. Jones and Pendleton; I know Mr. Jones by sight, and the reason I knew it was Mr. Pendleton—

Mr. Carlisle (interrupting)—It is not necessary to state that. There is no doubt about its being Mr. Pendleton.

Witness—We went there on our own account. The remark made by Mr. Pendleton was made in our presence.

Mr. Carlisle (sotto voce)—A curious way of suppressing evidence.

Mr. Woodward, the coroner, was recalled and examined by Mr. Brady.

Q.—Had you in your possession, at any time, any papers, cards, memorandums, or anything of that kind, belonging to Mr. Key.

Witness—No; last Monday in court, a gentleman asked me if I was aware that Dr. Miller had taken some papers out of Mr. Key's pocket; that was the first I heard of it; the inquest was held about half past three; I thought I made a thorough examination of Mr. Key's person, and I found nothing more than I have stated; it was I who sent for Dr. Miller; I was not told about other things being found.

Rev. C. H. A. Bulkley examined by Mr. Brady—I am a clergyman, and reside in Westminster, Connecticut; have known Mr. Sickles since 1838; we were associated together in the New York University; Mr. Sickles was in our class pursuing his studies in the department of belles lettres; our pursuits being since that time diverse, we have not cultivated an acquaintance, but we have recognized each other as we met.

Q.—Do you know the liability of Mr. Sickles to intense and sudden excitement?

Witness—Yes, Sir.

The District Attorney objected to proof of excitability, unless it went to the extent of insanity.

Mr. Brady did not propose to prove excitability, but he had heard before that in such cases the temperament or liability to become insane was not susceptible of being proved. He proposed, in addressing the jury, to speak to them about insanity, in all its various forms. Some men are lunatics for a few days, some for years, and some are incurably insane. And he believed any man of intelligence can express an opinion on the different phases of insanity. The physiological and psychological constitution of a man, as bearing on a tendency to insanity, is a fair matter of evidence. He wanted to prove that Mr. Sickles, on an occasion greatly lacerating to his feelings, had become positively insane, and had to be placed under restraint.

Mr. Carlisle, in that view, withdrew his objection.

Mr. Brady to witness.—State what you know of the tendency of Mr. Sickles' mind to become disordered on being subject to some great emotion.

Witness.—The incident which I am about to state occurred, I think, in the year 1840, on the occasion of the death of Professor Da Ponte, in the city of New York; he was a kind of patron and guardian of Mr. Sickles, or, rather, I might say, that Mr. Sickles was regarded by us students as his *protegé*—as one in whom Da Ponte took a special interest with regard to his education; in the cemetery where Professor Da Ponte was buried, immediately after the body was lowered into the ground, Mr. Sickles broke out into a spasm of passionate grief and most frantic energy; he raved, and tore up and down the graveyard shrieking, and I might even say yelling, so much so that it was impossible for us who were his friends to moliify him in any measure by words; we were obliged to take hold of him, and by friendly force restrain him, and thus ultimately we took him out of the cemetery; the demonstration that he made might be called one of frantic grief.

Q.—Did he do any violence to his person or his garments, or anything of that kind?

Witness.—I cannot say positively as to that, but the impression I have is that he did tear his clothes and his hair; I cannot swear positively as to that; the other facts are very indelibly impressed on my mind.

Q.—Is the statement now made by you one that was sought by the prisoner's counsel, or are you here in consequence of a voluntary communication from you?

Witness.—It has not been solicited at all; it was suggested to my mind as being a piece of testimony which would be a benefit to Mr. Sickles.

Mr. Carlisle.—It is not necessary to state that; nobody imputes improper motives to you.

Mr. Stanton.—It is only to show that Mr. Sickles was unconscious of anything strange having taken place on that occasion.

Mr. Brady.—You can prove that Mr. Sickles did not directly or indirectiy apply to you to give his testimony.

Mr. Carlisle.—Nobody says he did.

Mr. Brady.—I want to exclude the possibility of that idea.

Mr. Carlisle.—Nobody questions it.

To Mr. Ould.—I cannot tell precisely what was Mr. Sickles' age at the time of that occurrence; it was in 1840; I suppose we would have called ourselves young men then.

Mr. Brady.—Young America. (Laughter.)

Witness—We were both about the same age. I am now forty years of age. I cannot say how long this frantic grief lasted—somewhere between five and ten minutes. Saw no trace of it the day following. I was not associated with him then, as I graduated in 1839, and went to the New York Theological Seminary. Do not recollect whether I saw Mr. Sickles the next day. I did see him two or three days afterwards. Did not then notice anything extraordinary or unusual in his appearance. I might say, possibly, that he appeared to be rather lighter-headed, and apparently too much so under the circumstances. His light heartedness seemed unnatural in contrast with the grief he had ex-

hibited two days before. With respect to the first manifestation, it was the most remarkable one I ever saw. I have been in the ministry for several years, and have never seen anything like it. There was nothing particular on the second occasion to produce mirthfulness.

To Mr. Carlisle—The latter incident was somewhere near the University. All traces of grief, so far as I saw, had disappeared. It was such a very casual thing that I am not able to recall more—the time or the circumstances. It was so ephemeral that I thought no more of it.

To Mr. Brady—As to this exhibition of levity, I have stated that it struck me as unnatural in contrast with the remarkable exhibition he had made two days before—so that the inference on my mind was that he was subject to very sudden emotions. This friendly force I spoke of was employed for the purpose of lessening the demonstrations which he was making, which were aggravating the grief of the mourners, and which seemed so excessive in them. We were apprehensive of some further violence to himself, and that his mind would entirely give way.

To Mr. Carlisle—Mr. Sickles was studying in the English and scientific classes, and did not graduate with me.

Jesse B. Haw examined by Mr. Brady—Knew Mr. Key. The last time I saw him was the morning of the day he was shot, between ten and twelve o'clock, in Lafayette Square. Saw him come out of the west gate. He went towards Georgetown. I lost sight of him as he passed. I did not notice him looking at anything. I was with Mr. Young at the time, but did not see Mr. Key use his handkerchief. Have known Mr. Key five or six years.

Major Hopkins examined by Mr. Brady—I am coachman for Col. Freeman; have been for five or six years. His house is between Fifteenth and Sixteenth streets, on H. street; the last time I saw Mr. Key was Sunday morning; he was shot about half-past one. I was standing at Freeman's gate. I saw Mr. Key in the middle of Lafayette square, walking back and forth two or three times to the Jackson statue; that was all I saw on Sunday; I did not see him do anything particular at that time; I saw him on the Monday or Wednesday before the shooting. He walked past me five or six times. I saw him wave his handkerchief five or six times. Mrs. Sickles came out and joined him on the corner of H. street and Madison place. I saw them go up Fifteenth street, and lost sight of them on the steps of John Gray's house.

Mr. Carlisle—As a matter of curiosity, is Major your Christian name or title?

Witness—My name.

Mr. Carlisle—That explains why the Major drives the Colonel's carriage—you don't belong to the army or militia.

Cross-examined by Mr. Carlisle—It was either on Monday or Wednesday that I saw them, between one and two o'clock; Philip Lynch, the footman of Colonel Freeman, was with me at the time; we did not follow the parties. we were on the box of the coach when we first saw him wave his handkerchief; we drove to Judge Wayne's; saw them while we were going back, and also on First street, while going to Mrs. Cutts'.

Mr. Carlisle—Do you know Mrs. Sickles well? What's her size?

Witness—She is not very large nor very small, but of middle height, light hair, a little stout. I cannot say how tall she is.

Q.—How tall are you?

Witness—About five feet seven inches.

Q.—Is she as tall as you

Witness—I guess not.

Q.—Is she five feet two?

Witness—I can't say, I never measured her. (Excessive laughter, which the officers rebuked.)

Mr. Carlisle—I am very glad you have mentioned the fact, and sworn to it. There can be no doubt of it, I suppose.

Witness—I saw her with her veil up, and distinctly recognized her; it was a pleasant day, and the usual number of people were in the street she had on a black dress and dark cloak, bordered with red and white.

Cross-examined by Mr. Ould, particularly as to his locality when he saw the parties, when it appeared that he was a square off at the time he took notice of her dress.

Witness—To the best of my opinion that lady was Mrs. Sickles, because I had seen her coming out and going down Madison place with Mr. Key; the lady I saw in Fifteenth street wore the same clothes that Mrs. Sickles wore; this was between two and three o'clock.

Q.—Did you or did you not merely suspect that this was Mrs. S., or did you know it?

A.—To the best of my opinion it was Mrs. S.

Mrs. Nancy Brown, a middle aged lady, was next placed on the stand. As the oath was administered to her, she said she did not hear it distinctly, and wanted to understand it. She drew near the Clerk, and took the oath.

Examined by Mr. Brady—I live in Fifteenth street; my husband is the President's Gardener; I knew Mr. Key; I saw him on the Wednesday before he was shot.

Q.—Where did you see him?

Witness—I saw him going into a house on Fifteenth street, the next but one to where I live.

Mr. Carlisle tried to stop the answer. He supposed there must be some point of time when his Honor would hear and determine the question about this house of John Gray's. They were sliding along in the direction of giving evidence of adultery. He desired to know and to have it determined whether his Honor meant to admit as competent evidence facts tending to show previous adultery on the part of deceased with the prisoner's wife? They were getting along, point by point, towards that subject, and if they did not make an objection now, he did not know when they should make it. If his Honor thought the evidence should be admitted, no objection could or would be offered on the part of the prosecution. But they would have evidence to offer on the same subject. He asked whether this was or was not a link in the chain of evidence bearing on adultery? If so, it was the duty of the prosecution to present the question to the court.

Mr. Brady would say a few words, politely he hoped, in response to the prosecution. The defence was represented here, to the annoyance apparently of the District Attorney, by several counsel. The prosecution was represented by two counsel. For his part he wished it represented by six counsel. He would insist that Mr. Key was killed in an act of adultery, within the meaning of the law, and that that was proved within the testimony of the prosecution.

He offered this evidence—first, to prove an adulterous intercourse and connection carried on between Mr. Key and Mr. Sickles by a standing agreement between them, dating further back than the hiring of this house in Fifteenth street, and connected with the hiring and furnishing of that house; and they would claim that where an adulterer hires a house and takes to it the wife of another man, daily or weekly, or whenever he could get her to go there, that was a case of habitual adultery. In other words, they said that when a man and woman go habitually to a house far the purpose of adultery, they are living in adultery all the time; and it was not necessary for the husband to wait for the disgusting exhibition of his own dishonor, to slay the gorged and satiated and brutal adulterer; that was one aspect of this case. They had proved that Mr Key was frequently seen before the house of Mr. Sickles, waving a white handkerchief, and no one could look on any part of this case without seeing this tainted banner floating in the atmosphere, which was corrupted by the presence of that brutal adultery.

They had shown that with that banner in his hand, and with the key of that house of prostitution in his pocket, the deceased was hovering around the house of Mr. Sickles when the outraged husband met and slew him. He supposed that, having proved the matter of the signal, they could show the purpose for which that house in Fifteenth street was kept; and he held that, in point of law and in point of reason, the deceased was killed in the act. They would offer this evidence, too, on the point of insanity, supporting it on the rulings in the case of Day and Jarboe.

They offered to prove, first, that just before Mr. Sickles left his house and home, on the 27th of February, and shortly before he met Mr. Key, the latter had used his handkerchief in front of said house, as a signal to Mrs. S. to leave the house and join him, to proceed to said house in Fifteenth street, and there have adulterous intercourse with said Key, and that Mr. Sickles saw the said Key use the said handkerchief, and knew what was the meaning of such use, as is above stated; that Key hired a house in Fifteenth street, in the city of Washington, for the exclusive purpose of

committing adultery therein with Mrs. Sickles; that the key of such house was found on the person of deceased after his death, and was one of those which have been produced on this trial; that Mr. Sickles knew of the aforesaid design, intent and preparation of this same key; that at the time Mr. Sickles met Key, on the 27th of February, at the corner of Madison avenue, and just before he was shot, Key was on his way to the home and house of Mrs. Sickles, with the unlawful and wicked design to cause and procure her to leave said house and proceed with him to the aforesaid house on Fifteenth street, and then and there to have adulterous connection with him, the said Key then having the key of the front door lock of said house in his possession, to be used in procuring admittance; that Mr. Key was in the habit of exhibitiug and using his handkerchief before Mr. Sickles' house and home as a signal, on perceiving which she was to leave said house and proceed to the house in Fifteenth street, and there have adulterous connection with Mr. Key, and that she had done so in pursuance of such signal; all which said facts had shortly before the meeting between Mr. Key and Mr. Sickles, on the 27th of February, come to the knowledge of said Sickles, and that said Sickles, immediately before the killing, had himself seen the said Key using his handkerchief before the residence of said Sickles, for the adulterous purpose aforesaid.

The Judge—As I understand this proposition, it brings up the question of admission of proof of adulterous intercourse.

Mr. Brady.—For any purpose?

The Judge.—Yes, for any purpose that opens the whole question.

Mr. Carlisle.—I think so.

Here the court took a recess for a few minutes, and then the argument proceeded.

Mr. Carlisle argued against the admissibility of evidence of adultery. He regarded the question as one of exceeding importance to the administration of justice generally. The consequences of his Honor's opinion must stretch far beyond the issues of this particular case. His honor had offered to him an opportunity of establishing a new era in the administration of justice in cases of homicide, and he was invited, instead of resting on the *antiquas vias* of the law, to follow the ingenuity of counsel into new and devious paths. The counsel on the other side would argue that they were only asking his Honor to apply old principles to a new case, if they could succeed in showing that he (Carlisle) would not be disposed to cavil at or object to such determination by the Court.

He had already, in an argument somewhat akin to this, had occasion to express to the court the views of the law which the prosecution here entertained, and he was compelled to wait and hear the arguments and the doctrines which were to him unknown and unimaginable by which the learned counsel on the other side hoped to satisfy his Honor that the plain rule laid down in all text books, and adjudicated in all cases of which there are records, was not the rule of this case.

It would offend his Honor to refer to the text writers, and prove that to reduce the grade of the offence from murder to manslaughter, because of an act of adultery by deceased with the prisoner's wife; that the adultery must be an actual and not an imaginary or figurative one; that it must be one in the eyes of the husband; that the killing under that provocation must be an immediate killing; and that the subsequent killing is one on the principle of revenge, and is murder. The case in Iredell, to which he referred yesterday, recapitulated the law, and laid it down as the existing law of the land. The learned Judge there said, that with that law all existing authorities concurred. The same law is aid down in the American treatises on the subject.

Counsel would refer his Honor to Wharton on Homicide, page 179, where it is said that, however great the provocation may have been, if time had elapsed for passion to subside, the killing is murder; and that in the case of adultery where there has been cooling time, the provocation will not avail in alleviation of guilt.

He also referred to the case of the Queen against Fisher (8 Carrington and Paine.) There a father found that his son had been reduced to an unutterable condition of crime and disgrace by the party whose life he took. There, too, the act itself was a capital crime, punishable under the law of the land by death. For that father to have brought the man to justice would have been to have brought his own son to the gallows. To be sure, that father had not been described as in any paroxysms of grief; but counsel had yet to learn that grief would not corrode the heart as surely, when silently gnawing at it.

Under this provocation, the father, when he met the offender, slew him. Mr. Justice Parke, in summing up that case, said that there would be exceedingly wild work taking place in the world if every man were allowed to be the judge of his own wrongs; that there must be an instant provocation to justify a verdict of manslaughter in all cases- the party must see the act done. He therefore held that, as the father in this case had not seen the act done, there was nothing to reduce the crime from murder to manslaughter.

Counsel for defence.—There was only a conviction of manslaughter there.

Mr. Carlisle.—That is true. The charge of the Judge is reported on the question of provocation, and on that question alone the facts of the case showed that there was a scuffle between the parties, and counsel could well comprehend how any jury, called to pass on the life of that father, would do as the jury had done in the case of Jarboe, stand on tiptoe to find a reasonable doubt of the prisoner's guilt.

Counsel would never forget that case of Jarboe, and if that case were relied on by the counsel on the other side for a precedent for throwing open the gates of society to every species of violence, when that violence was set in motion by the natural feelings of the heart. they were mistaken.

For one, as a humble member of this community, as one who expected his bones to rest on this soil, and the bones of his children, and his children's children to rest in the same hallowed soil, he should deplore that he had been spared to live to see the day that such a doctrine should be proclaimed by the authority which resides in the jury box. But even if the Jarboe case established such an evil precedent, he had that confidence in the good and lawful men of this community, that he did not believe that any precedent would lead astray a jury of this county.

In the case of Jarboe, it appeared in evidence that the prisoner and his young sister, who had fallen into the arms of an infamous seducer, when they were walking in the street together met the deceased, and that the brother asked him civilly and quietly, "What do you mean to do about my sister?" The answer was brutal in the extreme; and it further appeared that on the instant of death the deceased had drawn from his person a loaded weapon, which fell at his feet. Under these circumstances the counsel appealed, and rightly appealed. to the jury to give the prisoner the benefit of the doubt in reference to the deceased having first drawn a pistol upon the prisoner. That was not this case.

Counsel forbore at this time to contrast the two cases. The case of the People against John, reported in Iredell, was a direct case of adultry, where the husband found the deceased lying on a bed, and his wife in the room with him, and instantly killed him. And there the adultery was not allowed to be proved in justification. Counsel had yet to hear any argument against the authority of that case, except that the party was a slave.

Counsel also referred to the case of the Queen vs. Kelly, reported in Carrington and Paine.

Counsel for defence—That is the case where a man shot his mistress on mere suspicion.

Mr. Carlisle—It is. I do not intend to compare the facts with the facts of this case, but read it merely for the law, as it is laid down in it. That was a modern case—a case long subsequent to the time when the benefit of clergy (the burning in the hand) was abolished.

Whatever there be disgusting or repugnant in the proposition that the husband must catch the adulterer in the act to entitle him to set it up in mitigation of the offence, it is the proposition of the law, and not of this prosecution. Painful and disgusting as the law might be unhappily for those who offend it, it must be submitted to.

Counsel for the defence say they propose to show habitual adultery; that the prisoner saw the adultery with his mind's eye; that the proof had thickened upon him, until he was forced to believe it. Granted all this for the purpose of this argument; granted that he had sat in judgment, and heard the parties, both of them, and had pronounced a true judgment that they were

guilty, did that make the case laid down in the text books of an adulterer found by the husband in the very act? Why, no sir. And yet the doctrine here was not that that knowledge of adultery reduced the crime from the grade of murder to that of manslaughter, for that is scouted, but that it justified the murder.

According to this doctrine, the husband was in a condition for the year during which this adulterous intercourse had continued to kill not only the adulteress but her paramour. This doctrine was entirely new to him, but of course it did not follow from that circumstance that it might not be sound.

Counsel had not the advantage of having the points of evidence before him, but he understood that it was proposed to prove habitual adultery between deceased and the prisoner's wife. If a woman leaves her husband's house and goes to live with her paramour in open adultery, might the injured husband at any time he thought proper to go and slay that adulterer? He would put that case in the strongest light; if he had the ability of the counsel on the other side he would paint it in the most disgusting terms; but he was "no orator as Brutus is;" it would be new law to him that the husband might, under such circumstances, slay his wife or her paramour; his Honor had never read such a law, and certainly had never enunciated it.

What next was offered? The waving of the flag, the possession of the key of a house hired for the purpose of prostitution; that the deceased at the moment of the homicide was on his way to the prisoner's house, with the unlawful design of seducing the prisoner's wife out of her house.

What next was offered to be proved? That the prisoner knew the deceased was on his way to the house with the design of inducing his wife to commit an act of adultery with him. Did that knowledge justify murder? Why, not at all. Such a knowledge made his wife a thing to be loathed by him. These are the facts offered in evidence. He might place them under three heads: First, facts tending to show habitual and continued acts of adultery; second, a specific act of adultery; and third, evidence tending to show that the adulterer was about to perpetrate an unspeakable wrong upon the prisoner.

Counsel supposed that no further act of shame could have been then perpetrated upon the prisoner's wife. She had become dead to the prisoner at the bar—worse than dead, infinitely worse. He, the counsel proceeded, has not the consolation which her death might have given him. I am not here, and I hope I never shall be in any place, to endeavor to take from him any particle of sympathy which any human heart may extend toward him. Far from it.

In my connection with this case I have not swerved thus far, and I trust my life will not be spared to the end if I do swerve from the spirit of justice, of truth and of Christianity, in respect of every movement connected with it. But this is the case of a husband who takes pains first to show that his wife was a confirmed adulteress, who would have you believe that when she lay her head upon his trusting bosom night after night, she had come from the embraces of an adulterer; that his wife was one who had stood with their child, the innocent pledge of their mutual love, resting her hands on its head, and who then and there made or received or answered signals from an adulterer; a woman who had polluted his bed, who had made his child motherless, who had filled his cup of shame and bitterness to overflowing. This is his account of it. There seems to be no difference at all in respect of the colors in which the unhappy wife is to be painted. I concede to the prisoner, in the argument I am now making, all that he claims for himself, as one capable of comprehending and fully realizing all the sacred relations of the marriage tie; and I say magnifying him in that respect for the sake of this argument, desiring to say all that can be said for him, to erect him into a pure, upright, virtuous, just man; a man of the purest and the strongest feelings, and nicest sense of honor; a man capable of being driven to insanity by the discovery of the infidelity of his wife; granting all this to him, how does it bear on the proposition of this evidence? Why, they tell us he has tracked this thing from the beginning to the end.

Mr. Brady.—I beg your pardon; nobody has stated that in my hearing. The proposition is that just before Mr. Sickles left his house that Sunday, he had discovered these facts, and had also witnessed the waving of this flag.

Mr. Carlisle.—I am aware that this offer of evidence embraces no such fact; it would be strange if it did. But I am addressing his Honor on a matter of law; and I am addressing a Judge who has seen and read and determined upon the admissibility of a certain paper which on Saturday night was drawn up in the prisoner's presence, and signed by witnesses. I admit for the purpose of the argument, that the prisoner had the undoubted proofs of his wife's habitual adultery with the deceased. He sees the flag of the adulterer waving, and he slays him on the instant of meditation of the violation of the husband's rights.

Why, what rights had the prisoner in this woman at that time? If he be as they describe him, and as he is presumed to be, he must have loathed and deserted her. What outrage then could be committed on him that could add to his suffering? Do the counsel mean that still by condonation the prisoner might have been willing to take back to his arms the wife who had been a confirmed adulteress for many months, and that he would have done so but that he saw the flag of the adulterer waving in front of his house? I fancy not.

Looking at it then not as lawyers, but as men, with the common heart of mankind, he would ask what was there in that meditated act at that time to justify the prisoner in taking the life of the deceased? Nothing, he submitted. What was there in the eye of a lawyer? One may take life to prevent the commission of a felony; but was that meditated act a felony? The counsel on the other side had urged that it was not only not a high crime by the law, but that it was no crime at all; that because the laws of society did not furnish satisfactory punishment for such a crime, they are remitted to the higher law. That was the theory of the gentleman who developed that portion of the defence.

He said that Daniel E. Sickles had made a compact with society, one of the conditions of which was that society should furnish punishment for the adulterer; otherwise it was no bargain. Well, it seems, according to this doctrine, that Mr. Sickles did condescend to enter society under that compact, and that society failed to fulfil this pledge. His destiny brought him to this unhappy District, where society had failed to provide for such a case, and therefore, under these circumstances, another law goes into operation.

But, continued the counsel, we are now instructed that the law furnished no sufficient punishment for adultery, and that woman, who is the mother of us all, woman the wife, woman the sister, woman the daughter, woman, embodying all that is purest and noblest and most elevating in creation, must be protection from herself. And as the law does not protect her, it follows that she must be chained, or barred in a dungeon, or else her husband must have full power to avenge his wounded honor.

The jury are told that they must take heed themselves. They are appealed to to remember that such is the nature of woman, whose "name is frailty," that the husband must stand at the door, revolver or bowie knife in hand; that it must be understood that that higher law controls which authorizes him to deal summarily with the adulterer, and to put him to death; or else, as is perfectly clear from the well known nature and character of woman, an adulterer has only to wave his flag—to beckon to her—only to show her how she may desert virtue, bring ruin and desolation to her household, and make her children motherless—and she will do it. She will do it. Not this woman, but all women, sir.

I will not trust myself, at this moment, to remark upon that doctrine as I think it should be remarked upon. I have referred to it incidentally and without premeditation, in connection with this idea that there is here no law to punish adultery. That according to the law under which your Honor sits, and which you are sworn to administer, adultery is no crime. But then what follows? Why, it follows that the taking of this life was not the taking of a life to prevent the commission of any crime known to the law. That is the result of the argument, and I am now on the question of how it is to be determined by a Judge and a lawyer—the only doctrine that I know applicable to the subject being that to prevent the commission of a felony about to be immediately committed. A man may justifiably take life, but he may not do so in regard to any minor degree of crime, and, *a fortiori*, not where the thing attempted to be prevented is no crime known to the law. But there the gentleman (counsel for the defence) is mistaken. Adultery is a crime known to the law of this District.

Whether it is or is not punished as the gentleman or myself might think it ought to be punished, is not material. I myself have known cases of adultery tried in this Court—two or three of them. It one your Honor was called upon to determine what was meant by the term adultery, and which of the parties in a given case were entitled to that legal designation. But that is immaterial. It is a misdemeanor under the law of this District; certainly it is not a crime to prevent which the law arms any one, or, exclusively of all others, the person who has been injured, with the right to take the life of the person meditating the crime.

On this ground, in regard to which he felt the most solicitude, because he thought it concerned the administration of justice eminently, and the peace of the District eminently, counsel had nothing more to say as to the offer of this evidence on the ground of tendency to prove insanity.

He would repeat what he had said before, that it was only competent to inquire into the question of insanity itself, not into the cause of that insanity.

Mr. Brady—Was the case of adultery to which you refer as being tried here an indictment under the statute?

Mr. Carlisle—Yes, under the statute of Maryland

Mr. Magruder inquired whether, under the statute of Maryland, the punishment for that crime was not a fine of a hundred pounds of tobacco?

Mr. Carlisle could not say exactly what was the punishment.

Counsel for defence—Then the only satisfaction an injured husband could have would be a chew of tobacco. (Laughter).

Mr. Phillips said the gentleman who addressed the Court took occasion to express his sympathy for the prisoner, and declared in very emphatic terms, if he thought he would lose that sympathy he hoped his life would not be preserved to end this trial.

Mr. Carlisle replied he was unfortunate if he had not succeeded in making himself understood. What he said was, that he did not mean to say one word to deprive the prisoner of the sympathy which might be extended to him; that so far as he was concerned, he would conduct this case in the spirit of truth, justice, Christianity, and that if he willfully and knowingly departed from this course, he trusted his life would not be spared to end the trial.

Mr. Phillips had so understood him.

Mr. Brady—Certainly, we don't want Mr. Carlisle to die.

Mr. Carlisle—We are growing so fond of each other, sir, that I am afraid it will prevent us from doing our duty.

Mr. Phillips (resuming) said—Let us contrast with the declarations the gentleman has made the object of the speech he has addressed to us, which, in spirit and style, though this is a matter of taste, is rather becoming the hustings than to the judge on a question of law. Let us controvert them with the temper and manner of that speech. While he has on one hand given an expression to the sympathy which ought to exist everywhere, on the other he has argued to exclude from the consideration of the jury the ground of the provocation which induced the passion which led to the commission of the act. This was the whole scope, object and effect of the speech; it was that the jury should not have the proof of character, the provocation which led to the commission of the act.

Mr. Carlisle—You are quite right.

Mr. Phillips—The gentleman also declared, if he thought this case, as made out according to the evidence given, could produce from the jury another verdict than that of murder; he trusted the bones of himself and his children's bones, which he expected would be gathered round him, might not rest in such a land; there was pollution in the atmosphere of such a country. I give my friend fair warning. There is not in this broad land, where liberty and virtue walk hand in hand, there is not a spot where a jury would be found to render such a verdict in such a case.

Mr. Carlisle—You do not state my proposition accurately. I said nothing about the facts of this case. I was speaking with reference to a suggestion of the counsel, and I said, when the day came that a jury undertook to set their faces against their sworn duty, and against the law and evidence, I would wipe off the dust of my feet of this community.

Mr. Phillips—The gentleman's explanation does not change my construction. He maintains that such a case as is made by the evidence is murder, and nothing else. I cannot mistake his argument.

Mr. Carlisle—If the Judge lays down the law as murder the jury will conform to it.

Mr. Phillips further controverted his points, and Mr. Carlisle explained.

Mr. Phillips said—While I confess in this matter I feel as a husband and father—a feeling no doubt shared by every man who hears me—I enter this court house endeavoring to suppress those feelings, and bring myself to the act of thinking and speaking as a lawyer. In this spirit, discarding, I trust for all time, any feelings which may have been excited by the remarks of my friend, for I take pleasure in calling him my friend—

Mr. Carlisle (interrupting)—I reciprocate it.

Mr. Phillips—I proceed now to discuss the merits of the case. The evidence we propose to offer is on four points: First, justification; second, provocation; third, insanity; fourth, the explaining words uttered by defendant at the time of the homocide, and proved by the prosecution.

To one of these points I will refer—namely, as to how far the evidence is proper to show the prosecution on which the passion in this case is to be justified or excused. It was admitted on the opening that if the evidence be competent for any purpose, there is an end of the question; that the weight of is not for consideration.

Is it competent to prove the fact of the adultery? The indictment sets out by stating what the injury is, and represents the accused as having been moved by the devil, as a preliminary or introductory remark—nothing more; that he was instigated by evil passion or spirit. The old form of indictment has been followed, which would be more honored in the breach than than the observance. The same evil spirit was a figurative description of the devil.

But further on in the indictment the language is set out more legally, and the technical words, "murder" and "felonious" are used. All these words and description embrace the malice and premeditation on which alone the law will rest any accusation of murder which this indictment charges.

The distinction between murder and manslaughter is so familiar to the minds of lawyers and your Honor, that it is needless to enter into technical language to declare it. We know that in murder there is premeditation and deliberation, out of which the law raises the malice of one thought, and that in manslaughter there is absence of deliberation, premeditation and malice aforethought: and this is sufficient to indicate the true line between these two offences. With reference to malice and its peculiar character, we find the most satisfactory definition to be this:—Its presence is discovered when it has been attended by such circumstances as are the ordinary symptoms of a wicked, depraved and malignant spirit, and which indicates a heart regardless of social duty and deliberately bent on mischief.

To sustain the indictment, you have to show the presence of that malice which is vigorously and accurately described in the law books with reference to the question of malice. So necessary is it to constitute murder, and sustain an indictment for murder, that in a case where express malice is proved, by old grudges, threats, and killing subsequently, yet, if a fresh provocation, calculated to excite the passions, has intervened between the old grudge and the commission of the act, the law refers the killing to the new provocation, and not to the old grudge or threat.

It is said by my learned friend that malice may be presumed out of the act of killing. Granted. But this is only a presumption, and, like other presumptions, may be rebutted by evidence showing the fast friendship of the parties, which would exclude malice. It may be shown that the killing rose from passion excited by just provocation.

There are two modes by which the prisoner may relieve himself from the presumption which the law casts on the act of killing, and thus change the character of the offence for which he is indicted. As to the first mode—of rebutting malice—we would be enabled to enter into proof, and show the kind relations between these parties at a date long anterior to the time of killing. Now we propose to use the second mode of rebutting the presumption of malice, which would arise out of the killing, to wit:—We propose to prove the passion, and the provocation which led to that passion.

As to the first, the rule, which has been well laid down, and on which this court has acted, is, that expressions of good-will and acts of kindness on the part of the prisoner towards the deceased are always considered important, as showing what was his general disposition towards the deceased, from which the jury will be led to conclude the intention was not what the charge imputes.

When we come to the second mode of rebutting the presumption of killing with malice, by showing passion as connected with the prosecution, we are met by the objections of the gentlemen engaged for the prosecution, who say, however true that may be, there is a wall built up by the law which forbids its access to the jury. Mr. Phillips here referred to the Commonwealth against Bell, in Addison, page 162, adding—here the judge lays down the doctrine, which is consistent entirely with everything we have said, namely—that the passion rising from sufficient provocation is evidence of the absence of malice.

We think we have proved the passion. That is not for us, but for the jury to determine. Then, in order to rebut the presumption of malice, by which we would change the character of the offence, we have only one thing to do, to wit: to show that passion rose from sufficient provocation; and while we are in pursuit for the doctrine of the law, and while attempting to rebut the presumption of malice, the gentleman takes his stand with a firmness which, in his opinion, will not and cannot be shaken, and speaks about certain things which would lead to most disastrous consequences to the community. If a father kills one who has beaten his son, and he is indicted for murder, to what authority would the gentleman refer to exclude from the jury the evidence of the provocation?

It is admitted that if a father kills one who has assaulted or killed his son, you may show the provocation as connected with the passion, for the purpose of reducing or mitigating the offence; but here the proposition is insisted upon that the slayer of a man who has committed adultery with his wife, cannot show that the passion which led him to the killing was produced by that provocation.

The very last decision which my friend read described adultery to be the greatest provocation which can be inflicted on any human being. The language of the judge was, "it is more than human nature can bear." If adultery be the greatest provocation that can befall a man, other provocations are necessarily of a less degree— I presume there is no misapprehension of that. The killing of a man who has beaten his son is not, therefore, the greatest provocation, for he says adultery is. He may show provocation, but as to the latter, the greatest provocation, we are to be excluded.

But coming nearer to the point, we have the proposition that if the husband find or see the wife in the act of adultery, then the provocation, and the passion induced by the provocation, would mitigate or lessen the offence charged as murder. But if he did not see it, then the adultery, however heinous, and under whatever state of aggravation the mind can conceive, forms not the slightest provocation in the eye of the law for the act; and the gentleman in giving his construction of the word "finding," which is the word in most of the books, interprets it to mean "see with his eyes the act of adultery."

Now, why say the eye? We have the eye, the ear, and the touch; all of them are mere messengers of the mind, in which knowledge is obtained. The knowledge thus derived is to be the proper subject of human action. In many cases there might be knowledge derived through the ear as by the eye. What if a man see another entering his bedchamber, and applies his ear to the keyhole and hears such evidence as would give him indications of but one act, and which it is not necessary for me to describe or to paint, what if the man should slay the adulterer?

Would the gentleman tell us in a labored argument that there was no provocation because the man did not see the thing, and that it was only through the ear of the mind he obtained the information of the adultery. Take the question of touch, where neither the eye nor the ear is invoked as the messenger of the mind. In the course of my experience I have been engaged in three cases of homicide under such circumstances. In one of them the facts serve to illustrate the point on which I am speaking.

A stevedore, whose business was the shipping in Mobile Bay, after an abscence of some weeks, returned to his home. He arrived at about twelve o'clock at night; he went into his house, a single story with a piazza around it and two doors, one leading to the bedroom, the other to the parlor. On entering the chamber, where thick darkness prevailed, he saw nothing, heard nothing. He advanced to the bed, put his hand in it, and felt a man. He drew his knife—the knife of a stevedore—long and broad bladed, and stabbed him repeated blows, till he fell from the bed to the floor, dead; the slayer called for a neighbor to bring a light; he put it the face of the deceased, when he found that, as in this case, the man who had most grievously wronged him, he had held to his bosom as a friend. I merely use this case as an illustration. It was the touch that communicated the knowledge of the fact to the man's mind. Where then is the reason for the argument that no provocation of this kind is worth anything in a court of justice except it be presented to the eye.

Mr. Phillips was proceeding to other parts of his argument, when the Court reminded him that the usual hour of adjournment had arrived.

TWELFTH DAY.—*Saturday, April* 16.

The Court opened at the usual hour, and with the usual crowd in attendance.

The argument on the question of the admissibility of evidence of adultery was pretermitted for the present, in order to allow Peter Cagger, of Albany, to be examined, he being desirous of returning home this afternoon.

EXAMINATION OF PETER CAGGER.

Peter Cagger examined by Mr. Brady.—I am a member of the bar, residing in the city of Albany; have known Mr. Sickles for twelve years and upwards; saw Mr. Key but once, in June, 1858; I was introduced to him by letter from Mr. Sickles, and engaged him in a case as counsel.

To the Court.—I retained Mr. Key's services on the ground of that letter of introduction.

Not cross-examined.

Mr. Ould would like to refer the counsel for the defence to one or two additional authorities, third volumes, Jones law reports. The State against Reuben Samuel. The State vs. John P. Creighton; C. Iredell, page 164. The State vs. John G. Ferguson. Hill South Carolina reports, page 619.

Mr. Phillips resumed his argument. He had discussed yesterday the following propositions:—1. That if the evidence offered is admissible for any purpose it must be received. 2. That the issue presented by the indictment is not whether there has been a killing, but whether there has been a murder. 3. That, to constitute murder, there must be established a killing with deliberate intent or malice prepense.

4. That the malice of the law implied a wicked, depraved, and malignant spirit, a heart regardless of social duty, and fatally bent on mischief.

5. That even in cases of express malice, arising out of a past grudge, if there has intervened a new provocation, it was not to be presumed the killing was on the old grudge.

6. That in cases where the law presumes malice from the act of killing, this presumption may be rebutted by expressions of good will and acts of kindness on the part of the prisoner towards the deceased, always considered important evidence, as showing what was his general disposition towards the deceased, from which the jury may be led to conclude that his intention could not have been what the charge imputes. (Quoting 2d Russell, page 698.) That this presumption may also be rebutted by showing that the killing was in passion, for passions arising from sufficient provocation is evidence of the absence of malice. Quoting from the Commonwealth against Bell, page 162.

7. That as the law declares adultery to be the greatest of all provocations, there could be no such legal absurdity as permitting evidence of the lesser provocation and excluding evidence of the greater.

8. This brought one to the consideration of the admission of the prosecution, that if the accused had seen with his own eyes the very act of adultery, then the provocation given could be given in evidence—but not otherwise.

This I demonstrate to be wholly unreasonable and fallacious by showing that the eye, the ear, and the

touch were but media through which facts were transmitted to the brain, and that this governed the will and decided the action. I was illustrating the position that the knowledge of the adultery, at the time of its commission, could be as definitely conveyed to the mind by the ear or the touch as by the eye, and cited examples to this end, when the adjournment of the Court took place. He had yesterday presented a case in illustration of the falsity and absurdity of the doctrine that a man must see the act of adultery to set it up in justification.

He might also illustrate the same idea by the case of the blind man. He had seen a picture of Hogarth's representing a scene at an English hustings, where an old man, with the snows of many winters on his head, and without his right arm, which he had lost in the service of his country, came up to vote. The old man was challenged, and the Judge declared that, inasmuch as the form of the oath required the persons taking it to place his right hand on the book, and that as this man had no right hand, he was not a competent voter.

That doctrine was about as absurd as the doctrine laid down by the prosecution that the husband must find the adulterer in the very act. Suppose a husband found the adulterer in his wife's bed, in a state of quiescence, or found him disrobing or clothing himself in the bedroom of his wife, would it be held that that fact would not be a legal justification?

The District Attorney did not know that there was any well fixed line in this matter.

Mr. Phillips replied that there was no reason for this rule, as in the nature of things it would be impossible to make the proof, and where the reason of the law does not apply the law itself is at an end. Did not the adulterer invariably endeavor to shield himself from detection?

Besides, if the husband did find the parties in the act, how was it to be proved? The tongue of the adulterer is palsied, the tongue of the wife is silenced by the law, and the prisoner cannot give evidence in his own cause. It was not therefore the mere witnessing of the fact but the knowledge of it, however derived, which stirs the human passions and lashes them into fury; and if the adulterer is killed in the transport of passion thus aroused, the law, which is a rule for the government of man, has regard for the frailties which hang around the human heart. The most liberal interpretation of the law does not require that the killing should be concurrent with the act of adultery.

Counsel referred to 1st Russell, page 4 to 10, to show that though the killing may be subsequent, yet it will not be murder if not done deliberately and upon revenge; counsel also discussed the case of Manning, on which he said this prosecution entirely rested, and even there the judges unanimously declared "that the killing was but manslaughter, and the prisoner having clergy at the bar the sentence was that he be burned in the hand, and the Court directed the executioner to burn the hand very slightly as adultery was the greatest provocation that a man could receive, and was too much for him to bear."

With a view of testing this matter still further, suppose they were to convert this judicial resolution of the Judges in Manning's case into a statute against adultery, that any person found in the act should suffer such and such punishment, and if a person were indicted under that statute what amount of evidence, he would ask, would be sufficient to convince the jury that the offence had been committed? Would it be for a moment contended that the witnesses must testify to seeing the very act itself?

The statute of Massachusetts declared that any party who had been guilty of the crime of adultery should suffer so and so, and there what evidence was necessary to convict a man under it. He would read some other decisions there.

Counsel referred to the case of the Commonwealth vs. Morris, 1st vol. Cushing. p. 394, and also to vol, 14 Pickering, p. 518, in the case of the Commonwealth vs. Merrion. The rule was the same in other States, and in the English courts. He referred to the case of the State vs. Wallace, N. H. Reports, and to a case in Alabama. He also referred to the opinion of Lord Stowell, vol. 2 Greenleaf's Evidence, where it is declared that it is not necessary to prove the fact of adultery, but to prove such facts as led to the inevitable inferencee that the offence had been committed.

The circumstances must be such as to lead the guarded opinion of a discreet man to such a conclusion. Counsel would ask whether the knowledge on the part of the husband of the adultery is required to be greater and more complete, in order to justify the provocation, than would be required by a jury of twelve deliberate and impartial men to convince them if they were trying the very issue of adultery. To ask that would be to reverse all our notions in reference to the principles of law, and in reference to the principles of humanity.

In the case of John, reported in Iredell, John was a slave, and there being no marital rights recognized as between slaves, there could be no adultery. But the counsel on the other side had said there was no distinction in law between slaves and freemen.

Mr. Carlisle—Oh, no, I did not say that. There are local laws, of course, affecting slaves.

Mr. Phillips supposed that the gentleman had reference then to moral principles. He would take that to be the case, and he would ask, would there be no distinction or difference of feeling between the case of a white man, whose marital rights are recognized by law and by society, and those of a black man, who has no marital rights? The very statement of the proposition was enough to show its fallacy. The counsel would ask, what would be the condition of defence, if, after excluding the evidence of the provocation, the District Attorney would call upon the jury to declare that the passion of the prisoner, which had been proved, was fictitious and feigned, not real.

Mr. Carlisle thought he had noticed the point by saying that the passion was immaterial unless produced by provocation, and that a previous adultery was no legal provocation.

Mr. Phillips held that if they had a right to show the passion, they had a right to show the provocation for that passion, so as to exclude the possibility of argument that that passion was fictitious, not real. Counsel referred to vol. 1, Phillips on Evidence, p. 172, and vol. 1, Greenleaf, p. 114, sec. 105. What did they offer to prove in this case? A systematized adultery, carried on in the absence of the accused, in his house and in the house of the deceased, that these facts were made known to the prisoner, and that, a few moments before the homicide the flag of the adulterer was floating in the very eyes of the prisoner.

Under these facts, whatever calmness time might have imparted to the heart of the accused after his first knowledge of the transaction, they insisted that before the killing there was a new provocation in the eyes of all reasonable men to justify the commission of the act. Counsel was grieved to see that counsel for the prosecution had laid down the proposition that when the prisoner had knowledge of the faithlessness of his wife, there was no cause for passion.

Mr. Carlisle only made that point in answer to the plea of the homicide having been committed on the part of the prisoner to prevent the crime of adultery.

Mr. Phillips.—The argument was, that because the wife had been loathsome to the prisoner, the signal of the deceased formed no ground for passion which would lead to justification.

Mr. Carlisle disclaimed any such idea, and hoped the Court did not so understand him.

The Judge said he had understood it as Mr. Carlisle did.

Mr. Phillips.—His Honor occupied a position in this case which seldom falls to the lot of any judge. He was not called upon to make a law in this case, but to apply the analogies of the law to the new facts presented in this extraordinary case. This sometimes occurred in criminal cases, and it signally occurred in the present; for the point now discussed was, as far as he knew, never discussed or adjudicated by any tribunal in this country or in England. Here they offered to prove the truth.

What were the rules of evidence made for, but the elucidation of the truth? And should these rules be converted into an instrument for the suppression of the truth? Before such a principle was established it would be necessary, in the words of Curran, "That language should die away in the hearts of the people, and that humanity should have no ear, and liberty no tongue." That is the period and degradation, when alone such a doctrine can be successfully maintained in a court of justice.

If on this point there should be any doubt in the mind of your Honor as to whether the testimony should be admitted or not, that doubt ought to be resolved in favor of the application in this case. The oldest trial on record having any analogy to this was that of Ores-

tes, for slaying the adulterer of his mother, which was tried before the court of the Areopagites. The Goddess of Wisdom is represented as having presided there, and having cast her controlling ballot in favor of the accused; and from that day we have had the beautiful type thus derived wherever civilization has spread, that justice tempered with mercy constitutes the rule which determines the action of the courts of justice. With these remarks he submitted the case.

Counsel for Mr. Sickles said the presentation of the case is thus:—The counsel for the defence ask that certain evidence be received; the counsel of the prosecution ask that it be excluded, because if received the court is bound, as a matter of law, to decide that it goes for nothing; the question for the court is virtually this—whether the testimony shall be first received and the effect judged of afterwards.

He then stated the propositions which were offered yesterday by the defence. We, he said, offer these pure propositions on four grounds:—First, as making out a justification in the act of Mr. Sickles; second as establishing the provocation which led to the perpetration of the act; third, as illuminating the state of Mr. Sickles' mind with regard to insanity, or a mind of unsoundness at the time of the commission of the act; fourth, as proving the truth of Mr. Sickles' declaration at the time of the affray, that the mind that induced him to the commission of the act was the sense of the adulterous intercourse between Mr. Key and Mrs. Sickles. In other words, the facts show that he was the instrument in the hands of his Maker, to carry out the judgment against adultery, which is denounced by the Court of Heaven. It was necessary for him to repeat this, as the senior counsel for the prosecution (Carlisle), had claimed he had misunderstood him. The counsel had entirely misconceived the scope and effect of his address.

Mr. Carlisle.—Quite unintentionally.

Counsel for Mr. Sickles.—In order to sustain the prosecution, the evidence it is claimed, must establish four facts:—First, that the defendant was moved and seduced by the instigation of the devil to perpetrate the crime; second, that he killed the defendant feloniously, maliciously and of his malice aforethought; third, that the act was against the peace and government of the United States; fourth, that at the time of the commission of the act the deceased was in the peace of God and the United States—and we distinctly and confidently say the deceased was neither in the peace of God nor in that of the United States.

We propose to show that we are not invading a new domain of proof. We are not offering facts or evidence which have not already baen encrouched upon by testimony. We are seeking to extend the line of proof already commenced, and if it stops here we leave no doubt, morally or legally, in the mind of any man of the existence of this very adultery which we seek to establish by more positive proof.

The prosecution thought we would have difficulty to prove this, and that they might get the benefit of supposed failure. In other words, the prosecution experimented with us and allowed us to go a certain stage, and when they found us able to extract the proof they ask the Court to stay our progress.

The question is whether the Court can exclude the evidence we seek to adduce. We have offered proof as to the friendly relations which existed between the defendant and deceased, and that Mr. Key availed himself of the friendly acts of the defendant. We have shown, in the second place, that immediately before, and up to the time of the commission of this alleged criminal act, the defendant was in a state of frenzy or mental unsoundness, which forbids the idea of killing with rational mind. In the third place, we have sworn that at the very time of the act Mr. Sickles declared what was the maddening cause of his conduct. Fourth, that the deceased constantly made the defendant's house the place of adulterous assignation up to the time of his death. Fifth, that Mr. Key and Mrs. Sickles not only went in the direction of the house where it is charged they committed adultery, but that before the death of Mr. Key they were located outside the house, in the very act of entering the doors.

The simple question is, whether our proof shall take them beyond that door, and whether we shall be permitted to show the jury the guilty correspondence between them, so as to leave no doubt on the point that the deceased and Mrs. S. were pursuing a confirmed and habitual adulterous intercourse. In other words, this was not an attempt to invade a new territory of proof, but to exhaust all their proof in regard to a matter in which they fairly exhausted their proof.

It was a rule of law that where objection is to be made to a line of proof, that objection must be made in line, and once the threshold is passed it cannot be required of the party to retrace his steps. He asked the court whether the law countenanced such an experiment as that evidently made by the prosecution in this case? In the case of a witness who answers any question which he might not have answered, he is not allowed to object to answering further questions on the same point. The prosecution had permitted the defence to show certain facts which did not essentiate the main fact; and now would they ask this court to stultify itself by restraining the proof on the point of adultery? After having allowed the defence to go so far, the prosecution urge the doctrine that, unless the husband detect his wife in the very act of shame he has no rights against the party who has deflowered her body, and cannot set up the adultery as a justification for his act. In order to reduce the grade of offence, it is urged that the husband must see the act of shame with his own eyes; otherwise, he must stand before the court and the world as one of the highest criminals known to the law. So long as passion was carried on secretly and clandestinely, so long would the husband, according to this doctrine, be deprived of all right as against his wife's adulterer. His Honor knew that in cases of divorce, a chain of evidence which led the mind to the irresistible conclusion of adultery was all that is ever required. (Counsel referred to 2 Greenleaf, sections 41 and 43.) Proximated facts, leading on to the demonstration or establishment of guilt, are all that the law requires in cases of divorse. Adultery is a continuous fact, and, where once shown to exist, it is presumed to overshadow all subsequent associations of the parties. A great effort was made here to excite prejudice against the ground taken by the defence. Now, it was hardly necessary for him to appeal to this court to say that he had not laid down the doctrine that any man has a right to slay an adulterer in cold blood, and as a result of calm deliberation. Whatever, said he, my views are on that subject, I have distinctly restrained their expression in this case, because at every stage of the case, I have insisted that there is not a single feature communicating premeditation to the act which places the defendant at the bar of this court.

What I have said, and what I say now, and what I am prepared to say, in this, that when a husband catches an adulterer of his wife, either in the act of coition, or so near to that act as to leave no doubt of his guilt, that the frenzy which seizes on the husband is the mode which the Almighty has adopted of turning that husband into his instrument for carrying out the judgment which He has denounced against the adulterer: and if the Bible proves anything, I challenge any man who even professes a nominal belief in it, to gainsay that. I say that the Almighty has made us with such instincts that there are certain provocations so operating on us as that when they do work on us we are thrown on these instincts, and that our acts become but the execution of the law of Heaven. Now I will suppose a case. We have all had mothers, and can enter into the feelings which encircle a relation of that kind. Could it be expected that a son should stand in the presence of his mother, and see an indignity, whether it amounts to violence or not, offered to her? And if he rose in the midst of his feelings and slew the party who outraged the parent from whose womb he came, where is the jury that would convict him of crime in so doing? Now what is it that justifies, what that necessitates, a slaying under such circumstances? It is the irresistible influence of that love which the great Creator has implanted even in the breast of a brute towards the parent brute that produced it. Is not that precisely the affection that identifies itself with the relation of husband and wife? And if, at the time of the indignity to that relation, the party who is innocent of any participation in that indignity is so frenzied by these instincts, which are a part of him, as that he could not resist being driven on to the result that is inevitably placed before him, he thus becomes an involuntary instrument in the execution of a judgment for which, and the execution of which, he was intended by nature to be an instrument. That is the doctrine I have endeavored to place before the court and jury.

It is unnecessary for us to insist in this case that a husband, after he had discovered the fact of his wife's

adultery, has a right deliberately to conclude upon and accomplish the death of the adulterer. Where the husband slays under the influence of frenzy, he slays in obedience to the will of nature. Where he slays in the possession of his faculties, he slays in obedience to his own will. Our doctrine goes to that extent and to no greater extent. When the mind is frenzied there is no will but that which directs everything; but where the mind is in the possession of reason, then it is in possession of that will which the great Creator has vouchsafed to every mind. An effort has been made here to satisfy the Court that we are trying to throw this defence back on what is odiously called the higher law. The origin of that term is perfectly well known to all of us. It originated with some fanatics, who, for the purpose of accomplishing political ends, would subvert the structure of our government. So far as any odium is sought to be thrown on this defence by identifying it with that doctrine, we disown connection with these words; but I say that, as in the case of individuals, so in the case of communities: like individuals they are required to take the administration of the law into their own hands, and administer it for their own benefit; because those who have been confided with its administration have not been true to the duties imposed on them. Counsel here referred to the case of the Vigilance Committee of San Francisco, and proceeded: If there are periods when, and at which, communities are justified in rising, and resenting and punishing summarily the wrongs under which they have so long groaned, I ask whether or not in analogy to that, individuals may not at times, too, become invested with similar rights, and whether they are not entitled to rise, in the dignity of their individual natures, and resolve themselves into the instrument of Deity for the purpose of accomplishing and carrying out his ends? Counsel again quoted from the Sermon on the Mount—St. Matthew, 5th chapter, 28th verse—for the purpose of showing that the body of the wife is to all intents and purposes defiled by the lustful eyes of the man who lusts for her:—

But I say unto you, that whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart.

So that, said he, so far as the adultery of deceased could be perfected, it was in the course of being made perfect at the very time he was met by the defendant on the occasion leading to the affray. As to the benignity of the law in allowing the defence of adultery to reduce the grade of the offence to manslaughter, counsel asked, is the law benign? Is that the mercy which the jury are in the habit of asking when they say the Lord's Prayer? Is the law benign, is its benignity to be found in reducing the act of the husband from murder to manslaughter when he finds his wife actually engaged in her act of shame? Is that benignity?—is it mercy?—is it lenity? And yet the counsel for the prosecution say that when the husband catches the wife in her shame the law is benignant—then and only then. This doctrine of the prosecution was mainly based on the case of John, cited in 8th Iredell. All the remarks made there by the Court were *obiter*, for in that case—a slave case—the rights of the husband did not exist. The *obiter dicta* of Judges had been the occasion of more confusion in the law than arose from any other or all other causes. His Honor would find that that case in 8th Iredell repudiates the doctrine of moral insanity—a doctrine recognized by his Honor and all the great jurists of the country. Why, then, should it be relied on in regard to other points? What was the origin of the rule which says, that where a man catches his wife in her shame, and slays the adulterer, his offence is reduced to manslaughter? In the case in which that rule was declared, there was a special verdict made in reference to a particular state of facts; and was it to bind all other cases? The rule in the case of Maddy is reported in Hale's Pleas of the Crown, which were written in 1700. That rule was copied by Hawkins, which was written in 1724. It was again copied by Foster, and again by East. Did these writers sanction the rule? No; all they did was to refer to it, without giving it the weight of their names at all. Therefore it was a mere historical fact, not endorsed by any of these authorities, that in the reign of Charles II. such a rule was declared by the Court of Queen's Bench on a particular state of facts. Was that rule to govern this case? Juries were at that time mere instruments in the hands of the Court. Jury trials were then a mockery.

Is this great institution, which like a mighty tree strikes its roots deep in the soil of the constitution, to be restrained and restricted in its growth for the purpose of encircling its trunk and branches with an arbitrary rule made under a despotic government and in a corrupt age? The jury system is now developed and is perfect, and it was idle to try to apply to it the rule of two centuries since. Then the jury had no right to pass upon the motive or intention of the accused; that was kept for the decision of the Judge; but here the jury was as absolute as the Autocrat of all the Russias; his Honor could not restrain them, nothing his Honor could say should have more weight upon them, in reference at least to the facts, than what fell from the lips of the counsel.

Another consideration weighing against the rule in Maddy's case was that the Judges were anxious to aggrandize and enrich the coffers of the king, and while there the prisoner was absolved from all corporal punishment, his estates passed into the king's treasury. To show that counsel was not reviling the old law, he referred to Foster on that point, page 264. There was much progress made in the law since that time. To illustrate that he referred to the difference between now and then, in regard to the plea of insanity.

According to Lord Hale, nothing but a perfect extinguishment of the candle of the mind would satisfy the behests of the law in regard to irresponsibility. If the law of sanity had changed so, so had other laws changed, and as well might Hale be cited now to show that his Honor was not right in his ruling in cases of insanity, as be cited to show that it was necessary for a husband to catch his wife in the act of coition to reduce the grade of homicide to manslaughter.

Besides, it was suggested to him by his colleague (Mr. Brady) that Lord Hale presided in cases of prosecution for witchcraft; therefore, he said that, *non obstante* Lord Hale, this question was to-day a new one. Counsel referred to the statute of James I. in regard to homicide, in reference to which statute it was held that the case of an adulterer stabbed by the husband was not within the statute, and if the husband was indicted, under that statute the jury were directed to acquit; and so the indictment in such cases was made under the common law. Shylock-like, they secured their pound of flesh by indicting the husband under the common law, so as to get his estates for the crown. Was not this hypocrisy? Was it not such protection as the wolf give to the lamb, covering and devouring it? It would be for his Honor to say whether this rule was to be the rule of morality and society in these days.

Cousel referred to Pearson's case, in Lewis' Crown Cases, 216, where the Judges followed with the most implicit blindness everything that emanated from such a Moloch as Lord Hale. For the purpose of enforcing the right of defence to this testimony he submitted: first, the Constitution of the United States, as having broken down the old system of special verdicts, arguing if the Court can dispense with a jury it can abrogate that provision of the Constitution which provides that the trial of all crimes, except in cases of impeachment, shall be by jury. It is for the jury themselves, on the facts themselves, to form judgments with all the surrounding circumstances. North or South Carolina might make what laws they please for the trial of State offences, but they could not come into the federal courts and strike down the constitution of the land. The learned counsel (Mr. Carlisle) said he loved North Carolina law because of its mustiness of one hundred and sixty or one hundred and eighty years, and the inference was that he would rather have lived at that time; but as for himself (the counsel for the defence) he would prefer to live when he now did. (Laughter.) He would show that we were not to kneel to old idols and run after strange gods; the gods we are to worship are our household gods; we are not to run after those of other countries. The second points is this: In the present case the intention is synonymous with the state of the mind, and the causes which produced the state of the mind are admissible for the purpose of illustrating the defendant's acts. In Day's case this court received the whole narative; you permitted the prisoner to show that his wife had a child three or four months after marriage; you permitted him to establish all the facts in evidence; and at the close of the case the effect of these facts judged of. In Jarboe's was the case same thing was allowed; the deceased seduced the prisoner's sister, under promise of marriage. Now, the door through which these facts entered in these cases is sought to be closed against us

In the case of Singleton Mercer all the facts were narrated; for the sister of Mercer was permitted to take the stand and trace out her acquaintance with Heberton. In the case of Smith, which will be found in Wharton on homicide, all the facts were permitted to be elicited; Captain Carson had absconded from his wife, and been gone two years without being heard from, and his wife married Smith. Carson turned up and claimed his wife. A contention occurred, which resulted in the second husband killing the first; all the facts were received in evidence, and the case adjudged in view of them. So in the case of Hatfield, showing that disease was produced by a wound received in battle.

In all these cases, the Court permitted the party to trace out the act to the real cause—there was no limit of time. We say, in the next place, the testimony offered establishes the truth of the declaration at the time of the occurrence; that it disproves the idea of mere pretence; it goes to show that Mr. Key had drawn off Mr. Sickles' wife from her true and lawful allegiance, and that Mr. Sickles did not imagine or feign what he uttered, but uttered the real fact; that the fact existed precisely as he declared it, and he declared it because he was informed of it in such a way as to leave no doubt of its existence.

On what principle, then, was the defence not entitled to it? If the defence was that Mr. Sickles slew Mr. Key under a delusion, we would prove that he imagined the fact, and they would trace out the origin of the delusion. Now, as the law permits it to be shown that a man can become insane from real as well as imaginary causes, what difference is there in the application of the rule?

In the time of Lord Erskine it was only delusion; now it is admitted man can become insane from real causes. If we can show the origin of our delusion and all the circumstances, why are we not entitled to trace back the state of Mr. Sickles' mind and all the causes which produced it, although they may be real. As it was in connection with his wife that Mr. Sickles' frenzy or temporary mental unsoundness arose, shall we not show the extent and character of Mr. Key's relation with her?

Where the act of the defendant was committed under the influence of the marriage relation, and everything turns on the conduct of his wife, why should he not be permitted to avail himself of such conduct to shield himself from conviction, when the conduct of the wife was the cause of the frenzy which superinduced the act which he committed? The knowledge of the adultery of Mrs. Sickles was the propelling power, and was a part of the *res gestæ*.

Counsel then proceeded to make plain to Mr. Carlisle's mind what *res gestæ* is, and quoted from various authorities to show it was impossible to lay down time as to the rule of justification. All the circumstances of the case must be considered. No matter what the chasm is, if the intervening circumstances render the chain continuous, and certain facts happening, no matter what the distance, they become a part of the facts they qualify. No matter when the adultery took place, the question is, when did it first come to his knowledge? This is the time it took place, when the husband first heard of it. It then took place before his eyes. He was the witness of his wife's shame, and in imagination could carry himself to that period of time when on her bed she surrendered herself to the debasing lusts of Mr. Key. The effect is then produced, and that is the attitude of the defendant. He became satisfied of the fact the night before; his feelings were hovering and culminating through the night; he had no sleep, this victim of grief; there was everything to drive his excitement forward to the maddening point, and every moment he heard the story of his wife's shame, and saw the infamy before him. It was the freshness of the occurrence of the facts for which he was placed at this bar.

Another foundation, another ground on which the evidence is important, is that it explains the meaning of the waving of the handkerchief, and places the deceased in *flagrante delicto* at the time of his death. He then committed adultery in his heart against the prohibition of the Good Book. Now, Key had seen Mr. Sickles come from his house, and went in the direction he knew he would not encounter the husband, for the purpose of getting up an adulterous intercourse with Mrs. Sickles. Could any one doubt that this was he true explanation of the conduct of the deceased at the time? There is enough in the case already to show what the waving of the handkerchief meant. But why are we restrained from giving further evidence? Why deny the effect of this waving on the mind of the prisoner? It is testimony to which we are entitled. I ask, if there is any doubt as to what the meaning of the fluttering of the handkerchief was, why not permit us to prove beyond a doubt that in response to the signal the wife was carried from the mansion of her husband to the place where the deceased was in the habit of enjoying her body? The last point is, even by the declaration of the deceased himself, the prisoner has the right to show the status of his mind and the causes which superinduced it. This the counsel maintained by reference to the case of King against Whitehead, and other authorities, and quoted to show where a prisoner was permitted to prove that his participation in a criminal act was voluntary. We ask, continued the counsel, to be permitted to show the slaying of Mr. Key was just as involuntary as though he was hurried on by the violence of a mob; but instead of being an instrument of the mob, he was an instrument in the hands of his instinct, and went forward in the commission of the act.

The counsel quoted a case where the defence was permitted to justify by showing the declaration of an alleged thief at the time of his depositing the goods on the premises of a neighbor, and after further quoting from precedents added—It seems the learned counsel for the prosecution was unfortunate in distinguishing the present case from that of Jarboe; but if the report of the case, as contained in this pamphlet, is correct, it is perfectly evident that Jarboe acted on the ground that he was temporarily insane at the time of the act of slaying the seducer of his sister. This court, in its instructions to the jury, meant the case should turn on the *status* of the prisoner's mind at the moment the killing occurred. It has been asked on the other side, what interest had Mr. Sickles in his wife at the time he met Mr. Key, for she then had forfeited her marriage vow? I ask, was not his grief at the pitch of despair? Mr. Sickles knew his wife had been guilty of conduct which forfeited her hold on him; he saw the man who cut off the attachment to him; and henceforth what must have been the feelings of the man who was deprived of the richest pearl in the casket in which he had placed his jewels?

Mr. Carlisle.—I have already distinctly disclaimed having entertained any such idea or used any such argument. One of the grounds upon which the proof was offered was that the deceased was at the time of his death actually proceeding to commit the crime of adultery with the prisoner's wife, and that the prisoner slew him in defence of his wife's honor, and to prevent that crime. In this connection I referred to the fact that, according to the theory of the defence, he had the day before fully ascertained that an adulterous intercourse for nearly a year had been carried on between those persons.

Counsel for defence replied—If the doctrine of the prosecution is a correct one, then we ought to stop with the Coroner's jury who found who killed Mr. Key; and according to the prosecution, this is the only fact before the jury. A strenuous effort has been made to show the state of the prisoner's mind at the time of the killing of Mr. Key. If the intention is important, and the evidence bearing on it is proper, then it seems to me the defence is entitled to such evidence. If we are here merely to discover what the Coroner's jury found as to the killing of Mr. Key, and if this course is conclusive evidence of malice, and is admissible, then the preferment of the accusation by the grand jury, and trial by petit jury, are unnecessary in law. But I say that every fact, whether it bears remotely or nearly to the case, is proper to be shown, to enable the jury to understand the condition of the prisoner's mind at the time of the killing. We ask you to extend the line of inquiry. If there is objection, it should have been previously urged. It was not now for the prosecution, after experimenting with us, and finding we have evidence of the adultery beyond peradventure, to deprive us, by means of technicalities, of this benefit. I ask the Court to review.

The District Attorney replied—The grounds on which the application was made were first, that the facts recited amount to justification; second, that they amount to legal provocation; third, that they are competent evidence in connection with the question of insanity, and lastly, that they are competent evidence for the

purpose of explaining the statement of the prisoner at the time of the homicide, and explaining the motives and feelings by which he was actuated. The first two grounds could be treated of at one and the same time. The questions of justification and provocation are legal questions presented to his Honor in connection with the offer of testimony.

It had been said that the English rulings could not apply here, because no such state of facts existed. He contended that the questions were the same in substance The proposition here implies the truth of facts offered in evidence. It was to be taken for granted by his Honor that they were true. The legal effect of those facts was to be necessarily determined by his Honor; and in that respect the Judge was performing the same functions as were imposed upon English judges in cases of special verdicts. The question here was, what was meant by the rule as laid down in the English books of authorities, in regard to the effect of adultery as justification. The prosecution here did not contend for the doctrine that the husband must witness the infidelity of his wife. They relied on the wording of the English authorities, that if a party "be found in the act of adultery" the offence of slaying the adulterer would be reduced to manslaughter. That, undoubtedly, was the meaning of the rule; if found in the act, the killing was manslaughter; but if the husband afterwards slays the adulterer, the act is murder. The old masters purposely use the word "find." He could imagine that if a man witness from a distance—say with a telescope—his wife's infidelity, and afterwards slay the adulterer, he would be excluded from the benefit of the rule. He had been asked to define the line of this rule. It was impossible to do so; he might with as great propriety ask the other side to define the line of what they call the husband's marital rights. The law had settled it by declaring that if there were time sufficient for the cooling of the passion, the act of killing is murder. If the rule was to be extended, the length claimed by the other side, even to the case of ordinary lust, he asked what would be the state of society under such circumstances? If a man could take the life of one who had lusted for his wife, what would be the condition of society? It was not the part of the prosecution to stand up and defend adultery; it was a grievous crime, a great outrage inflicted on the rights of the husband. The question is, how a party who kills another under such provocation is to be treated in a court of justice? It had been declared here, that inasmuch as the Good Book had declared that the adulterer should suffer death, and inasmuch as the civil law did not, the rights of the husband were remitted into his hands. He did not subscribe to any such doctrine. He would also refer to the Good Book to show what had been almost a judicial determination of this question, by the Founder of our holy religion:

"Jesus went unto the Mount of Olives.

And early in the morning he came again into the Temple, and all the people came unto him, and he sat down and taught them.

And the Scribes and Pharisees brought unto him a woman taken in adultery; and when they had set her in the midst,

They say unto him, Master, this woman was taken in adultery, in the very act.

Now Moses in the law commanded us that such should be stoned; but what sayest thou?

This they said, tempting him, that they might have to accuse him. But Jesus stooped down, and with his finger wrote on the ground, as though he heard them not.

So when they continued asking him, he lifted up himself, and said unto them, He that is without sin among you, let him first cast a stone at her.

And again he stooped down, and wrote on the ground.

And they which heard it being convicted by their own conscience, went out one by one, beginning at the eldest, even unto the last; and Jesus was left alone, and the woman standing in the midst.

When Jesus had lifted up himself, and saw none but the woman, he said unto her, Woman, where are those thine accusers? hath no man condemned thee?

She said, No man, Lord. And Jesus said unto her, Neither do I condemn thee; go and sin no more."

The whole case there recited was remarkable in its incidents; it was, as it were, a transfiguration of Christianity itself—a transfiguration as glorious as that which took place about the same time in the presence of Moses and Elias. For himself, he would rather have been in the pillory than in the position of the last Scribe or Pharisee in that presence. That whole case was an exemplification of the meaning and spirit of Christianity. There was no hint there that the party offended might take the law into his own hands, and be the voluntary or involuntary instrument of Divine vengeance. No; it was the genius and spirit of Christianity, stooping, as it were, from heaven, and kissing in peace the erring sister. He did not deny that when the party is caught in the act the law says that it is the greatest provocation a husband can receive; but the same law says that when time for cooling has elapsed it is no provocation at all. There was no pretence for any authority anywhere pretending to allege that it was a justification. Unquestionably it was a grievous provocation; but the solitary question to be determined by his Honor was whether it be a legal provocation; whether such a provocation as will excuse a man for the perpetration of a homicide. It had been stated that there was no instance of a conviction for murder here or in England, in the case of a husband who had slain the adulterer. He would show that there was, and for the purpose he referred to 3 Jones, N. C. Reports, 24.

Counsel for defence.—There the prisoner had made previous threats.

The District Attorney read a statement case, where the judge ruled that had the prisoner caught the deceased in the act of adultery the killing would have been manslaughter, but as the killing took place after time to cool the act was murder, and the prisoner was convicted of murder. In that case exception was taken, and the Court of Appeals affirmed the ruling of the court below, and held that the facts of the adultery did not amount to legal justification. In that case there were peculiar features; the prisoner found his wife in the company of the deceased, going out for the purpose, as he believed, of adulterous intercourse; fifteen minutes after that the husband armed with a wooden mallet, went after his wife's paramour and slew him; and notwithstanding that, the court held that the acts did not amount to a legal provocation. In this case did the facts amount to a legal provocation? That was the question for his Honor to decide. He held that the facts here offered in evidence did not amount to legal provocation, and consequently that evidence of them was not competent in law. The learned counsel on the other side had asked for the foundation of the rule, as laid down in Manning's case—a very appropriate inquiry. Is its reason that the adultery was committed, or that that fact had a certain effect on the prisoner's mind. The law presumed that the fact would produce a certain effect upon the prisoner's mind, and, therefore, the fact itself might be proved. But whenever the law says that the tempest of passion should not exist after cooling time, then the party should not have the benefit of presumption. It had been asked what would be the evidence required in case the rule there laid down had been enacted into a statute, and the Massachusetts authorities had been quoted. They did not, it seemed to him, bear on this case. They were not on the inquiry here whether in point of fact the adultery was committed, but what was the state of the prisoner's mind in consequence of it. It was said that the case in vol. 8 Iredell did not bear on this case, because it was the case of a slave. One of the counsel denied that it was law, while the other admitted tacitly that it was law, but that it ought not to be law.

Counsel for defence.—I said that one part of it was *obiter*, and that the part in regard to insanity conflicted with his Honor's rulings.

The District Attorney held that that case illustrated what was the state of the law in all cases of homicide on the ground of adultery, whether the parties were bond or free. He referred to Archibald's Criminal Practice, vol. ii. page 13, and to Hill's South Carolina Reports, vol. ii. page 116. He contended that the extent of cooling time was necessarily a question of law, and must be determined by his Honor.

Mr. Phillips—That would make the Judge the trier of the whole case.

Counsel for defence—It would be the case of a special verdict. The District Attorney argued that it was a matter solely for the decision of the Judge. He referred to Archibald's Criminal Practice (235), on the question of cooling time. It was material for his Honor to inquire whether there was cooling time between that hour when his wife's infidelity was communicated to the prisoner and the time when he shot down Key; did it

involve such a space of time as that his passion ought to have ceased? That was the material inquiry—not whether the passion actually did cease.

Mr. Brady would ask the District Attorney to answer this question: if the Judge was to pass on the question of provocation, of justification, and of cooling time, what was the jury to pass upon?

The Judge thought the answer to that question might be deferred for the present, and the Court adjourned.

THIRTEENTH DAY—*Monday, April* 18, 1859.

The Court opened at 10.20, the usual large audience being in attendance.

Mr. Sickles was soon afterwards brought into Court.

District-Attorney Ould proceeded to close his argument against the admissibility of the evidence offered to prove the adultery. He had been endeavoring, he said, when he closed his remarks on Saturday, to show that the facts offered in evidence on the part of the defence did not amount to legal provocation, much less to justification, and that the questions of provocation, justification, and cooling time were mere legal questions. He had been interrupted, politely of course, by a question from Mr. Brady asking on what were the jury to pass if the Court determined the justification and the cooling time. It was the duty of the jury, he held, to pass upon the facts as connected with the killing and to apply the law as enunciated by the Court. With reference to justification, provocation, and cooling time, the Court has its peculiar functions and so has the jury. If there were no other questions in the case that was the fault of the case—one of the incidents of the case. If a man were indicted for poisoning would the learned counsel claim that evidence of justification, provocation, and cooling time should be given? Did not the law declare that in such a case there could be no justification, no provocation, no cooling time? The jury pass upon the truth of the facts offered; their sufficiency in law was a question exclusively for the Court. If the Court decided that they were sufficient in law, then the question of their truth went to the jury. But if the Court decided that they were not sufficient in law, then, of course, they did not go before the jury. It was the constant practice of the Courts to pass upon provocation, justification, and cooling time.

The Judge—At a different stage from this, however.

Mr. Brady—We utterly refuse to enter into any discussion of any question at this time, except what relates to the particular points before your Honor for determination. We offered to prove habitual adultery; the objection was made to that. As to justification, provocation, and cooling time, we propose to be heard at a future stage, in asking the Court for instructions, and we mean to insist that the jury are judges of the law and the facts, but that time has not arrived yet.

Mr. Ould certainly misunderstood the arguments of the counsel, if the questions of justification, provocation, and cooling time were not now before the Court.

Mr. Phillips—If the evidence has a tendency towards justification, that is sufficient.

The District-Attorney held that it had no such tendency, for in law the facts amounted neither to justification nor provocation. He referred the Court on this point to Addison and to 6 Tredell 178 and 181, the State *vs.* John P Creighton. In the case cited by the other side—(Manning's case)—the question of provocation was before the Court, and the Court then declared what would be and what would not be provocation. Did not every Court in cases of murder necessarily decide upon the sufficiency of the evidence to constitute legal provocation? Undoubtedly it did. Here the facts sought to be put in evidence were admitted, but the question was whether they amounted to a provocation or a justification. The same doctrine came up incidentally in Selfridge's case as to the effect which the law ought to give and which the jury must give to certain questions affecting honor and dishonor, and there the Court decided the question. Counsel referred to Vol. 2 Archibald's Criminal Practice.

Mr. Ould replied to the proposition of Mr. Phillips, that this evidence was competent for rebutting the question. That he (Ould) thought begging the question. Was the evidence of such a character on its face as would be a legal rebuttal of malice? If not, it was not competent. It had been also argued that the evidence was competent as affecting the question whether the passion was real or feigned. It was immaterial for the jury to find out whether it was real or feigned. It had been also argued that the deceased was giving the signal of adultery, and that therefore the evidence was competent, but if, as the prosecution held, the adultery itself was not a legal provocation or justification, how could an invitation to adultery be. The other learned counsel (Mr. Graham) had argued that the evidence of adultery was always properly before the Court; that was not so. In Iredell's case the evidence came before the Court, whether the evidence of adultery could be admitted to reduce the grade of homicide, and the Court rejected such evidence. He contended that where such evidence was admitted it was admitted only as part of the *res gestæ*.

The Judge—In the case of Fisher, 8 Carrington and Paine, the whole case is detailed; the interview between the father and the man in whose house the crime was committed; it was committed more than once; and yet all the circumstances were gone into so that there it was impossible that the facts proved could have been part of the *res gestæ*.

District Attorney—The case in volume 6 Iredell was precisely the kind of case alluded to.

Mr. Graham—There all the proofs were got in.

District Attorney—They were made a part of the evidence of the prosecution, and were put in as evidence connected with the homicide. He challenged the defence to point out a case where objection was made to such evidence and not sustained. It had been also set up here that the indictment recited that the deceased at the time of the homicide was in the peace of God and of the United States, and that he was not so in point of fact, and that therefore the indictment could not be sustained. The words are mere surplusage, and might have been omitted. They meant simply that he was under the protection of the laws of God and man, nothing more than that. If Mr. Key had been engaged in a riot, or if he had been blaspheming, would it be contended that any man might kill him?

Mr. Graham—In an effort to prevent him committing a crime, it would not be murder to slay him.

District Attorney—Would it be proper to kill a man to prevent him committing an assault and battery?

Mr. Graham—I take the ground that if a man assaults me, I have a right to resist him to the death.

The District Attorney—That depends altogether on circumstances.

The Judge—It would depend on the nature of the attack.

The District Attorney proceeded to argue that the testimony in regard to the handkerchief did not connect the parties with any adulterous intercourse; this was therefore not a proposition to continue evidence already partially given, but to give new evidence on a distinct point. He held to his position that it was for the Court and the Court alone, to pass upon the nature of the evidence offered. It was only for the jury to pass upon the facts allowed to be given in evidence. Trial by jury was a creature of the common law, and when the Constitution of the United States gave to the arraigned the privilege of trial by jury in accordance with the course of the comman law and in no other way. The common law had been announced by Hale, and Foster and Gast and others, and what he contended for now was one of the principles of that common law. It had been alleged by the defence that the case now presented was analagous to that of Jarboe. He proceeded to show that no such analogy existed.

In the case now before the Court the prisoner made the declaration at the time of the homicide, "He has defiled my bed." In Jarboe's case the question was by the prisoner to the deceased, "What do you intend to do?" and the answer was, "You will see what I intend to do." That was a matter which did not explain itself and therefore it was right for the Court to allow the evidence to be given to explain the declarations. Here the declaration of the prisoner explained itself, and therefore no evidence was necessary to elucidate it. The facts themselves carried no further impression to the human mind than the expression itself does.

There was another distinction between the two cases. In Jarboe's case, the expression was made use of both by the deceased and the prisoner; here no expression was made use of by the deceased. His Honor, in Herbert's case, drew a distinction between the declarations made by the deceased and those made by the prisoner, otherwise a party might manufacture testimony in his

own case, while no such objection could possibly apply to the declaration of the deceased. He insisted that the instruction of the Court in Jarboe's case applied to this case here, namely, that the facts did not justify the act, or constitute a legal provocation, and that the killing was murder. In regard to the question of insanity, his Honor's rulings hitherto had been that no declarations made by the other parties to the prisoner could be admitted as proof of insanity, and on that ground the evidence must necessarily be ruled out. What, then, was left as competent evidence in law? Nothing but that the first prisoner was witness to the adulterous intercourse between deceased and the prisoner's wife.

The last ground on which this evidence had been urged was on the ground of its being *res gestæ*, that it was competent as explaining the declaration of the prisoner that the deceased had violated his bed. The declaration itself was part of the *res gestæ*, and was receivable, but the evidence of the truth of the declaration was not *res gestæ*, and was not receivable. As well might the United States go into a long evidence of the manufacture of firearms, and detail the manner of making the pistol which had been offered in evidence in this case. But, say the defence, the declaration of the prisoner show his nature, and this evidence ought to be received, because it explained the declaration. That raised the direct question whether the fact of adultery constituted a legal provocation or justification, and he had already shown that it did not. It had been hinted, rather than argued, on the other side, that the prisoner, at the time of the homicide, was but defending his wife from future advances of the deceased.

The law, however, says that for the taking of human life such an excuse affords no justification or excuse. Nothing but an attempt to commit a felony can excuse the taking of life. It must be distinctly shown that the deceased was at the very time attempting to commit a felony. But an invitation to adultery does not rise even to the dignity of a trespass.

The Judge—Five propositions are stated as the basis of an offer to prove the fact of adultery in this case, and that that fact is known by the prisoner. The proposition is not to introduce evidence of adultery as proper under all or any circumstances, but whether, under the existing state of the evidence already given, the defence are entitled to adduce further evidence than they have already given to the jury. It is a question of competency of evidence for any purpose; what may be its legal effect is not the inquiry.

That the Court may be called upon to give an opinion on before the trial terminates. But I will not anticipate it. That opinion must be founded on all the evidence, and can be properly investigated when the evidence on both sides is closed. A great mass of testimony has been received going to show the adulterous intercourse, the frequenting by deceased of the immediate neighborhood of the defendant's house. The exhibitions of a handkerchief! What did they mean? Have not the jury a right to understand what they meant? By themselves, they might be regarded as weighing very little, or as having more or less influence on any particular point raised. The jury must pass on them, and on all the evidence. Can they do so without a full knowledge of what that testimony imparts?

At the time of the homicide the prisoner declared the deceased had dishonored his house, or defiled, or violated his bed, for all these expressions have been used by the different witnesses examined. This declaration is a part of the principal fact. It is important to the jury to have it explained, and it is the right of the defendant, in all justice, to have it explained. Jarboe's case has been referred to as a decision rendered by this Court on a great deliberation. It is one from which I am not disposed to depart. In that case considerable testimony having been given, it was proposed to prove what passed at an interview between the witness, who was the father of the prisoner, and the deceased, and the prisoner himself, in regard to the engagement of marriage. This interview, it will be observed, was two or three months before the homicide. Here the Judge quoted his ruling in that case, and proceeded: It is said, however, that the expression of the prisoner here at the time of the homicide that the deceased had defiled his bed, explains itself; and that it is not susceptible of any further elucidation. It was certainly not stronger than this case of Jarboe, where the prisoner asked the deceased if he was going to marry the unfortunate girl, his sister, and he said, No; you see, or you will see, what I am going to do.

The plain English of that is, "I am not going to marry her." In this case, it is true, the expression used by the prisoner is one that might be ordinarily understood in a particular sense, but men may have various ideas of phraseology, and the jury are to pass on this case on the evidence. That declaration, to be sure, is in proof by the United States, but still there may be a different construction put upon it by one man from that put upon it by another. Be that as it may, in order to insure perfect understanding by the jury, what was meant by that declaration. I think on that ground also, the evidence is admissible, the Court reserving of course, an opinion on all the evidence until in accordance with the ordinary course of practice here, that opinion is asked in the shape of what lawyers here call prayers. I am of opinion that the evidence is admissible.

The silence in the court as Judge Crawford pronounced this decision was almost painful, and as he closed there was a perceptible though silent expression of satisfaction.

Mrs. Nancy Brown was then recalled.

Examined by Mr. Ratcliffe—I was sufficiently acquainted with Mr. Key to know him; the last time I saw him was on the Wednesday before he was shot, when he went into the house on Fifteenth street; I saw him take a key out of his pocket, unlock the door, and go in; he came out in about an hour; I am acquainted with Mrs. Sickles; I saw her go backward and forward often; I saw her go in and then out the back way; he would go to the back gate and let her out, and then would come out of the front door.

Q.—How long were they in the house?

A.—About an hour.

Q.—How did you know that it was Mrs. Sickles?

A.—I inquired different times; I saw Mrs. Sickles at her own house after that, then other persons were present; she was the lady I had seen go into the brick house.

Q.—How often had you before that Wednesday seen him go into that house?

A.—I saw him go in three times before, when he unlocked the door and took the key from his pocket; saw Mrs. Sickles go with him and have hold of his arm, except the Wednesday before Mr. Key was killed.

Q.—What time elapsed between these three times you saw them go into that house?

A.—About a week. I saw them go in three times within three weeks. Key came up to my door in October. He rode up. He stepped on the porch and asked me whether the house was occupied. I said no. He asked me who the house belonged to. I told him to a colored man named John Gray, and he lived somewhere on Capitol Hill, and that the colored people could give him all the information. He came about three weeks after that, and tied his horse to my tree. I asked him whether he did not know that that was against the law? [Laughter.]

Mr. Ould—I suppose that is not evidence.

Witness—I asked him not to tie his horse there again.

Mr. Ould—That's not evidence. Stop, Mrs. Brown.

Witness—I was only telling you what it was. He said, I won't tie it there any more. He said, I rented this house for a friend of mine, and want to see how it is situated. I don't know whether he said it was for a Member or Senator. He then untied his horse and went away. I never spoke to him any more.

Q.—Did you notice anything Mr. Key had with him?

A.—I noticed, on that Wednesday, he had on a shawl when he went in. It was on his left arm. But had none when he came out. This was on the Wednesday before he was shot. When he first came to the house, we laughed when we saw the smoke come out of the chimney. He went down the yard and got wood to make a fire. Saw a white string tied to the upstairs shutters, so that when the wind blowed it would swing.

Q.—Have you seen the shawl since?

A.—I saw the shawl, but you know there are many alike, I don't like to swear to this one.

Mr. Ratcliffe (to officer)—Tell Mr. Mann to bring the shawl in.

Witness—I don't want to tell a lie. [A shawl was produced—it had a grey and red border.] Witness [examining]—This looks like it. He had it folded on his left arm.

Q.—How was Mrs. S. dressed?

A.—She had on a little small plaid silk dress, which she wore open, and she had a black Raglan—a cloak, you know, as I call it—fringed with bugles, and a black velvet shawl, with lace. And I saw her in a brown dress, like a travelling dress, the Wednesday she went in and out the back way. In entering the house the back way—it was where they put the wood—the mud was that depth (four or five inches). The alley was not paved.

Q.—What was the state of the weather?

A.—It was always fair when I seed them.

Mr. Ould—That's not evidence.

Mr. Brady—You say Mr. Key told you he hired the house for a Senator or Member. Did anybody occupy it except Mr. Key and the lady?

A.—Never saw anybody go in but theirselves. I am sure I did not.

To Mr. Graham—Saw them go up and turn back. They saw two policemen standing down K-street. They were at the gate. I was at my gate. They went up Fifteenth street as far as I could see them.

Mr. Stanton requested that the prisoner might retire during this examination. To this the prosecution said they had no objection.

Mr. Sickles accordingly retired, accompanied by an officer.

Mr. Graham—Did you see them come back that day?

Witness—Not likely. They were so scart, they run away. [Laughter.]

Cross-examined by Mr. Ould—Whereabouts do you live?

A.—I live next door but one to John Gray's. There are three little houses, in a small frame. I live on the north.

Mr. Brady here put in a true copy of the survey of the premises, from the Surveyor's Office.

Mr. Ould examined the witness particularly about the houses and their tenants in that immediate neighborhood. She said the first time she saw Mrs. Sickles was three weeks after Mr. Key told her he had taken the house; never held a conversation with her until she went to Mrs. Sickles' house; I think it was in November when Mr. Key first came to Gray's house; I tuck no particklar notice; I was standing at my gate.

Q.—How many feet from Gray's honse?

A.—I never measured it. [Laughter.]

Mr. Ould—About as far as the back part of this room from where you stand?

A.—I don't think it's so far.

Q.—How do you know it was Mrs. Sickles?

A.—Because I inquired, and was told; I asked different people, and they all told me it was her, and when I saw her at her own house, I knew it was the same person.

Q.—Why did you go there?

A.—I went to see if it was the same lady.

Q.—What was the occasion of your going there?

A.—She sent for me to identify her, whether she was the same person; it was the Tuesday after the killing.

Q.—How many times altogether did you see them go into the house?

A.—Three times, and at another they only came to the gate; as I said before, Mr. Key unlocked the door fer her to come in.

Q.—How far off were you?

A.—Not so very far, from here to there; she had a black bonnet on but no veil at the time I seed her; could see her feturs; I knowed her afore, and of course knowed her agin; I was standing at my front door when I seed her go in at the front door; she passed by me and looked in my face; she was with Mr. Key each time; the policemen were standing at the corner of K and Fifteenth streets talking when Mr. Key and Mrs. Sickles came there the last time; they passed on to go into the house; did not go furder; they saw the policemen and immediately turned back.

Q.—I suppose they saw them?

A.—I know they did, for they started off.

Q.—Did they return that day?

A.—It is not likely they returned that day; not likely, gentlemen; I did not watch more after that; I knew they were not so foolish. [Laughter.] After they seed the police; not likely after that. [Renewed laughter.]

Q.—Where does Mr. Seeley live?

A.—His alley opens very near to the back opening of Gray's house; the white string was put out every time that he came first and made the fire.

Q.—How do you know that it was he that made the fire?

A.—Because there was nobody else to make the fire, and because I saw him go down and fetch the wood. [Laughter in Court. The Judge ordered it to be suppressed, as there was no cause for laughter.] Never saw Key go there by himself except the first time when he came about the house; saw the string out of the window three or four times; if I had looked oftener I might have seen it oftener.

Q.—How did you come to notice it?

A.—Because I knew it was the signal, of course. [Laughter.] She was with him every time I saw him but that once; I saw him go down the yard for wood four or five times; of course when I saw him go down for an armful of wood he was there.

Q.—You did not know whether he was there by himself?

A.—I should think he was not when I saw the signal flying. [Laughter.]

To Mr. Radcliffe—It was Mr. Mann who called for me to go and see Mrs. Sickles, and there I identified her as the person whom I used to see go to that house; the shawl was shown to me the next week, week after the death of Mr. Key; the other man, I never could speak his name [Mr. Gintry,] was there when the shawl was shown to me; I could not identify the shawl, but I stated at that time that I thought it the same shawl: I think it now the same shawl, but I could not swear to it exactly because there are so many shawls like it.

To Mr. Brady—I saw that same lady on Pennsylvania avenue; I never thought she was no lady when I saw her come to the house; I thought she was a servant girl; I saw her getting out of a carriage in the avenue and asked a gentleman who she was, and he told me she was Mrs. Sickles; I also saw her in the market.

To Mr. Carlisle—I saw the policemen go in the same day the shawl was shown to me; I think the house was opened the Monday after Mr. Key's death; I did not see people go in; saw them at the door; have no knowledge of any person breaking into the house; I could hear a noise of some persons inside, but I could not see them; this was two or three weeks after Mr. Key's death.

To the District Attorney—Did not hear anybody in the house the week after Mr. Key's death.

Here the Court and jury took a recess for a few minutes.

Mr. Brady exhibited to the jury the lock taken off the front door of the assignation house in Fifteenth street, and showed how it was fitted by one of two keys found in the pocket of the deceased. The second key belonged to the door of a house in C-street.

Chas. Mann, examined by Mr. Ratcliffe—My business is that of a policeman; am acquainted with the location of the house in Fifteenth street; I was in the house; Mr. Magruder and yourself [Ratcliffe], and a third person were present; I found this shawl there, a pair of gloves, a comb and some cigarettes; saw some chunks of wood there: found a shawl in the bed in the front room; this is the shawl; I showed it to Mrs. Brown, the last witness; Mrs. Brown went to the house of Mrs. Sickles with me for the purpose of recognizing her; I took her there at your [Ratcliffe's] instance.

To Mr. Brady—On the first floor of the house there were two rooms and a kitchen; they were furnished in plain style; there was a carpet, chairs, tables and book-case; on the second story there are two rooms communicating with each other; in the back room of the second story there was a bedstead and bedding, basin and pitcher, and perhaps a bureau; the bed looked as if it had not been made up for a week or two; there were soiled towels lying about; the shawl was found in the bed in the front room; that bed looked as if it had not been made up for some time; have not here the gloves and comb I found there; have them at home; I got into the house over the fence; there was a colored man inside who admitted me; I took the key from the side-room door, and found it opened the front door; I unlocked it to admit Mr. Magruder and Mr. Ratcliffe.

To the District Attorney—I got in through a back window into the entry; a person opened the back window and I went in; the window opened easily; I hoisted it myself, and went in; the other person did not go in; this person opened the shutter for me; did not open the back door at all; it was between one and two o'clock the day after Mr. Key's death; I left the premises the way I came in; I did not examine the back door; I tried to get in that way but did not succeed; I found it locked; these beds had not been made since they were occupied; the gloves I speak of are not riding gloves, but a pair of

ordinary yellow kid gloves; that was the only time I was in the house; I went with Mrs. Brown to Mrs. Sickles' some two or three days or a week after that.

To Mr. Ratcliffe—Think Mr. Key resided in the neighborhood of the Court-house.

To Mr. Carlisle—Do not think the person who let me into the house was a white man. He was light complexioned. He followed me from the jail. I do not know at whose request. Never saw him previously or since. Saw him at the jail, and asked him to go along with me in the carriage, and he said he'd meet me there.

Q.—What had he to do with the house?

A.—I calculated he was to assist me.

Q.—Why did you think he could admit you more than you could admit yourself?

A.—I do not know about that. The attorneys of Mr. Sickles requested me to go to this house. I never received anything for it, nor have I been promised anything. There was a man at the jail, and I asked him to step into the carriage, and come up to the house.

Q.—Was this John Gray?

A.—I do not know John Gray.

Q.—Did you not hear that this was the owner of the house?

A.—I understood at the jail that this negro fellow was to accompany me to the house.

Q.—Did you not say you did not know whether he was colored or white?

A.—Neither do I. I was at the jail, and employed to do this business. I heard from some one of the counsel—Ratcliffe, I think—that this man was to go with me. He followed us out to the gate, and, as I knew he was to go with me, I asked him to get into the carriage.

Q.—Did you inquire, or did anybody tell you, for what purpose this man was to accompany you to this house?

A.—I inquired very little about it. I calculated that this man was to go with me.

Mr. Carlisle—That does not answer the question.

Witness—I hardly know how to understand you. (Laughter.) Nobody told me why that man was to accompany me to the house, nor did I ask anybody the reason why. I did not know what business I was to do after getting to the house. I knew I was to attend to some business.

Q.—What explained the business to you?

A.—I found out myself after I got there.

Q.—It did not strike you before you got to the house?

A.—It struck me before I got there.

Q.—Where did it strike you?

A.—That is a nonsensical question. (Laughter.)

Mr. Carlisle—Not at all, sir. You need not trouble yourself to express your opinion. I ask you where you were when the idea struck you?

A.—When I left the jail, I knew I was going to the house in Fifteenth street, and when I entered the house I found the articles I have described, and took them away.

Q.—Nobody instructing you to do so?

A.—Yes, I was instructed to take them away by Mr. Ratcliffe. Mr. Magruder and Mr Ratcliffe went with me, and told me to take possession of these things. This other man was there when we got there. Have never seen that person before or since. I tried the front door, and he showed me round the back way, and opened the shutter. He had not been there before. I thought we might find the back way open. I would like to have that man here, to see whether you could tell whether this man was white or colored. I carried the shawl to two or three persons, to see if they could recognize it. I carried it to Mrs. Brown and Mrs. Seeley. I went to the jail that morning of my own accord, and while there I was engaged in this business.

To Mr. Brady—Am not much acquainted with that neighborhood. Don't know whether the houses are occupied by white or black people.

Mr. Magruder—When it was decided that counsel should visit the house, it was agreed to take a policeman, and this man was suggested as the person to show the house.

Mr. Carlisle—Now you distinctly recollect that this man went to point out the locality of the house?

A.—I do.

Witness was directed by counsel to go home for the other articles found.

Mr. Ratcliffe, one of the counsel, was placed on the stand, and related the circumstance of the visit to the house. He said they did not know at the time that this person [Crittenden, he believed] was a colored man, but somebody suggested that he was, and so they did not take him into the carriage.

Mr. Brady—Describe what you found there.

Witness—We found up there a bed all in confusion, and on that bed we found a shawl. Thinking I had seen such a shawl in possession of Mr. Key, it was suggested that the officer take charge of the shawl. Looking about we found a pair of gloves on the mantel, and a parcel of cigarettes. It was also suggested that he take charge of the gloves and comb found there. Cannot say that this is the same shawl, but it is like it. It was handed to Mr. Mann, and he was requested to take charge of it. I think Mr. Key resided in C street, about a mile from the house in Fifteenth street. Mr. Key was a widower, with four or five children. They had often been in my house. Mrs. Key has been dead some four or five years

Mr. Brady—That is all.

Mr. Ratcliffe to Mr. Carlisle, with mock politeness—Any question, Sir?

Mr. Carlisle—No, Sir. [Laughter.]

John M. Seeley, recalled and examined by Mr. Brady—My attention was first called to the visits to the house in Fifteenth street by Mr. Key and a lady between the middle of January and the beginning of February last. Noticed Mr. Key and a lady go there frequently. The last occasion was on the 15th February. Mr. Key's outside garment was usually a steel-mixed gray sack, and on other occasions a plum colored coat. Did not notice a shawl. Saw Mr. Key put a key to the lock and walk in.

Q.—When Mr. Key and the lady were there the first time, had she walked with him?

A.—I did not see her at any time except on foot. Do not know that she had hold of his arm. Did not see them come out on that occasion. It was between one and two o'clock. I noticed that after they went in the door was shut. The next occasion that I particularize was Saturday, the 12th day of February. That was about the same hour.

Mr. Brady—Describe the whole incident.

Witness—I was going up Fifteenth street. They were going up before me. Was walking leisurely. As I passed the door of the house in Fifteenth street, they stopped and went into the house. The lady, as she went in, drew up her veil and looked at me, and I looked at her. I have known Mr. Key for years.

Q.—Did you observe whether the door was unlocked at that time?

A.—He unlocked it. I presume he took out the key. Saw them come out of the house that day. They were there about an hour or an hour and a half. They came out separately—she first. Both came through the front door. Some four or five minutes elapsed between her coming and his. She passed on toward her home, and he passed in the opposite direction. The only Sabbath I saw them go into the house was on the 20th of February. It was about one o'clock, or perhaps half-past one. I saw him enter, but no lady with him. I immediately went up to a back room in the third floor of my house and looked out the window. I saw the same lady come up through the alley leading from K street to L, which forms rather a T. Saw Mr. Key come to the back door, and walk down toward the gate, and they returned together to the house. To my certain knowledge that was Sunday, the 20th day of February. Am not prepared to say how long they stayed on that occasion—perhaps an hour or an hour and a half. The lady came out the way she went in, but I did not see how Mr. Key came out. Also saw her pass into the house the Wednesday or Thursday before Mr. Key's death. She passed in by the back gate. That was somewhere about two o'clock. Did not see Mr. Key there at all that day. Cannot state how long she remained, for I was compelled to leave on my own business. The house had been of unfortunate repute when I went to the neighborhood. The parties left, and the owner occupied it a short time. After he left it remained unoccupied till I saw Mr. Key and the lady go there.

Q.—Did you ascertain who the lady was?

A.—I did.

Q.—How?

A.—By going and seeing whether she was the person it was said she was; I went to see her about ten days after the fatal occurrence; I went to her residence, and

saw she was the identical same person; I went in company with my wife and daughter, who had also noticed them; there was a gentleman present named Hart; the lady introduced as Mrs. Sickles is the person that came to the house in Fifteenth street.

To Mr. Ould—I passed that house daily; I saw this lady's face three or four times, perhaps; think I saw her face every time she visited; her face was uncovered by a veil at all other times except the time when she threw it up; when I was looking from my back window she was perhaps seventy feet from me; the window was open and I saw her features distinctly; she appeared as if she was looking round to see whether anybody was looking at her; she did not throw her glance at the window where I was; on the 23d or 24th, when I saw her going through the alley on K street, I was at my own back gate; think she observed me then; she made no effort to conceal her features, but went straight up to the door; she had no veil over her face; if I had met her walking on the avenue think I would have recognized her immediately; had seen her passing about the city prior to that, and was told she was Mrs. Sickles; when she came to this house I thought it was the same person; am satisfied now that it was, because I went to their house and satisfied myself that it was she; I was told by hearsay that it was Mr. Sickles; to satisfy myself that it was, I went to her house to see her, and that fully satisfied me.

To Mr. Graham—The walking was very bad, miry, and muddy on some occasions when she came to the house; the alley-way is a very deep, marshy, muddy alley, so much so that the carts with coal could hardly get in; the walking was worse on these occasions than it has been for years before.

Mr. Carlisle—You thought it an extraordinary place for any decent woman to go along.

Witness—I thought it an extraordinary place for any body to go along; the time I visited Mrs. Sickles' house was about a week after Mr. Key's death; I went with my wife and daughter through curiosity.

Mrs. Sarah Ann Seeley sworn and examined by Mr. Brady—Is the wife of John M. Seeley; knew Mr. Key from a boy, when his father lived in Georgetown; saw Mr. Key and Mrs. Sickles three different times on the 16th of February; the first time my attention was called to Mr. Key and Mrs. Sickles, they were passing about the street, and the police had a warrant against him; saw Officer Ginnity there, who stopped them in the evening; when I saw them it was dusk; they were passing Fifteenth street as if going home; the first time I saw him on Mr. Gray's premises, he was carrying wood in his arms; the next time, he was in the alley, with a small roll in his hand, twisted, which might be paper; I only saw him once with wood in his arms; I once saw her on K street; I saw her come through the alley on Wednesday before Mr. Key was killed; this was about one o'clock; can't say how long she remained there; did not see her come out of the house; never saw her enter there but once, and then she went in alone; she was dressed in black silk; the square in the silk was dark brown with narrow stripes somewhat darker; cannot say whether they were black or bottle green; she had on a large velvet shawl, with twisted silk fringe and bugles, black bonnet and feathers, and a short black lace veil; the first day I saw her she wore a white and black silk and worsted dress, and she always had on the same shawl; cannot say whether he wore an overcoat or shawl; had a small cane and keys in his hand, which rattled; I found out it was Mrs. Sickles for certain; for more than a week after the decease of Mr. Key I went to Mrs. Sickles' accompanied by my husband and daughter, and there identified her as the same; I was introduced to Mrs. Sickles by Mr. Hart; she recognized us immediately after we passed into the room.

Cross-examined by Mr. Ould—When I recognized the rattling of the keys it was on L street. Mrs. Sickles was with him at the time. I could not see them go in. My house was on L, and theirs was on Fifteenth. I was in the back part of my house in the second story. She wore a short veil on that occasion. I could distinguish her features. She looked like a person badly frightened.

Q.—How did she exhibit this?

A.—I can't give the indications of fear. She looked as if she were severely threatened, judging from the manner she was walking and running after Mr. Key.

Q.—That is your impression?

A.—It is. They were on the pavement immediately beneath us. My daughter called my attention to them. I did not pay as much attention to Mr. Key as I did to Mrs. Sickles. I had seen them on the morning of the 16th of February, about eleven o'clock, between three and four in the afternoon, and again in the dusk of the evening. This was the only day I saw them together.

To Mr. Brady—I did not know how long the house had been occupied. I only knew it was occupied when I saw smoke coming from the chimney. Did not see anybody else coming there after Mr. Key began to come there.

Cross-examined by Mr. Ould—She always wore a splendid shawl. Black velvet, silk fringe, with bugle trimmings. It was a large shawl. It came down low on her person. Mr. Hart received us at Mrs. Sickles' door. I told him what we came there for. I went to see her to be certain of knowing her. When people are summoned to Court, they have to be particular.

The Court reminded the witness that she must answer the questions first, and then if she had anything to explain, she could do so.

Witness begged pardon. It was the first time, she said, she was ever in Court. Please excuse me this time. (Laughter.)

Mr. Brady—No wonder you're frightened, seeing so many lawyers here.

Mr. Carlisle—The woman can beat us in talking.

Mr. Ratcliffe—It is well they can beat us in something.

Witness—Mr. Hart asked me whether Mrs. Sickles was the same person. I said I thought she was. Mrs. Sickles was in her chamber. She first recognized my daughter. It was in the morning, between nine and ten o'clock. She repeated she saw Mr. Key pass in the back way.

Cross-examined—She repeated the description of Mrs. Sickles' dress. Mrs. Sickles asked my daughter whether she was not looking out of the window when she and Mr. Key passed by our house. My daughter replied in the affirmative.

James Ginnity examined by Mr. Brady—Am a police officer. Knew Mr. Key between five and seven years. Knew Mrs. Sickles.

Q.—Did you ever observe Mr. Key and Mrs. Sickles together in this city? If so, when and where?

A.—On the 16th of February, I was standing at the northeastern corner of Fourteenth and L streets, in company with several gentlemen. They remarked—"Here comes"—

The District Attorney—Never mind that.

Witness—A remark was made which attracted my attention to Mr. Key and the lady.

Mr. Brady—Describe their manœuvres.

Witness—They came down L street to Sixteenth street, then went up to K street and up Fifteenth street, north of L; I stopped to look after them, and as I thought they turned down L street. I looked after them, and Mr. Key looked behind; he might have been in a little store on the corner, he peeped out, and drew in again; he came out and walked down the street, and I stepped up and spoke to him from one or two minutes on Fifteenth street, between L and M; the lady was standing with him. I took a good look at her and went home. They went down Fifteenth street. I do not know where; he had a small brass key twisting in his fingers; it was a key like this [a key in the lock belonging to the door.]

Q—Who was present besides you that day looking at this proceeding and observing it? A.—There was a great number of people on the steps of the doors and all along these streets.

Q.—Engaged in observing them? A.—Yes, engaged in observing them.

Q.—Did you at that time know it was Mrs. Sickles? A.—No, sir.

Q.—When did you discover it was Mrs. Sickles? Q.—The following week or week after. I think it was after the decease of Mr. Key; I was requested by one of the counsel for the defence to go and see if I could not recognize her. I went to Mr. Sickles' house. Mr. Hart asked me up stairs, and I went; I saw Mrs. Sickles, and recognized her as the lady I saw on Fifteenth street. I know James Miller, Alex. T. Borland, David Welsh, Thomas Langley, Joseph Edwards and Wm. Prentice, and think all of them were present when I observed Mr. Key and Mrs. Sickles. The lady I identified is the same lady all these persons saw.

To Mr. Ratcliffe—The walking was very bad that day. There were several persons besides these I have named,

both white and black, standing at the doors and windows, watching Mr. Key and Mrs. Sickles.

Matilda Seeley, a bright, fair-haired girl of sixteen, sworn. Examined by Mr. Brady—Knew Mr. Key; knew Mrs. Sickles; knew John Gray's house: saw Mrs. Sickles go in there once two weeks before Mr. Key's death; she went in alone by the alley; had seen her in company with Mr. Key in that neighborhood; saw her twice one day; the first time was between eleven and twelve, and the second time between three and four; when I first saw her I was standing at the corner of Fifteenth and L streets, and the second time, at the second floor front window; saw Mr. Key go in once by the back way; afterwards saw Mrs. Sickles at her house, and she recognized me.

To Mr. Carlisle—Did not see either go into the house that day. The day I saw her go in was not the day I saw him go in.

The Hon. John B. Haskin, recalled—I remember a visit which I made to the house of Mr. Sickles at a time there was a salad there; this was in April, 1858. Mr. Sickles had left the city the previous day for New York or Albany. I called, at the request of Mr. Sickles, to see if his wife wanted anything.

Counsel—Relate the circumstance.

Mr. Haskin—A few days after Mr, Key had called at my house, to converse with me in regard to some correspondence, Mr. Sickles was called to New York on business; before going, he came to my seat in the House of Representatives, and desired me, as having been familiar with himself and wife for years, to drop up occasionally and see his wife, and see if she wanted anything; the day following I had occasion to go with my children and wife to Georgetown, to get some shoes, and when we got opposite the President's house the request of Mr. Sickles occurred to me; I drove up to his door, helped my wife out in a hurry, rushed up stairs, opened the front door and the door of the little library without knocking; on entering the little library, I found Mrs. Sickles and Mr. Key seated at a round table with a large bowl of salad on it; she was mixing it; there was a bottle of champagne and glasses on the table, [laughter, which was suppressed by the officers;] I excused myself for my abrupt entrance: Mrs. Sickles got up, blushed, and invited us to take a glass of wine with her; after sitting there for a moment, I hastened away with my wife; on entering the carriage, or immediately after entering it, my wife said [an attempt to interrupt witness being ineffectual] that "Mrs. Sickles was a bad woman."

Q,—Did you have any conversation with Mr. Key at that time in that room?

A.—Very little; I think Mrs. Sickles on that occasion introduced my wife to Mr. Key.

Q.—Did your lady ever visit there afterwards?

A.—No, Sir.

Q.—Did you see Mr. Key and Mrs. S. any time after that?

A.—Yes.

Q.—Where?

A.—Shortly after that, in riding through the cemetery, near Mr. Corcoran's country residence, I met Mr. Key and Mrs. Sickles in the cemetery; saw them at the theatre once or twice, and once or twice on the avenue.

Q,—You have alluded to this correspondence and its termination. Did you speak to Mr. Key about it?

A.—Mr. Key came to me and talked to me about it.

Mr. Carlisle—That does not strike us as material.

Mr. Brady wanted to how how Mr. Key expressed himself towards Mrs. Sickles, but would not insist on the question.

To Mr. Ould—This salad and champagne interview was between four and six in the afternoon.

Mr. Brady—I propose to ask how, after this correspondence between Mr. Sickles and himself, Mr. Key described Mrs. Sickles—how childlike she was, and how innocent, and what paternal relations he occupied toward her; that she was a mere child, and that he looked on her as a father. Is there objection to that?

Mr. Carlisle—Certainly. I had not the slightest objection that Mr. Haskin should pronounce the judgment of a virtuous matron on the conduct of this woman in April, 1858 though not strictly evidence, but I do not see what Mr. Key's description of Mrs. Sickles has to do with this case.

Mr. Brady—It is difficult for the defence to conceive what line of remark or argument the prosecution may pursue as to the relations between these parties. We know that when the relations between a man and a woman are called in question, suggestions frequently are made about a husband being too confiding, too indulgent, too kind, and that is sometimes turned into a pretext in extenuation of the act of the adulterer. I desire to show that Mr. Key had communicated to Mr. Haskin, and intended Mr. Haskin to im ress on the mind of Mr. Sickles that Mr. Key claime l to regard Mrs. Sickles as a young person who stood towards him in the relation of a child, and that he was almost in the situation denominated in law *in loco parentis*, and that, to prevent any possible suspicion on the part of Mr. Sickles, that he (Key) could have towards that girl anything but honorable intentions, he made this declaration which I refer to, and which was communicated to Mr. Sickles.

The Judge—It does not appear to me that anything Mr. Key said on the subject of his relations with Mrs. Sickles can be evidence on this trial

Mr. Brady—Well, I have made the offer. It is understood, and I do not propose to argue it.

Mr. Graham—The Court will note our exception to its exclusion.

Mr. Carlisle to witness—You are not mistaken about the point of time. It is as long ago as April of last year that you found Mrs. Sickles entertaining Mr. Key in her own house, in the absence of her husband?

Witness—No, sir, I am not mistaken about the time.

Mr. Brady—Did you ever communicate to Mr. Sickles this fact which you have related on the stand?

Witness—Never, sir.

Mr. Carlisle—She was mixing the salad for him?

A.—There was a large bowl containing salad, with a large wooden thing to fix it. She was using the wooden thing. (Laughter.)

Q.—Anything particular about that?

A.—Nothing particular.

Q.—And the champagne was ordinary champagne?

A.—Yes, ordinary champagne.

Mr. Ould—How much of it had disappeared?

A.—I think about half had disappeared.

The Court at this time adjourned.

FOURTEENTH DAY—*Tuesday, April* 19, 1859.

Judge Crawford took his seat on the bench at twenty minutes past ten, and after an interval of several minutes passed in complete silence, Mr. Sickles came in, accompanied by the jailor and officers.

James Mann, police officer, was re-called, and produced a pair of gentleman's gloves and a common comb. Did not preserve the cigarettes.

Emanuel B. Hart examined by Mr. Brady—I reside in the city of New York. Am Surveyor of the port of New York. Have known Mr. Sickles twelve years. Have seen the witnesses that were examined yesterday—Mrs. Brown and Mr., Mrs. and Miss Seeley. Saw them at Mr. Sickles'. Mr. Ratcliffe suggested to me some persons would come that day to identify Mrs. Sickles and requested me to admit them. They came and I admitted them, and they saw Mrs. Sickles in my presence.

To the Judge—Mrs. Brown came on Monday or Tuesday, and the others some four or five days afterwards.

To Mr. Ould—I was staying at the house at that time at the request of Mr. Sickles.

Mr. Sickles by permission of the Court, retired in company with the jailor.

John Thompson (an intelligent looking young man, speaking with a broad Scotch accent) was examined by Mr. Brady—I reside in New York. I was at one time coachman for Mr. Sickles. I went to him on the 16th of November, 1857. I left him on the 4th of February, 1859. I was acquainted with Mr. Key by seeing him and driving him. Mrs. Sickles went from the house in the carriage alone. She went out mostly from 12 to 1, and remained out till 4 or 5 and sometimes 6 P. M. The dinner hour was usually five or half-past five. Mr. Sickles went away before twelve, and usually came back from four to five. Mr. Key always found Mrs. Sickles in the street. Could hardly mention a day that he did not meet us. He met us at the Presidents' Mr. Donaldson's, Mr. Gwyn's, and Mr. Slidell's. Sometimes he would get into the carriage and tell me to drive through back streets. When he would meet us, he would always salute Mrs. Sickles, and say, "good morning, Madam." Sometimes he would remain on horseback, and some-

times dismount. He never got into the carriage at Mr. Sickles' door, and always but once got out before we got back to the house. He always got out at the corner of the avenue and Fifteenth street, at the Club House. I knew him only once to come home with Mrs. Sickles, that was in April or May of last year. He went into the house and when he came out I could not say. I have known Mr. Key to come to the house while Mr. Sickles was absent in New York. He always came at dusk. I knew him to be there every night almost. Sometimes I knew him to remain until late at night. At other times I did not know how long he would remain. He and Mrs. Sickles always remained in the study. The door was shut while they were there. There was a sofa in that room with its foot right at the door. Have known him to be there one night while Mr. Sickles was absent till one o'clock in the morning. He was always there when I went to bed at ten or eleven o'clock. I do not know how long he remained on these occasions. There was no person in the room but Mrs. Sickles and Mr. Key. If there was any other gentleman in the house it is likely I would know it. The night he was there at one o'clock they were in the study. He came there at seven o'clock. There was no other visitor between these hours. I think that was May, 1858.

Q.—Did anything particular occur to which your attention was called?

A.—Yes, sir.

Mr. Brady—Relate it to the jury.

Witness—I was going to bed about one o'clock. I went to the head of the hall stairs and met the seamstress.—I stood and talked a little while with her, knowing that Mr. Key was in the room. We thought the hall bell had rung, and Mr. Key and Mrs. Sickles came to the hall door and looked out. There was nobody there; they shut the hall door and locked it again; they went into the study, and I heard them locking the study door and the door that leads into the parlor. There are two doors in the study; heard them locking both of these. I stood a little while and heard them making this noise on the sofa for about two or three minutes. I mentioned to the girl that they were making a noise; the girl ran away; she would not hearken to me—(laughter)—as it was not language suitable for her to hear. I heard them for about two or three minutes. I then went to bed; I knew they "was'nt" at no good work—(laughter)—I had been out that night, and came in at 12 o'clock. I knew they were, and it was the conversation among us all, that ———

District Attorney—Never mind that.

Witness—I have seen Mr. Key come round the square and pass the house while Mr. Sickles was in the house; perhaps an hour after he would come up when Mr. Sickles had gone out, and then he would come in; he never came in the house while Mr. Sickles was in the house except on reception days; he always rang the bell when he came to the door. The last time I saw him was at Taylor & Maury's bookstore, Pennsylvania avenue. They have visited the Congressional cemetery two or three times, and two or three times the burying ground at Georgetown. These visits would be made between one and three o'clock. He would meet us somewhere in the street. They would walk down the grounds out of my sight, and be away an hour or an hour and a half. Then they would come back and drive away. Sometimes he would ride, and tie his horse; another time I drove her to the gate.

Q.—Then when they came out again what would they do?

A.—They both got into the carriage; there was only one time that Mr. Key rode with Mrs. Sickles in the carriage to the Congressional burying ground; another time he rode out on his horse, tied the horse to the railing, helped Mrs. Sickles out of the carriage, and walked down the burying ground; they staid an hour; another time I brought Mrs. Sickles in the carriage alone, and when I got there I saw Mr. Key's horse there; a colored man came up and handed her a letter; she took the letter and walked down the grave yard. Mr. Key came afterwards in a carriage, and told his colored man to take the carriage home; he then followed her down the burying ground, and they were there for about an hour. Mr. Key on coming back went off on his horse across the country, and I drove Mrs. Sickles home.

To the District Attorney—Every time Mrs. S. rode out Mr. Key met her; there might be some days he did not meet us, but very few; we drove out nearly every day; we left Washington last year the 1st of July; the first time I saw him was in April, 1853; from that time to the 1st of July never a week passed without my seeing him; the first time I saw him was on horseback, with two or three gentlemen, and I was driving Mr. Sickles; he visited the house next day, and visited it daily after that time, but not when Mr. Sickles was present; he visited the house some day every week; when Mr. Sickles was at home he visited on reception days, but otherwise I never knew him to visit while Mr. Sickles was at home; he usually visited in the afternoon, about two or three o'clock; these visits would be the first time I would see him that day; I always drove out about twelve or one o'clock, and he always met us; the days that he did not meet us he would visit the house; Mr. Sickles always went away about twelve o'clock, and I came with the carriage shortly afterwards; the witness then repeated the evidence about the occasion when he saw Mr. Key at the house at one o'clock at night.

Q.—What conversation did you have with Bridget? (Laughter.)

Witness—Oh no conversation—only a little joke.

Q.—Where were you standing?

Witness—I stood with my shoulders to the head of the hall stairs.

Q.—And you engaged in conversation with Bridget?

Witness—Oh no conversation particularly.

Q.—What happened after that?

Witness—Well I was only talking to her as one servant talks to another.

Q.—What was that conversation about?

Witness—Well I cannot exactly say, something about myself I guess. (Laughter.)

Q.—You do not know the nature of the conversation?

Witness—No sir, but I think I went on after that to talk about the people sitting down stairs. In the course of two or three minutes after they went in from the hall door I heard them making a noise which I mentioned; that was a second conversation; our conversation was only a general thing among help; we must talk to one another; the conversation was about Mr. Key.

Q.—Was that the first or second?

Witness—I cannot exactly say what I was saying to the girl. Some joking language, likely.

Q.—In which of the conversations that you had did you allude to the thing down stairs?

Witness—I cannot exactly tell you the conversation. The first conversation was not alluding to Mr. Key at all. This was after I saw him.

Q.—How long did you stay there?

Witness—Ten or fifteen minutes.

Q.—What kind of a sofa is in the study?

Witness—A pretty large sofa. Its covering is red.

Q.—A substantial one?

Witness—I never sat on it. I cannot tell you. It seems to be.

Q.—Was it a fine piece of furniture?

Witness—Yes, a nice piece of furniture.

Q.—Was it new or old?

Witness—It was in the house before I came to it. It seemed pretty. It looks pretty good decent. (Laughter.) I think Mr. Sickles went to Baltimore or Philadelphia one night. I cannot exactly say how long he remained. Mrs. S. did not leave Washington last winter.

Q.—Did Mr. Key visit Mrs. S. on these occasions of Mr. Sickles' absence at night?

Witness—He always visited her at night to my knowledge, when Mr. Sickles was away.

Q.—Was Mr. Sickles away during the month of January last?

Witness—I cannot exactly say. Am not certain.

Q.—After you had driven Mr. Sickles to the cars these evenings when he was absent from the city, do I understand you to say that Mr. Key visited Mrs. Sickles?

Witness—I did not say so.

Question—What did you say?

Witness—I cannot exactly say whether Mr. Sickles was away a night or not, this year. Think I drove him once to the cars to go to Philadelphia, but cannot exactly say whether he went away or not. It was my impression he was going to Philadelphia. I did not see him get into the cars.

Question—Had he baggage with him?

Witness—He had a carpet bag.

Question—I want to know whether Mr. Sickles was absent these evenings Mr. Key visited Mrs. Sickles at her house?

Witness—I cannot exactly say when Mr. Sickles was away. But I know that if he was away any night last year or this, I would not be right back to the house before Mr. Key was there. Whenever Mr. Sickles was away, Mr. Key was there. It is in my memory that I drove Mr Sickles to the cars last January, but I always noticed that after I drove Mr. Sickles away, Mr. Key always came to the house afterwards.

Mr. Brady—On occasions when they went to the cemetery, and Mr. Key and Mrs. Sickles went inside to walk, were they all of that time out of your sight?

Witness—All the time out of my sight.

Q.—You said something about directions to drive through the back streets; do you recollect the night of Senator Gwin's party?

Witness—Yes, a fancy ball last year.

Q.—What time did they leave that party?

Witness—About two o'clock in the morning.

Q.—Who left?

Witness—Mr. Key and Mrs. Sickles left Senater Gwin's house and got into the carriage together; I drove him and her to the National Hotel.

Q.—Then what happened?

Witness—They sat in the carriage a little while, when Mr. Key got out and bid her good night.

Q.—And what became of her?

Witness—I drove home.

Q.—Did you drive by the shortest road to the National Hotel?

Witness—I was told to drive down H or I street.

Q.—Who told you?

Witness—It was always Mrs. Sickles.

Q.—Were the orders given in the presence of Mr. Key?

Witness—Yes.

Q.—Had they left that party before that?

Witness—That was the only time I drove them from the party that night; Mr. Sickles was at that time home in his bed; I cannot exactly give the date of that party.

To Mr. Ould—These orders to drive in back streets were always given by Mrs. Sickles; Mr. Key was always in the carriage at the time.

To Mr. Carlisle—I always got orders from Mrs. Sickles to drive to those houses where she visited, and we always met Mr. Key at one of the houses or in the street; she always gave me a "lie bill" of the houses she wanted to visit, and I drove to them as suited myself; I drove past this City Hall one day while Mr. Key and Mrs. Sickles were in the carriage; he came in, and she waited outside till he came out again, and then I drove to Georgetown; this was last year, perhaps in May; I met him almost every day in the year, and so cannot fix the day; this was the only occasion I ever stopped in front of the City Hall: I often drove round this way, but she never gave me any particular orders to drive past the City Hall; I drove her to Mr. Key's house in C street; I left him there as we came from the cemetery, but she did not go in; she left a card there for Mrs. Pendleton.

G. W. Emerson sworn—Resides in this District; is by profession a butcher; have a stall in the market house; have known Mr. Key four or five years; knew Mrs. Sickles; she had been dealing with me for two sessions of Congress; have seen Mr. Key in her company, and on Thursday previous to the tragedy; that was at an unusual hour for her, between eight and nine o'clock, her ordinary time being between ten and eleven; she came to the bench and gave me the order; she asked me how much it came do, and then handed her portemonnaie to Mr. Key, saying, "Pay Mr. Emerson;" he took a ten dollar gold piece out and handed it to me, and I gave the change.

Cross-examined by Mr. Ould—It was the 18th of February; I did not know the person who accompanied them the session before the last; Mr. Sickles accompanied her in marketing oftener this session than during the previous one.

John Cooney, sworn, examined by Mr. Brady—Is the present coachman of Mr. Sickles; have been since the 8th of February; had not been employed by him before; I took the place of John Thompson; I had been living in Washington three months before that time; never saw Mr Key till the second day I went to live with Mr. Sickles; I met him on the avenue, on the square; I was on the box, driving Mrs. Sickles in the coach; Mrs. Sickles rung the coach bell; I drew up, and Mr. Key got in; I drove them to Douglas' greenhouse, and from there down the avenue; we met Mr. Key afterwards in some of the back streets, when he would get into the carriage; cannot say whether any visits were paid that day; he got out before we reached Mr. Sickles' house; up to Mr. Key's decease I usually left the house at one o'clock, or a little after; pretty much every day saw Mr. Key; he never went from Mrs. Sickles' house in the coach, or returned with her; he would join her on some part of the journey; he met her pretty much at Douglas' greenhouse or at Taylor & Maury's book store; she was generally there before he was, and then he would enter her coach; I was told of, but never saw him in her house; I remained in the upper part of the house when I was at home; I have noticed him five or six times around or about the house; I have never seen him at the house when Mr. Sickles was in it; I saw Mr. Key on the Sunday he was shot, and on the Thursday before—it was about five o'clock—at Mrs. Greenhow's; there were in the coach Mrs. Sickles and Miss Ridgely; Mrs. Sickles visited Thompson's first; I saw Mr. Key come in afterwards; left Thompson's and went to Gov. Brown's, and she, in not many minutes, followed him; I drove them to Mrs Greenhow's; Mr. Key joined them there; he stayed there an hour and a half or so; I drove them to Fifteenth street, and drove Mrs. Sickles and Miss Ridgely home; can't tell where he went.

Mr. Brady—Do you remember, when the coach door was open, that Mr. Key stood with one foot on the sidewalk talking with Mrs. Sickles?

Witness—I do not; I saw Mr. Key pass Mr. Sickles' house about twelve or half-past twelve; I saw him a quarter of an hour afterwards; the waiter man called me to look at Mr. Key; I did not see him after that.

Cross-examined—I am Mr. Sickles' coachman now.

Mr. Wooldridge recalled—Mr. Brady handed him an envelope and letter, asking whether he had ever seen them before.

Witness—Yes, both of them. I saw them on Friday before the killing. On the 25th of February saw them first, at the Capitol. They were shown me by Mr. Sickles. He read all of the letter except two or three lines. He could read no more. That was about one o'clock. I gave it back to him, and put a mark on the envelope and letter.

Mr. Brady proposed to read that letter.

The counsel for the prosecution, having examined it, submitted whether it came within the ruling of the Court.

The Court decided it was admissible, and it was read. It is dated Washington, addressed to Mr. Sickles, and signed "R. P. G." The letter was handed to the jury, and is as follows:

"WASHINGTON, *Feb.* 24, 1859.

"HON. DANIEL SICKLES—

"DEAR SIR: With deep regret I inclose to your address the few lines, but an indispensable duty compels me so to do, seeing that you are greatly imposed upon.

"There is a fellow, I may say, for he is not a gentleman, by any means, by the name of Phillip Barton Key & I believe the district attorney who rents a house of a negro man by the name of Jno. A. Gray situated on 15th street bt'w'n K and L streets for no other purpose than to meet your wife Mrs. Sickles, he hangs a string out of the window as a signal to her that he is in and leaves the door unfastened and she walks in and sir I do assure you

"With these few hints I leave the rest for you to imagine

"Most Respfly
"Your friend R. P. G."

Mr. Brady proposed to show by Mr. Wooldridge the declaration of the prisoner immediately before leaving his house for the scene of the affray in which Mr. Key lost his life, as tending to exhibit the prisoner's condition of mind, and as warranting the inference that h was not legally responsible for the act.

Mr. Ould did not see how this could, on any ground be received as evidence. It was contrary to the rule, and would be opening the door wider than on any previous occasion.

Mr. Brady—Mr. Magruder will show the authorities.

Mr. Ould—I do not propose to discuss it.

Mr. Magruder commenced an argument by saying that it seemed to be the desire of the other side to suppress the truth, while the constant purpose of the defence was to bring out all the facts and circumstances, to enable the jury to pass upon the case intelligently.

The case for the prosecution was conducted, he said, as if your Honor were a Minos or a Rhadamanthus sitting to administer some brutal code in the regions of Pluto.

The Judge called counsel to order. This argument, he said, was one of law.

Mr. Carlisle—So far as we are concerned, we are quite willing that counsel should be allowed to express his views of how the case should be argued and conducted, and he is quite safe in supposing that our views will probably never coincide with his.

Mr. Magruder called the Judge to witness that he was only speaking in reply to the remarks made in the course of the prosecution. There were here two prosecutors—a public and a private one. That was rather an unusual spectacle in this court-house. Had he not the right to speak of the gentleman associated in the prosecution (Mr. Carlisle) as private prosecutor? It was a notorious fact that the Chief Magistrate of the country, the President of the United States, was applied to to employ additional counsel to aid the prosecution, and that he declined to do so.

The Judge—Mr. Magruder, do not refer, if you please, to the Chief Magistrate of the country. He has nothing in the world to do with this matter. It is a matter of argument on a law point.

Mr. Carlisle—The gentleman means to demolish the law point by commenting on one of the counsel for the prosecution. That is a novel style of argument. I think the gentleman had better content himself with answering my arguments, rather than harping at my presence.

Mr. Magruder took the hint, and proceeded to argue the question. The evidence, he said, was offered as bearing on the prisoner's state of mind, and he argued that in that, as well as in other points of view, the evidence was admissible.

The District Attorney said that it was not his purpose to discuss the question at all. It had been already sufficiently discussed. He simply arose for the purpose of making a remark. The motives which actuated the prosecution had been already frankly stated. He was surprised that a gentleman would rise in this place and say that the prosecution had suppressed the truth and suggested falsehood. If he believed that, and still expressed high personal regard for the counsel who conducted the prosecution, the confession itself was humiliating.

Mr. Magruder explained, that he had said the prosecution was carried on on the basis of a suppression of the truth, and suggesting falsehoods by the technical objections raised.

Mr. Ould also explained, that the remarks which he had made in reference to the theatrical organization of the defence, including a gentleman outside of the profession—the Rev. Mr. Haley—were made in a playful spirit, and he was surprised that they had not been taken in that spirit.

Mr. Magruder was glad the gentleman had had an opportunity of making the *amende honorable*.

The Judge—It is proposed to prove what the prisoner said on first leaving his house, and shortly before the killing. Declarations of a defendant are never evidence for him, unless when they are part of the *res gestæ*, or are made evidence by the United States. The length of Lafayette square is well known to the jury and counsel; and, in my judgment, the distance is too great to allow this declaration to be given as part of the *res gestæ*. There is but one point of view in which the declaration can be received. That has been made one of the aspects in which it is presented to the court. It is as to the insanity of the prisoner, or as tending to prove insanity at the time the act was committed. As far as the declaration may go to show that, I think it may be evidence. The acts and declarations of a man alleged to be insane are the best possible evidence of insanity; and if these declarations are offered for that purpose, I do not feel at liberty to reject them. But they are rejected as part of the *res gestæ*, and must be submitted to the jury simply as evidence of the insane condition of the prisoner at the time, and for no other purpose; that is, to show that the prisoner's mind was in an unsound state. The declarations of a man up to the moment of killing, or after, may be evidence of insanity, or may not be. Such evidence was received in the case of Day, in this court, extending through a period of some months, and up to the very moment of killing.

Mr. Brady—Yes, your Honor; I do not know how else in the world to judge of a man's insanity except by what he says or does.

The Judge—There is no way of proving it so well as by one's acts and declarations. Counsel understands that this is received on that ground only.

Mr. Brady—We understand your Honor perfectly.

Mr. Wooldridge was re-called to the witness stand.

Mr. Wooldridge again took the stand, and, in reply to a question by Mr. Brady, said, that Mr. Sickles, after the waving of the handkerchief by Mr. Key, remarked, "that fellow, who has just passed my door, has made signals to my wife." That was the purport of what he said.

Q.—You have already stated that Mr. Sickles exhibited to you the anonymous letter above referred to. Did you, in consequence of that communication, make inquiry on the subject of that letter, as to whether its contents were true or not?

A.—Yes, sir.

Q.—Did you communicate to Mr. Sickles what you had ascertained on that point?

A.—On Friday I did. Mr. Sickles read all the letter except the last two lines to me, and then handed it to me. On Friday afternoon, I think, after gas light, I went to the premises on Fifteenth street. I mentioned to Mr. Sickles that I had obtained the consent of parties living opposite the house to occupy a room, and that these parties told me the lady was last at Gray's house on Thursday of that week, before I was there, and was with Mr. Key. I had discovered that I had made a mistake, as it was Wednesday and not Thursday the woman was there, and this I told to Mr. Sickles. I then gave him a description of the dresses she wore. I found it always one and the same lady. Mr. Sickles recognized the apparel of his wife, and it appeared at one time to convince him it was his wife who had been there. I told him the lady had come there two or three times a week. That Mr. Key would come first, go into the house, leave the door on a jar, and then she would slip in. Previous to this, a towel or something white would be put out at the bowed window, and by this parties in the neighborhood knew Mr. Key was in the house, and that the lady would come from that fact. I told him Mr. Key had said that he had hired the house for a Congressman or a Senator, and that a load of wood, already sawed, had been brought there and carried through the entry to the yard. I had no knowledge of the facts myself. I could not meet a person who knew my business in going into that neighborhood, who could not give me some information on the subject. Mr. Sickles said his hope was that this was not his wife, because he had made inquiry and found that on Thursday she could not have been there, but when I corrected myself and told him it was on Wednesday, and not Thursday, it unmanned him completely.

Cross-examined by Mr. Carlisle—The anonymous letter was exhibited to me by Mr. Sickles about one o'clock on the 25th of February, Friday. It was in the Capitol, in the rear of the Speaker's chair. Mr. Sickles said, as he approached me, taking the letter out of his pocket, "George, I want to speak to you on a painful matter. Late last night I received this letter." Mr. Sickles then read all but the two last lines, burst into tears, and handed me the letter. Before I opened it, he said he generally threw anonymous letters aside, but, as in this the facts could be proved or disproved so easily he thought he would investigate it. Mr. Sickles added, he went in the morning of that day to the neighborhood, as described in the letter, and found that the house had been hired by Mr. Key from the negro man Gray, and that a lady was in the habit of going there. He further said, "My hope is, that this is not my wife, but some other woman. As my friend, you will go there, and see whether it is or not." He was very much excited, so much so that he put his hands to his head and sobbed in the lobby of the House of Representatives. He rushed from the sofa on which he was sitting, and went into another room, in a corner. He said, "Get a carriage, we'll go, and I'll show you the house." I called a carriage, when we entered and drove to Eleventh street. He showed me Gray's house. I left him at the Treasury building. During the ride I said I would make the examination. Made up my mind to go and take a room in the vicinity of the house to see whether it was Mrs. Sickles or not.

Q.—At the time Mr. Sickles showed you this letter at one o'clock on Friday, you say he was greatly agitated.

A.—Yes, sir; he put his hands to his head, and sobbed audibly; the House was in session at the time, and per

sons were walking up and down; he told me he entertained a hope that it was not his wife; I parted from him at the Treasury about two o'clock.

Q.—Are you aware of the fact that on Friday, at that hour, Mr. Sickles addressed the House of Representatives?

A.—I am not aware of that fact.

Q.—Are you aware that on Friday evening Mr. Sickles revised and corrected his speech?

A.—No, sir; the scenes I have described took place on Saturday; his excitement was not nearly so great as it was on Sunday; it was on Friday at one o'clock, that he showed me this letter; I did not take him into a private room on Friday; if I so stated, it was in mistake.

Counsel.—I was interrogating you about the circumstance of reading the letter on Friday, at one o'clock, and you described his placing his hands to his head and sobbing audibly, and that you took him into an ante-room.

Witness.—I did not take him into the ante-room on Friday; his grief then was not so great as it was the next day; I am not aware of the fact that that same afternoon Mr. Sickles addressed the House, and revised and corrected his speech; I told him on Friday evening that I understood it was on Thursday that the lady was at the house in Fifteenth street; I was employed as a clerk in the House of Representatives; I was not aiding Mr. Sickles as a clerk this session; I ascertained from a colored man, the son of Mrs. Baylis, that the lady was there on Thursday; when I made that communication to Mr. Sickles he was in the lobby, at the rear of the Speaker's chair; it was between four and five o'clock on Saturday when I made the second report to Mr. Sickles; I ascertained the fact that the day was Wednesday from Mrs. Baylis, the woman from whom I rented the room near the house; Mr. Sickles did not leave the House of Representatives in company with me on Friday; I did not see how Mr. Sickles occupied himself after I made that communication; I am not aware that he addressed the House or voted on questions after this communication was made.

Q.—Has your friendship been of long standing with Mr. Sickles?

A.—Since the winter of 1855; I knew him before that, but not intimately; our relations were very close; I was not employed by Mr. Sickles; in the winter of 1858 I would go to his house and overhaul his letters, and lay aside those to be answered; am in the map department of the Clerk's office.

Q.—Did he explain to you how he had ascertained or found this house in Fifteenth street?

A.—He followed the directions of the letter; I presume he made inquiries of somebody; did not tell me so; I took a memorandum of the dresses described to me; I have it now in my book; he recognized the dresses when I described them, and I felt in my own mind that he was convinced; his exhibitions of grief were then more violent than on the preceding day; I cannot say who was present on that occasion; my attention was so taken up with him that I did not remark; my impression is that he was in the hall when I got there, and I sent in for him.

Counsel—Fix as closely as you can the time of this interview of Saturday.

Witness—Between four and five; at three I left the house in Fifteenth street and went to my house in Twelfth street; think I stayed to dinner. I was told that a man had been there with a letter for me. I concluded from the description it was McClusky, who was about the house. McClusky, while I was there, came with a note to me from Mr. Sickles, and I immediately went up to the Capitol in a hack. The house in Twelfth street is between C and D; the hackman who drove me to the Capitol was black. If I took dinner, it would be ready at four o'clock. I am certain I remained in the house an hour, and then rode up to the Capitol. It might have been ten minutes after four when I got to the Capitol and saw Mr. Sickles; think I remained with him ten or twelve minutes. Left him in the retiring room, and saw no more of him till Sunday morning. I went to his house on Sunday morning; Mr. Butterworth was present when Mr. Sickles said he saw the villain Key pass the house and make signals to his wife.

Q.—How long did he remain in the room at the time?

A.—A very brief time—very brief, indeed; he made use of this exclamation, and Mr. Butterworth endeavored to calm him, as it were. Some conversation took place between them. Do not know the words Mr. Butterworth used. He said something about "only themselves knew it," Mr. Sickles' words were, "that he could not—the whole world, or whole town knew it." Mr. Sickles asked what would he do? Mr. Butterworth then said, after hearing that the whole world knew it, "As a man of honor I have no advice to give you." Think that was all he said. He did not say that "as a man of honor you have but one course to pursue." I am positive as to that.

Q.—Are you not aware that Mr. Butterworth himself has admitted that he said so?

Mr. Brady suggested that the question was improper.

Mr. Carlisle argued that it was a proper question, by way of refreshing the witness' memory.

Some time was consumed in squabbling about this point. The Judge said he saw no irregularity in the question, when asked for the purpose of refreshing the memory. Exception taken.

A.—I have no recollection of Mr. Butterworth making such a statement. Mr. Sickles was dressed when he came into the room at that interview, as he had been all day. My impression is that when he returned with the officers he had an overcoat on. At the interview, prior to the shooting, he had no outside coat or hat on. He passed into the hall. Do not know where the overcoat was kept. Did not hear him go up stairs after he left the study. Might have heard the hall door open, because Mr. Butterworth passed out. They left the study together. I have no distinct recollection of Mr. Sickles asking Mr. Butterworth to accompany him to the Club House or any other place. They were in conversation as they passed out of the library into the hall. Mr. Butterworth had been in the house a very short time; he had hardly been in the house when Mr. Sickles came down stairs.

Q.—Did he refer to any signals supposed to have been made from the Club House in connection with the other signals?

Witness—I had told him that morning I had heard from the servants that signals were made from the Club House. I have no recollection about Mr. Sickles saying to Mr. Butterworth that while she had confessed everything, she denied about the signals. Have no recollection about his asking Mr. Butterworth to accompany him to the Club House to see if Mr. Key had a room there. There was very little conversation after the burst about the handkerchief. I was so much affected by his grief, and whatever he said was so broken by sobs, that I could not make out what he said. The steps to the front door are stone. I saw Mr. Butterworth go down as I was sitting in an easy chair by the window. He was alone. He went up toward the avenue. Was not aware that Mr. Sickles was out of the house till he came back. Am not satisfied that Mr. Sickles went down those steps. It has bothered me since how he did get out. If he had gone down the front steps I must have seen him. I had just stepped into the back room to get a stereoscope, and as I laid aside my crutches, when I came back I saw the people running. I meant that if Mr. Sickles had accompanied Mr. Butterworth I would have observed him. If any one had gone down the steps, even while I was not looking out, he would have attracted by attention. There is another outlet to the street from the kitchen apartments. Cannot describe what rooms there are on that lower floor. Believe Mr. Sickles must have gone out by the basement door. Do not recollect seeing his overcoat that morning. My back was towards the clothes rack in the hall. The door in the hall was open when Mr. Sickles and Mr. Butterworth left the study.

To Mr. Ould—This exclamation of Mr. Sickles was made right on the doorsill of the library. He had been in the room every ten or fifteen minutes that morning. Saw Mr. Sickles more than once on Friday, in the afternoon and evening. I think the House had just adjourned when I saw him on Friday evening. Think my son was with me, and this colored boy (Crittenden). I left the Capitol that evening shortly afterward. Crittenden came back with me. No interview took place between Mr. Sickles and Crittenden that evening. I told Mr. Sickles I had the boy with me, but he said he did not wish to see him, in fact he did not want to see anybody. I communicated to Mr. Sickles what Crittenden had told me, that the lady had been there on Thursday. I took the boy there, supposing that Mr. Sickles might like to see him.

Adjourned

FIFTEENTH DAY—*Wednesday, April* 20, 1859.

The Court opened at half-past 10, A.M., with the usual crowd in attendance.

The cross-examination of George B. Wooldridge was continued.

To Mr. Ould—I cannot say at what hour I saw Mr. Sickles after the killing of Mr. Key; I saw him as soon as he got in; I cannot say how long he remained before he left; I have not the least idea about the time; Mr. Butterworth and Mr. Walker came in at the same time; with them were two or three officers; I do not know to what part of the house Mr. Sickles went; I do not distinctly recollect seeing him after he came to the house until he was about to leave; I remained in the study all the time; I think the door between the parlor and study was closed the latter part of the time; he passed through the library where I was; I cannot say whether Mrs. Sickles was in the back parlor at any time that door was open; I did not know that any person was there except from the fact of seeing them come out; I have a distinct recollection more from the manner of the parties than anything else, that there were persons in the back parlor; if anything unusual had taken place in the back parlor, and if the doors between the rooms were open, I would have had my attention drawn to it; the library is small, the parlor very deep, and the walls thick; the depth of the library is 12 or 15 feet, and that of the parlor 30 or 35 feet; it is long and narrow.

To Mr. Brady—The sofa is near the piano, which is at the extreme end of the room; after Mr. Sickles returned that Sunday there was a great buzzing and confusion in the house; some dozen people were there talking in couples; I did not receive a communication from Mr. Sickles on Friday night; I did receive, a communication on Saturday, after three o'clock in regard to exercising caution in the investigation; he told me must be careful and not use Mrs. Sickles' name for suspicion was worse than reality, and he had knowledge that his wife had not been there on Thursday; it was that which had depressed me, in having to tell him that it was Wednesday, and not Thursday, that the lady was seen there.

To Mr. Ould—I rode with Mr. Sickles to the neighborhood of the house in Fifteenth street on Friday. He did not get out of the carriage or make inquiries. I returned there about 7 o'clock that night. It was a dark, stormy, snowy night. I did not stay more than an hour in the neighborhood. I cannot say what time I got to the Capitol. I understood that I was to see this lady when she came there, and ascertain whether it was his wife or not. I was to find it out by seeing the lady myself. I had a conversation with the negro boy "Crittenden," and found that he was full of knowledge about Mr. Key going there. I carried the negro to see Mr. Sickles, presuming that he might wish to ask him questions. The negro did not know who the lady was. I did not have to make inquiries. The information came from the negroes to me. I did not get any specific or general directions at the second interview with Mr. Sickles on Friday evening. I was acting on my first directions, which were to find out, as his friend, whether this lady was his wife or not. I cannot say what was the date of the letter that I received on Saturday afternoon. He did not say anything to me on Friday evening about it. He said nothing but what was in the letter about my being guarded in my inquiries. He did not say whether I was or was not to make inquiries of other parties.

To Mr. Carlisle—The card I received Saturday night after being at a presentation to Mr. Allen, Clerk of the House, and it was to that card I alluded in my testimony yesterday.

Mr. Carlisle—That does not explain your testimony, (reading a portion of it).

Witness—I had the card and note mixed together. I got the note through McCluskey, and the card after I came home on Saturday night, asking me to go up to his house that night, if I received it in time, and, if not, to go up next morning. McCluskey brought the note to my room between three and four o'clock, and I told him I would go up as soon as I got ready, or as soon as I got my dinner. Am well satisfied that I must have remained an hour at my house before I went to the Capitol. By Mr. Sickles' manner I should think that my communication to him, on Saturday afternoon, about the dresses of the lady, and about the day being Wednesday, not Thursday, completely convinced him. He was quite prostrated. I prosecuted my inquiries no further. It was on Friday that Mr. Sickles showed me the anonymous letter. He retained it. I did not put my initials on it then. I brought down Mr. Sickles' portfolio from his desk in the house, and in it was this letter. I marked it, under the direction of one of the counsel. I was rightly understood, yesterday, in saying that after he had shown me the anonymous letter, Mr. Sickles and I drove to the neighborhood, and he indicated to me the house. He said he had been there that morning. He said his hopes were that it was not she.

Mr. Carlisle—Repeat as accurately as you can the language of the note addressed to you by Mr. Sickles on Saturday afternoon.

Witness—It was that I should be cautious in my inquiries, about using the name of Mrs. Sickles, as the suspicion, if not proven or not true, was worse than the dreadful reality; another thing he said was, that he made inquiries which assured him that it was not his wife who had been there on Thursday. I read the letter before I went to the capitol; I asked Mr. Sickles no questions when we drove to the neighborhood, as he did not seem to wish to converse about it. He told me that he had made inquiries and that the house was there, and that Mr. Key had rented it of John Gray; he did not say from whom he had made the inquiries. I cannot recollect any of the names of the persons in the lobby of the House on Friday or Saturday afternoons, when Mr. Sickles was so agitated. I can remember Captain Goddard and Mayor Berrett, and Mr McClusky being in the house just after the homicide. He may have seen me when he came in on that occasion, as I was sitting in the study near the window. I am not aware that Bridget, the lady's maid, was in the study. Cannot state the interval of time between Mr. Butterworth's going out on Sunday and the return of Mr. Sickles with the officers. It was much longer than five or fifteen minutes. Think it could not have been less than an hour. All that time I was in the library; cannot say what time elapsed from Mr. Butterworth's going out to my seeing the people running; it seemed to be one continuous matter; the words of Mr. Sickles, "What shall I do!" were not addressed as a question to Mr. Butterworth, but were an exclamation. I was very much affected that day.

Mr. Carlisle—I have no doubt of it. It was a scene to affect any person.

Witness—I was calm enough to remember that I had seen a stereoscope, and perhaps it was to relieve my mind of the emotion produced by Mr. Sickles' sufferings that I went for the stereoscope; cannot estimate the interval of time between their going out and my seeing the people run; five minutes might cover the whole of it.

Mr. Carlisle—That is all.

Witness—There is one matter in which I think I am misunderstood. It might appear that the words, "What will I do," was a question to Mr. Butterworth. It was in this manner—it appeared to be in this way—(witness holding his hands to his head.)

To Mr. Carlisle—That was before Mr. Butterworth's remark that I have repeated.

Witness—That reminds me of another thing. Mr. Butterworth's words "be quiet," were to soothe and calm Mr. Sickles.

Mr. Brady called John J. McElhone. Mr. McE. not answering, Mr. Brady stated that he wished to prove by him that he had caused to be inserted in the Washington States, of the 26th of February, an advertisement for the author of this anonymous letter.

Mr. Carlisle had no objections to have the advertisement put in, but the prosecution also wanted to examine Mr. McElhone, and therefore this matter might be reserved.

Mrr. Brady assented to that arrangement.

The paper containing the advertisement was handed to the Judge.

Mr. Stanton stated that a similar advertisement appeared in the Star the same day.

The advertisement is as follows:

R. P. G., who recently addressed a letter to a gentleman in this city, will confer a great favor upon the gentleman to whom the letter was addressed by granting him an early, immediate and confidential interview.—FEB. 26.

Albert A. Megaffey, examined by Mr. Brady—I reside in the City of Washington; I am a contractor; I

knew the late Mr. Key, was acquainted with him from January or February, 1858; was tolerably intimate with him; I was a member of the Club up to the time of its dissolution, and met Mr. Key there.

Q.—Did you at any time have a conversation with Mr. Key in reference to Mrs. Sickles?

A.—I did.

Mr. Carlisle—Stop a moment.

Mr. Brady—We don't ask the witness to state the conversation.

Q.—When did the conversation take place?

A.—In June, 1858; I had a subsequent conversation on that subject the day or two immediately preceding the Napier ball, which was on the 17th of February; become it from something that occurred at the ball between Mr. Key and myself; never had regular set conversation with him about the matter, but those two, but I have referred to it three or four times when I met him.

Mr. Brady—I desire you to state this conversation.

District Attorney—We object.

Mr. Brady—We propose to prove by this witness—First, that shortly before the decease of Mr. Key the witness had noticed certain conduct—on his part—towards Mrs. Sickles, which led him to suggest to Mr. Key that the latter was observed to be over attentive to her, in answer to which Mr. Key remarked, that he had a great friendship for her, that he considered her a child, and had paternal feelings towards her, and he repelled indignantly the idea of having any but kind and fatherly feelings towards her; second, that at a subsequent conversation in relation to the same subject, the witness suggested to Mr. Key that he might get into danger or difficulty about the matter. Mr. Key laid his hand on the left breast of his coat, and said, "I am prepared for any emergency."

Mr. Ould argued that evidence of these conversations was inadmissible.

They had not been in any manner connected with the accused, and it did not appear that they had been communicated to him.

Mr. Brady argued that the evidence was competent. The District Attorney, in his opening, had represented Mr. Sickles as a walking armory, and Mr. Key as being unarmed, and that Mr. Sickles knew that he was unarmed. This evidence now offered was to show that Mr. Key, in reference to this very subject, had made a gesture and expression that he was armed, and that he was prepared to use his weapon or his weapons, in any collision that might occur. They had nothing in evidence about the first moment of contact between Mr. Key and Mr. Sickles, except that there was loud talk between them, and counsel argued that the previous conversation and statements of Mr. Key in reference to the matter were perfectly competent evidence.

Counsel for defence followed on the same side. They considered the evidence offered as showing an acknowledgment on the part of Mr. Key of his guilt; and it seemed that as the evidence of adultery was admitted, the admission of guilt was as high evidence as could be offered to the jury on that point. Deceased did not repudiate the insinuation of guilt, but he intimated that he had converted himself into what the prosecution had described the prisoner, namely, a walking magazine, prepared to repel any attempt on the part of the husband to punish the infraction of his marital rights. They offered the evidence on another ground. Whatever right there is to sustain this prosecution grows out of the conduct and declarations of Key. If this conduct and these declarations gave him a kind of *caput lupinum*, a wolf's head, which put him outside of the pale of the government, the defence had a right to show it. They proposed to show that he was not only on an errand of adultery at the moment of the homicide, but that he was prepared to resist the doom which rightly belongs to the adulterer. Were not these strong facts to go to the jury on the point as to whether deceased was in peace of the government when he was slain? The evidence was important, also, as meeting the assertions of the prosecution made in the opening speech of the District Attorney. He verily believed that the tendencies of all intrigues of this character were to end in the death of the husband. They had a remarkable instance of this at the present moment in Albany (referring to the case of Mrs. Hartung). The evidence was therefore proper, not only on the ground of the general inference of danger to the husband, but because in this particular case, the adulterer had armed himself to resist the husband if he interfered with him in his amour. This declaration, too, it would be remarked, was made in Lafayette square, in view of the house of Mr. Sickles, and at the time wher Key was contemplating the perpetration of the wrong for which he was killed.

Mr. Carlisle argued against the admission of the evidence. He would first notice the point of justification and Divine vengeance which it seemed as if his Honor was understood to have countenanced by previous rulings in this case. He had not so understood his Honor's rulings. But his Honor had said that the evidence of adultery was admissible, as tending to show the insanity only, which he took to be a clear exclusion of the conclusion that it was admitted for the purpose of showing that Divine vengeance was executed on the part of the prisoner.

The learned counsel (Brady) had not distinctly announced that as one of the grounds on which he relied, and he (Carlisle) was curious to hear what he thought of that doctrine of Divine vengeance. He (Mr. Brady) had argued that it was admissible, because we are now inquiring into the fact of the previous adultery, and because this evidence bore on that inquiry.

As to the fact of adultery, his Honor ruled against the objection of the prosecution, but with his better judgment of the law, determined that that matter was a fit subject of inquiry here, but exclusively on the suggestion that it was to be connected with other proof, to show the insanity of the prisoner. Certain portions of the evidence tending to prove adultery were admitted, as tending to show the meaning of the language used by the prisoner at the time of the homicide. He did not, therefore, deem it necessary to trouble his Honor with the argument on that part of the proposition. His Honor had constantly refused to recognize the doctrine of Divine vengeance, but this offer of evidence was based on another ground, which he deemed worthy of consideration. It was offered, first, to show that Mr. Key was armed; secondly, as tending to strengthen the impression on the prisoner's mind that Mr. Key was armed; and, thirdly, as being something in the nature of a threat by deceased towards the prisoner. These were perfectly intelligible grounds, and he proposed to discuss them, as he thought they were entitled to be discussed. How, then, did these declarations tend to show that deceased was armed at the time the homicide took place, on the 27th of February—declarations made ten or twelve days before that?

He submitted that that did not tend to prove that the deceased was armed when the prisoner met him Whether or not he was armed on previous days was totally immaterial. As to its being in proof that the prisoner knew deceased was armed, he had not heard any suggestion that the conversations between witness and deceased were never in the lifetime of deceased communicated to the prisoner. Admit that the conversation took place, and that it might be interpreted to mean that the deceased then wore arms, it neither proved, nor tended to prove that the deceased was armed on a subsequent day. But whether deceased was or was not armed, was wholly immaterial on the question of the prisoner's guilt or innocence.

The question was not whether he was armed, but how he used, or whether he used at all, the arms which he was supposed to have carried. It was urged here that the declaration of the deceased amounted to an admission on his part of guilt, and to a declaration that he was prepared to meet any assault that might be made upon him.

The offer is in a case where the facts show the homicide, and where the defence claims that the homicide was righteous, deliberate, and in execution of the decrees of Providence himself, for the purposes of justice in the government of the world. The declaration of the deceased that he was prepared for any such attack as that tends to show that the deceased made the first assault; that he threatened, in substance, the prisoner Unless that be the use made of it, I submit it can have no use. Does it tend in any degree to that end? I submit not. It is simply, naturally, exclusively a denial of guilt, and in answer to a warning that he would be assaulted, a statement that he would defend himself. Before it goes to the jury, your Honor must perceive that a reasonable mind may reasonably infer the fact to prove which it is offered. No such interpretation has been suggested; none such has occurred to me.

I am wrong, perhaps, in saying that no such interpretation has been suggested.

It has been suggested in the argument of the gentleman on the other side, that, if deceased had defended,

or had offered to defend, his life against the prisoner, satisfied as the prisoner was that the deceased was an adulterer, it would have been to place himself in defiance of the law; and that, if he had slain the prisoner in defence of his life, it would have been equivalent to slaying the sheriff on the scaffold, standing there to execute the mandate of the law.

Need I discuss this? I suppose not. The argument is, that, so soon as this prisoner, sitting in judgment on the acts of his wife and the deceased, reached the conclusion, justified by reason and in the exercise of reason, that they were guilty as adulterer and adulteress, he was right in treating the deceased, whenever he met him, as one not in the peace of God and of the United States, nor either of them; that, in the matter of law, he was not in the peace of God and of the United States; that he was an outlaw; that he wore no human features, but wore them *caput lupinum*, so that not only the prisoner at the bar, but the first man who met him, with the knowledge or belief of his guilt, might slay him in the public highway; and that, if he took the life of any one except in the defence of his own life, he would have been a murderer.

Now, I confess when I first heard that doctrine about the peace of God and the United States, I thought it a very harmless piece of oratory. I supposed it was to round a point. I supposed it was intended to produce an effect on those who did not know or could not comprehend how it was to conform to the plainest principles of law. But I was mistaken. I perceive it has been the subject of much study and reflection by counsel on the other side. I see it is a deliberate judgment which they have formed—a theory they have constructed on the principles of ethics, theology, and the fundamental principles of social organization, about which they know better than I do; and that it is, in fact, the foundation of a new section of all these subjects—a new kind of socialist, a new kind of religionist, a new kind of jurist.

It may be possible that I shall live to see the day when I shall be a humble follower of this new doctrine, for very strange things have happened before now with regard to things containing not a particle of truth. But the world has not yet reached that point of civilization, that extreme susceptibility, to be prepared for the reception of such impressions just now. I confess, of all places I know on earth, I should most deeply deplore seeing it taking root in this temple of justice.

In the peace of God and of the United States means nothing more nor less than that the party is in a condition to have the protection of the law. That is all, and I agree, that if every man is guilty of adultery, *ipso facto*, becomes an outlaw, forfeits all claim to the protection of law, and is to be treated as a wild beast and slain on sight; why, then, such an one is not in the peace of God and the United States. But until I learn from some Judge, or from some book, or from the use of my own feeble intellect, acting on such materials of learning as my small opportunities may have given me as the law, I shall believe that to kill an adulterer on the principle of revenge, or on the principle of divine vengeance to vindicate the law of God, is murder. I will not be behind tbe gentlemen in denouncing the sin of adultery; I will not be behind them in admitting it is one of the most odious of all sins; but I trust never to follow them in asserting and admitting the doctrine that society, either in a mass or by individuals, may by violence punish the sin. I shall never fail to denounce it.

The Judge—It is proposed to prove in this case, by the witness on the stand, what Mr. Key said in relation to Mrs. Sickles; that she was a mere child, and that he looked on himself in some measure as a sort of parent, and that on his being remonstrated with and told that he might get himself into trouble, he said, putting his hand on his breast, he was prepared for any emergency that might occur. This is objected to on the part of the United States for various reasons. I do not perceive that the evidence tends to establish any point in controversy in this case. The declarations of deceased occurred some of them so long ago as last June, and the last of them a day or two previous to the 17th of February. How that tends to prove, even if it were material, that the deceased was armed on the 27th of February, some ten days after the last declaration, is a matter that does not strike me as being likely to follow from the introduction of the evidence. There is another ground on which it strikes the Court that the evidence is not admissible. It is offered partly in explanation of the conduct of the defendant, in the supposition that he had a right to suppose the deceased was armed, and that his conduct might be partly accounted for on tha ground. This conversation might just as well have passed between any two gentlemen discussing the alleged intimacy between Mrs. Sickles and the deceased—it would be just as much evidence, if one had said to another: "These persons are misbehaving themselves, and if Mr. Key does not take care he will get into trouble, or into danger, or have his life taken;" that would be as much evidence as this. Because it does not appear that it could have influenced in any possible way the conduct of the prisoner, or could have had anything to do with any point involved in this case, I think the evidence not admissible.

Mr. Brady—Your Honor did not mention our grounds of offer, but I take it for granted it is included in your Honor's ruling—that is, the persistency of the deceased in prosecuting the act of adultery. Does your Honor's decision extend over that ground?

The Judge—I do not think it has any tendency to prove that even, and you are right in concluding that that point is covered by the decision rendered.

Mr. Brady to witness.—Then we will not examine you further, sir.

Thomas J. Brown, sworn and examined by Mr. Brady.—I took a measurement of Mr. Sickles' house from the window of the library to the back window of the back room, the distance is forty-five feet five inches. The sofa is near the back window of the back room. The thickness of the wall is fourteen inches.

Cross-examined by Mr. Ould.—I made the measurement yesterday. I don't know where the sofa was on the day of the killing, nor whether the partition wall is brick, or lath and plaster. The jam or frame of the door is about one and a half inch wider than the wall. The depth of the library room is seventeen feet ten inches. I did not take the width.

Felix McClusky sworn.—I reside in Brooklyn. I was in Washington on the 27th of February last, in the neighborhood of Willard's. I followed to the scene of the killing. There was considerable confusion and a mob near the club house, and at the corner I saw a crowd running after Mr. Sickles. I did not see Mr. Sickles till I got near Horace F. Clark's house. I saw Mr. Sickles ascending the stoop of Judge Black's house, the people running after him. I sent a note to him, saying I was there. Mr. Black appeared at the door and spoke to me. I sent in a note to Mr. Sickles, to say that I was there, and I got word from Mr. Black himself that Mr. Sickles would be out in a few minutes. I stayed there ten or fifteen minutes, and Mr. Sickles and Mr. Butterworth and others came out and got into a carriage, and rode to Mr. Sickles' house. I walked to the house. I was telling Mr. Wooldridge of the excitement, and while I was talking a carriage came up, with Mr. Sickles and Mr. Butterworth and others. They came out. Mr. Walker came into the house, looking very much excited and scared. Mr. Walker went into the library. Mr. Butterworth came out and spoke to Mr. Walker, and both went into the back room and closed the door after them. By the state I saw Mr. Sickles in I thought he would kill every man, woman and child in the house. I thought, even, that if he went up stairs he might injure his wife. I spoke with Mr. Berret, the Mayor. I kept my eye pretty close on Mr. Sickles, and as he went up stairs I stepped up two or three steps to watch him. He spoke to me about some keys. Mr. Goddard then came, and as I thought there was enough to watch him I did not follow him up stairs. I heard either her or him give something of a groan or holloa, or something of that kind, and I thought I would not go up. I do not think a person in the study could hear what was going on in the back parlor. The door opened once, and then I heard a buzz or confusion, but the door closed in a second, and then the noise ceased just as if it was a ventriloquist's trick. When I saw Mr. Sickles at Mr. Black's he looked liked a man frightened to death, you know, with his hair over his face. I had my opinion from the start that he was not responsible for anything he did. Mr. Black looked scared and excited, too.

Mr. Carlisle—Do you think the Attorney General was crazy, too.

Witness—No, sir.

To Mr. Ould—I stayed at Mr. Sickles' house till he went to jail with Mr. Walker and Mr. Butterworth. I do not think it was over an hour between his coming to the house and leaving to go to jail. He stayed up stairs only a few minutes, for if he had stayed longer I know I would have gone up. When he came down stairs he

went first into the library and then into the back parlor through the library door. Mr. Butterworth, I think, closed the door. I was in the library and out in the entry. I did not go into the back parlor at all. While I was in the entry I heard this confusion, you know. I thought it was Mr. Sickles crying, you know. Everybody was excited, you know. Mr. Walker appeared to be taken all aback, you know.

To Mr. Carlisle—Mr. Sickles only came out to the door once at Mr. Black's house, and that was when he got into the carriage. He did not come out to wipe the mud off his boots. I went there in the capacity of a citizen, you know. I heard that somebody had shot somebody in cold blood, and when I got by Horace F. Clark's house, I heard it was Mr. Sickles that had shot Mr. Key. They were running, and I ran in the crowd, too. I do not recollect that I did see the dead body. I am positive that I did not. I saw Mr. Eustis at the door of the Club House, and I heard him say that somebody was dying; heard them say it was Mr. Key. I went to Mr. Black's and saw Mr. Sickles crossing Franklin place; sent in a note to him.

Charles G. Bacon recalled—He produced a certificate from the Surveyor's office of the diagram showing the width of Pennsylvania avenue opposite the President's house to be one hundred and twenty feet. It is called President square, and is not properly Pennsylvania avenue; the width of Madison place is ninety feet. Jackson place and Seventeenth street are the same width; the breadth of Lafayette square is 419 feet 10 inches, and the length 725 feet 9 inches, exclusive of Jackson and Madison places. The diagram was considered in evidence.

Witness—I went to the edge of Commodore McCauley's house and walked from there rapidly to the foot of the tree where the homicide was committed; it took me thirty seconds. I ran the same distance and it took me thirteen seconds; the distance is 256 feet.

John McDonald (a smart young Irishman) examined by Mr. Brady—I hired with Mr. Sickles as groom and footman on the 10th of last February; I accompanied John Cooney when he went out with the coach; the last place I saw Mr. Key was in Lafayette square on Sunday at noon; the last time before that was the previous Thursday; I saw him at several places that day; the last time he was coming out of the Club House with a shawl on his arm; he was coming down to the Douglas greenhouse; he came up and shook hands with Mrs. Sickles; I saw him next at Secretary Thompson's and Secretary Brown's; he got into the carriage and drove to Mrs. Greenhow's with us, and there they remained an hour or an hour and a half.

Q.—Who remained?

Witness—Mr. Key and Mrs. Sickles, and Miss Ridgley.

Q.—Did Mr. Key get into the carriage there as you were leaving?

Witness—I call it half in and half out; he sat with his hip on the carriage and his legs out; he sat in that position, looking straight in Mrs. Sickle's face.

Q.—Did he say anything to her?

Witness—Yes, he passed some remarks to her.

Q.—What were they?

Witness—He first asked if she were going to the hop at Willard's; she said she would go if Dan would allow her; then he said he expected to meet her there; another remark he made was that her eyes looked bad, and she said that she did not feel well, or something like that; he then got into the carriage; she told us to drive to the corner of Eleventh street; I got up alongside the coachman, and told him where to drive; as we got between Fifteenth and Sixteenth streets, on K, we understood Mrs. Sickles' voice to say to stop at the next crossing, which was Fifteenth street; we then stopped and let Mr. Key out; we then drove down to Gautier's, the confectioners, and Mrs. Sickles went in there; that is all I saw of her till she came out into the carriage; she told us to drive home rapidly, which we did, and then she ordered us to put the carriage up.

Q.—That was the last time you saw Mr. Key?

Witness—That was the last time for the present; I saw him that night at Willard's.

Q.—That sofa in the back parlor, when had you noticed its position before Mr. Key's decease—the last time before?

Witness—There was a dinner party there that Thursday night. I noticed particularly that Mrs. Clayton was sitting on it. I cannot recollect the other ladies who were sitting on it. [Describes the position of the sofa in reference to the piano.]

Q.—Was the sofa in the same position in which it now?

Witness—It may be a little "slopeder" now.

To Mr. Ould—The sofa was at an angle to the back wall.

Mr. Ould—Some way in this position? (Illustrating with a knife across an envelope.)

Witness—Yes, sir. It was about half-past four when I let Mr. Key out of the carriage that Thursday afternoon.

Mr. Brady now addressed the Court, for the purpose of announcing that the defence had closed.

The District Attorney—Having been notified that the defence is going to close, I feel it proper to make this statement. When, at a certain stage of this trial, a certain piece of evidence was offered, the United States felt it incumbent on them to object. That objection was made and sustained. The reason why the objection was made was because, in the view of the prosecution, all evidence relating to any adulterous intercourse between the deceased and the wife of the accused was entirely incompetent. Your Honor has subsequently ruled that in certain aspects of the case evidence showing this adulterous intercourse could be introduced. That evidence has been introduced. I now state in frankness to the gentlemen on the other side, and will let them take their own course about it, that the evidence having been given with respect to this adulterous intercourse, the United States now waive all objection to the introduction of any evidence which the gentlemen may have tending to the development or proof of this adulterous intercourse; and they particularly waive all objection to the introduction of the testimony offered on the part of the defence the other day in relation to the confession of Mrs. Sickles. We waive objection to all evidence relating to that point to which legal objection has been heretofore taken on the part of the United States.

Mr. Brady—I am not prepared to made any specific answer to that deliberate and prepared suggestion of the prosecution, founded on reasons which, in their consultation, they undoubtedly esteemed to be sufficient, for I presume such a thing was not done without careful consultation; nor do I think that at this stage of the case, after having encountered in every step of its progress every species of objection which the sharpest and most cultivated legal intellects could present against what we honestly esteemed to be relevant proof, we are called upon by any consideration of duty to the Court, to our client, or to the prosecution, to accept any proposition which the prosecution make Nevertheless, I will imitate the example we are told prevailed with some of the aborigines of the country, whenever propositions were made in the spirit of peace never to give an answer immediately, but to take time to give the proposition the semblance, at least, of being considered.

I will confer with my associates. But since the learned gentleman has referred particularly to this paper called a confession, which seems to be the prominent subject on his mind at this moment, I take this occasion to say what I think is due to my client, that any publicity which that paper has found anywhere is not in the slightest degree attributable to him, but was in direct opposition to his expressed and consistent wish, as I know. I have no censure to apply to any party or person in relation to the publication of that paper. I have my own private opinion as to whether its publication was proper or not; but I know that my client, neither directly or indirectly, had the slightest connection with it, and I know that he regretted it was published. At the same time we all understand that a paper offered during the trial of a cause, which becomes a subject of discussion, and on which the Court makes a ruling, to which ruling exception is taken, becomes a part of the record.

I ask your Honor's pardon for making that little statement, but it seemed to be an act of justice and propriety to make it. As to the proposition of my learned opponents it shall be considered, and at the proper time—perhaps at the opening of the Court to-morrow—an answer will be given. Mr. Stanton is not in Court now, and it is inconvenient to enter into a conference at this time. Reserving the right to prove the advertisement published in *The States*, we now rest.

The Judge—Am I to understand that an answer is to be given to-morrow morning, and that time is wanted for conference?

Mr. Brady—Yes, sir.

The Judge—I think that, under all the circumstances, that is reasonable enough.

Mr. Ould—There is no sort of objection. I merely rise now for the purpose of making a single remark, to put the prosecution in a proper position. The gentleman has said, and no doubt said so conscientiously, that the defence believed the testimony offered by them was competent and proper. I have no doubt they thought so. The United States, on the other hand, claim for themselves the right to say that their views of law were to the contrary; and that, in the honest administration of justice, they presented such objections as they thought the law made to the reception of such testimony. They endeavored to confine themselves simply to a statement of such objection as the law alone suggested. The opinion of the Court seems to have been adverse to views presented by the United States. A portion of the evidence having been thus introduced, I felt it due, standing here as public prosecutor, and purely in that view alone, to make this tender to the gentlemen on the other side. With respect to the other matter, as to the publication of this confession, I beg leave to state, on the part of the United States, that we are not responsible for its publication in any sense, form or shape. We had nothing to do with it, directly or indirectly.

Mr. Brady—There is no pretence that you had.

Mr. Ould—The paper was never in our possession except for a single moment. I felt it due to the prosecution that this statement should be made.

The Judge—If time for the conference is desired, the Court will grant it, of course.

Mr. Brady—We do not propose that the Court shall adjourn to give us time for the conference. The prosecution may go on with their proof.

Counsel for defence—After your Honor decided that the proof of adultery was admissible, the prosecution should have made this offer, and not after we had disbanded our witnesses and sent them to the four winds of heaven. The effect of this offer is to embarrass the defence, just as much as the objections that led to the exclusion of the testimony.

Mr. Ould—It is certainly not so intended.

Counsel for defence—Whether intended in that spirit or not, I do not know. If the prosecution had come in on Monday, when his Honor decided the subject of adultery invalid, and then said, "We spring the doors open as wide as you want—enter with all your witnesses," then, indeed, it would be proper; but we cannot pass on it now without opportunity for a conference.

Mr. Ould—The United States supposed this was the appropriate and the only appropriate time to make this tender. The time was selected purposely, inasmuch as any other time, even that indicated by the gentleman, would have been manifestly inappropriate.

Counsel for defence—We think the case ought to proceed.

Mr. Brady—The prosecution may go on and examine witnesses. Three is one point on which I think we all agree—that this is a pretty long trial, and that the sooner it is brought to an end the better.

District Attorney—Very well. If the gentlemen do not want to adjourn, we can go on with our testimony.

The Judge—I understand then, that the prosecution proceed with rebutting evidence, reserving the right on the part of the defence to embrace the offer made.

Mr. Carlisle—It is not intended as a continuing offer, but one which must be accepted or rejected to-morrow morning.

The Judge—Certainly.

Hon. Geo. H. Pendleton sworn—Examined by Mr. Ould.—Am brother-in-law of deceased. On the second Monday after Mr. Key was killed, I made an examination of the premises said to belong to the negro man Gray. Went to the front door and found it closed. Thence proceeded to the rear, and went into the yard. Attempted to get into the house by the back door. It was locked or fastened. I suggested it was better to send for a locksmith. Instead of Gray's going, he sent somebody else. The locksmith came, and if I mistake not, tried a door I supposed to be at the end of the entry leading from the front to the back of the house. I think, besides this, there is another door leading directly into the kitchen to the passage or gangway. Looked about the two lower rooms for two or five minutes. Mr. Jones went directly with me up stairs. By the time we came down the front door was open. My recollection is that it was wide open. I called Gray and gave him half a dollar for his trouble of going for a locksmith. I never gave a direction or made a suggestion to the locksmith as to removing that lock at that time, or to anybody else. I did not see any one taking off the lock. I am not prepared to say the lock was taken off from the front door when I was there, as a witness has testified. If it was, it was without my knowledge. Some articles belonging to the deceased were transmitted to me. The articles were said to belong to him. I received them on the afternoon or the night of the day Mr. Key was killed from John A. Smith. They were said to have been taken from his person or clothes at the time or subsequent to the homicide They consisted of the case of an opera glass, two brass keys, a set of small keys, a pocket book, in which were fourteen dollars and some cents, and a pair of kid gloves. I gave the small keys to Mr. Maury, who I learned was appointed administrator of the estate of Mr. Key. On the Friday or Saturday following the death of Mr. Key I received an envelope containing one or more papers, with a card from Dr. Stone, saying he was requested by Dr. Miller to deliver them, but that he was prevented from doing so sooner by professional engagements. I have no recollection of there being more than one paper. It has been stated there were some cards and a card case. I have no recollection there were not. There was a paper, which is in the envelope still. It is under my control. I have not it about my person. Before I left Washington I left it in the possession of Mr. Charles Howard, of Baltimore, so that nothing should be left to the contingency of my absence. Charles Howard being in the room, by request, delivered the paper to witness who, examining it said, I see this envelope is addressed to "Hon. Mr. Pendleton, from Dr. Miller," in pencil, and "Left with Dr. Stone for delivery." It is the same envelope. This is the same paper which was in it, and the same card from Dr. Stone. This envelope contains some cards and scraps of paper. If any were left by Dr. Miller I presume these are they, but I don't know. I repeat I have no personal recollection as to the cards. I don't know whether they were previously in the envelope or not. I cannot say positively.

Mr. Brady—May I ask you the character of your feelings? Was it not one which naturally excited strong emotions?

Witness—I was very much pained at Mr. Key's death; I do not think any one spoke to me about visiting Gray's house; Mr. Jones was a friend of the family and myself, and he accompanied me at my request or suggestion; nothing belonging to Mr. Key was found by us at the house; I have no knowledge as to the pay of the rent except what Mr. Gray told me.

Mr. Brady—Do you remember this slip of paper (peculiar in shape, and which appears to be the bottom part of a letter) with the signature to it?

Witness—I have seen it since I returned to Washington last week; my impression, however, is indistinct; I am certain I delivered all the papers I received from Dr. Stone to Mr Howard; I believe nothing is lost.

Mr. Brady—I want to show them to the prisoner.

After showing them to the prisoner, Mr. Brady remarked that—Mr. Sickles desires me to say that these cards, containing the names of ladies and gentlemen of known respectability, he has no desire to read, as they are in no way connected with this case. On the contrary he objects to it. The envelope addressed to Mr. Pendleton is immaterial. As to this slip of paper, we simply ask to take the name and address, so that we may inquire whether it has anything to do with the case.

[Note by Reporter—This bears a lady's name.]

Mr. Brady—But we want to look at this letter, which is in cypher.

Mr. Carlisle—Put it into the hands of some person that we may get the key and make a copy of it.

Mr. Brady—When did you first learn that the lock had been removed?

Witness—I heard it in court; the other day a remark was made by one of the counsel for the defence with regard to the suppression of evidence; I desire to say before I leave the stand, in the most positive and circumstantial manner, that I gave no intimation or direction, nor made any suggestion as to the removal of the lock, nor did I hear it had been removed until I heard it in court; and I say further, that any intimation or charge that any suppression of important or unimportant evidence had been by my participation or knowledge, by

whomsoever made is, I may be permitted to say, infamously false. (Slight applause.)

Mr. Ould—You spoke of two keys. Do you know what lock they belonged to?

Mr. Brady—Are they the same keys we have produced?

Witness—I have not seen them; show them; I could identify them.

Mr. Carlisle—We admit they are the same.

Mr. Brady—Do you know whether there has been paid any rent or for wood of that house?

Witness—I do not.

Mr. Brady—Do you know whether anybody undertook to pay the charges of that house?

Witness—Only what I heard from John Gray. I have no knowledge except what is in the newspapers that Mr. Key was in any way connected with the house.

Colonel Charles L. Jones sworn, and examined by the prosecution—I visited the house in Fifteenth street, in the company of Mr. Pendleton, on the Monday week after the murder. Gray had tried all the doors; I suggested to Gray he had better break open the door, but Mr. Pendleton thought it would be more dignified to get in by the aid of a locksmith. I made an examination of the house, but found no property of Mr. Key there. Mr. Pendleton gave no direction. I paid no attention to the taking off of the lock. The witness then further detailed the incidents of their visits, agreeing with Mr. Pendleton's statement.

Mr. Brady—You are a member of the bar?

Witness—I am, sir.

Mr. Brady—You have been assisting the prosecution ever since the trial commenced?

Witness—I am going to answer your question, but I want to understand, though—

Mr. Brady (interrupting)—I don't mean to complain of what you have done. I ask whether you have not assisted the prosecution in this case. I don't say as counsel.

Witness—I have handed two or three authorities to Mr. Carlisle, who said he was aware of the cases; I have not the least ability to hunt up evidence.

Mr. Brady—I intended to treat you with all proper respect; but as to furnishing brother Carlisle with authorities, that is unnecessary. You have, Mr. Jones, taken in this case—

Witness (with emphasis)—The very deepest interest; shall I tell you why?

Mr. Brady—Not at all.

Mr. Carlisle—You were the intimate friend of Mr. Key?

Witness—From early youth to the hour of his death.

Mr. Brady—I never object to a man standing by his friend as long as he deserves to be respected.

Mr. Ould called as a witness ex-Senator Brodhead.

The Judge said he supposed Mr. Brodhead was at his home, in Easton, Pa.

Mr. Ould, as Mr. Brodhead had been subpœnaed, and failed to appear, asked for an attachment. One was accordingly directed against him and several others.

Mr. Brady—We want to look at that letter in cipher.

Mr. Ould—We have no objection.

The jury retired under charge of an officer, and the prisoner was remanded, and the Court adjourned.

SIXTEENTH DAY.—*April* 21, 1859.

The usual crowd in attendance this morning, and the same interest continues to be manifested in the proceedings.

Among the letters received by the counsel on either side from various parts of the country, one was received this morning by Mr. Brady, from a lady signing herself in Greek characters, "Olympia Aiken," and describing herself as "one of the order of frailty—one of the simple waiters for the wave of some masculine pocket handkerchief." The letter is dated from West Randolph, Vt., and asks the counsel's attention to the following extracts from "White Lies."

"I'd have no wasps round my honey. If my wife took a lover, I would not lecture the woman—what's the use? I'd kill the man, then and there. I'd kill him in doors or out. I'd kill him as I would kill a snake. If she took another, I'd send him after the first, and so on. till one killed me."

Before proceeding to business, the Judge said that there was a letter on his desk directed to one of the jurors.

The letter was directed to Mr. Wilson, in care of the Judge. It bore the New York post mark.

Assent was given on both sides, and the letter was handed ever to Mr. Wilson.

After a few minutes the letter was returned to the Judge, who said this letter is handed back by the juror, He knows nothing about it or the writer. It proceeds from the very worst motives. It is an impertinent, improper and unwonted interference with a Court of Justice.

Mr. Brady—I take it for granted it is, if it relates in any way to the trial.

The Judge—It does relate to it, and relates to it exclusively. Let the counsel look at it.

The letter was handed down and examined by the the counsel.

Mr. Brady remarked that the manuscript was similar to that of the anonymous letter to Mr. Sickles.

Both letters were examined together, and the counsel agreed as to the similarity of the handwriting in both letters.

The Judge—It is a matter of extreme regret that the author of the letter is not known.

The letter was kept secret among the counsel, but it was understood among other things to convey scandalous assertions against some of the counsel.

After some time spent in examining the letter, the Judge said he supposed the best course would be to put it in the custody of the District Attorney; but for certain injurious remarks against gentlemen, whose names are not before the public, he would have directed it to be filed.

Mr. Carlisle—It is agreed on all hands that it is an atrocious interference with the course of justice. If its author were known he would deserve to be prosecuted for an act as high as misdemeanor. But as it is written from a distance, and there is no probability of its author being known, it is not worth preservation.

The Judge—Only with the view of punishing the author.

Mr. Carlisle—As addressed to your Honor's care, I think your Honor had better keep it yourself.

The Judge—I have no desire to be the keeper of it. The remarks I made about its preservation were solely with the view to find out its author and punish him with all the rigor that could be applied to the case.

Mr. Brady—There is but one thing stated in it in relation to which I have any personal knowledge, and that is an atrocious falsehood. If that is a fair criterion of the whole letter, it shows how much its statements are worth.

Judge—As there is no probability of finding the author, perhaps the best way is to destroy it.

Mr. Ratcliffe—Your Honor might preserve it for some days, and perhaps the author may be found out. I think that may be advantageous. We have some handwriting in our possession which seems to resemble this.

The letter was handed back to the Judge, but it was then shown to Mr. Sickles and scrutinized by him and counsel. Several minutes were consumed in this matter, and inquiries were apparently set on foot to find out the author.

Mr. Brady.—A proposition, if I may so call it, was made yesterday by the government to the counsel of Mr. Sickles to admit what is called the confession of Mrs. Sickles as evidence. In response to that, I present the immediate and unanimous answer given by all my associates when the proposition was submitted to them; that is, we do not accept it, or deal with it; that the case of the accused is closed, and the prosecution must therefore pursue such course on their part as they may deem advisable.

Francis Doyle, recalled.—I went for the Coroner.

Mr. Brady.—I believe we have long been through with that. It is not rebutting testimony.

Mr. Ould.—It is preliminary.

The Court.—It is not of itself rebutting.

Witness.—Almost immediately after the body of Mr. Key was carried to the Club House, I went for and returned with the Coroner.

Mr. Ould.—How long did you stay?

Mr. Brady.—We object. This is not rebutting testimony. It is now our turn and duty to apply the rules to the other side.

Mr. Ould.—We have no objection to that. I have offered this evidence to explain how and under what circumstances certain papers testified to by Dr. Miller and Mr. Pendleton were found.

Mr. Brady objected, repeating that this was not re-

butting evidence. So long ago as the middle of the prosecution of this case, the Coroner was introduced and asked to produce certain articles which have been connected with the person of Mr. Key, and which led to the exhibition of his clothing and other articles. Various gentlemen who were in the Club House at the time Mr. Key's body was brought there, including this witness, were examined. And your Honor will remember how diligently and scrupulously we endeavored, but failed, to discover whether there were any other articles than those which the Coroner produced. No examination was more searching, and it was not until we called Dr. Miller that we found some other things belonging to the person of the deceased. We know the person of Mr. Key was subjected to other hands than those of the Coroner. We never heard of those papers until they were proposed on the stand. It has been shown by Pendleton that the prosecution knew of these facts almost immediately after they came into his hands, and that he communicated them to Mr. Carlisle.

Mr. Ould—It was not communicated to the prosecution that these papers were at any time found on the person of Mr. Key. We now propose to show the circumstances under which they were found, and then trace how they came into the hands of the witness.

Mr. Philips argued against the line of examination proposed. There never would be an end to the trial if such a course was permitted.

Mr. Ould—There was no evidence offered as to the existence of these papers. The circumstances were introduced by the defence.

Mr. Brady remarked that Mr. Pendleton yesterday repudiated the idea that he had lent himself to the concealment of any kind of testimony. The fact was that Mr. Pendleton received the letters taken from the person of Mr. Key and held them in custody to be used when required, and communicated to Mr. Carlisle the fact that these papers existed, and yet the defence knew nothing of them.

Mr. Carlisle denied that Mr. Pendleton had communicated the fact that the particular paper, the letter in cypher, was not found on the body of the deceased, and his impression had been that it was not so found.

Mr. Phillips objected—not because of the importance of the matter now before them, but because it would be necessary at some stage to interpose an objection to going over the same ground that had been already gone over, or to reopen the case after the prosecution had closed.

Mr. Carlisle supposed that the theory of the defence would be, that there had not been a thorough search made of the person of Mr. Key at the time of the homicide, and he contended that it was allowable for the prosecution to negative the presumption.

Mr. Brady—You do not state the hypothesis correctly; we suppose that there was a thorough search made.

Mr. Carlisle argued that then it was allowable to examine witnesses as to this matter, and that the examination proposed was within the principle of rebutting testimony.

Mr. Brady asked Mr. Carlisle for the card which Dr. Stone addressed to Mr. Pendleton with these papers.

The card was handed to be judged and examined.

Mr. Brady stated that Mr. Pendleton had commuicated these papers to Mr. Carlisle shortly after the homicide. The prosecution therefore had these papers in their hands. If they were relevant, as they are, very relevant and very important, they should have been given in evidence by the prosecution. If they were irrelevant the prosecution should have objected to their introduction by the defence. They should not now have the privilege of continuing that line of proof. When the case for the prosecution closed did not every one believe that everything found on the person of Mr. Key had been produced in court. The fact that the other things were found shows that the person of Mr. Key had been subjected to the touch of some persons who had not been produced as witnesses by the prosecution. He argued that it was the duty of the prosecution to have produced all these matters found on Mr. Key's person. No District Attorney had a right to keep out of a case any matter belonging to it.

Judge—The defence introduced the evidence for the first time in respect to certain papers that passed into the hands of Dr. Miller, and which papers came into the possession of Dr. Miller some four or five days after the homicide. The law is undoubtedly very clear that nothing but rebutting evidence can be received for the United States in the present stage of the case. I think that this evidence is rebutting, and that the United States have a right to introduce evidence so far as it goes to meet the evidence introduced by the defence. It must be confined exclusively to these Miller papers.

The examination of Mr. Doyle continued;—Was present in the club house about seven o'clock on the evening of the homicide; was standing conversing with Dr. Miller, when some one who was examining the clothes said "Here are some papers;" I requested Dr Miller to take charge of them; I did not touch these papers; my attention was not turned to the search of the clothes; almost everybody that came in had access to the clothes of the deceased.

To Mr. Carlisle—I speak of a time three hours after the Coroner's inquest; the body was there at that time.

To Mr. Ould—I first saw these papers in Dr. Miller's hands; I made no search of the body, and was not present when the search was made by the Coroner.

Mr. Ould had another point on which he wished to examine this witness, if the defence had no objection.

Mr. Brady—Go on.

Witness—I had forgotten all about these papers till after my examination here.

Mr. Ould—Did you observe Mr Sickles at the time of the homicide?

Mr. Brady—Is that rebutting?

Mr. Ould argued that it was connected exclusively and solely to the issue of frenzy or insanity of the prisoner.

Mr. Brady argued that it was not rebutting, as this witness had been examined, and has stated everything he had observed Mr. Sickles say or do; if this were permitted it would allow all the witnesses for the prosecution to be recalled.

Mr. Stanton said that the prisoner had made a suggestion. He desired to state, if he had not permission of the Court, he would not state it.

Judge—Well, go on.

Mr. Stanton—The suggestion of the prisoner at the bar is this:—On this indictment that the state of the mind of the prisoner at the time the offence was committed was the point at which the prosecution started. The burden of proof was on them to show that he was a person of sound memory and discretion at the time the act was committed. They introduced their proof at a particular spot and particular time, and exhausted their proof. We have not called a single witness in answer to that evidence; we have shown other facts by other witnesses going to a question on which the burden of proof was on the prosecution.

The Judge—Considerable evidence having been given tending to show the condition of unsound mind of the prisoner, the United States propose to prove facts and circumstances to meet that evidence. A large portion of the evidence for the defence has been to show this condition of the prisoner, and if it were not to be met because the United States did not introduce it in the course of the direct evidence on part of prosecution, it never could be met. The counsel who last addressed the Court labors under a mistake in saying that the burden of proof of the insanity of the party accused is on the United States; it is not so; every man is presumed to be sane till the contrary is proved; that is the normal condition of the human race, I hope. [Laughter.] I think the evidence receivable under any and every rule of law with which I am acquainted.

Mr. Ould—Mr. Doyle, state what was the appearance of Mr. Sickles at that time?

Mr. Brady—Do you mean to speak of his countenance?

Mr. Ould—Yes.

Witness—When I came up to Mr. Sickles, he turned round almost immediately. I thought his manner was self-possessed. More than his speech indicated; there was more excitement in the expression than the manner.

Mr. Brady—I don't know to what extent you have given yourself to the study of men; have you ever been in a lunatic asylum?

Witness [evidently hurt by the question]—No, sir; I hope the Judge will protect me.

Mr. Ould—He does not mean as an inmate, but a visitor. [Laughter, in which the witness, recovering from his misapprehension, joined.]

Witness—I beg your pardon.

Mr. Brady—I should beg your pardon, did I insinuate that you had been an inmate of a lunatic asylum.

I mention this by way of illustrating how small a cause will produce undue excitement. Everything you have stated has been with the most gentlemanly regard to truth. I meant, whether in such an asylum you have seen an insane person?

Witness—No, sir.

Mr. Brady—If you visited an insane asylum, and saw twelve persons dancing or sitting still, do you think you could tell who were insane or not?

A.—No, sir.

Mr. Brady—Have you ever spoken to a person unmistakably insane?

A.—No, sir.

Mr. Brady—Among your acquaintances you find gentlemen high-minded and impulsive, quick to anger and resentment, but soon the excitement passes away. You happen to know some who are more excitable than those who flash their temper, and yet ordinarily exhibit composure. You will not undertake to judge of Mr. Sickles' temper?

Witness—I did not undertake to say what was his state of mind. I merely gave my judgment.

In answer to various questions, witness said no person was prevented from examining Mr. Key's clothes. He did not particularly notice who had access to them at the time. No one particularly had charge of Mr. Key's body, there was an overcoat of deceased in the dining-room. It had been there for several days. After the Coroner's inquest was over. I requested one of the boys at the Club House to throw them along with the other clothes.

Albert Greenleaf, sworn.—Was at the Club House when Dr. Miller was there. Some papers were put into the latter's hands. If I mistake not, a pocket-book or card-case was handed him by a police officer, whose name I don't know. The papers came from either the vest or overcoat. Don't recollect which. Saw him hand the articles to Dr. Miller. Cannot swear that he took the vest, though he observed they were there. This was about seven o'clock on the evening of the 27th. There were several persons present. Dr. Miller, Mr. Snowden, Mr. Doyle, two police officers and others.

To Mr. Brady.—I was there first that Sunday, at about half past six o'clock. Cannot state where the clothes were till I saw them in this officer's hands. He had only a coat and vest, not an overcoat. Cannot describe these officers nor give their names. [An officer in the Court here said he was there, and that his name was King.]

To Mr. Brady.—These papers came from the coat or vest.

Jacob F. King, police officer, examined by Mr. Ould.—I went to the Club House, and got there while the investigation was going on; stayed till the body was removed. Saw Dr. Miller there, and saw some papers handed to him. I took charge of the door of the room where the body was lying. Dr. Miller came in. The coat and vest of Mr. Key were lying on a chair. The pants were on the body. This was half an hour after the inquest. Think Mr. Snowden handed these papers to Dr. Miller.

Q.—Did you see from whence they were taken?

A.—Think they were taken out of the fob-pocket of the pantaloons. Know there was a small white handled knife taken out of the pockets. Did not observe anything fall on the floor. Cannot say positively whether this knife was taken from the pocket or whether it fell on the floor. Do not know where Mr. Snowden resides. He had hold of the vest while I was examining the hole where the ball went through. Mr. Snowden appeared to be officiating a good deal about Mr. Key. Think he took the papers out of the pocket. Know he had a small memorandum book, and a small porte-monnaie, which he took from the clothes. Do not think any other officer was there at the time.

Mr. Brady.—This memorandum book was quite small?

Witness—The last I saw of it was in Dr. Miller's hands.

To Mr. Ould—I did not handle it, but I believe it to be a memorandum book.

To Mr. Brady—The articles I saw given to Dr. Miller were a memorandum book, portemonnaie, small knife and some papers.

Re-examined by Mr. Ould—Did you observe the manner and expression of Mr. Sickles at the time of Mr. Key's death?

A.—I did.

Mr. Ould—State what it was.

Witness—I thought he was exceedingly cool, as far as I could judge. As soon as we got up to him, he desisted, turned round, and made the remark I have already sworn to.

Q.—Was his manner self-possessed, or not?

A.—Well, I thought so; I did not see any indication of great excitement, that I am aware of.

Mr. Brady—Were you familiar with Mr. Sickles' countenance before that?

A.—Had seen him, I suppose, fifty times. I had not seen him under the influence of great excitement or irritation; the incident which drew my attention was but for a moment.

Edward M. Tidball, re-examined by Mr Ould—My attention at the time of the homicide was directed more to Mr. Sickles' manner than anything else; I thought it was rather cool and deliberate; his face was somewhat pale, of course.

Mr. Brady—Have you ever visited a lunatic asylum?

A.—Not that I recollect.

Q.—Have you ever talked with an insane person?

A.—I do not recollect that I have.

Q.—Is it your opinion that the eyes of an insane person have a peculiar expression?

A.—I would not like to express an opinion on that; I had often seen Mr. Sickles before; do not think his face was habitually pale.

Q.—If the expression of his eyes at the time of the homicide had been totally different from their ordinary expression, you would not have noticed it, would you?

A.—I think not.

Ex-Senator Brodhead, of Pennsylvania, Mr. Halimer and John J. McElhone was called, but none of them answered.

Charles Howard, examined by Mr. Carlisle—Mr. Key was my brother-in-law; this is the paper which I produced yesterday, and handed to Mr. Pendleton.

Mr. Carlisle—State what you know in relation to it.

Witness—It was shown to me by Mr. Pendleton, some four or five days after Mr. Key's death; I was then at the house of Mr. Key; I returned to Baltimore the Thursday week after Mr. Key's death; and, before I left Washington Mr. Pendleton placed this and other papers in my possession; I have made a cipher which appears to correspond with this, and I think I can read it. [Produces a translation of it, made by himself.]

Mr. Carlisle handed it to the Judge, remarking that a copy of it had been handed to counsel on the other side

Witness [to Mr. Brady]—I do not recognize the handwriting of the letter in cipher.

Mr. Brady—Then I object to it.

The Judge carefully read the translation.

Mr. Carlisle remarked that this cipher letter made its appearance yesterday, in the course of the cross-examination of Mr. Pendleton, and the counsel for the defence then asked that the letter should be preserved, to be kept on record in the case. The prosecution had proved all about the letter except the handwriting, and they now held that it ought to go to the jury. If it had any significancy, or any relation to the cause, it was proper that that significancy should be communicated to the jury by the witness who has deciphered it, and ascertained the key to it. He presumed it was not different from a paper written in a foreign language, and that the letter and translation should go to the jury together The cipher letter was written by the substitution of one letter of the alphabet for another letter, and was unintelligible to any one who has not the key to the cipher. He presumed that, at this stage of the cause, the prosecution should not be driven to proof of the handwriting; and, as it had been found on the person of the deceased, it should go the jury.

Mr. Brady—What is it to rebut?

Mr. Carlisle—Not to rebut anything in this aspect of the case. It was brought out by the defence.

Mr. Brady—Then we ought to offer it in evidence not you.

Mr. Carlisle—The same right which entitled us to show these papers, not put in evidence by us, entitles us to prove to the jury what this paper means, now that it has been produced by the other side. The defence had gone so far as to show that there were other things on the body of the deceased, not first proved, but had gone no further; and he held that the prosecution had a right to take up the thread, and show that this was a paper having a meaning; whether admissible in evidence was another matter. He offered it now on the ground that

the United States having put in evidence what matters were found on the body of the deceased, exclusive of this letter, and the defence having brought out this letter, the prosecution are entitled to show what it means.

Mr. Brady—Counsel has made a very *naive* argument. It was distinctly conceded that this was not rebutting evidence, and therefore under the recent ruling of the Court, it was not competent. He spoke of the publicity of the place the body was lying, and of the access which many persons had to his clothes, and of the fact that these papers or some paper had been in the hands of Mr. Wilder, Mr. Miller, Mr. Stone, Mr. Pendleton, Mr. Howard, and Mr. Carlisle; the prosecution had all the papers in his possession before the indictment was found, and if they deemed it appropriate to give any of them in evidence that were admissible they should have done so when they were proving their case. Not having then produced this cypher letter, they cannot now produce it. Nothing cumulative can be received. What had disappeared from the person of Mr. Key and what appeared was left in a state of the greatest confusion and doubt. Then, whose handwriting was this cypher letter in? Was it in a male or female handwriting? Was it connected with any person in this case? He had asked Mr. Carlisle for an order on Mr. Howard for this cypher letter to show to Mr. Sickles, and the reply was, "Would you do the same under like circumstances?"

Mr. Carlisle—To which you made no reply.

Mr. Brady—To which I made no reply, because I was not to presume that what I should do would be any authority for you. They had no opportunity of seeing what this letter meant, and bad as this woman was, there might be some lingering touch of pity or regard for her which would induce the prisoner to save her further exposure. They should not, therefore, be forced into having this cypher letter put in evidence.

Mr. Carlisle claimed that the prosecution was entitled to the opening and close of this argument, and said that he made this statement because he apprehended that, with some rudeness [referring to a habit which Mr. Stanton has displayed in this case,] he might be interrupted in the exercise of his right.

An argument on this point sprang up, and occupied considerable time.

The Judge held it to be the natural order of things that the objector should open and close, but the question really was whether the evidence is admissible or not. It was very plain to him that this was not rebutting evidence. The cipher letter and translation were therefore excluded from the case.

The counsel on both sides preserve strict secrecy as to the contents or character of this cipher letter.

After a recess of a few minutes, business was resumed.

Mr. Carlisle asked if the paper was not admissible with the proof of the handwriting.

The Judge thought the proof of handwriting would make it still more objectionable. He refused to admit it, because it was not rebutting evidence, and on that ground alone.

Wm. Daw, police officer, examined by Mr. Ould.—Was present at the house of Mr. Sickles shortly after the killing of Mr. Key. Accompanied Mr. Sickles there from Judge Black's in a hack. Mr. Suit, Mr. Mann, Mr. Butterworth, Mr. Sickles and myself went in the hack. I stood in the hall, just inside of the front door. When Mr. Sickles first came to the house, he went into the library, where he stayed a few minutes, and had a conve sation with some gentlemen. After he came out he wanted to go up stairs. Mr. Suit and myself told him he could not go up except on promise not to harm his wife. He said he had no such intention. Mr. McBlair told us we might depend on what Mr. Sickles said. He remained up stairs for about five minutes and came down with some letters in his hand. He went into the library and stayed there some time. Then he went into the parlor. Recollect nothing of importance that transpired in the library. To the best of my knowledge the door between the parlor and library was open while Mr. Sickles was in the library. The door from the parlor to the hall was ajar. We were in the house about half an hour altogether Mr. Sickles went in Senator Gwin's carriage to jail, and our carriage followed immediately after. There was talk in the back parlor while Mr. Sickles was there. I heard no unusual sounds. Nothing like shrieks or moans. Mr. Sickles invited us to take some brandy just before starting for the jail. He asked the whole company. Nobody drank but Mr. Sickles and Mr. Butterworth.

To Mr. Brady—I went there as an officer, to assist Mr. Suit, the officer who made the arrest; we went to the house at Mr. Sickles' request; he wanted to arrange some business as I supposed; I conversed with nobody while there but with Mr. Suit; I was once in the library; saw Mr. Wooldridge there and Mr. Walker. Mr. Walker went from the library into the back parlor. I was still standing in the hall. While I was in the library Mr. Sickles was up stairs. I was not in the back parlor at all. I was right at the front door, and opened it several times.

James H. Suit, examined by M. Ould—I accompanied Officer Daw from Judge Black's to Mr. Sickles' house; noticed Mr. Sickles after he reached the house. I stood at the library door leading into the hall a part of the time; and walked through the hall back and forward; think the door between the library and back parlor was open; would not be so certain that it continued open all the time. Could not say whether the door was open from the parlor or hall; had a conversation with Mr. Sickles when he was coming up stairs. I asked him where he was going. He said he was going up to get some papers. He had papers in his hand as he came down. I do not recollect hearing anything about Mr. Key.

Q.—Did you hear any unusual noises in that back parlor?

A.—No, sir; I heard talking, but nothing unusual; have a slight recollection of somebody saying something about taking a drink, but did not know it was Mr. Sickles; would not be certain that Mr. Sickles took a drink, but think he did; cannot say positively where the liquor was; do not know whether Mr. Sickles had on an overcoat as he went up stairs.

To Mr. Brady—When we left Judge Black's that street was crowded; a great many followed after the carriage, and came from all directions; had no conversation with any person but Mr. Sickles.

J. H. McBlair, examined by Mr. Ould—Was present at Mr. Sickles' house on the 27th of February; went there about fifteen minutes after the occurrence; Wooldridge and Miss Ridgely were there. Senator Slidell and myself went together; the prisoner came in in about twenty minutes; I left the house before the prisoner arrived, but I returned and remained till Mr. Sickles left. I was in the back parlor for about two minutes, in conversation with Mr. Berrett, and the remainder of the time was in the library. Did not see Mr. Sickles in the back parlor; I had been under the impression that Mr. Sickles had not gone into the back parlor, but since then I have charged my memory, and have concluded that Mr. Sickles might have gone into the back parlor without my seeing him; the door between the library and back parlor was open till Mr. Walker went into the back parlor, and then the door was closed entirely; heard no unusual noises in the back parlor; had a conversation with Mr. Sickles after he came down stairs; that was not the last time I saw him; a few minutes before they left to go to jail, Mr. Sickles came and asked me to ask Mr. Walker to accompany him to jail. Butterworth asked Mr. Sickles for a glass of brandy, and a bottle was taken out of the sideboard, and Mr. Butterworth took a glass, do not know that Mr. Sickles did; think that when Mr. Sickles went into the back parlor, he went to the secretaire. I was considerably excited myself; some police officers told me they apprehended some of the mob would shoot Mr. Sickles, and Mr. Suit, putting his hand on what appeared to be a pistol, said he could shoot as well as any of them.

To Mr. Brady—Mr. Sickles, when he came down stairs, had papers in his hand: there were about ten persons in the house and one hundred and fifty outside. Mr. Sickles was extremely calm, I thought it the calmness of desperation; he appeared to be suffering internally, and to be endeavoring to restrain his feelings; I thought him, and still think him to be, a man of remarkable powers of endurance, or he never would have been able to withstand the relentless persecution extended to him.

Q.—Is it not a fact about Mr. Sickles that this appearance of calmness attends him even when under the strongest excitement?

A.—I have always found him calm; that external appearance always exists; I have always found it so.

Mr. Ould—He is a man of great command over his feelings?

A.—I think he is a calm man; I do not know that he has great command over his feelings; he has great command externally; a man can be calm and have

very powerful feelings at the same time; I remarked to Mr. Brady that I always found him calm in my intercourse with him,

Mr. Ould—Then you have never seen him under such circumstances as required great exercise of self-control or self-command?

Witness—I said no such thing; I say that I have always seen him calm, and that I never previous to that had seen him in difficulty.

Mr. Brady—Your attention had been drawn to Mr. Key's manœuvres about that house?

Witness—Yes, for twelve months.

Col. Berr't, Mayor of Washington, sworn—Was present at Mr. Sickles' house on the afternoon of the killing of Mr. Key; I went there with the Chief of Police, from the Club-house; when we reached the house, we found there two policemen, Mr. Wooldridge, Mr. Sickles, and, perhaps, several other gentlemen; I entered the house by the front door; was shown into what is called the library; there found Mr. Sickles, who remained there five or ten minutes, arranging some matters about the bookcase; I said he had better go to jail, where the preliminary examination would take place; he said that was what he desired; we went to, and, I think, remained in, the parlor for five or ten minutes; I mean Mr. Sickles, Robt. J. Walker and myself; we soon after left for the jail: when Mr. Sickles discovered Mr. Walker in the parlor, he said, "A thousand thanks for calling;" he exhibited much feeling, and spoke of his child, and of his house being dishonored, and immediately thereafter took his seat on the sofa; he wept heartily; I remarked to him that he would have to leave there, very soon, and I remarked to him to be composed; he said he would be; his outburst of grief continued four or five minutes; he made a very distinct noise, indicative of deep grief; it was a hearty cry, and might have been heard in any part of this room; I accompanied him to jail, in company with the Chief of Police and Robert J. Walker; he seemed on the way to be restive, and made gestures as of salutations as he left his house; I suggested to him that he had better not allow his attention to be called to the crowd; I don't know whether he saluted anybody particularly; there was a very brief examination at the jail; his manner was composed under the circumstances; did not see any exhibition of grief there such as I have described.

Mr. Brady—Did you observe the amount of effort it cost him to compose himself?

A.—I certainly discovered an effort to become tranquil when I suggested the importance of it, in view of the crowd through which he had to pass.

Miss Octavia M. Ridgeley was recalled. She was accompanied into court by her mother and stepfather.

Mr. Ould—Were you present in the house when Mr. Sickles returned from Judge Black's?

A.—I was. Yes.

Q.—What part of the house?

A.—In the basement.

Q.—Did you remain there?

A.—Part of the time.

Q.—Did you see Mr. Sickles?

A.—I did as he got out of the carriage; I did not see him any more.

Q.—You did not go up stairs while he was there?

A.—I did not.

Mr. Ould—We were under the impression that you had been up stairs, and had seen Mr. Sickles there. As you say you were not, we will not trouble you further.

Mr. Ould stated there were but three other witnesses on this branch of the case, and one of these had been attached. He wished to finish this branch before he commenced on another. It was more than probable that the witness who had been attached (Ex-Senator Brodhead) would be here to-morrow morning.

Mr. Brady—Do you wish it postponed till to-morrow morning?

Mr. Ould—Yes.

Mr. Brady—We have no objection.

Mr. Ould—Or perhaps postponed to Saturday; to-morrow will be Good Friday.

Mr. Graham—The better the day the better the deed.

Mr. Ould—Some people regard Good Friday as one of the holiest days, and some of the jury might desire not to be here to-morrow.

One of the jurors said the jury did not desire to adjourn over to-morrow; that they had a solemn duty to perform, and would prefer to come here and perform it.

The Judge said he had no scruples in the matter, and unless it was pressed upon him he would not adjourn over the Court.

Mr. Brady said he did not know whether the counsel in this District were in the habit of asking for adjournment on religious grounds. Counsel in New York were not.

The matter ended by the Judge directing that the Court adjourn till to-morrow.

SEVENTEENTH DAY—*Friday, April 22, 1859.*

The Court convened at the usual hour.

The three witnesses, McElhone, Brodhead, and Haldemar, who were attached yesterday, were called, but neither of them answered.

Mr. Charles H. Winder, a member of the bar, addressed the Court, saying he wanted to make an explanation in regard to the testimony of Mr. Doyle.

The Judge—It is out of the usual course, and I do not see how it can be done unless you are put on the stand as a witness.

Mr. Ould—That is what he proposed to do.

The Judge—It is not usual for a witness to call himself.

Mr. Carlisle—Mr. Winder himself feels some desire on this subject; there is none on our part.

The Judge—Explanations have become so frequent as to be annoying. That is not the object of testimony at all. If there be no objection I have none.

Mr. Brady—We have none.

Mr. Winder.—I do not know if the counsel will indulge me to refer to the conversation to which Mr. Doyle referred yesterday. By so doing I think I can make it very clear and plain. Unless they do I have simply to state that Mr. Doyle was utterly mistaken in saying that I had told him these papers were found on the person of Mr. Key at the time of the Coroner's inquest. What happened afterwards I do not know, because I left at the conclusion of the testimony, and did not go back.

Mr. Brady.—I think that fully meets all that was said in respect to you.

Mr. Winder.—I desire distinctly to say that at the time the search was made of Mr. Key's person during the Coroner's inquest, there was not a scrap of paper found.

The Judge.—No one says there was.

Mr. Winder.—Mr. Doyle says I said there was.

The Judge.—It is a mere confounding of the two cases.

Joseph Dudrow recalled.—I did not think Mr. Sickles was any more excited than any other man would be in a fight or anything of that kind. When the last shot was fired, I was thirty-five or forty feet from him. I did not hold any conversation with him.

Cross examined by Mr. Brady—I have frequently seen Mr. Sickles in Congress.

Mr. Delafield recalled—As to Mr. Sickles' appearance and manner, it was rather cool; after he shot Mr. Key, he walked away quietly; he put the pistol in his pocket afterward; I saw nothing strange in his manner before he met Mr. Key; this is my impression after reviewing the affair.

Cross-examined by Mr. Brady—I thought from his firing such a number of shots that he was rather cool.

Mr. Brady—From that I should think he was rather hot.

Witness—I never saw Mr. Sickles under excitement before.

Q.—What was the distance between you and Mr. Sickles?

A.—I did not measure it; it was about the width of the street; did not know the color of Mr. Sickles' eyes till I saw him in court; I thought he walked rather erect and very dignifiedly; cannot say whether he walked slow or fast.

Chas. H. G. Lewis, sworn—Am connected with the Congressional Globe Office. I have here the proceedings of the House for Friday and Saturday, 25th and 26th of February last.

To Q. by Mr. Carlisle—The reporters are Messrs. Hinks, Smith, McElhone, Andrews and Hays; don't know whether Mr. Andrews is in the city.

Mr. Carlisle—Take care of these papers.

Mr. Brady—Have you looked into those corpulent rolls to see how much of them pertains to Mr. Sickles.

Witness—They contain all the proceedings of these two days.

Mr. Brady—Judging from the bundles, I should be very much alarmed at these speeches.

Mr. Carlisle—They are short speeches made under the five minutes' rule. This evidence is offered to show the condition of the prisoner's mind on the Friday and Saturday previous to the killing of Mr. Key.

Mr. Brady—We don't object to that.

Mr. Carlisle—I know that, but I want the Court to understand our purpose.

Mr. Brady—We admit that Mr. Sickles addressed the House on Saturday, but before he learned that all hope relative to his wife had been dispelled.

Francis H. Smith examined by Mr. Carlisle—Am one of the official corps of reporters of the House of Representatives; was in the House on Friday and Saturday, the 25th and 26th of February last; Mr. Sickles made speeches on those days; I have before me the manuscript of those speeches; that of the speech of Saturday is in the hand-writing of Mr. McElhone entirely; the first three pages of Friday seem to be in the hand-writing of Mr. McElhone; there are additions and corrections in Friday's speech in another hand-writing, and in different ink; do not know whose hand-writing that is.

To Mr. Brady—I do not know at which hour Mr. Sickles spoke; on Friday I think he spoke at about five o'clock, and on Saturday—though I cannot speak precisely about that—about four o'clock.

Mr. Carlisle read from the *Congressional Globe* the speech of Mr. Sickles, on the subject of Navy-yards, delivered on Friday, the 26th.

Mr. Carlisle then read from Mr. Sickles' Saturday speech on the same subject.

Witness—I cannot state at what hour this speech of Saturday was made; I only judge it was about 4 o'clock because the House met at 11 A. M., and adjourned at 9 P. M., and this occurs about the middle of the day's proceedings.

To Mr. Brady—I was present when Mr. Sickles made those observations both on Friday and Saturday,

Mr. Brady admitted that the corrections in the manuscript of Friday's speech were in the hand-writing of Mr. Sickles.

The manuscript was then exhibited to the jury.

To Mr. Carlisle—I do not know at what hour the revision was made. Speeches are sometimes revised within ten minutes of the time that they are reported.

To Mr. Brady—It would not have taken ten minutes to make all the corrections in that manuscript.

To Mr. Brady—The practice of sending speeches for revision is by no means uniform; in a majority of cases the speeches are not during the last days of session handed to the members till the next morning; how it was in this case I do not know.

Some delay occurred here while Mr. Smith was examining the records of the votes on Saturday, the 26th of February.

Witness to Mr. Carlisle—I have examined the roll of votes; on Friday Mr. Sickles seems to have voted on the last vote at the time of adjournment, which was about nine o'clock. Mr. Sickles appears to have voted on the last vote on Saturday. There is no indication here at what time that vote was taken, or as to what it had reference.

Some further time was occupied by witness in examining the manuscript of Saturday's proceedings in the House. During this time there were frequent conferences between Mr. Sickles and his counsel, and general conversation was indulged in.

The Judge and jury took advantage of the pause in the proceedings, and left the Court.

Over half an hour passed before proceedings were resumed. In the meantime the three absent winesses were inquired after, but none of them made their appearance.

Mr. Carlisle informed the Court that the prosecution had submitted to the counsel for the defence an offer of evidence, and were waiting for the result of their examination of it.

It is surmised that this offer of evidence is connected with an inquiry into Mr. Sickles' own conduct, and particularly into the matter of his visits with a lady to Barnum's Hotel, Baltimore. The proprietor of that hotel is in Court.

Messrs. Brady, Graham and Ould stepped up to the bench and in a low tone of voice discussed the matter with the Judge, evidently submitting the question to his decision.

Authorities were submitted on both sides, and some time was spent by the Judge in consulting them.

The Judge—For very obvious reasons the Court will do no more than merely state his opinion on this point, and that opinion is that the evidence is not admissible.

A further awkward pause ensued. The District Attorney took a seat beside the Judge, and entered into a consultation with him. The counsel for the defence, on their side, put their heads together, and had a quiet, hasty conference as to the course to be pursued by them. Great interest was manifested by the audience in the result of these deliberations, as they were supposed to be on the question of submitting the case without argument.

Mr. Carlisle, addressing the Court, said that the Judge having disposed of the offer of evidence lately made, nothing remained to be offered on the part of the prosecution, except the testimony of two witnesses on the question of insanity. They were exceedingly desirous that the jury should have the benefit of that testimony. These witnesses were Ex-Senator Brodhead and Mr. Haldemar, both of whom were at the Attorney-General's house when the prisoner arrived there immediately after the homicide. An attachment had been granted against them, and in the regular course of things they could not be here, under that attachment, till this evening. Under these circumstances, he would have to ask either that the Court adjourn now, or that the two hours up to the usual time of adjournment, be occupied in discussing the instructions which he would proceed to offer.

Mr. Brady—We cannot, of course, in representing Mr. Sickles, appear to offer any obstacle to the fullest investigation of any fact on which his defence reposes. At the same time, this trial has certainly been protracted to such a length that all of us must have the most sincere desire that it should be brought to a close at the earliest possible moment. The gentlemen of the jury have been from their homes and families for now nearly three weeks, and those of us who reside away from Washington have certainly a strong inclination to see our homes, however agreeable our stay here is made by the kindness and hospitality of many of the citizens of this District. We are very anxious, therefore, to have the case finished.

I presume that anxiety is felt by every one. In this view I make these suggestions, that the Court may make such disposition of the case as appears to be just. We have now in this room testimony of a cumulative character in regard to the state of Mr. Sickles' mind, commencing at the time of the communication made by Mr. Wooldridge, on Saturday night, and extending to the last period at which proof of that character would be admissible. But we have abstained from calling witnesses. With regard to that point, no one knows what can be proved by those gentlemen who have been called. They are of the highest respectability, I believe, but so were Mr. Blair and the Mayor, who were called as to the question of insanity, and I do not suppose it is proposed to contradict the Mayor's testimony. I think the history of the whole transaction, including the condition of Mr. Sickles' mind, is before the jury very fully, and that the jury, in view of the rights which they have, will pass on the question as men of the world and as reflecting men.

Mr. Carlisle did not mean to offer the opinions of these witnesses, but proof of the prisoner's deportment and conversation. In regard to the materiality of their evidence, he could speak from what one of the witnesses had told him.

Mr. Stanton—Is it about the same time as the other witnesses testified to?

Mr. Carlisle—No, Sir; it relates to a point of time as to which there has been no testimony; when the prisoner proceeded from the scene of the homicide to the house of the Attorney-General.

Mr. Brady—I suppose that we all concur in this, that Mr. Sickles or any man on trial in regard to an act of homicide, is to be judged by the jury in relation to his state of mind at the time the act was done. It is so in regard to malice; what occurred before and what occurred afterward throw light on that. Now, of course, whatever may be the amount of insanity of this description existing at the time of the homicide, a man's whole intellectual capacity is not gone. If Mr. Sickles after this homicide, did go to the house of the Attorney-General with the intent on his mind that he should be placed within the reach of the authorities, to answer for what

he had done. and if that be relied upon as evidence of sanity, we will see how very little importance is attached to it. When we are considering the state of mind under the influence of the provocation, sleeplessness, &c., which had preceded that event, extending through Saturday night, when he never closed his eyes up to the moment when, according to his declaration, he saw the wave of the handkerchief, and was impelled by an influence which he had no power to control to the act of homicide, no more intelligent witnesses can be brought on the stand than the Attorney-General himself, who is in the city, and who must have witnessed all this transaction.

Mr. Carlisle—The point of time to which this evidence relates is that which covered the period between the prisoner's entrance into Judge Black's house and the coming into that room of the Attorney-General, and the conversation which passed between him and these witnesses when the Attorney-General was not present.

Mr. Brady—That must have been a very brief interval. I beg again to say, your Honor. that we are not to be considered as objecting. We want all the evidence that can throw light fairly on any of the questions to be given to the jury. After all, it is their intelligence that is to be informed of the facts, and it is they who are to be the judges. My remarks are made exclusively for the purpose of saving time, and bringing the case to a close as soon as possible.

District Attorney—I look upon the evidence as exceedingly important. In one sense, it may be cumulative, in another it is not; it relates to a point of time about which no evidence has been yet given, and it is a very important point of time, that occurring almost immediately after the homicide. The United States have done all in their power to secure the attendance of these witnesses; in no sense, therefore, are the United States in default.

Mr. Brady—We do not say there is any default.

District Attorney—If we were to propose to adjourn the case till to-morrow, absolutely, we think our request would be and ought to be gratified by the Court. We are as anxious as the defence to avoid delay, but this proposition is really one which does not cause delay. It is that we proceed with the discussion of these instructions.

THE QUESTION OF SUMMING UP.

Mr. Chilton—I beg leave to make a few brief suggestions in regard to this matter. After the very long, thorough and laborious investigation that has been given to the case. After the discussion of every question of law that could possibly arise in it; after the citation, in the hearing of the jury, of the various decisions of your Honor in previous cases bearing analogy to this, and which, we humbly conceive, contain the whole law of the case, it was our purpose when we had closed the testimony to make a proposition to the counsel engaged for the prosecution to submit this case to the jury.

We had hoped that it would be acceded to; we had hoped that we would be met on this proposition in consideration of the imprisonment which the jury have undergone, and in consideration of the interest of all concerned. Therefore, if the proposition here was to continue this case merely for the purpose of adding cumulative evidence on the part of the prosecution; and if it were the desire of the jury to hear any further evidence on it, we would of course submit without a word to a continuance till to-morrow for the purpose of procuring that testimony. But we think that if our proposition be not acceded to, and if we are to have a discussion on the legal question before the Court of prayers for instructions, prayers first preferred by counsel for prosecution, as a matter of course that discussion must be met, and we would prefer that there should be no discussion on these prayers till the evidence is entirely closed. Therefore we cannot meet the proposition which we make. We cannot permit them to go on with the discussion on the law till the evidence is fully closed.

I would add that, in what I have said, I express the feeling and desire of the prisoner at the bar. I have taken little or no part in the case, and I certainly do not feel any desire to perform the part assigned to me in the argument before the jury if it can be avoided. After the evidence is closed, and after what seems to me to be the full and complete exposition of the law in this case, I doubt exceedingly whether discussion on either side will operate any change in the opinions which the jury have formed in regard to the case. On our part, we are willing to submit it to the jury, not feeling inclined further to debate them, or further to subject them to the very onerous burden imposed upon them.

District Attorney—I have but a single word to say in reply to the remarks of the learned gentleman. When this case shall have been concluded, when the law properly applying to it shall have been determined by your Honor, in answer to such instructions as may be prayed for on the part of the United States and on the part of the defence, the United States will be entirely willing to meet the offer which the gentleman has just indicated of submitting the matter to the jury; we will accede to it most cheerfully, and with the greatest gratification on our part. The United States, on the other hand, feel that it is due to the various subjects that have been brought in controversy, questions of law, and questions of fact, during the progress of the case, that the entire law of the case should be settled by your Honor in the form of instructions to the jury. We consider the case will have properly terminated then and only at that point; it has not as yet reached that stage; when it does, I assure the gentlemen they cannot make any offer more acceptable to us than the one just indicated.

Mr. Chilton—I have only to say, in reply to that, that we reserve what we have to say on that proposition till the prosecution announce to us that they have concluded the case, whether that conclusion be in the form of evidence or the form of instructions. When we shall have arrived at that point of the case. if we hear nothing from the opposite side, or from the Court, or from the jury, we shall not trouble the counsel on the other side with any further remarks, but shall understand that we go to the jury on the argument. This is all I can say at this time; but I repeat that we do not deem it consistent with our duty to this defence to take up the legal argument until the prosecution announce to us that they have closed their evidence, and until all matters of fact on which they rely are before the Court and jury.

Judge—It is proposed by the United States that two witnesses being absent who are expected here to-morrow, the evidence shall stop for the present, and that certain propositions of law, or prayers as they are called, here be submitted by the United States, and this afternoon be taken up in their discussion. The proposition I understand to be distinctly declined by the defence. The only other matter is whether the Court will, in the exercise of its discretion, suspend the further prosecution of the case until to-morrow morning, waiting for these absent witnesses. The defence do not very strenuously object to that course. I think, therefore, that, under the circumstances of the case, the United States having served subpœnas on the parties, and attachments having been taken to arrest them, which attachments are not yet returned, the discretion of the Court would be properly exercised in postponing the further hearing till to-morrow morning. But there ought to be some limit to the thing. It is to be understood that we are not to wait further for these witnesses.

The District Attorney—Undoubtedly.

Mr. Carlisle—The limit is to-morrow morning.

INSTRUCTION TO THE JURY.

Mr. Brady—I have one suggestion to make to my friends on the other side which may have the effect of saving time, and enabling us to dispose advantageously of the two hours that remain to-day. Let them give us their instructions now, and we will see whether we will agree to or dissent from them.

Mr. Carlisle, [producing a paper from his portfolio]—In anticipation that something might occur to bring us to the point of instructions to-day, I prepared this one at a late hour last night. I have submitted it to my colleague, and he concurs in it, but he has not examined it so critically as I would desire him to do. I will give you a copy of it with pleasure.

Mr. Stanton—Will that include the whole?

District-Attorney—Oh no! We may have more to add after the defence submits its instructions.

Mr. Carlisle—In my own view of the matter, that is all the law that is necessary to be laid down in the case except further instructions shall be prayed on your side.

Mr. Brady -It is agreed that the prosecution furnish us with a copy of their propositions. We will in return as soon as we can prepare them, furnish ours to them

By doing so, the discussion, when we come into Court to-morrow morning, will be comparatively brief. No time will be lost by this arrangement; on the contrary, time will be gained by it.

Judge—I am very glad to hear of anything that will tend to save time.

Mr. Brady—It will undoubtedly have that effect.

Mr. Carlisle—We may not, in fact, disagree as to certain propositions.

Mr. Stanton—I think you will agree to our law.

This arrangement being made, the Court, at 1¼ o'clock adjourned.

The following are the instructions proposed to be submitted for the prosecution:

If the jury believe, from the evidence in this whole cause, that the prisoner, in the day named in the indictment, and in the County of Washington aforesaid, killed the said Philip Barton Key, by discharging at, against, and into the body of him, the said Philip Barton Key, a pistol or pistols loaded with gunpowder and ball, thereby giving him a mortal wound or wounds, and that such killing was the willful and intentional act of the prisoner, and was induced by the belief that the said deceased had seduced his (the prisoner's) wife, and on some day or days, or for any period definite or indefinite, prior to the day of such killing, had adulterous intercourse with the said wife, and that the prisoner was not provoked to such killing by any assault or offer of violence then used and there made by the deceased upon or against him, then such willful and intentional killing, if found by the jury upon the facts and circumstances given in evidence, is murder. But such killing cannot be found to have been willful and intentional in the sense of this instruction if it shall have been proven to the satisfaction of the jury upon the whole evidence aforesaid that the prisoner was in fact insane at the time of such killing.

After the adjournment of the Court, the counsel for the defence met in the Marshal's room and agreed upon the following instructions:

First—There is no presumption of malice in this case, if any proof of "alleviation, excuse, or justification" arise out of the evidence for the prosecution. (State vs. John, vol. 3 Jones, p. 366; McDaniel vs. State, vol. 8 Smead's and Marshall's, p. 401 · Day's case, 17 of pamphlet.)

Second—The existence of malice is not presumable in this case, if on any rational theory consistent with all the evidence the homicide was either justifiable or excusable, or an act of manslaughter—(Same cases as above cited; United States vs. Mingo, vol 2, Curtis; C. C. R., 1 Commonwealth vs. York; Vol. 2 Bennett & Heard, Leading Criminal Cas., p. 505).

Third—If, on the whole evidence presented by the prosecution, there is any rational hypothesis consistent with the conclusion that the homicide was justifiable or excusable, the defendant cannot be convicted.

Fourth—If the jury believe that Mr. Sickles, when the homicide occurred, intended to kill Mr. Key, he cannot be convicted of manslaughter.

Fifth—It is for the jury to determine, under all the circumstances of the case, whether the act charged upon Mr. Sickles is murder or justifiable homicide. (Ryan's case 2. Wheeler's crim. cases 54).

Sixth—If the jury find that Mr. Sickles killed Mr. Key while the latter was in criminal intercourse with the wife of the former, Mr. Sickles cannot be convicted of either murder or manslaughter.

Seventh—If, from the whole evidence, the jury believe that Mr. Sickles committed the act, but at the time of doing so was under the influence of a diseased mind, and was really unconscious that he was committing a crime, he is not in law guilty of murder. (Day's Case; pamphlet, page 9).

Eighth—If the jury believe that from any predisposing cause the prisoner's mind was impaired, and at the time of killing Mr. Key he became or was mentally incapable of governing himself in reference to Mr. Key, as the debauchee of his wife, and at the time of his committing said act, was, by reason of such cause, unconscious that he was committing a crime as to said Mr. Key, he is not guilty of any offence whatever. (Day's case, Pamphlet, p. 17.

Ninth—It is for the jury to say what was the state of the prisoner's mind as to the capacity to decide upon the criminality of the particular act in question—the homicide—at the moment it occurred, and what was the condition of the parties respectively as to being armed or not at the same moment.

These are open questions for the jury, as are any other questions which may arise upon the consideration of the evidence, the whole of which is to be taken into view by the jury. (Jarboe's case. Pamphlet, page 20.)

Tenth—The law does not require that the insanity, which absolves from crime, should exist for any definite period, but only that it exists at the moment when the act occurred with which the accused stands charged.

Eleventh—If the jury have any doubt as to the case, either in reference to the homicide or the question of sanity, Mr. Sickles should be acquitted.

EIGHTEENTH DAY.—*April* 23, 1859.

The Judge was in Court somewhat earlier than usual, but the District-Attorney did not arrive till half past ten.

Previous to his arrival Mr. Carlisle notified the Judge that Mr. Brodhead was in Court, and explained the cause of his not having been here before. He was subpœnaed on the 7th of April to attend on the 14th, and on the 14th he received a letter from the Deputy-Marshal requiring his attendance here the same day. The evidence being satisfactory, the attachment was discharged.

Richard Brodhead, examined by Mr. Carlisle—I am acquainted with Mr. Sickles, though not intimately: I saw him the day of the homicide. I was walking out and met my friend Haldemar, of Harrisburg, and we walked together; we called at Judge Black's to see him, and were shown to the back parlor. We were seated but for a moment or two when Mr. Sickles came in; after shaking hands with him, I introduced him to Mr. Haldemar, who is editor of a Democratic paper at Harrisburg; a few words passed between Mr. Sickles and Mr. Haldemar on the subject of Pennsylvania politics, but very few; which commenced the conversation I cannot tell. I called Mr. Sickles' attention to some mud on his boots, and remarked that he was unfortunate in crossing the street; he said he was and would take it off, and he stepped out to do so; Mr. Haldemar observed after he left the room—

Mr. Brady—No; leave that out.

Witness—He returned in a very short time, but had scarcely taken his seat when I heard footsteps on the stairs; he immediately arose and stepped out as if to meet the person who I thought was Judge Black; he was out some time; in a minute or two Judge Black came in very much excited; I asked him what was the matter.

Mr. Brady—Asked who?

Witness—Judge Black.

Mr. Brady—Was Mr. Sickles present?

Witness—No.

Mr. Brady—Then say nothing about it.

Witness—Mr. Sickles was out some time; where he was I do not know; after awhile he came into the back parlor from the front parlor; Mr. Haldemar and myself stepped up to him, Mr. Haldemar acting as spokesman; seeing that he was without friends, Mr. Haldemar tendered him our services to go with him to the magistrate's; he thanked us; I asked him if it was a bailable offence; he said he did not know, but that if all the facts were known, it would be: he then added: "For God knows I would be justified," or, "I could not help it;" which was the precise expression he used, I cannot now remember; by this time Mr. Gillette came in, and I think Mr. Butterworth also; some one asked whether Mr. Key was dead; Mr. Butterworth answered: "Yes;" I do not know who asked that; Mr. Sickles then muttered something about there being "one wretch less in the world," and seemed considerably excited; the carriage having been sent for, and his New York friends having arrived, Mr. Sickles left Judge Black's, and Mr. Haldemar and myself remained; that is the last I saw of Mr. Sickles; I believe I have stated all the facts that now occur to my mind.

Mr. Carlisle to Mr. Brady—He is your witness, gentlemen.

Mr. Brady—I have nothing to ask, sir.

The witness made an explanation to the Judge of his non-attendance in obedience to the subpœna, and the Judge declared it satisfactory.

Mr. Haldemar, the other witness attached, not being in attendance, the District Attorney declared the testimony closed on the part of the United States

Mr. Brady—Our testimony is closed.

The Judge—You are closed on both sides?

Mr. Brady—Yes.

Mr. Carlisle—I would state that the District Attorney left the room shortly after the adjournment of the Court, and your honor knows his residence is in Georgetown. I therefore had no opportunity of conferring with him. At a late hour last night, after ten o'clock, I received a copy of the points on which the defence mean to rely—not in the nature of instructions, but in the form of law.

The Judge—I will give time to the District Attorney to examine them.

Some minutes were passed in the examination, by Mr. Ould and Mr. Carlisle, of the instructions prayed for by the defence, during which interval Mr. Sickles' counsel conferred together and with the prisoner.

Mr. Carlisle proceeded to read the instructions which the prosecution would ask the Court to give the jury.

The following instructions, as prepared by ths District Attorney, were copied, he said, verbatim from the instructions given by his Honor in the case of Day.

If the jury believe, from the evidence, that the deceased was killed by the prisoner by means of a leaden bullet discharged from a pistol, such killing implies malice in law, and is murder.

That the burthen of rebutting the presumption of malice by showing circumstances of alleviation, excuse or justification, rests on the prisoner, and it is incumbent on him to make out such circumstances to the satisfaction of the jury, unless they arise out of the evidence produced against him.

That every person is presumed to be of sound mind until the contrary is proved, and the burden of rebutting this presumption rests on the prisoner, with the addition of the following:

If the jury believe, from the evidence, that the deceased previous to the day of his death had adulterous intercourse with the wife of the prisoner; and further that the deceased on the day of his death, shortly before the prisoner left his house, made signals, inviting to a further act or acts of adultery, which said signals, or a portion of them, were seen by the prisoner; and, that, influenced by such provocation, the prisoner took the life of the deceased, such provocation does not justify the act or reduce such killing from murder to manslaughter.

Mr. Brady said that counsel on both sides had conferred privately as to the course which this discussion would take. The prosecution would open and close, but if new matter was introduced in the closing speech, the privilege would be given to the defence to respond.

Mr. Brady then proceeded to read the instructions asked by the defence, and handed them to the Judge.

Mr. Carlisle stated the grounds on what he thought the instructions, asked by the prosecution, should be granted, and those asked by the defence, or some of them, should be rejected. The first point made by the prosecution, that if the homicide were willful and intentional, and was induced by the belief of the prisoner that the deceased had criminal intercourse with the prisoner's wife, nevertheless it was murder, if the jury believe that no violence or assault was offered by the deceased at the moment of the homicide, that presented hypothetically on the whole evidence in the case of a willful and intentional killing, without provocation in law. It also presented that a previous seduction of, or adultery with the prisoner's wife, is no provocation in law, even if the jury believe it, but the instruction further proceeds to guard the jury against the conviction of the prisoner if he were insane at the time of the killing. He did not know that he ought to consume the valuable time of the Court in discussing the first proposition—namely, that a previous adultery is not provocation in law. The case of adultery as leading to homicide, wherever it is referred to in the book, is referred to solely in cases where the husband catches the adulterer *in flagrante delicto*. All the authorities confine it further exclusively to the case of instant killing. So that there are two points in it—one that the parties must be caught *in flagrante delicto*, and second, that the homicide must be instantaneous. But there was no authority for saying that adultery had ever been held as tending to establish a justification of the act of homicide. They had heard reasoning and eloquence on the subject, but as yet heard no authority cited on the other side. They were told that every man was to judge, when he finds himself aggrieved, whether the law of the land gives him adequate relief, and if he does not then, he is remitted to his natural rights. In other words, they were told that there were two conditions in every society—a state of nature, and a state of society *un imperium in imperio*. He would not argue that proposition; its mere statement was its own refutation.

It was also argued that human law must be in accordance with Divine law. He would not go into any argument on that subject, but would concede, for the sake of argument, the proposition. He denied, however, that the Divine law anywhere authorized the taking of a human life for any wrong, by the person wronged. The Divine law did not make adultery as great a crime as murder. That sacred volume, on its sacred pages, had, from beginning to end, in letters of living light, denunciations of such acts of violence as this—and he further said, that at no period of the Jewish dispensation was it ever held that the punishment of adultery by death was other than a judicial punishment. He denied that any text in the Bible countenanced the idea that he who had been injured was authorized to take the life of the adulterer. Dr. Paley, in discussing this sin of adultery, had referred to that most touching of all the incidents recorded in the New Testament—the occasion when the Scribes and Pharisees brought to the Saviour the woman taken in adultery. They said to him, "Master, this woman hath been taken in adultery, in the very act; the law of Moses says that crime shall be punished with death; what sayest thou?" The Evangelist adds that they said this "tempting him." How tempting him? Tempting him to take upon himself some judicial authority, that they might have an opportunity of accusing him. Finally he gave them that notable answer, "Let him that is without sin cast the first stone at her." "Then one by one the Scribes and Pharisees slunk away, and the Saviour turned and asked the woman, 'Hath any man condemned thee?' She said, 'No man, Lord.' Then said he, 'Neither do I condemn thee; go and sin no more.'" I, said he, pronounce no judgment; I take upon myself no judicial authority, "Go and sin no more."

If his Honor would refer to the Greek, he would find that the verb was *calachrino*, equivalent to the Latin *judico*, to pass sentence against one. It showed that, at that time, there was no such thing among the Jews as private authority to punish adultery. What could be more shocking, what so irreconcilable with the existence of peace and good government than the doctrine that he who is grievously wronged is to take into his own hands the knife, and to execute summary judgment against the offender? Society could not exist with such a doctrine. If it were established here, in the capital of the nation, the land would present one great scene of violence and confusion—because the principle would not be confined to the single crime of adultery, but would extend to all other wrongs for which the law did not give the offended party adequate reparation. He did not know that it was necessary for him to argue these instructions any further. In regard to the other instructions prepared by his colleague, he would not discuss the second, third and fourth, because they were copied from the instructions of his Honor in the case of Day. As to the fifth instruction, the proposition was, althoug adultery did not offer a legal provocation or justification, yet, if the prisoner knew that the deceased had had adulterous intercourse with the prisoner's wife, and if the prisoner saw the signals and knew their meaning, the passion excited would make a legal provocation, reducing the grade of crime from murder to manslaughter. It merely asked his Honor to repeat in this case the old and well settled law on that subject.

As to the propositions offered by the defence, they were, many of them, if not all, liable to the objection of being abstract propositions of law, and did not conform to the practice here. The counsel read them. The first proposition, he said, was an abstract proposition and was liable to the objection, that his Honor would have to confide to the jury the functions of the Judge. The effect of laying down this proposition to the jury, without anything more, your Honor, who is placed there for the purpose of instructing us at the bar and the jury, as to the law, and to whom the community look for a declaration of law, leaves it to the

jury to find whether there is any proof of alleviation, excuse or justification arising out of the defence. Does the counsel mean to say, in general terms, with regard to the feelings with which men are disposed to look at the fact of killing under these cirumstances, that they may find something of alleviation, excuse or justification of the act? It is not as to the alleviation which might be drawn under other and different circumstances therefore, that they find in the circumstances of the case made by the prosecution.

There is some alleviation, is it meant to say, if the jury find that the presumption of malice is rebutted? I presume not. Your Honor is to say to the jury what facts and circumstances it is competent for them if they believe them, to consider as an alleviation, excuse or justification in this case, for it must be alleviation, excuse or justification in the eye of the law. It must be what your Honor must declare legal alleviation, excuse or justification; and it would be, I think, taking an extraordinary, not the usual course, to throw the whole case before the jury without giving instructions. What is meant by this equivocal language is, that the jury are presumed to be acquainted with the law further than what other men know of it. Without the aid of your Honor, it is not to be presumed what is the law which will amount or extend to alleviation, excuse or justification. I object to the first proposition on this ground. I will say nothing about the abstract proposition of law, out will add, f om the fact of killing, whenever the law presumes malice, it may be rebutted by certain facts and circumstances, or circumstances and facts of a certain sort, which the law regards as alleviation, excuse or justification.

As to the second proposition—namely, the existence of malice—it is not presumable in the case, if, on any rational theory consistent with all the evidence, the homicide was either justifiable, excusable, or an act of manslaughter. I must express my admiration at the singular adroitness with which it has been prepared. I think I see in this proposition an invitation to the jury to consider whether, on all they have heard in this case, the theory of my learned friend—although I don't mean to say it is his theory alone, but may be that of the gentlemen associated with him—whether the theory of the homicide was excusable under these circumstances, and whether it is a rational theory; and that if the jury think it is, then the existence of malice is not presumable. While I acknowledge, to the fullest extent, the right of the jury to give a general verdict of guilty or innocent, as they may think the facts and the law require, I deny it is the province of this or any court to invite the jury, or to submit to the jury on the application of counsel, the question whether the law is to be thus or so. We had better—I say it with the most perfect respect—abolish the bench entirely if such practice is to prevail, and trust to the jury, without any interference of the Judge. I know of no authority or precedent, on the face of it by express terms, which induces a submission to the jury by the Court, as to what is the law of the case. They or your Honor are to determine whether there be a rational theory of justification in law, in any view of the evidence of this case. Your Honor is to tell them what is a justification in law, and it is for them to form their opinion.

As to the third point namely that if there be any rational hypothesis consistent with the conclusion that the nomicide was justifiable or excusable, the defendant must be acquitted—this was substantially the same as the second, only that it was more boldly stated.

In the fourth proposition, the defence undertake to save the prisoner from conviction for manslaughter, by saying that, if the jury believed that Mr. Sickles intended to kill Mr. Key, he cannot be convicted of manslaughter. He submitted, however, that it did not follow that, because Mr. Sickles intended to kill Mr. Key, he could not therefore, be convicted of manslaughter. He could suppose many cases where a party does intend to kill the assailant, and does kill him, and where the act falls short of murder, and is manslaughter.

The fifth proposition was, again asking your Honor voluntarily to surrender into the hands of the jury the functions of the Judge—the whole investigation on the whole question of law and fact. If his Honor did that, society would be exposed to those doctrines that are inconsistent with the existence of civil society. The jury would be referred to their own conscience, without regard to law, and would be asked to say, whether that unhappy deceased did or did not deserve his fate; and if they thought he did deserve it, they would be asked to acquit the prisoner. He would not stop to argue the falsity of that proposition.

The sixth proposition was, that if Mr. Sickles killed Mr. Key while the latter was in criminal intercourse with the wife of the prisoner, Mr. Sickles cannot be be convicted of either murder or manslaughter That was again laying down the doctrine of divine right on the part of the injured husband to slay an adulterer.

The seventh point was, that if the jury found Mr. Sickles was laboring under the influence of a diseased mind, and was really unconscious that he was committing a crime, he is not in law guilty of murder. This proposition was in quotation marks, but he did not know where it was taken from. He did not suppose it was taken from his Honor's ruling.

Mr. Brady.—It is Mr. Bradley's language in the Day case.

Mr. Carlisle—I am glad it is not the Judge's language.

Mr. Brady—His Honor adopted those instructions.

Mr. Carlisle—Could well imagine how his poetical friend on the other side, who seemed to have the great dramatist at his finger's end, could make an argument on those words, "diseased mind." He could transpose the words, and say with Macbeth, "Canst thou not minister to a mind diseased, pluck from the memory a rooted sorrow, raze out the written troubles of the brain?" &c., &c. This doctrine would amount to making ungovernable passion an equivalent to insanity. Such a doctrine would render criminal law nugatory.

The eighth proposition was similar to the seventh. It is, that if the jury believe, from any predisposing cause, the prisoner's mind was impaired, and he beeame mentally incapable of governing himself, &c. Why, said he, every man who is under the influenee of uncontrollable passion and thirst for revenge is mentally incapable of governing himself. But who would argue that he was not accountable for acts done under that influence? If Mr. Sickles had adopted the theory of his friend, and been advised that it was no crime to kill Mr. Key under these circumstances, this proposition asked his Honor to say that then it was no crime, and that the jury must acquit him.

The ninth proposition again places it in the province of the jury to declare whether the prisoner had capacity of mind to decide upon the criminality of the particular act, the homicide, and if they think he had not, the jury must acquit him. There was a code which might hold that the deceased had forfeited his life to the prisoner. That was the duelling code. It was not the code of assassination, but of honor, where it is so arranged that the parties shall be placed on terms of equality. With that code, however, they had nothing to no. It was unchristian, was denounced by law, and was fast fading from civilized society.

Counsel for defence.—I have lately perused the history of duelling, and I will let you have it, if you choose.

Mr. Carlisle.—No, sir. I have no desire to read it.

Counsel for defence.—The adulterer has never been placed on the footing of an honorable man, but has been treated as a dishonorable man.

Mr. Carlisle proceeded to discuss the tenth proposition, which is that the law does not require that the inanity which absolves from crime should exist for any definite period, but only at the moment when the act is committed. He did not believe in such a state of insanity. No theorist had ever laid it down, and the proposition was entitled to no favor from the Court.

The eleventh proposition was, that if the jury have any doubt as to the homicide, or the sanity of the prisoner, he should be acquitted. He argued that the presumption was to be in favor of sanity, not of insanity. The proposition here was, that the presumption should disappear, and that the prisoner should have the benefit of any doubt about sanity. Insanity was the most easily counterfeited matter, and if this doctrine were established all cases of homicide under passion could easily be brought within the defence of insanity. The defence of insanity was a specific defence, and must be proved affirmatively and beyond doubt. There was no reason why that defence should be placed on more favored grounds than any other defence. On the contrary, there was every reason why the defence of insanity should be proved beyond any reasonable doubt. The doctrine embraced in this proposition was a very dangerous doctrine. It had been laid down by all authorities, and decided by

the twelve judges of England, in McNaughten's case, that the defence of insanity must be proven to the satisfaction of the jury.

Mr. Brady understood, that in the case of a man named Oval, tried before his Honor, this very question had been discussed and passed upon.

Mr. Carlisle was not familiar with that case, and would leave it to the District Attorney to comment upon. He referred to the language of the English judges in McNaughten's case, and closed his argument.

SUMMING UP FOR THE DEFENCE.

Mr. Stanton said it became his duty to present some considerations in support of the points of law which had been submitted by the defence, and which points were in conformity with those which may be given to a jury. The event which had brought the jury and the prisoner at the bar into solemn relations, and made the Court and counsel participators in this momentous trial, was the death of Mr. Key at the hand of Mr. Sickles, on Sunday, the 27th of February. The occasion of this event was an adulterous intrigue between Mr. Key and the wife of Mr. Sickles. The law rising on the case must depend on the relations each held to the other at the time the occurrence took place. Two theories had been presented—one by the prosecution, the other by the defence. Those theories, as in all such cases, are opposite; and it will be for the Court, by a comparison of those theories with the known principles of law, to give to the jury the instruction. The act of taking human life is designated in law by the general term of homicide, which may be either with malice or without malice. The act of Congress which governs in this District designates two grades of unlawful homicide—namely, murder and manslaughter. He defined these two crimes in the language of Blackstone. In some States the law designates other grades of unlawful homicide, but only two are designated by the act of Congress above referred to; but life may be taken under circumstances which the law will excuse or justify. This must depend on a variety of circumstances, neither foreseen nor enumerated, and must be judged by wise tribunals, and by maxims which form the common law of the land, and are essential to peace and security. They are illustrated by examples and cases, whence the reason of the law can be derived, and by these the true rule of judgment is ascertained.

After mentioning two classes of cases in which a man would be exempted from judicial punishment for killing —namely, self-protection as a natural right, and the defence of one's household from the thief or robber—he said there was a third class, arising from the social relation—the law holding family chastity and the sanctity of the marriage bed, the matron's honor and the virgin's purity, to be more valuable and estimable in law than the property or life of any man. The present case belonged to that class on which rested the foundation of the social system, and, as it involved the life of the prisoner, it could not be too carefully considered, and this principle never came before a judicial tribunal in a form more impressive than now. Here, in the capital of the nation, the social and political metropolis of thirty millions of people, a man of muture age, the head of a family, a member of the learned profession, a high officer of government, intrusted with the administration of the law, and who for years at this bar has demanded judgment of fine, imprisonment and death against other men for offences against law, has himself been slain in open day in a public place, because he took advantage of the hospitality of a sojourner in this city. Received into his family, he debauched his house, violated the bed of his host, and dishonored his family. On this ground, alone, the deed of killing was committed. The instructions presented by defendant bring to the view of the Court two consistent lines of defence —one, that the act of the prisoner at the bar is justified by the law of the land, under the circumstances of its commission; the other, that, whether justified or not, it is free from legal responsibility by reason of the state of the prisoner's mind. When the crime was committed against him by the deceased, in both points of view, the relations which the deceased and the prisoner at the bar bore to each other at the moment of the fatal act are to be observed—one, as a husband outraged in his house, his family and his marital rights; the other, an adulterer in *flagrante delicto*.

While counsel for the prisoner insist that the act is justified by the law, the counsel for the prosecution assert that the act is destructive of the existence of society, and demand judgment of death against him as a fitting penalty. The very existence of civil society depends, not on human life, but on the family relations. "Who knows not," says John Milton, "that chastity and purity of living cannot be established or continued, except it be first established in private families, from whence the whole breed of men come forth?" "The family," says another distinguished moralist, "is the cradle of sensibility, where the first lessons are taught of that tenderness and humanity which cement mankind together; and were they extinguished, the whole fabric of society would be dissolved." In a general sense the family may embrace various degrees of affinity, more or less near; but in a strictly legal sense it embraces the relations of husband and wife, parent and child, brother and sister. The first and most sacred tie, however, is the nuptial bond. "Eternal discord and violence," says a great moralist, "would ensue if man's chief object of affection were secured to him by no legal tie. No man could enjoy any happiness or pursue any vocation if he could not enjoy his wife free from the assaults of the adulterer. The dignity and permanence of the marriage are destroyed by adultery. When the wife becomes the adulterer's prey the family is destroyed, and all family relations are involved in the ruin of the wife. When a man accepts a woman's hand in wedlock, he receives it with a vow that she will love, honor, serve and obey him in sickness or in health, and will cleave only to him. This bond is sanctified by the law of God. "What God hath joined together let no man put asunder." By a marriage, the woman is sanctified to the husband, and this bond must be preserved for the evil as well as for the good. It is the blessing of the marital institution that it weans men from their sins and draws them to the performance of their duties. This seal of the nuptial vow is no idle ceremony. Thenceforth the law commands the adulterer to beware of disturbing their peace. It commands that no man shall look on woman to lust after her.

The penalty for disobedience to that injunction did not originate in human statutes; it was written in the heart of man in the Garden of Eden, where the first family was planted, and where the woman was made bone of man's bone, flesh of man's flesh. No wife yields herself to the adulterer's embrace till he has weaned her love from her husband; she revolts from her obedience, and serves the husband no longer. When her body has been once surrendered to the adulterer, she longs for the death of her husband, whose life is often sacrificed by the cup of the poisoner, or the dagger or pistol of the assassin. The next greatest tie is that of parent and child. If in God's providence a man has not only watched over the cradle of his child, but over the grave of his offspring, and has witnessed earth committed to earth, ashes to ashes, and dust to dust, he knows that the love of a parent for his child is stronger than death. The bitter lamentation—"Would to God I had died for thee"—has been wrung from many a parent's heart. But when the adulterer's shadow comes between the parent and child, it casts over both a gloom darker than the grave. What agony is equal to his who knows not whether the children gathered around his board are his own offspring or an adulterous brood, hatched in his bed. To the child it is still more disastrous. Nature designs that children shall have the care of both parents; the mother's care is the chief blessing to her child—a mother's honor, its priceless inheritance. But when the adulterer enters a family the child is deprived of the care of one parent, perhaps of both. When death, in God's providence, strikes a mother from the family, the deepest grief that preys upon a husband's heart is the loss of her nurture and example to his orphan child; and the sweetest conversation between parent and child is when they talk of the beloved mother who is gone. But how can a father name a lost mother to his child, and how can a daughter hear that mother's name without a blush? Death is merciful to the pitiless cruelty of him whose lust has stained the fair brow of innocent childhood by corrupting the heart of the mother, whose example must stain the daughter's life.

The pride and glory of the family is its band of brothers and sisters. Sprung from the same love, with the same blood coursing in their veins, their hearts are bound together by a cord, which death cannot sever; for, wide asunder as may be the graves of a household, varied as may be their life here on earth, when life's rough ocean is passed, sooner or later they will rejoice

in the heavenly coast—a family in heaven. But when the adulterer puts a young wife asunder from her husband, her child is cut off from all kindred fellowship. The companionship and protection of a brother of the same blood can never be her's. No sister of the same blood can ever share her sorrow or her joy. Alone, thenceforth, she must journey through life, bowed down with a mother's shame Nor does the evil stop here. It reaches up to the aged and venerable parents of the wretched husband and of the ruined wife, and stretches around to the circle of relatives and friends that cluster around every hearth. Such are the results of the adulterer's crime on the home—on the home, not as it is painted by the poet's fancy, but home as it is known and recognized by the law—as it exists in the household, and as it belongs to the family of every man. They show that the adulterer is the foe of every social relation, the destroyer of every domestic affection, the fatal enemy of the family, and the desolator of the home. The crime be ongs to the class known in law as *mala in se*—evil in itself—fraught with ruin to individuals and destruction to society.

Such being its nature, we can easily perceive why it is that in Holy Writ the crime of the adulterer is pronounced to be one which admits of no ransom and no recompense. We can perceive why it is that in every book of the Old and New Testament it is denounced. Why it is, that by every holy lawgiver, prophet and saint it is condemned. We can understand why it is that twice it is forbidden in the Ten Commandments, and why it is that Jehovah himself, from the tabernacle in the midst of the congregation, declared that "the man who committeth adultery with another man's wife, even he who committeth adultery with his neighbor's wife, shall surely be put to death." By God's own ordinance he was to be stoned to death, so that every family in Israel, every man, woman and child might have a hand in the punishment of the common enemy of the family. By the Levitical law, the adulteress was subject to the same punishment. But the Redeemer of mankind when on earth, is supposed to have mitigated the punishment of the adulteress by requiring him who was without sin to cast at her the first stone. No such condition, however, was imposed in favor of the adulterer. There was no mitigation of his crime, and we know the Saviour's judgment of the sin when he declared that "he who looketh at a woman to lust after her committeth adultery in his heart." From the silence of Scripture on the occasion recorded in the Gospel of John, it is to be inferred that, as the adulterer and adulteress had been taken in the act, the adulterer on that day in Jerusalem had been put to death by the husband, as he might be by the Roman law, before the adulteress had been brought to the Saviour's feet. This case has been cited here, as it often is in favor of the adulterer, and against the husband. But the argument of Dr. Paley, alluded to by counsel on the other side, conclusively shows that that case cannot be cited in favor of the adulterer. On that day, in Jerusalem, the laws of Moses, as a civil and political institution, had passed away, and the Roman law had taken its place.

Why was it that the men of Jerusalem brought not to the Saviour the adulterer who had been taken at the same time, if they wanted to know the Saviour's judgment of the sin of adultery. By the Roman law, while the adulterer suffered death, that punishment does not seem to have been inflicted on the adulteress. This woman, therefore, was brought to the Saviour's feet to hear what would be his judgment. If he had undertaken to say that the laws of Moses ought not to prevail then, an accusation might be brought against him in the synagogue; and if, on the other hand, he had said that the laws of Moses should be enforced, then ready accusation would have leaped to their lips that he was usurping judicial functions, and he would have been brought before the judgment seat of the Roman authorities. As Dr. Paley observes, the case only serves to show that the Saviour meant to rebuke those who tempted him, but that he never designed to shield the adulterer from the just doom of the law. What, then, is the act of adultery? It cannot be limited to the fleeting moment of sexual contact; that would be a mockery; for then the adulterer would ever escape. But law and reason mock not human nature with any such vain absurdity. The act of adultery, like the act of murder, is supposed to include every proximate act in furtherance of, and as a means to, the consummation of the wife's pollution. This is an established principle in American and English law, established from the time of Lord Stowell, as will be hereafter shown. If the adulterer be found in the husband's bed, he is taken in the act, within the meaning of the law, as if he was found in the wife's arms. If he provide a place for the express purpose of committing adultery with another man's wife, and be found leading her, accompanying her, or following her to that place for that purpose, he is taken in the act. If he not only provides but habitually keeps such a place, and is accustomed by preconcerted signals to entice the wife from the husband's house, to besiege her in the streets, to accompany him to that vile den; and if after giving such preconcerted signal, he be found watching her, spy glass in hand, and lying in wait around a husband's house, that the wife may join him for that guilty purpose, he is taken in the act.

If a man hire a house, furnish it, provide a bed in it for such a purpose, and if he be accustomed, day by day, week by week, and month by month, to entice her from her husband's house, to tramp with her through the streets to that den of shame, it is an act of adultery, and is the most appalling one that is recorded in the annals of shame; if, moreover, he has grown so bold as to take the child of the injured husband, his little daughter, by the hand, to separate her from her mother, to take the child to the house of a mutual friend while he leads the mother to the guilty den, in order there to enjoy her, it presents a case surpassing all that has ever been written of cold, villainous, remorseless lust. If this be not the culminating point of adulterous depravity, how much farther could it go? there is one point beyond; the wretched mother, the ruined wife, has not yet plunged into the horrible filth of common prostitution, to which she is rapidly hurrying, and which is already yawning before her. Shall not that mother be saved from that, and how shall it be done? When a man has obtained such a power over another man's wife that he can not only entice her from her husband's house, but separate her from her child for the purpose of guilt, it shows that by some means he has acquired such an unholy mastery over that woman's body and soul that there is no chance of saving her while he lives, and the only hope of her salvation is that God's swift vengeance shall overtake him. The sacred glow of well placed domestic affection, no man knows better than your Honor, grows brighter and brighter as years advance, and the faithful couple whose hands were joined in holy wedlock in the morning of youth find their hearts drawn closer to each other as they descend the hill of life to sleep together at its foot; but lawless love is short lived as it is criminal, and the neighbor's wife so hotly pursued, by trampling down every human feeling and Divine law, is speedily supplanted by the object of some fresher lust, and then the wretched victim is sure to be soon cast off into common prostitution, and swept through a miserable life and a horrible death to the gates of hell, unless a husband's arm shall save her.

Who, seeing this thing, would not exclaim to the unhappy husband, Hasten, hasten, hasten to save the mother of your child. Although she be lost as a wife, rescue her from the horrid adulterer; and may the Lord, who watches over the home and the family, guide the bullet and direct the stroke. (Here the audience broke into an unrestrainable burst of applause, which the officers of the court vainly endeavored to check.) And when she is delivered, who would not reckon the salvation of that young mother cheaply purchased by the adulterer's blood? Aye, by the blood of a score of adulterers? The death of Key was a cheap sacrifice to save one mother from the horrible fate, which on that Sabbath day, hung over this prisoner's wife and the mother of his child. Counsel then proceeded to discuss the law and the judicial decisions of England and of this country as bearing upon the question of adultery as a justification for homicide. In speaking of the laws of Maryland, as they descended to the District of Columbia at the time of the cession in 1801, he said it had never been adjudged by this or any other Court, that the man who destroyed the violator of his family chastity was guilty of a crime. He cited Manning's case. Manning was a married man, who, entering his house one day, found his wife in the arms of a neighbor, who was committing adultery with her; the husband snatched up a stool and struck a blow over the adulterer's head and killed him on the spot, and for this was arraigned as a prisoner for murder. As an Englishman it was his birthright to have the act passed upon by a jury of his country, and his innocence or guilt determined by them in accordance with

the common law; but this was in the dark day of judicial tyranny and corruption—the day when jurors were fined and sent to jail, as he quoted authorities to show, for refusing to find verdicts against their consciences, in accordance with the charge of the Court—in a day when, from the King's Bench, from Westminster Hall, it was declared that the judge was entrusted with the liberties of the people, and that his saying was the law; that was the day when it was adjudged that the husband was a felon for killing a man caught in adultery with his wife.

In Manning's case, Judge Twisden directed a special verdict, and determined the degree of guilt himself, and Manning was punished by being branded on the hand as a felon. There were four epochs in which killing in such cases went unpunished—it was justified under the Jewish dispensation, by the laws of Solon, by those of the Roman Empire, and by the Gothic institutions which have given shape to our own. By the mere force of frequent repetition in the books of Manning's case, it has come to be believed that a man must stand by the bed of his wife and behold the adulterer polluting his bed, and not raise his hand against him. From the time of Edward II. to King Charles—three hundred and sixty odd years—no word is to be found in the common law, no word imputing guilt to the slayer of the violator of the chastity of his wife. This right to kill was never denied till now. There was one fact he had never before seen related, except by Paley, that by the laws of the Commonwealth, immediately preceding the time of Charles, adultery was punished by death.

Counsel for the prosecution remarked that Blackstone mentioned it. In 1650, at a period before the judgment Manning's case, it was punishable by death.

Mr. Stanton.—The age of Charles was an age of adultery and gross corruption; the palace was filled with harlots, and thronged with adulterers and adultresses; the judges were the panderers, partakers and protectors of the corruptions of the age and the same court which ajudged the husband to be a felon for slaying the adulterer on his bed, fined and sent jurors to prison for refusing to find verdicts in accordance with its instructions; it was the same Courts which hunted Quakers, Catholics and Nonconformists to death; the same Court which persecuted John Howe and Richard Baxter, and which sent to the pillory and prison John Bunyan for preaching the Gospel to the poor. Counsel referred for the history of those times to the first volume of Macaulay, page 140.

This was the state of the laws and social life at the time the principle was introduced into the common law of England that to kill an adulterer in the act is a crime; and when society in this District is reduced to the same condition, and when the government offices are filled by open and avowed adulterers, when the professions of law and medicine shall be thronged with libertines, when the wife's purity and family chastity shall become a jest, then it will be time to introduce here a principle of common law never before heard from the judgment-seat; then it will be necessary for the Court to extend the shield of law over its attorneys to save their lives from the hands of the husbands whose wives they have violated, whose homes they have destroyed, and whose families they have made desolate. I claim, then, on this proposition, that the expression or rule of the common law in regard to the consent of the wife had its origin in a state of manners and of social life that do not exist in this country, and that that rule is not applicable here. It is founded on the principle that the wife's consent can qualify the degree of the adulterer's guilt, and determines the husband to be a criminal. In American society there is a freedom from restraint and supervision that exists nowhere else, and this results from various causes; husbands, fathers and brothers devote a large share of time to the cares of life, and to the duties of providing for the family, during which time the female portion of the family are left to themselves without protection. The frequent changes of habitation and the equality of our social condition lead to a frankness of intercourse which requires, for the sanctity of the home and the security of the marriage bed, a rigorous personal responsibility to the death. The peculiar conditions of society in this District are also to be noted before any principle like that of social law can be introduced.

Families come hither from all parts of the Union to remain for a shorter or a longer period of time. To enjoy any social life here the intercourse must be frank, without suspicion. The time which, in long established communities, may enable individuals to choose and pick out those with whom they may associate, is not had here; besides, it has been the custom here for officers of the government, and those in the public employment, to throw open their doors with a wide hospitality that exists nowhere else. This forms a peculiar feature and attraction in Washington society, and by the population that it attracts here and the stimulus thus given to business, the wealth and prosperity of the city and District are promoted. But if these social occasions are to be made the means of guilty assignations; if they are to become the means by which the adulterer pursues his lust, then the doors of families must be swiftly closed. No man would be willing to have his hospitality made the means of an assignation, or the social occasions, when he desires to give his friends and neighbors pleasure, converted into opportunities for corrupting the innocent wife of his friend. I repeat, then, that the doctrine on which this prosecution rests, is founded on the Manning case, copied by Hale, and Foster, and Blackstone. But it is also to be observed that, from the day in which Manning's case was decided to the present hour, it has not been followed by the conviction of a husband in England. No husband since then has been punished as a felon for taking the life of an adulterer. In three cases the doctrine of that case has been declared from the bench, but only by two judges; the case of the Queen against Fisher, the case of the Queen against Kelly, and another case. Two of these were tried by Justice Pare, and the other by Baron Rolfe. In the one, there was no adultery of the wife; in the other, no marriage, and in the third, the crime was of a totally different nature.

As, from the time of Alfred to the time of Charles the Second, there is no evidence that a husband was regarded as a felon in common law for slaying an adulterer, so from the time of Charles the Second to the present hour that principle has never been enforced by the punishment of any man in England. Counse then proceeded to argue that in the three cases cited by the prosecution from the North Carolina and South Carolina reports there were entirely distinct questions at issue; that so far as the marital relations of slaves were concerned, they were not recognized by the laws of those States, and that, therefore, the adjudications or rulings in the case of slaves did not govern or apply to this case. There was another case cited in Jones—the case of a white man. But there there was sufficient evidence to show that the killing proceeded from preceding malice. There was a case, however, cited from Hill's reports, which had some analogy to this case. There the adulterer slew a husband who was endeavoring to rescue his wife, and there it was held that the murderer could not set up the plea of self-defence. The American common law on this subject was shown in the cases of Singleton Mercer, of Myers, of Jacob Green, and the case of John Stump, and the case of Jarboe, where, in each instance, the slayer of the seducer was acquitted. Counsel also referred to Smith's case and Sherman's case in Philadelphia, Boyer's case in Virginia, and Ryan's case reported in vol. 2 Wheeler's Criminal cases, page 54. Where, then, he asked, did the adulterous doctrine of Charles the Second prevail in America? Not where the stars and stripes wave—not even where the royal banner of England floats—for it was not long since, in Canada, a husband had followed his wife's seducer from city to city till he found and slew him; and there the doctrine of Charles the Second was repelled and the man instantly acquitted. By the American law, he proceeded, the husband is always present by his wife; his arm is always by her side; his wing is ever over her. The consent of the wife cannot in any degree affect the question of the adulterer's guilt, and if he be slain in the act by the husband, then it is justifiable homicide. I will pass, then, to the question of what constitutes the act. I understood one of the learned counsel for the prosecution to claim, in accordance with the very loose language of Baron Parke, that it is necessary for the husband to have ocular demonstration.

Mr. Carlisle—"Finding" is the word.

Mr. Stanton—It does credit to the frankness as well as to the good sense of the counsel not to claim that doctrine, but that is the doctrine of Manning's case. The wife could not only consent to the act, but the husband, if he came in, in the dark, could not lay his hand on the adulterer until he lit the candle and saw his shame; and then if he slew the adulterer he must have the felon's

branding on his hand. The object was to erect before the husband the gallows and branding iron, so that the courtiers and corrupt men of that age might pursue with impunity the wives and daughters of the people; hence they demanded not only that the wives should not consent, but that the husband should see his shame. As late as within the last few years, Baron Parke, sitting in the judgment seat of England, said that the husband must have ocular inspection of the act. What is the act, and what is necessary? It is the fact of adultery that constitutes the guilt of the individual and the justication of the husband. That fact is to be manifested according to the rules of evidence that apply in regard to other facts. It is claimed by the defence that the evidence was brought directly to the visual senses of the prisoner at the bar, but whether it was so or not, the fact is only to be determined by the ordinary rules of evidence. Counsel referred to the rules of evidence in regard to adultery, as laid down in Poynter on Marriages p. 187; Collins against the State, vol. 14 Alabama Reports, p. 680; the State against Jolly, vol. 3 Devereux and Battelia, p. 160. My last proposition is, the counsel proceeded, that the wife's consent cannot shield the adulterer. she being incapable by law of consenting to any infraction of her husband's marital rights, and that in the absence of consent and connivance on his part every violation of the wife's chastity is, in the contemplation of law, forcible and against his will, and may be treated by him as an act of violence and force on his wife's person. It follows, as a logical consequence, from the relation of husband and wife, as stated in the first proposition, because her very being and existence is suspended, that is to say, "incorporated and consolidated," says Blackstone, into that of the husband during marriage, that any invasion of the husband's right r chastity of the wife is a forcible act.

The law does not look to the degree of force, it looks to the forcible movement, and being an act of force it follows that the right of the husband to resist that force is clear and undoubted on the highest principles of law. My friend here (Carlisle) says he condemns the adulterer as much as any one, but that he abhors lawless violence. So do I; but the question is here whether the violence be lawless? In undertaking to designate the act of the prisoner here as an act of violence, as an act of personal justice, he assumes the very questoin that is involved, because on no theory of law, on no system of jurisprudence recognized among men, has the defence of a right, the maintenance of possession in a right, the protection of a right, been recognized either as a revengeful act or an act of lawless violence. By the contemplation of law the wife is always in the husband's presence, always under his wing; and any movement against her person is a movement against his right and may be resisted as such. We place the ground of defence here on the same ground and limited by the same means as the right of personal defence. If a man be assailed, his power to slay the assailant is not limited to the moment when the mortal blow is about to be given; he is not bound to wait till his life is on the very point of being taken; but any movement towards the foul purpose plainly indicated justifies him in the right of self-defence, and in slaying the assailant on the spot. The theory of our case is, that there was a man living in a constant state of adultery with the prisoner's wife, a man who was daily by a moral—no, by an immoral power—enormous, monstrous and altogether unparalleled in the history of American society, or in the history of the family of man, a power over the being of this woman—calling her from her husband's house, drawing her from the side of her child, and dragging her, day by day, through the streets in order that he might gratify his lust. The husband beholds him in the very act of withdrawing his wife from his roof, from his presence, from his arm, from his wing, from his nest, meets him in that act and slays him, and we say that the right to slay him stands on the firmest principles of self-defence.

I have endeavored as briefly as I could to explain the principles of social law and jurisprudence on which the defence is planted, and I trust that on examination it will not be found to be any visionary ground of defence, or any such mere theory as was apprehended by my learned friend (Mr. Carlisle), who opened the argument. He says that society could not exist on such principles, because this was the exercise of the right of private judgment; and if it was to be established as a principle, the land would be a scene of blood, as the punishment of adultery would be followed by the punishment of other crimes. Now if it were so, if this land were to be a scene of blood, and if it were necessary to make it so, I ask whether blood had not better run in torrents through our streets than that the homes of men should be destroyed by the adulterer at will? But it is not so. Neither your Honor nor I will be frightened by any such appalling picture. Thank God, adultery is a crime that is usually a stranger to American society. It is but rarely in our history that some great event like this occurs to startle society and lead it to the examination of the principles on which it is founded. That has been the case, and it should lead to the examination of the principles of law on which home and family rest, should result in planting around that home and family the safeguards of the law, in breaking through the bonds by which the adulterous court of Charles the Second undertook to bind the arm of the husband, then some good will grow out of that great evil that has been produced by this event.

It is not my purpose to pursue this discussion in reference to the other points. I shall leave them to my colleague (Mr. Brady). I thank your Honor for the patience with which you have heard me in the discussion of this question. I have endeavored to discuss it on principles which I believe, as a man, as a father and as a husband, to be essential to the peace and security of your home and mine. I have endeavored to dtscuss it on principles which are essential to the peace and prosperity of the society in which my home is planted, as well as yours; and, I hope that, by the blessing of God, as it has been your Honor's good fortune to lay down the law which secures the family, in one aspect, from the seducer of the sister, you may also plant on the best and surest foundatfons the principles of law which secure the peace of the home, the security of the family, and the relations of husband and wife. which have been in the most horrid manner violated in this case.

As the counsel resumed his seat he was saluted with another outburst of applause.

The Court then adjourned.

NINETEENTH DAY.—*April* 25, 1859.

The court-room was crowded this morning to its ut most capacity, for fully a quarter of an hour before Judge Crawford took his seat, and a large number of persons besieged the doors, seeking vainly for admittance.

Mr. Brady proceeded to argue the instructions on behalf of the defence. He was quite sure his Honor would extend to him during the argument he was about to make, the same polite attention which he had hitherto received, and which he was delighted to acknowledge. He should endeavor to confine himself cautiously to the proper discharge of the particular duty devolved upon him. He felt and his client felt the great importance of endeavoring to convince your Honor's judgment of the propriety of the prayers which they asked your Honor to instruct the jury. He would not go over the same ground as his learned associate (Stanton,) had gone over, but would confine himself to those matters which his associate had slightly passed over.

There was a great difference of opinion between the counsel for the defence and the counsel for the prosecution, as to the principles on which this case rested, and the counsel for the prosecution (Carlisle,) was in error in saying that the instructions asked for by the defence were purely of an abstract character. The prosecution had commenced by showing a case which might be termed assassination, and which showed, in none of its aspects, mitigation or alleviation.

The District Attorney had represented the prisoner as a walking magazine, an animated battery going out from his house on the morning of the homicide determined to turn all his engines of destruction against Mr. Key. He is represented as knowing Mr. Key to be unarmed, and as having given the deceased no opportunity of defending himself, but in a cowardly manner shot him down. That statement, however, was utterly unsustained by the evidence adduced for the prosecution. Every man would have been surprised if the evidence had been allowed to stop there, showing only the mortal meeting of those two men, who had been hitherto fast friends. If the case had stopped there, would

not the whole world say, that in such a case there must have been either insanity or justification.

While the prosecution thus presented the case in the opening the counsel for the defence had suggested that their defence rested on two grounds. He had seen in the newspapers criticisms on the defence, that the two theories were inconsistent, that if the act were justifiable the defence of insanity should not have been set up. The defence, however, held that if the act was not held in law to be justifiable, they should have the benefit of the defence of insanity.

These views had elicited the defences of justification of homicide in consequence of provocation, and of insanity, and it was in reference to these three defences that the requests had been prepared. He must here take issue with the prosecution in reference to what the jury were to do. He had put an inquiry on that point to the District Attorney some days ago, but he had not heard a satisfactory answer since. That which he esteemed to be the ablest ruling on that point was to be found in the case of the State *vs.* Croteau, vol. 23, Vermont Reports, p. 14, where this rule is laid down.

This power of a jury is doubtless liable to abuse, and so is the power conferred on a Court, or any other human tribunal. But while a jury or court keep within their proper sphere of jurisdiction, they are in the exercise of the powers conferred on them, and are in the performance of a legal right, and this, though they may, by the abuse of the power, be guilty of moral wrong.

The extent of a court or jury is measured by what they may or may not decide with legal effect, and not by the correctness or error of their decision. Thus, the butcher, Jeffreys, by virtue of his office as Judge, had the political power, and consequently the legal right to conduct the trial of Algernon Sidney, and to give his opinion upon the law of the case in his charge to the jury, though for his shameful abuse of the right he may have incurred the deepest moral right, so the jury, in a criminal trial have the legal right to decide the law as well as the facts involved in the issue; but this does not give them a right, by a wanton disregard of law, to decide arbitrarily.

The counsel also referred to a ruling of Chief Justice Shaw, delivered in the Supreme Court of Massachusetts. He did not wish, in the present state of the case, to refer to these authorities for any other purpose than to show that they were consistent with the spirit of his Honor's ruling on various occasions. The counsel referred to Judge Crawford's ruling in the Herbert case. If he could believe that the view of the counsel for the prosecution were correct, proud as he was of having been born in this land, proud as he felt in her great destinies, he would rather live under the worst despotism on the face of the earth.

I verily believe, continued the counsel, that next to the integrity of the Judiciary, which I hope will always continue as it has done in the past, to adorn our national character, next to that is the importance of preserving the trial by jury, especially in criminal cases, intact. I do not recognize in the Declaration of Independence, in the statement of all the abuses that led to the revolt of the American Colonies, anything set up as the occasion for the war of the Revolution that compares in importance with the right of trial by jury as it now exists in this land, and much as I abhor the shedding of blood, and cowardly as I might be found when the moment of danger approached, I would be willing to lay down my life, and wade to any extent in the blood of the foe to prevent that palladium of liberty from being invaded for one moment.

Turning our attention now to that Sunday morning, and to that point of contact, let us see who the parties to it were. Each was in the rank of gentlemen, each a lawyer, each a man in public office. Looking at the relations that had existed between them as perfectly established in this case, we find that they had been close personal friends; we find that Mr. Sickles had, to the best of his capacity, urged the appointment or retaining in office of Mr. Key; that Mr. Sickles was desirous he should continue to discharge the duties of District-Attorney; we find that Mr. Sickles had recommended clients to him; had employed him as his own counsel, and had given him free access to his house in the exercise of that hospitality prevailing in this District, to which my associate (Mr. Stanton) has so ably referred, and to which, before I go away—perhaps never to return—I, as a stranger, want to bear cheerful and heartfelt testimony.

In view of all these facts, there is no man in the District, possessed of any intellect, who, knowing anything of the antecedents of Mr. Key and Mr. Sickles, could have supposed that Mr. Sickles walked out of his house that Sabbath morning, left his home and his wife, and that darling blossom of his heart—that child who has been polluted by the touch of the adulterer—could have walked out of his house in the light of day, under the blessed sunlight, and in the face of Heaven, and committed an assassination on the person of his friend. Therefore your Honor asks, the jury asks, and the whole world asks, how this thing was? The whole world, your Honor, has its eye on this case, and although there may seem to be egotism involved in the remark which I make, I cannot help saying, because I am here in the discharge of my duty, that, when all of us shall have passed away, and when each shall have taken his chamber in the silent halls of death, and while some of us would have been totally forgotten but for this unfortunate incident, the name of every one associated with this trial, from your Honor who presides in the first position of dignity, to the humblest witness that was called on the stand, will endure so long as the earth shall exist.

The whole world, I say, is watching the course of these proceedings, and the nature of the judgment; and I believe I know what kind of a pulsation stirs the heart of the world. I think I know, if the earth could be resolved into an animate creature, could have a heart, and a soul, and a tongue, how it would rise up in the infinity of space and pronounce its judgment on the features of this transaction. Now, with these two gentlemen thus coming together, with the fact before us that the District Attorney (Mr. Key) had been consulted as counsel for Mr. Sickles in relation to the very house which Mr. Sickles occupied at the time when Mr. Key was one of his most cherished guests, I will be permitted, in favor of the instructions, to which I will presently refer, to put before your Honor a very brief outline as to the undisputed facts in regard to the meeting of Mr. Sickles and Mr. Key. I will by sufficient testimony endeavor to daguerreotype the event precisely as it occurred. These gentlemen are brought into contact; a loud conversation occurs which no witness undertakes to give; after a loud conversation there is heard a scuffle between the parties, so that to Mr. McCormick's eyes it was a street fight, and he could imagine it to be nothing else; in the course of the encounter Mr. Sickles drew a pistol and fired a certain number of shots, which took effect; at what time this occurred, in what position Mr. Key was left, is a matter of dissension and doubt. The testimony of the prosecution is conflicting. The result was that Mr. Key received his death-wound, and was taken to the Club-house, and, shortly after, there were found near the spot, an opera-glass, which belonged to him, and a Derringer pistol.

To whom did this pistol belong, and who used it in this encounter? No witness pretends that is was in the possession of Mr. Sickles; he had nothing but a revolving pistol. There is no statement, hint or insinuation from any witness that he had any other weapon. The conclusion that he had is entirely excluded by the proof. I ask who owned the Derringer pistol? You remember what proofs we proposed to give about Key's being prepared for any emergency. In view of the facts of that collision, that pistol belonged to Key, and was used by him in that encounter, this is made conclusive although the personal friends of Key have been around this table, watching the result of this trial, including Mr. Jones, with steadfast and searching interest; not one has asked whether this Derringer pistol was in Key's possession; no witness was brought here to say Key had such a pistol; not one, who attended to his domestic affairs, who brushed his clothes, was asked by his friends or associates, or permitted to state, whether this pistol belonged to Key?

Mr. Brady then read the first, second and third instructions heretofore presented by the defence:

First—There is no presumption of malice in this case, if any proof of "alleviation, excuse or justification" arise out of the evidence for the prosecution. (State *vs.* John, vol. 3 Jones, p. 366; McDaniel *vs.* State, vol. 8 Smead's and Marshall's, p. 401; Day's case, 17 of pamphlet.)

Second—The existence of malice is not presumable in this case, if on any rational theory, consistent with all the evidence the homicide was either justifiable or excusable, or an act of manslaughter—(Same cases as above cited; United States *vs.* Mingo, vol. 2, Curtis'

C. C. R., 1 Commonwealth *vs.* York; vol. 2 Bennett & Heard, Leading Criminal Cas., p. 505.)

Third—If, on the whole evidence presented by the prosecution, there is any rational hypothesis consistent with the conclusion that the homicide was justifiable or excusable, the defendant cannot be convicted.

He cited the United States against Mingo, 2d Curtis' Circuit Court Reports. Mingo, and Johnson, the deceased, had served on board the same ship, on its way from Apalachicola to Boston; the defendant was a Haytien negro, and the deceased a colored man from Baltimore; Johnson was armed with a hatchet, and Mingo with a knife; Johnson received three stabs; expressions of anger and ill-feeling before the murder were heard, but as to which party made the attack, at what time of the affray either armed himself, and what were the words used, the testimony of nine witnesses who saw the affray, was contradictory. In this case a revolver was in the hands of Mr. Sickles, and a Derringer in those of Mr. Key, and there was no mortal to gainsay it.

A number of witnesses have been examined for the prosecution here, there no one gave the origin of the transaction. Mingo gave Johnson three stabs. Mr. Sickles fired three shots, although but one was mortal. Am I not right in saying no mortal, in view of the Derringer pistol, knows what were the words or the provocation at the moment of collision, and what was really the position of the parties. Did not Mr. Sickles accuse him of having dishonored his house, and may not Mr. Key have replied, "I have, and you can make the best of it," and this reply may have been accompanied by profanity—he drawing the opera-glass for one purpose and the Derringer for another. Who can say anything I have stated is inconsistent with the testimony adduced? I only ask that you rest the case on the ground it was placed by Mr. Stanton, who has so adorned it by his eloquent powers.

We stand on the law of God, on the law of man, on justice, irrespective of the question of insanity. Before entering more particularly into this justification, let me say that my learned friends produced the bullet found in the person of Mr. Key, and which produced the mortal wound. When the bullet was produced I supposed it would fit the Derringer pistol, and therefore, an effort was made to connect Mr. Sickles with that—but unfortunately the bullet would not fit the Derringer pistol. The bullet which killed Mr Key came out of the revolver. What then became of the bullet from the Derringer, which was found to be exploded.

Mr. Brady then referred to the charge of Judge Curtis, in the case recited against Mingo, the Court holding it was incumbent on the Government to prove felonious killing, and if on the whole evidence the Government failed to satisfy the jury that the act was felonious beyond a reasonable doubt, there must be a verdict of not guilty. But I do not think, Mr. Brady said, that the Government has proved, as required, a "case of murder beyond all reasonable doubt." If that case was more confused than this, I am not able to perceive it. I never saw Mr. Key but once, and did not see his face then, but whatever else might be said about him, none of his friends, or anybody who knew him, would say that he would not in a proper case, under rightful provocation, fight, and I suppose he would stand in the same category as described in the case I have just read, which says: "Both being on the deck, angry words passed between them; both being excited and ready for a fight, armed themselves simultaneously; both fought, and Johnson was killed;" the jury, in view of all the facts, acquitted Mingo.

Mr. Brady referred to the Judge's ruling in the case of Day, saying he had made those remarks to show that the prayer of the defence was not an abstract proposition; not an hypothesis of which there is no proof to warrant. If so, your Honor could not listen to it a moment. It is the fact that four shots were fired in this case, and, from the evidence as it stands, only three were fired from the pistol of Mr. Sickles. As to the fourth shot I am not called on to say or know who fired it; but I am permitted to say that that Derringer pistol belonged to Mr. Key, and the evidence shows that it was used in this encounter. There is one circumstance the most conclusive in the world. The gentlemen who came from the Club House understood this thing as I do, that there was no reason for making against Mr. Sickles any accusation. The Club House was the resort of Mr. Key. His friends were there in numbers, at the time in question. When it was ascertained that Mr. Key was lying near the door in a dying condition, these personal friends, gentlemen of character, no doubt, of courage and feeling alive to the importance of maintaining the law, having a just abhorrence of blood, and looking on assassination with disgust—coming to the scene, did not interfere to prevent Mr. Sickles from firing.

They heard from Mr. Sickles the remark, "He has defiled my bed," or "dishonored my house," and allowed him to pass away entirely unmolested; no one crying "shame," or "murder;" no one calling an officer, or attempting to arrest him. A jury, made up of Mr. Key's friends, might say he might walk free as any citizen; no one to stay his steps. The fifth prayer as presented by the defence is, it is for the jury to determine, under all the circumstances of the case, whether the act charged upon Mr. Sickles is murder, or justifiable homicide. When we prepared the instructions, we supposed we had conformed to your Honor's ruling in previous cases. In this connection I remark, in passing, that the case of Ryan is an authority directly in point, that it is for the jury, on all the evidence as to the husband slaying an alleged adulterer with his wife, to say whether it is murder or manslaughter. We drew these instructions on that. When Mr. Carlisle said the instructions were drawn adroitly, he gave us credit for what rests in himself. I think in shrewdness and sagacity he has no superior. We have done just what is right on this particular point.

Mr. Brady answered Mr. Carlisle's argument, in saying that the provocation, as we claim, was on the instant before Mr. Sickles went out, and it had existed before that it would not detract from the influence of the last provocation, but make it the stronger and more controlling. The waving of the hankerchief was admitted—white handkerchief. Mr. Key was unfortunate in its selection. A handkerchief of that color, even among the most savage nations of the earth, is regarded as emblematical of purity, peace, good faith; of regard for hospitality, and protection against treachery. The color of the flag of truce is that which was selected in this case. I hope I may be pardoned by my learned brethren for this remark, in passing, made not in anger, but sorrow, with all the feelings which belong to me. It would have been well if Mr. Key had attached as much importance to the dignity of a banner as did his distinguished sire, and had always within him a fresh recollection of those lines which identified him with the flag of our country wherever seen on earth If he had remembered that the star-spangled banner has been raised everywhere, in the wilds of Africa, and on the mountain hight, by the adventurous traveller, he would never have chosen that foul substitute for its beautiful folds. He would never have forgotten these two lines:

"And thus be it ever when freemen shall stand
Between their loved homes and the war's desolation!"

If his noble father inculcated in lines imperishable the duty of the American people to protect their homes against the invasion of a foe, how does it become less a solemn duty of the American citizen to protect his home against the invasion of the traitor, who, stealing into his embraces under the pretext of friendship, inflicts a deadly wound on his happiness, and aims also a blow at his honor? Now this raises up at once before us the question of adultery and its consequences, to which my learned associate so well referred—it brings to us, with regard to the use of that handkerchief, of that foul banner which polluted the atmosphere of Washington, the suggestion of our brother Stanton, that the common law to be enforced in this District was the common law that should be found to consist with our habits, customs, social condition, and institutions. It recalls to our mind what he said as to adultery being a crime generally recognized on the whole face of the earth, and punished by all nations as a crime. It has never ceased to be a crime in the estimation of the jurists in England. I am furnished by a gentleman of great ability and distinction, of profound erudition, who has cast his lot among the people of this District, my friend, Prof. Dimitry, whose name I am happy to mention with honor, with this very brief abstract of the law of humanity, with respect to this offence of adultery:

First—Among the Jews, by the law of God, the adulterer and the adulteress were both stoned to death.

Second—In Greece, Lycurgus decreed that adultery should be punished the same as murder.

Third—The Saxons, by their law, burned the adulteress to death, and over her ashes reared a gibbet on which the adulterer, her accomplice, was hanged.

Fourth—Some of the northern nations of Europe suspend the adulterer to a hook—*istis quibus pecasset partibus*—and left him a sharp knife, with which he was compelled to inflict self-punishment, or expend his guilty life in protracted torture.

Fifth—In England, in the reign of Alfred, the woman was shorn and stripped to the waist, driven away from her husband's house, and, in the presence of all her relations, was scourged from tything to tything until death ensued; while the adulterer was strung up to the next tree.

Sixth—In France, under the laws of Louis the Debonair, both parties suffered capital punishment.

Seventh—Constantine inflicted capital punishment against adulterers of both sexes, and Justinian, in his reformation of the codes, left the same penalty menacing male adulterers.

Eighth—In the vicissitudes of time, adulterers were condemned to be scourged and banished, or scourged and doomed to row for life in the galleys of France.

Ninth—The Spanish laws deprived the adulterer of that through which he had violated the laws of society and the sanctity of the marriage bed.

Tenth—In Portugal, the adulterer was burned to death with the adulteress; but if the husband chose to save his guilty wife from this fearful chastisement, she was set free with a fine. I feel that I am warranted, continued Mr Brady, in saying, when compelled to speak of the sin of Mrs. Sickles because it is a necessary part of this transaction, that, in consideration of her extreme youth, and of the moral power which a man like Mr. Key might exercise over her, or some worse power, under the circumstances to which I will not refer—it is not wrong that, in our own hearts, and perhaps not wrong that down deep in the heart of my friend who is at this bar, to-day, there should be some lingering remnant of hope that she had not entirely sinned and entirely destroyed herself. It was a gratifying circumstance to me to know—and I am sure none of us were otherwise than pleased with that little incident of the trial—that when in his agony the officer noticed his intention to ascend the stairs, he stationed himself at the foot because he feared in the then condition of Mr. Sickles that he might injure her who had been the partner of his life, whose head had been laid on his bosom, he, with a manliness that I know belongs to Daniel E. Sickles, gave him to understand that whatever was the condition of his mind, her person was safe from his touch.

Counsel then continued to read from Prof. Dimitry's abstract of the laws of adultery as follows:

Eleven—In Poland, the adulterer was taken to the nearest bridge leading to the market town, in or near which he resided, and was there nailed or hooked to the main bridge post, a knife being at the same moment put into his hand to enable him to free himself by the mutilation of these parts. *Quibus presumisset peccare.*

Twelve—In the Kingdom of Bohemia, the penalty of the adulterer was decapitation, and that of the adulteress was perpetual seclusion, spent in menial drudgeries, and in penance on bread and water.

Thirteenth—In Roman history, instances frequently occur of adulterers being put to death; and until the enactment of the *lex julian.* The husband had the right of summoning all the relations of the adulterous wife, and trying her on the *hemicyclum*, the hearthstone of the household, and there and then adjudging her to death.

Memorandum—Our penal legislation on this subject is worse than useless; it is scandalous, for its very provisions are contrived to pour ridicule and ribaldry on the head of the husband, or on that of the wife, as the case may be.

Our legislation, counsel proceeded to argue, was worse than useless. By the laws of Maryland the punishment was a fine of three pounds in money, or a certain quantity of tobacco. He was happy that his learned friend the District Attorney, in revising the criminal code of this district, had testified his abhorrence of the crime by introducing a provision visiting adultery with far more terrible consequences than any ever fixed under any law known in this district. They were told that the English judges had said that they took no cognizance of adultery as a criminal offence. His associate (Mr Stanton) had shown the Court that there never had been a conviction, in England or in this country, of any husband who killed an adulterer, under what circumstances soever the homicide was committed—not one; but, on the other hand, there were adjudications showing that, in the contemplation of our people, on their views of the morality of the marital relations, of social duties, and of domestic life, there was such a common law as was contended for by his learned brother Stanton This suggestion, continued Mr. Brady, that the party injured must be left to an action for damages, is one that has frequently excited the disfavor, and I may add, the disgust of the most brilliant minds of the legal profession in England.

In order to show how far their judgment may assist us in seeing what would be the public sentiment, even in England, in cases like this, in opposition to the argument that is always made use of by the conservative lawyer of England, that when a husband has had the visitation of an adulterer's polluting presence in his house he must go to a lawyer, as he would with a promissory note, and have an action brought for damages.

I wish to read to the Court a few observations, from an eminent man with whose name all of us are familiar, who was once Sergeant Talfourd, and who died on the bench of England, in discharge of his official duty:

"Pathos much oftener than imagination falls within the province of the advocate, as employed at the bar in actions for adultery, seduction and breach of promise of marriage, ostensibly as a means of effecting a transfer of money from the purse of the culprit to that of the sufferer, it sinks yet lower than its natural place, and robs the sorrows on which it expatiates of all their dignity. The first of these actions is a disgrace to the English character, for the plaintiff who asks for money, has sustained no pecuniary loss, and what money does he deserve who seeks it as a compensation for domestic comfort, at the price of exposing to the greedy public all the shameful particulars of his wife's crime and of his own disgrace.

"He speaks of modesty destroyed, of love turned to bitterness, of youth blasted in its prime, and of age brought down by sorrow to the grave, and he asks for money. He hawks the wrongs of the inmost spirit, 'as beggars do their sores,' and unveils the sacred agonies of the heart, that the jury may estimate the value of their palpitations. Money will not compensate, not because it is insufficient in degree, but in kind, and, therefore, the consequence is, not that great damages should be given, but that none should be claimed. When once money is connected with the idea of mental grief, by the advocate who represents the sufferer, all respect for both is gone."

To show the precedents in American cases, counsel referred to the case of Bowyer, who having learned that his daughter had been seduced by McDowell, President of the Bank of Fincastle, in August, 1858, made a journey to Baltimore from Fincastle, about four hundred miles, and having there learned further particulars from her confession, came back and shot and killed McDowell, and yet Bowyer was acquitted and discharged by the called Court, without the case ever being sent to the jury. He also referred to the case of Isaac C. Sherlock, and to the Canada case, where a husband followed his wife's seducer from city to city, deliberately shot and killed him as he was drinking at a bar, and was acquitted by the jury. Counsel also referred to a remarkable case tried in Toulouse, France, at the Assizes of the Department of Upper Garonne, on the 23d of June, 1857, and reported in *The Gazette des Tribunaux.*

It was the case of Abdon Souffare, who shot the seducer of his wife, Charles Broustel. In that case, the counsel for the accused maintained that there was, and that there could be no premeditation in the case, and summed up in these words, which counsel considered applicable to this case:

"Gentlemen of the jury—There are two great principles which you are to weigh in the forum of your conscience—one is the principle of the inviolability of human life. I proclaim it to you, Gentlemen, like the church, *a sanguine humano abhorreo.* I have a horror of shedding human blood, and of all the imageries of childhood that which has impressed me most deeply, is the far-off image of Abel slain by Cain. But next, and immediately next, to that principle is another—equally sacred one—the inviolability of conjugal society; the respect which it secures to woman as a wife

or a daughter; the respect due to Souffare and his wife where they had hoarded theirs.

"You will not say, gentlemen, that a libertine, because he knows that a husband is for a number of hours chained down to the performance of a public duty, by which he gives support to his wife and children, shall be allowed with impunity to desecrate a man's bed and poison his whole existence. You will, then, gentlemen of the jury, stand in the midst of Souffare's broken up family, you will listen to those terrible revelations"

[Counsel here read from Proverbs, vi., 27th and 35th. inclusive.] The counsel continued: Jealousy is the rage of man. Thus speaks the Great God of the Universe to us. It is peculiarly the rage of a man, and in the wisdom of the inspired record, no estimate was ever formed of human nature more accurate as it now exists. I venture to say that if Mr. Key had possessed a wanton mistress, and that any man had ventured within the house he had hired, to infringe upon his rights there, he would have been false to the instincts of humanity if that rage of jealousy had not taken possession of him. If I could have the grave opened, if I could have summoned here a witness who has not been called, if I could put Philip Barton Key on the stand in this Court, in which he once officiated as a prosecuting officer, if I could ask him in virtue of his birth, his education, of whatever manly characteristics belonged to him, and whatever opinions he may have derived from his association with gentlemen what he would have done if any scoundrel had invaded his house, polluted and wronged his wife, and brought shame and reproach upon him, if I could have asked him what he would have done under such circumstances, I leave your Honor, I leave the earned prosecutor, I leave his surviving friends, to say, what would have been his answer.

"Jealousy is the rage of a man;" it takes possession of his whole nature; no occupation or pursuit in life, no literary culture or enjoyment, no sweet society of friends in the brilliancy of sunlight, no whisper of hope or promise of the future, can for one moment keep out of his mind, his heart or his soul, the deep, ineffaceable consuming fire of jealousy. When once it has entered within his breast, he has yielded to an instinct which the Almighty has implanted in every animal or creature that crawls the earth. I cannot speak of the amours or jealousies of the worm; but when I enter the higher walk of nature, when I examine the characteristics of the birds that move about in the air, I find the jealousy of the bird incites him to inflict death upon the stranger that invades his nest, and seeks to take from him the love which the Creator has implanted in him, and formed him to enjoy.

I read in the records of travellers who have penetrated the wilds of Africa, that the most deadly engagement that can occur, an engagement which never permits both to pass away with that life, occurs between two lions when the lioness has proved wanton, or seduction has been applied to her. Yet man in his animal instincts is no more capable of controlling within him the laws which the Almighty has planted there than the inferior animals to which I have referred.

"Jealousy is the rage of a man," and although all the arguments that my learned opponents can bring, or that can be suggested, that a man must be cool and collected when he finds before him in full view, the adulterer of his wife, to the contrary notwithstanding, yet jealousy will be the rage of that man, and he will not spare in the day of vengeance.

The Court will remember the memorable language of John Philpot Curran, in a civil action for damages, when crim. con. was the controversy, in answer to the allegation that his client behaved otherwise than patiently and decently as became a gentleman, when he heard that his wife was false: "Gentlemen of the Jury," said he, "it seems that when the fiends of hell were let loose upon the heart of my client, he should have placed himself before a mirror and taught the streams of his agony to flow decorously down his brow, he should have tuned his features to harmony, writhed with grace and groaned in melody." "Jealousy is the rage of a man!" It converts him into a frenzy in which he is wholly irresponsible for what he may do. I meet my learned friends distinctly upon the subject of insanity, relying upon the proposition which I have presented, drawn in strict conformity with the decisions already made by this Court in other cases.

The counsel on the other side (Mr. Carlisle) had remarked that he considered such a thing as instantaneous insanity almost impossible. Such a doctrine could be drawn from the rulings of the Court. It was impossible for any human being to perceive the exact point when he passed from a state of wakefulness to a state of sleep, and it was just as impossible to fix the exact moment when the mind of a human being passed from a state of sanity to a condition of insanity. It was impossible, by the utmost exercise of the intellectual or mental power, to keep the thought fixed upon the circumstance of death even for the duration of a second. We may, in a general philosophical way, declare that we must all die. But in reference to that sharp point of certain inevitable agony, of destruction which is the thing called death, we cannot keep our minds upon it even for an instant.

To be capable of doing that for any considerable period of time, would necessarily produce a tension of mind and spirit such as would inevitably result in the destruction of the intellect. Yet you might just as well attempt to discover the mysterious point of connection between life and death as between sanity and insanity. This Court had already in its decisions given a good illustration, contained in the pamphlet copy of his decisions, of the fact that insanity may be of greater or less duration. No man can measure it. It is not necessary to fix the exact point of time at which it commenced and at which it terminated. Counsel here referred to the case of Day and Jarboe, adjudicated in this Court, pages 7, 9, 17 and 20 of pamphlet, and to the charge of Judge Allison in the Shirlock case. In the Day case the instructions to which he specially referred, were drawn up by Mr. Carlisle, and, observed counsel, it is remarkable how apposite the language of Mr. Carlisle in that case is to the circumstances of this case. He only asked that the same instructions should be given now. He hoped his friend would not find it uncomfortable to see his own language in that case now made the instrument of the opposition. If so, he could sympathize in the spirit of the following quotation:

> "So the struck eagle stretched upon the plain,
> No more 'mid rolling clouds to soar again,
> Sees his own feather on the fatal dart
> Which winged the shaft that quivers in his heart."

The evidence of the waving of the handkerchief had been admitted without objection, and the Court had admitted it to prove the fact of the adultery. For what purpose was this evidence received unless it was intended that it should be offered as a justification? If it is no justification, and no excuse, what has it to do with this trial? The Court received it also with reference to the state of the prisoner's mind, and so the counsel for the prosecution must have regarded it when they made no objection to the introduction of evidence to prove Mr. Key's manœuvres, watching, sneaking, spying round Mr. Sickles' house, stationing himself in that square, in the presence of the monument (Jackson's) of one who, whatever one may think of his political opinions, was a gallant and brave man. That monument should have held in suspense his depraved lusts while he was standing there inspecting Mr. Sickles' house with an opera-glass. He might be permitted to refer in this connection to the case of a young man who indiscreetly, zealous to serve the purposes of his country, made his appearance within the lines of the enemy's camp, within the territory held by the enemy, was arrested, tried, and condemned to death; he begs for the privilege of a soldier's death; it was refused him, and he was hung high on a gibbet; the commanding officer—that immortal man whose name graces and gives dignity to the city in which we are assembled—refused the request, and Major Andre, in the flower of his life, suffered an ignominious death, applied to him deliberately by one of the wisest and best of mankind, because he was a spy in the camp of the foe. But here was this spy engaged in the bad effort to commit domestic treason, for which he suffered death—a death, the counsel hoped, no good man would regret.

The counsel then stated in detail the circumstances developed in the evidence, by which the fact of the adultery had been made known to him, and described Mr. Sickles' feelings when the truth was forced home upon him. Mr. Sickles, said he, remarked the confidence he had bestowed on Mr. Key; he felt how he had been betrayed; all the emotions of his nature changed into one single impulse; every throb of his heart brought distinctly before him the great sense of

his injuries; every drop of his blood carried with it a sense of his shame; an inextinguishable agony about the loss of his wife—an appreciation of the dishonor to come upon his child—a realization that the promise of his youth must be forever destroyed—that the future, which opened to him so full of brilliancy, had been enshrouded perhaps in eternal gloom by one who, instead of drawing the curtain over it, should have invoked from the good God his greatest effulgence in the path of his friend.

He remembered how, in a city where he had come to abide as the guest of the nation—in a city distinguished for its splendid hospitality—a city which for the time he had made his home—the man whom, above all others, he might have expected to cherish and sustain and protect him, had proved to be his implacable, hypocritical, treacherous and detestable foe.

With that great sense of his injuries, he rushes out on Pennsylvania Avenue, and, although a man who every one knows, your Honor knows, the Jury and spectators know, is measured and steady and even in his gait at ordinary times, he passes with all possible rapidity down Pennsylvania Avenue—he attracts the attention of Mr. Mohun and of the Rev. Dr. Pyne, a learned and estimable gentleman—his eyes are observed—they are vacant in their stare—the expression of his countenance is all altered; each of these gentlemen perceive some great agony, some great affliction, some great change affecting his whole nature, and so he passes to his home. How do you see him there? What are the incidents of the Saturday night? In feverish earnestness he paces that chamber of suffering more ferocious than the caged and starved tiger, thinking through the whole night of nothing but these reflections to which I have alluded, and which darkened the past, the present, and the future.

Think how, on that Sunday morning, he made this exhibition to which the witnesses have referred, when he saw Mr. Key with his opera-glass for inspection or for spying, with his handkerchief to make the adulterous signal, and with the keys in his pocket of the house in Fifteenth street, to which he was about to take Mrs. Sickles at that moment, if he could obtain her person. There was Mr. Key, with all the weapons of moral death around him, going to make war upon Mr. Sickles and his wife and child. He is seen by Mr. Sickles. He is seen by Mr. Sickles to pass his house and to wave this handkerchief, and Mr. Sickles exclaimed, as your Honor properly permitted to be proved, that "that scoundrel has passed the window and has waved his handkerchief." Then he disappears from the view of all the witnesses until he comes to the scene of the homicide. Just before Mr. Sickles thus passed out of that house, with the full knowledge that that iniquitous salutation was given to his wife to leave her child and husband on that Sabbath day, and to go and be polluted again in that house of bad repute in Fifteenth street. Mr. Key had been standing in front of the Club House, or in the park, with his opera-glass in his hand, he saw Mr. Sickles go out and pass up the street in which his house is; at that instant Mr. Key goes round the other way to go round Lafayette Square. Mr. Sickles is now gone, and Mr. Key may be a little bolder; he may have a little less caution, and more courage than ordinarily; he is now certain of his victim; he has the handkerchief, the opera-glass, the keys, the locks waiting to receive them, the intent in his mind being exclusively to employ all the intellectual of his physical and moral nature to commit the act of adultery; Mr. Sickles sees him thus, as all of us, his counsel undoubtedly think, engaged, within the meaning of law, in the act of adultery. He sees him engaged in the act, as one of a set of burglars who watches at the corner while his confederate is breaking into the safe of an unsuspecting merchant, is, in the contemplation of law, engaged in the act of burglary.

Mr. Key, with the means of thus having the person of Mrs. Sickles, is there approaching the house of Mr. Sickles, supposing that he had entirely eluded the latter; he is eager, as he thought certain to obtain the wife. At that moment he is met by Mr. Sickles. If that be not taking a man in the act of adultery, I would like the learned counsel for the prosecution to tell me what it was. And if Mr. Sickles, having a weapon in his possession, which he had been accustomed to carry, for reasons which we need not declare, with the realization of all these facts pressing down with terrific weight on his mind, and heart, and soul, thus meeting Mr. Key, and understanding thoroughly the vile purpose of his heart, was not to shoot him, I ask my learned brother to tell me what he was to do. I would like to ask all assembled humanity what he was to do. To bid him good morning, to pass him silently by, to avert his eye?

Daniel E. Sickles, a man of unblenching and unvaried courage, as I know from the past associations of our lives, let Philip Barton Key believe that he could not only seduce his wife, but cow him! If he had done anything more or less than became a man, under these circumstances, whatever may have been the intimacy of our past relations, I would have been willing to see him die the most ignominious death before I would venture to raise anything in his behalf, but a prayer to Heaven for the salvation which after death might come. (Applause.)

He did meet him; he met him under the influence of intense provocation fresh upon him; and here, your Honor, unless I have totally misunderstood the indisputable facts in this case, this question of cooling time disappears entirely, if, indeed, there is any such thing as cooling time applicable to such a case.

It was not thought so in the case of Bowyer, where a month intervened; and it was not thought so in the other cases, where a longer time intervened. With all deference to your Honor, and to my learned opponents, I respectfully submit that the phrase "cooling time" has no kind of application to such a case as we have here, but is confined to cases of combat, collision, affray and physical violence between two contending beings.

We know just as well as we know that there is breath in our bodies, that it is idle to talk about cooling time in relation to the husband who knows that his wife has been seduced, whom he pressed closest to his bosom, and if the laws of the land do say that there is any time in a career of twenty millions of years, when the indignation of the injured husband grows cool in relation to the adulterer of his wife, I hope I am not irreverent in saying that these laws of man are in direct hostility to the immutable laws of God.

In this connection, and in reference to the subject of malice, which here naturally associated itself with the question of cooling time, counsel referred to the case of the State against Will, 1st Deveraux, and Battelle, 165, and argued that in view of the exclamation made by Mr. Sickles at the moment of the homicide, that the deceased had defiled his bed, the presumption of malice was all gone, and in the language of the Judge in the case referred to, "the act must be referred to the present and declared motive, the effect to its immediate cause, and not for light reasons to any preconcerted purpose."

He argued that there was no evidence in this case that did not necessarily exclude the belief that Mr. Sickles could have had any preconceived motive, any malice, or any deliberate desire of revenge as against Mr. Key. He referred to the State against Mann, vol. 10, Humphrey, p. 529. As to the question of provocation, he called his Honor's attention to the following passages from Blackstone's Commentaries, vol. 4, chap. 14:

"Of which life, therefore, no man can be entitled to deprive himself or another, but in some manner either expressly commanded in or deducible from those laws which the Creator has given us, the Divine laws—I mean of either nature or revelation. Second—In some cases homicide is justifiable, rather by the permission than by the absolute command of the law, either for the advancement of public justice, which, without such indemnification, could never be carried on with proper vigor, or in such instances where it is committed for the prevention of some atrocious crime which cannot otherwise be avoided."

He spoke of the well known principle of law, that a man may be convicted of rape even on a prostitute, and that she may, in resisting the aggressor, take his life. But, he continued—hear it, men of the universe! hear it, men of the United States!—that it is claimed that a man is not permitted by law to do anything for the protection and vindication of his honor—he cannot be raped, but he can have the greatest affront put upon his right—he can have the relations between himself and his wife violated—he can have the legal contract between him and his wife made valueless to him by the ruthless hand of the adulterer—he can have his name made a byword and a reproach, and can have his wife reduced to a thing of shame, and cannot raise his hand to prevent all this—he can have what more?

Look, your Honor, at Daniel E. Sickles; look at Te-

resa, that was his wife; look at the woman whom I knew in her girlhood, in her innocence, and for whom, in the past, as now, I pray the good and merciful interposition of Heaven to make her future life a source of happiness, and of no more anguish than is inevitable for the repentance to which her life should be devoted!

Look at Mr. Sickles, and look at that poor girl, for positively, although the mother of a child, she is a girl, accessible to the influence of a master intellect, though the sphere of its mastery be even in a region of seduction? And look at that young child, standing between its father and its mother, equally influenced by the great laws of the Creator to go toward either, and destined to leave one! No judgment of Solomon can prevail here; but perhaps, as in the case of the rival mothers, it might be better to divide that poor child in twain, and leave one-half at the feet of each parent, than let it live from the period it has now reached. Look at that case and say whether you may break into the sanctuary of a man's heart, rifle the treasures of his home, betray the friend who confided in you, outrage his hospitality, bring shame upon him, leave him almost hopeless, a wanderer in the world. Now, what says Blackstone on that subject:

"Though it may be cowardice in time of war, betwcen two independent nations, to flee from an enemy, yet between two fellow subjects, the law countenances no such point of honor." Why, the *naïveté* with which Blackstone always explains a principle of the common law, and with which, in this case, he appropriates to the Saxons that which they never had, this very trial by jury, which all who investigated the subject know belongs to the Continent, is developed in stating the reason why a man cannot protect his own honor. Because, says he, "the King and his Courts are the *vindices injuriarum*, and will give to the party wronged all the satisfaction he deserves." This is Blackstone. Is it the the duello?

Now, is it not more consistent with the analogies of the law, more consistent with the marital relations, its duties, rights and responsibilities; more consistent with the structure of our government and the character of our people, with our habits, usages, thoughts, feelings, sentiments, principles, to adopt the relations for which my brother Stanton contended with so much power?

Is there anything in the law of the land inconsistent with his great conclusion—a conclusion which all of us arrive at—that this circumstance of consent, employed to distinguish the case of a ravisher from that of an adulterer, can make no difference in regard to its consequences, unless it can be said that the consent of the wife to the pollution of her person is not obtained by a fraud on the established relations of husband and wife. By fraud in law, then, I do not know on what view of duty, of society, or of legal principle any such aspect of the case is, or can be presented.

District-Attorney—Then what is the difference between adultery and rape?

Mr. Brady—Simply that one is made indictable by law, and punished with serious consequences, the other is not. So far as the husband is concerned it is utterly unimportant to him whether the offence of the party polluting his wife is that of a ravisher or an adulterer, except, as was well stated by brother Stanton; the party committing the adultery superadds to the deflowering of the wife, the betrayal of all the trust and confidence reposed in him by the husband, and then, in a moral point of view, the adultery becomes the greater offence. And, inasmuch as no use of a man's wife can be made by reason of any consent that she gives, the man who does take and prostitute her to his lecherous purposes, commits a fraud upon the law, a fraud on the relations of husband and wife, and a fraud upon the husband. The consent of a child five years of age to taking articles out of her father's house no more avails the thief in such a case than the consent of a woman avails in lessening the crime of a seducer.

This brought him to another of the instructions. The question as to whether, there being doubt on the question of sanity or insanity, that doubt belongs to the prisoner. He would not stop to read the case of the People agt. McCann, decided in the courts of New York, where it was fully and plainly determined, that, in making out a case of murder, it is as necessary for the prosecution to prove that the prisoner was sane, as to prove any further fact.

He granted that, there being no justification or excuse, the law presumed malice, and the presumption stood for proof; but when, in regard to the element essential to constitute the crime of murder, doubt was thrown on the question of sanity, that was a doubt affecting the case of the prosecution. Whether the doubt related to the fact of killing or to the sanity of the man who killed, was utterly immaterial. He understood that the question had been mooted before his Honor in the case of Develin and Ogle, and as his Honor had considered it, he would abstain from any extended remarks on that particular point.

Judge—The case was made and decided at the last June Term of this Court, in the case of the United States against Develin. The Court stated generally, that the benefit of the doubt belonged as much to the question of sanity or insanity, as to any other matter involved.

Mr. Brady—Then, your Honor, I have certainly nothing more to say on that subject.

Judge—I think when that case comes to be examined there will be authority found for it.

Mr. Brady referred to some additional authorities, and proceeded to discuss the question of insanity. He alluded to the fact that the last report on the Lunatic Asylums of Pennsylvania showed that of the inciting causes of insanity, that which was by far the most frequent, was domestic affliction; whether that result corresponded with the results obtained from other similar institutions, he was not prepared to say; but he did know, and all men knew, that nothing wounds the spirit of a man more than that which assails him in regard to his place of refuge.

When, proceeded counsel, we are tired of the world, fatigued with employment, despairing, sick at heart, or diseased in body, home is the place where we expect to find comfort, and repose, and solace, and sweet society; and that which assails us there, is the deepest affront that can be put upon us.

In illustration of this, I ask permission, your Honor, to let the refulgence of one of the stars, to which the District-Attorney playfully referred in the course of this case, be shed for a moment on my path, and on the path of investigation which the Judge, and my learned opponent, and the Jury, are to pursue.

I entirely acquit my learned opponent of having intended anything unkind in his allusion to the *dramatis personæ*, in which the heavy gentleman, and the light gentleman, and the walking gentleman figured. What particular part my learned opponent intended to assign to me, I have never yet been able distinctly to understand. When I am a member of any theatrical corps, I sincerely hope I may have the benefit of his association. [Laughter.] His achievements on this trial show that if the stars are to shine, he may take his place in the galaxy. It is true that a number of learned gentlemen have come to the defence of Mr. Sickles. Two of them came from his own State, of which they, like himself, are natives—my brother Graham and myself.

Gentlemen from other States are here, and there is one here, at this table, one of my cherished friends, the friend of Mr. Sickles, who came here, as we who are from New York are expected to come, without fee or reward, or the hope thereof, to offer up in behalf of his friend Sickles, in this hour of his trial, that affection and devotion which he once tendered in behalf of his native land, and for which, as a consequence, he, like Mr. Sickles, was placed in the criminal dock of his native land, and subjected to the condemnation of death.

In the share I have taken in this case, I have been permitted to avail myself of the great services of the gentlemen around this table, and in the address I have made, I have endeavored to speak their sentiments, thoughts, and opinions. I am sorry, indeed, if under their instructions I have been led into anything erroneous.

My friend and brother, Meagher, to whom I have just referred, and who gave a dignity to the criminal dock in his native land, which I sincerely hope may be imparted to this dock, by the presence of Mr. Sickles on this trial, has asked himself, in relation of that condition of Mr. Sickles, how it was produced, and in relation to the principles of law which affect it. Immediately on the scene which occurred in this Court, of which none of us have lost the recollection, he instituted a legal inquiry, and made a suggestion which, as his construction to the cause of his client, I shall quote as quite germane to the matter in discussion.

Mr. Brady then read to the Court the following from

a manuscript of Mr. Meagher's: "In connection with this subject, the state of mind in which Mr. Sickles committed the act for which he stands arraigned, you recollect what occurred in Court on Tuesday morning, the 12th day of April. A distinguished gentleman was on the stand. In distinct and emphatic words, but, nevertheless, with an emotion which it was plainly perceptible he controlled with severe difficulty, he told us of the distraction, the bitter woe, the wild desolation, the frenzy, the despair the strange, unutterable, unearthly agony in which he found Daniel E. Sickles on the afternoon of that memorable Sunday, the 27th of February.

"He seemed said this distinguished witness, his own eyes and heart filling up and overflowing he recalled the scene, he seemed particnlarly to dwell on the disgrace brought upon his child. These words set free the tempest that had been so long pent up. As they fell from the lips of Robert J. Walker, there occurred, here in this very court, a scene which, from the memories of those who witnessed it, never will be, never can be, blotted out. All eyes were turned to the dock, every eye was eager, fixed, dilated, quivering; and there was he—he who from the first hour of his imprisonment down to the utterance of those words, had borne himself with a heroic calmness, suddenly overcome and racked with a relentless grief, struck down as though he were himself the motherless and houseless child for whom he wept, smitten to the quick and beaten to the dust, drenched in the gall and wormwood of a tribulation the depth of which no mortal hand can sound, and over the subsiding flood of which no arch of peace can ever shine. There was he, the avenger of the invaded household, of the more than murdered wife, of the more than orphan little one—there was he, in an appalling moment of parental agony, subdued at last. Talk of the mind diseased—talk of the circumstances which unhinge, upset and madden it—talk of the distraction in which a ruthless perfidy had plunged my client and my friend—talk of his condition of irresponsibility when he dealt the fatal blow—talk of this, and with your worrying interrogations strive to elicit the recollection of it from those who themselves the witnesses of it, were themselves agitated as they never were before. Nature, Heaven, God Himself, in his heart-broken image, here became, here in this very court became, the witness of the torture by which, on that terrible day, the 27th of February, the prisoner was inflamed.

You beheld the scene of the 12th of April. It was the same as that to which Robert J. Walker testified. Recall this scene. Think of how the proceedings of this Court were suddenly arrested by the sobs of the prisoner, when the beautiful image of his poor child was revived by the words of Robert J. Walker, how he was bowed to earth, and how he writhed as though an arrow were buried in his heart; how, supported by his friends, he was led from this Court, his vision quenched in scalding tears, his limbs paralyzed, his forehead throbbing as though it had been bludgeoned by some ruffian, and his whole frame convulsed. Recall this scene. Think of this—think of the tears you shed yourselves as this stricken victim was borne by—think, think of this—and then may we well say to the jury, if your love of home will suffer it—if your genuine sense of justice will consent to it—if your pride of manhood will stoop to it—if your instinctive perception of right and wrong will sanction it, stamp "murder" upon the bursting forehead that has been transpierced with the thorns of an affliction which transcends all other visitations, and for the scandal, the dishonor, the profanation, and, in the end, the devastation which provoked this terrible outburst, this tempest of grief, this agony of despair, as Robert J. Walker described it; for this incalculable wrong, I say, and for this irreparable loss, declare by a verdict for the prosecution, that so many thousand dollars, an appropriation from an economic, or swept right off from a lavish, Jury, can afford a soothing compensation. Do this, do it if you can, and then, having consigned the prisoner to the scaffold, return to your homes, and there, within those endangered sanctuaries, following your ignoble verdict, set to and teach your imperiled wives a lesson in the vulgar arithmetic of a compromising morality, and let them be inspired with a sense of womanly dignity by a knowledge of the value you attach to the sanctity of the household, to the involability of the wife, to the security of the hospitable roof, and last of all, but above all, to the inherited traditions of an innocent but ruined offspring."

If, resumed Mr. Brady, the effect produced on the mind of strangers, who witnessed that scene, was so great that if many were moved to it by tears, what must have been the nature of the agitation wrought on the mind of Mr. Sickles. And suppose that the condition in which your Honor and my learned opponents have beheld Mr. Sickles since the trial had received no consolation, had found no vent, had had no alleviation. Suppose that the great, big, full, bursting heart of one oppressed with a sense of terrible wrong could not find in sobs and tears any relief, what would have become of his brain. What did become of the brain of Mr. Sickles when the heart became sterile, except as a place of occupation for that sense of injury, for that desolating influence of mind as well as heart, to which the learned Dr. Pyne referred when he described the appearance of Mr. Sickles as "defiant and desolate." "Defiant," your Honor, as poor Meg Merrilies was when she stood by the wayside and made that speech to the Laird of Ellengowan—"desolate" as the hearths which he had invaded, that the memorable outburst of her grief and despair might adorn the pages of him who was called a wizard in the fields of literature.

On this question of sanity, insanity and provocation, we invite your Honor's careful deliberation and judgment. I wish to say, for all of the counsel on this side, and for our client, that none of us have forgotten the great command of our Maker, "Thou shalt not kill," any more than we have forgotten that other command, "Thou shalt not commit adultery."

We know, however, that our great Creator did not intend that homicide should be entirely excluded from the hand of man. We know it by the wars which desolate the earth, by the duels, by the killing of adulterers, ravishers and criminals; we know of the right which the law gives, and which is sanctioned by home law, to kill him who in the silence of night, comes as a burglar to rob and desolate our homes. All that we appreciate, and of all that we desire to have the benefit, and I will be permitted to say, whatever consequences may result from the declaration, that, in view of all that has transpired in the city of Washington, to whose citizens on this jury, Mr. Sickles commits his life, his character, all that is to elevate or keep him in existence, for in our own confidence in the integrity and judgment of your Honor and the jury, we are convinced that no harm can come to Mr. Sickles out of this trial. In view, also, of the relations of Mr. Sickles toward him before he came to this city, in view of what we knew of her, of the extending of this shame from the mother to the child, which we suppose the evidence fixes on Mr. Key, Mr. Sickles might have gone anywhere else in the world but to New York, if he had not resented that dignity. He could never have returned to the city of New York, and been accepted for one instant among any of his former friends.

On the learned counsel resuming his seat, amid the applause of the audience he was sensibly affected for some moments, and covered his face to hide his emotions.

Mr. Ould, the District Attorney, said he had listened, as no doubt the Court had, with great interest and satisfaction to both the arguments addressed to his Honor on the pending instructions, the day before yesterday and to-day. He admired particularly the ability and candor which marked the argument of Mr. Stanton, who, boldly meeting and presenting this case, marched up to and contested them in all their strength. Not only did he admire the candor of the argument, but the brilliancy, power, and pathos which characterized it. After saying thus much, it would not be amiss for him to remark that the prosecution stands now on a position the same as taken by the other side, to wit, that of denouncing the offense of adultery. The question, however, is not of adultery, but one of murder, and whatever vice and criminality may attach to adultery does not relieve the other and higher offense of murder from the condemnation which the law passes upon it. We admit, in all their fullness, the justice of the denunciations which have been made against adultery, and that it is an offense which cries aloud from heaven for condemnation, and to man for his reprobation, nor do we deny the sacredness of the family relations which have been so pathetically alluded to by the gentleman on the other side, nor their importance to the well-being, the peace and happiness of society.

But, deeper far, and below all such questions as that, lies another, upon which all questions of this kind rest, and from which they all spring, namely: the sacredness of human life. The family relations, so eloquently portrayed by gentlemen on the other side spring out of the human life; they are such relations as are social in their character, affecting not man individually, but springing out of the relations of society. Human life is the shaft around which all such poetries as this are wreathed. It is the grand trunk which supports the blossoming glories of the family relations. There has never been a civilized nation, never a code of laws, human or divine, where the sacredness of human life did not, first and foremost, receive all the sanctions which human society itself could gather around it. The law made human life its first care, and all concur that both human and divine law unite to give such sanctions to life as will best secure its preservation. It was truly and well said by the learned gentlemen on the other side, that adultery drives a wife from her husband's side, and severs those whom God has joined together. It is true that such iniquity may render desolate the hearthstone, but is it not equally true that by taking away a human life a household may be wrecked? Is one to be cursed by the other? It has been contended by the counsel on the other side, that adultery is sin *malum in se*, but he (Ould) had seen no book, no treatise relating to modern society, where it is so registered.

If so, then the right of punishment not only belongs to the injured husband himself, but to any person, no matter how much a stranger to the husband, who might become a witness of the adultery. It has been contended on the other hand, that there is no mitigation by the provisions to the New Testament—but is this so? In the beautiful illustration of Christianity, which has been read in the hearing of the Court, taken from the record of the loved disciple, the principle, the soul which breathes through it is to be considered, as well as its peculiar phraseology. The sin is there spoken of by our Divine Master; and if the adulteress could receive his forgiveness, it could on the same principle be extended to the adulterer. No evidence has been suggested that previously the adulterer himself had been seized by an enraged multitude, or by the husband, and slain. There is no suggestion in Divine record that any such thing occurred. But, say the learned gentlemen, the Roman law prevailed there. Does that alter the case? The Saviour was there speaking of the nature of the sin, and not interpreting a particular law. Besides, the Roman and Jewish law, so far as parties were caught in the act, was one and identical. In both cases the sin was visited with the penalty of death, judicially administered; that this was so, must be apparent from the New and Old Testament. In proof of this he referred to Deuteronomy, where the very method of trial, through each successive step, was expressly written down from the mouth of God, and in this case extending to some extent to the principles of our very law. As to him accused of adultery which was so heinous to the Hebrews, it required the testimony of two witnesses to convict him, and the testimony was to be given before a judicial officer. In illustration of the same fact, he quoted from the 31st chapter of Job, 11th verse, where in speaking of the offense of adultery the following language is used:

"For this is a heinous crime, yea it is an iniquity to be punished by the Judges."

"He next quoted from the 18th chapter of Ezekiel, 10th verse, to show that not only the adulterer and the murderer, but any man who begat a robber, or a shedder of human blood, or an idolater, or a usurer, should receive the same punishment at the hands of the law as the adulterer. Not only is there a command to keep the Sabbath holy, but, on a particular occasion, a party who went out and gathered sticks on the Sabbath was stoned to death It has been considered by writers on both divine and civil law, that this peculiar judicial system was confined to the Hebrews, given by God himself, and that this judicial system has not such a divine sanction as is expressly commanded to be observed by men in all future time. In the very same chapter of Leviticus, where the penalty of stoning to death is expressly written, the last verse in the same chapter visits the same punishment, without qualification, on parties possessed with familiar spirits, or for being a witch or a wizard; and yet denunciations are launched against an incorruptible Judge and Jury in England, because when he sat on the bench carrying ou the Divine law, he visited the penalty of death on certain witches and wizards who were brought up for judgment If, from the fact of this Divine order among the Jews, it was to be considered as authority, so far as adultery is concerned, and its spirit was to be observed in this age, and under our system of law, the eminent jurist was not only correct in his judgment, but in this day it becomes your Honor to visit the same penalty on witches and wizards as well as on usurers. No man can take up the Old and the New Testaments, and look into them with a spirit of candor, without coming to the conclusion that there is the greatest and a marked distinction between the sin of adultery and that of murder.

An illustration was given in the chapter quoted by Mr. Graham, of Simeon and Levi, as an authority conferred by the Divine law for the punishment of the offence of adultery, they having killed the ravisher of their sister Dinah. If it had occurred to the learned gentleman to read further, he would have found that when the aged father was about to gather up his bed, that he might depart to his fathers, when he was inspired by prophecy, and his lips touched, as it were, with a coal from Heaven's altar, he said "cursed be their anger, for it was fierce, and their wrath, for it was cruel." Where is the language for other offences or crimes? It is written all through the Good Book, in such language that there is no qualification attached to it. He referred to Exodus, chap. 21, verse 12: "He that smiteth a man so that he die, shall be surely put to death;" and Leviticus, 24th chap., 17th verse: "And he that killeth any man shall surely be put to death;" and Numbers, chap. 35, verse 16, "And if he smite him with an instrument of iron so that he die, he is a murderer: the murderer shall surely be put to death." Nay, more, the avenger of blood himself might follow him and put him to death, etc. It reaches back earlier than that. It was almost the first divine decree made by the Creator with regard to the offence. He referred to the ninth chapter of Genesis, sixth verse, and of the peculiar reason which was given by the mouth of Jehovah why the penalty should be inflicted on the shedder of human blood. "Whoso sheddeth man's blood, by man shall his blood be shed, for in the image of God made He man." "He is the temple of the Holy Ghost," says the New Testament, and he who pursues him for the purpose of assailing him, commits a sacrifice against God as well as an offence against man. He slays what he himself calls divine, and has made his temple.

With regard to the punishment indicted in former ages on adultery, he (Mr. Ould) preferred to stand on the great monuments of the law with the sanctions and authorities which had been given to them. He did not read the ancient law as it was quoted by the defence, and read from the first book of Blackstone, as follows: "If a man takes another in the act of adultery with his wife, and kills him directly upon the spot, though this was allowed by the laws of Solon, and likewise by the Roman civil law if the adulterer was found in the husband's own house, and also among the ancient Goths, yet in England it is not absolutely ranked in the case of justifiable homicide, as in the case of a forcible rape." The distinction is taken, as in common law, making the distinction between the party "caught" and "found," as the word is used by some authors, but subsequently pursues and overtakes the offender and executes summary vengeance. He challenged proof to show that any code had received the approbation of any civilized people wherein the adulterer was allowed to be pursued after the fact and slain. It had not been shown to exist anywhere. In tracing this down, we come to the material point of the inquiry, and the question is, What is the interpretatin which the common law put on the act and fact of adultery and murder. The learned gentleman (Mr. Stanton) said the common law of Maryland consists of the maxims which have received general approbation, and suited to the manners, habits, customs and usages of the people, undoubtedly. These maxims now constitute the common law of this District. The law as to murder was suited to the manners of the people at the time they colonized Maryland, and from whom we have received it. This principle will apply to new cases, as they arise, and therein consists the peculiar merit of common law over the civil law, as our system or code.

The gentleman says the doctrine for which we contend made its first appearance in Manning's case, and, by dint of repetition by Hale, East, Russell and other com-

mentators on the law of England and this country, has heretofore been acknowledged and unquestioned. Could any higher compliment be paid? If it has received the approbation of these judidicial experts, could it be presented to your Honor in a garb to entitle it more to your consideration and reverence. Manning's case, it is said, was decided under Charles II., and that it is the first recorded case where punishment of adultery, whether or not the offender was caught in the act, is to be found in the English books, and that the new law was made then and there for the first time. This I most gravely dispute; I think I can show, to the satisfaction of the Court, that, instead of this being a new law, it was in mercy an alleviation of law, so far as it is universally regarded and considered by the sages of the common law. I lay it down as a rule of common law, which has been recognized in Manning's case, that, under no circumstances, was murder to be alleviated to manslaughter, except there was an act of assault on a man's person or property, and especially so where the slayer might resort to the use of a deadly weapon.

But there is not a solitary case before Manning's time where the slayer resorted to a deadly weapon, except where an assault had been committed on his person or property, that the offence has been reduced from murder to manslaughter. The reason why this question was never before reported in the books, is that, up to the time of Henry VIII., there was no distinction between murder and manslaughter. Both were clergiable offences, and up to the time of Charles II, no case came before a court for adjudication. What did the common law say to the Judges who denied the principle? That technically and strictly it was a case of murder, although the party was caught in the act But the common law undoubtedly meant to alleviate from murder to manslaughter in cases of assault on persons and property Twisden, in adopting the rule, alleviated to this extent, and to that extent it has been recognized in the common law.

The learned gentlemen on the other side mistake when they say this rule, with regard to adultery, had its origin in a corrupt age—not only was a merciful interpretation given to the principle, but it was carried still farther, because the Judge ordered the punishment of Manning to be administered gently. It is not my purpose to defend the English judiciary, but I do say that the history of the English people shows that its judiciary has been their great bulwark. The judiciary there established, with a solitary exception which starts up here and there in its iniquity, has stood for centuries, as it were, like an Ararat of the Deluge, the last point that was submerged beneath the waves of tyranny and corruption being the first that lifted itself in the light of day. A material question is, whether the rule then and there adopted has been conformed to by subsequent interpretations. The prosecution has challenged the other side to show a solitary English case where it was questioned. The reports which have come to us, show that where they have come up for judicial interpretation, the same doctrines announced by Reynolds in his reports, have been approved; that before a learned and humane bench in 1445, when the Alagous case came up, the rule was approved. He referred to Fisher's case, also to that of Kelly, where the same bench announced the same doctrine; also to Pierce's case, where Ralfe announced the same doctrine. If it be so henious a doctrine, so repugnant to the human heart, the learned, able and humane Judge would not have traveled out of his way to give it his express approbation; although in the case of a courtezan, the learned Judge went further in his opinion, and said: "I would be false to my duty were I not to say, even if the party were a wife, and should have committed adultery, and been slain by her husband, it would have been murder."

Other authorities have been referred to, which have occurred in the judicial experience of American courts, and two cases, particularly in North Carolina (vol. 8, Iredell, and vol. 3, Jones). One of the learned gentlemen denied the application of the case in vol. 8, Iredell, because it was the case of a slave. In carefully reading, however, it will be seen the learned Judge does not put the law on any such footing; whatever the peculiar relations growing out of slavery, it did not, in his opinion, affect the merits of the case. It stood on a distinct principle, and was treated as standing on the principle of husband and wife, and the law is there set down with clearness and faithfulness. The case of Jones was not liable to the objection. He says, there was evidence of deliberation and express malice. What was the evidence of express malice in that case? In that case the time occupied for deliberation is stated to be only 25 minutes, nay more, the man had gone off with his wife, and in his company about the time. There had been repeated acts of adultery, and the husband was smarting under wrong and outrage, after seeing his wife go off with the adulterer, he pursued him with a wooden mallet, and then and there slew him. I ask, whether the case, as put here by the defence, so far as declaration is concerned, goes far beyond the case of Jones.

It is admitted by the other side, that the provocation existed in the prisoner's mind longer than twenty-five minutes, or that number of hours, and so far, therefore, as proof of deliberation is concerned, the present case presents features which would justify the judgment of the law as announced in that spirit more fully than the facts in this case would warrant. Another case has been quoted once or twice—Byon's case in 2d Wheeler; there is not one single principle of law as announced by the Judge, that is disputed by this prosecution, and when he (Mr. Ould) should have the privilege of seeing the book, he would show the Court that the Judge distinctly put the case on the true and identical privilege claimed by the prosecution in this case.

The hour of 3 had now arrived, and Mr. Ould had not concluded.

TWENTIETH DAY.—*Tuesday, April* 26, 1859.

The District-Attorney renewed the argument on the the instructions prayed for. He had been endeavoring to show, he said, that the rule adopted in Manning's case was not a lightening of the principle of the common law, but was rather in the nature of an alleviation than otherwise. The doctrine had never gone further than that no act of insult or contumely, and no trespass on property, would justify the slayer in taking the life of the trespasser, and would not reduce the crime from murder to manslaughter. The determination of the Bench in Manning's case was in consonance with the principles of common law, long established. As adultery was not an assault on the person of the husband, but was only combined of the two provocations of insult and tresspass. Then to regard the construction of the law, as understood at that time would have convicted the party of murder. The law then, for the first time, declared that adultery was such a provocation as would reduce the homicide from murder to manslaughter. From that time to this the law had never gone further. It would be very unwise for courts of justice to relax that rule. It would overturn the principles of common law in regard to murder, and would establish the principle that a man could kill another from motives of revenge.

Besides, it could not be restricted to the single crime of adultery, but would also have to extend to the case of the defamation of a man's wife; the principle that would allow one would necessarily embrace the other. He referred to Blackstone, where it is laid down that no insult constitutes a justification for homicide, no species of contumely, no species of mere trespass, and no combination of the two had been recognized in either ancient or modern times as an alleviation of the crime of murder to manslaughter. He referred to the case of Smith tried in 1804, where a man shot another who was representing a ghost. The jury brought in a verdict of manslaughter, but the Court refused to receive the verdict, and the jury retired again and brought in a verdict of guilty. These principles had been uniformly recognized and adopted in this country. He referred to the case of Ryan, second Wheeler, 447, and recapitulated the circumstances of that case and the rulings of the Court. The law there laid down was the law which the prosecution here recognized, and the law by which they were ready to stand. If the theory of the defence were true, that adultery was a justification of homicide, as well as provocation, how could the learned Judge in Ryan's case, have said that the circumstances there might constitute the crime of murder or might constitute the crime of manslaughter. There was an entire uniformity of judicial interpretation running through all the cases reported. In the case of Jarboe; the question was distinctly propounded to his Honor whether, if the deceased had seduced the prisoner's sister, and committed all the turpitude charged in the case, it constituted

either provocation or justification, and his Honor had decided that it amounted to neither. In the two Virginia cases, Bouyeris and Hoyt's, cited yesterday, there was no trial before a Judge.

Mr. Magruder—Before five magistrates.

Judge—They were tried before an Examining Court.

District Attorney—They were not to be controlled in this by the *ipse dixit* of a magistrate Court, composed probably, of men who knew nothing about law. In Singleton Mercer's case, the whole energies of the defence were directed to the solitary and exclusive issue of insanity. So it was in Smith's case in Philadelphia. As to Stump's, in Maryland, he did not know what the facts were—but if Judge Legrand there decided that adultery constituted either justification or legal provocation, except where the parties are caught in the act, he would like to see such decision.

Mr. Magruder—The jury so held.

District Attorney—It was argued here that the deceased was virtually killed in the act of adultery, and that, therefore, the homicide was committed on legal provocation. In the cases cited to support that theory the question was what constituted proof of adultery. But the question here was not what constituted proof of adultery, but what constituted proof of "finding" in the act of adultery. There could not be any proximate fact with regard to that—there was but one method of proving it. The proof must be that the party was "found, caught, surprised," in the act of adultery. The waving of the handkerchief, and the occupation of the house in Fifteenth street might tend to show that in this case adultery was committed, but they did not tend to show that the parties were "found" in the act. If they were, then the law says the homicide may be reduced to manslaughter—but if the husband pursue the adulterer, and slay him out of revenge, it was murder. The very phraseology of the rule showed that it was not intended to apply to the proximate facts, but as to whether the party was found in the act.

The counsel for the defence had contended, that even if the wife had consented, still the adultery was forcible. He asked then, and he asked now, whether, if that were so, the distinction between rape and seduction was not obliterated. If forcible, it was rape, and if rape, then the defence had wasted all their thunder, for Philip Barton Key might have been indicted by the Grand Jury, and visited with condign punishment. He understood why the defence had started such a theory—they knew that before a party was justified in using a deadly weapon, the aggressor must have used actual force, otherwise the killing would be aggravated murder. Thence the counsel for the defence had striven to show that every act of adultery was necessarily an act of force. That, however, was neither law nor common sense. There was no foundation for such a theory in nature, in morals, or in law. It had been set up by the other side that adultery was *malum in se*, and that the protection of a right was never an act of lawless violence. He held, however, that the party is hunted by the law to just that degree of defence of his right which the law gives him, and not to follow his own passions and desires. It is the right of a creditor to have his debt paid to him by his debtor, but it does not follow that he has the right to take the law into his own hands and commit an assault and battery on his debtor. The law limits the resorts which a man has for the defence and maintenance of his rights. The last ground which the defence assumed, was that this case stood on the great doctrine of self-defense. Self-defence against what? Did the principle of self-defence apply to a past transaction in any sense?

Such a theory excluded all the past, and all the provocation, and stood upon the right which the injured husband had to protect himself in the future. Once the injury is consummated against a man, his rights of self-defence are ended. The law of self-defence never therefore applies to a past transaction, and can never be confounded with the law of vengeance. Were that doctrine properly applied, his Honor had decided that it was not material to show that there was actual danger, but that the party supposed there was. To extend that principle to this case, it would follow that, whether the adultery was ever committed or not, provided the injured husband supposed it was, then if he sallied out and shot the person who he supposed had injured him, he would be justified. That, said the District Attorney, could not be law—society could not exist on any such basis, and human civilization would be an impossibility. It would follow as an inevitable consequence from this, where the prosecution cannot go into the antecedents of the party, that the prisoner himself may be stained with corruption, that throughout the whole course of his life he may have proved himself totally regardless of the calls of duty, and insensible of conjugal proprieties, that, to use the language of my associate, though I do not mean to apply it to this case, he may have been bred in brothels, nay, that he may have offered his own wife for a price to the very man whom he slew, and that all this cannot be given in evidence before the Court and jury, but that under these circumstances, although he may have committed an act of homicide, he is to be justified on the ground of suspicion. All these doctriens, these abominations, flow necessarily from the doctrine of self-defence as sought to be applied to this case.

On this point of self-defence, he would refer his Honor to the case of The People vs. Shorter, 4 Barbour, 460.

Mr. Brady—That has been overruled by the Court of Appeals of New York, reported in 2d Comstock.

The District Attorney would refer to 2d Comstock, to see how far it overruled the case in Barbour. He referred to these authorities, and also to the case of The People vs. Doe, 1st Manning's Michigan Reports. Was there, he asked, any danger of bodily harm to Daniel E. Sickles at the hands of Philip Barton Key at the time of the homicide? If not, he put it to his Honor and the jury that the principle of self-defence could not apply. Nay, more. If Mr. Sickles believed that Mr. Key was, then and there, proceeding to his house for the purpose of committing a felony much less a misdemeanor, the principle of self-defence could not apply as a justification. It had been said by the defence that, unless their doctrine was announced by this Court, and sustained by this jury, the doors of the people of this District would have to be closed. Standing here, he said, not as a public prosecutor, but as a private citizen, I on the part of the people of this District, denounce the doctrine that the protection of the wife's or daughter's virtue is to be bound in the husband's or brother's revolver. It may do for other countries, for other climes, and for other religions, where the law of force, as applied to woman is carried out in all its violence and wrong. But in a Christain community, where woman is ennobled and dignified, and elevated by Christain law, and male chastity is to be found in the woman's own virtue and in her own character. Stronger than bars and bolts, the flash of woman's virtue is as quick as God's lightning and as sure. Far more effectual is it for silencing seducers or revellers in licentiousness than Deringer or revolver. Every pure woman necessarily, and by the gift of God, in Christain communities carries that weapon along with her.

There is no seducer, no villain, I care not from whence he comes, or how he may have trained himself in the arts of seduction, who can resist the showing of that weapon for one solitary instant. I thank God that the matrons and maids of our land have a surer protection than the pistol or the bowie knife. Sad, indeed, would be their fate if it were not so. If it were so, one half of this whole community would not use a weapon, and the other half would use it wrongfully and improperly. The spirit of virtue which God had implanted in the woman's heart, tells her as if by the flash of lightning what are the intentions towards her of a man, whether honorable or dishonorable, and she has but to use for one moment this gift which God in his benevolence and bounty has given to her for the purpose of silencing and stifling, not in death but in shame, to the proposer, every offer that would imply the slightest touch of contamination or of insult. It is found every where. It is a circle of glory which adorns the female brow, and sheds its blessed and happy light alike on hovel and on palace. It stands there as the protector of the wife, though the husband may be on distant seas, far away from home, with his protecting arm. It is there ready to assist at a moment and to resist effectually the advance of every slimy reprobate who, under the guise of friendship or of fraud, walks into the house of purity for the purpose of defiling one of its inmates. The very moment you bring the law of force for the purpose of protecting female honor, that moment you sacrifice female honor. If it is to be protected by the sword, the knife and the pistol, it is unworthy of protection. Unless it be that God-ennobling nobility, in and of itself, and unless it exists of itself

and for itself, it is unworthy to be cherished or known.

The history of the world has shown that to be true. Go back as far as you please, and trace history from the earliest dates down to the present time, examine all eras and all examples, and I say that it stands out on the pages of history, at all times and throughout each one of its lustres, as the fixed and recorded truth, that wherever woman has been left alone to the vindication of her own virtue, and wherever man has kept the contaminating hand of violence from her, for the purpose even of protecting her, she has risen in her purity, God-ennobled and self-vindicated. The great God of Heaven has laid his hand with consecration on the fair head of virtue, and when the virtuous woman ceases to be her own protector and her own guardian, by force of the power which God has given to her, she and her virtue both sink into the dust, and in its stead rises the crest of murder and violence, and of wrong, and of debauchery. The learned gentleman (Mr. Stanton) said that when the law does not or cannot give redress, it is left to natural right. It is not necessary to rebut this position, although we think it could be successfully. It certainly gives no right of vengeance. In 4th Book of Blackstone, page 6, the doctrine on which the defence seems to rest is utterly exploded by this commentator.

The theory of law is not contradicted, that every man is presumed to consent to the laws of society which are made in behalf of society. The law punishes murder, but it is said it does not properly punish adultery, and, therefore, a man may say I am remitted to my original rights for punishing where the law does not inflict punishment. This is manifestly an absurdity. According to the first theory it is man's duty to acquiesce in such laws as are positively made. There is a positive law of this community with regard to murder, and according to all rational theory the prisoner has assented, or is supposed to have assented to that enactment. He is prohibited from committing murder, and although the law might not have a specific punishment for adultery, he is not, therefore, privileged to supply such a defect. Although he may have a right to punish, he has no right to violate another provision; if he does, he becomes a wrong-doer, although he may have a right to redress a wrong. Yet he has no right to redress it by an infraction of the human compact into which he has entered.

Having endeavored to answer the arguments of Mr. Stanton, the District Attorney proceeded to notice those of Mr. Brady. He understood him as contending that the jury are the judges of the law as well as the facts. But the administration of the law is divided into three different compartments. The Judge has his functions, the jury have their functions, and the Executive his. Who wears the *gladis justicial?* If he (Mr. Ould) had read the law aright, it was for the Court to pass on all questions of law. It was for the jury to pass on all questions of fact, and the duty of the Executive, under the Constitution of the United States, to decide on the propriety of inflicting the punishment. These functions are separate and distinct, and when one trenches on the other a usurpation is committed. The Court has not only to decide the question of law, but all the law which belongs to the case. It made no matter whether it be criminal or civil law; the very moment it becomes a question of law, it becomes the Court to decide it. It becomes the jury to find the facts, and to apply the law as it is laid down by the Court.

A question of justification, malice or provocation, is a matter of law, and cooling time is question of law; and in this connection he combatted the arguments of the defence, and quoted 3d Bennett's Missouri Reports, the Commonwealth agt. Moseler, and various other authorities, in support of his position. He also quoted authority which, he said, was recognized as controlling in this District, from 5th Cranch, in which was embodied the remark of Judge Story: "That it is the duty of the Court to instruct the jury as to the law, and the duty of the jury to follow the law thus laid down. The District-Attorney had stated what are the functions of the Court and jury. In addition, the Constitution of the United States has imposed on the President a certain duty to perform, in connection with the administration of public justice, namely—the pardoning power. This, by the true policy of he law, is given to the Chief Magistrate for the express purpose of keeping the Court within the functions, and the jury within theirs; also with the view of preventing gross and aggravated injustice from being perpetrated on a party under a form of law." As the circumstances of this case had been referred to by the defence, he would say, in reply, a pistol was found.

His learned and distinguished friend, (Mr. Brady) inquired, To whom did it belong and who used it? He (Mr. Ould) should not pretend to give the answer; he would let the witnesses speak. Mr. Van Wyck said he saw a pistol in the hand of Mr. Sickles. Mr. Read, the clearest witness, who ssatement seemed the most coherent, said he saw a pistol in Mr. Sickles' hand at the very spot; and further, that no pistol was in the hand of Mr. Key at that time. Not only had Mr. Key no pistol at that time, but he had none at any time. Not a solitary witness had stated any pretense of the fact. Who then, had the pistol, and who fired it? To whom did it belong. It must have been the man who was seen to have a pistol, and not him who none at all And in the same connection it was asked why not produce witnesses to show that Mr. was not in the habit of going armed? Was it incumbent on the United States to show that he was not in the habit of going armed when there was no pretense that he was aumed at all?

Mr. Brady.—You have not forgotten that we offered to show that Mr. Key said he was prepared for any emergency, at the same time placing his hand on the breast pocket of his coat.

District-Attorney.—I am speaking of the testimony in the case. His Honor's ruling was that that did not shed any light on the question, and was immaterial.

Mr. Brady.—But I understand you now to say that there is no pretence that Mr. Key was armed. I pretend that he was armed.

The District-Attorney explained that he spoke only of the testimony; but if the gentleman wanted to give evidence to the jury to show who used that pistol, why did not the defence summon Mr. Butterworth? The defence complained that the prosecution did not produce the friends of Mr. Key to give the negative proof that the deceased did not carry arms habitually; but why did not the defence itself produce that friend of Mr. Sickles who witnessed the whole transaction, and who could say positively who it was that used the pistol in question? The defence had referred to the case of Mingo, but that was a case of mutual combat.

Mr. Brady—The question there arose as to whether malice should be proved, and Judge Curtis ruled that under all the circumstances of the case, the responsibility devolved on the prosecution to prove malice. He contended that where the prosecution failed to give evidence as to the controversy between the parties at the moment of the homicide, the Jury should acquit.

The District-Attorney replied that the plea in Mingo's case was a plea of self defence, and that that was so sustained by the evidence that the Judge had the impression that it was a case of self defence; but in this case the evidence was put upon the issue that Mr. Sickles intended to kill Mr. Key, and that he was justified in killing him. Counsel for the defence had argued that cooling time applied only to cases of mutual combat, the principle of cooling time did not apply.

Mr. Brady—Cooling time as to the adultery.

District Attorney—It seemed to be a *concessum* in this case that there was an intention to kill. Now, he held that where there was an intention to kill, that is a proof of malice. Malice and the intent to kill were the same thing. If the defence claimed the exclamation of Mr. Sickles as proof that at the moment of the homicide there was no malice, he asked could he not refer to that other declaration, wherein the prisoner followed up the first declaration by the question, "Is the d—d villain dead?" To his mind, that inevitably proved malice

His learned friend (Mr. Brady) in one of his airy wheelings, had said that if Philip Barton Key could be put upon the stand, he would say so and so. I would to God, said the District Attorney, that Philip Barton Key could be put upon the stand, perhaps much that is now dark, much that is now covered with gloom, much that is now not nnderstood, could be made plain as if by the flashing of the sunbeam. Perhaps the gentleman (Mr. Brady) might be put in possession of facts of which he does not now dream, and which he does not now believe to exist. It might show a very different transaction from that which has been painted by the evidence.

The only party who could array facts in his defence, or in his behalf, has been silenced in death, and the testimony which might have been adduced for the purpose of vindicating his character is unknown and un-

heard therefore, so far as he is concerned, it is the same as if that testimony had never existed. He might have shown, perhaps, that although sinning himself, he was sinned against; that, instead of as has been charged in this case, his entering into the house of his bosom friend for the purpose of wronging him, malignantly and violently, in defiance of all the laws of God and man, and of the sacred obligations of friendship, he himself was seduced by the temptations repeated and continued until those higher moral bulwarks that should have supported his character gave way beneath repeated shocks. I say not whether it was so, or was not so; the only party that could have had the opportunity of bringing that evidence here and vindicating his character is gone; I say not what was.

Mr. Brady.—The District Attorney will recollect that we offered to prove his own declaration, that this was a mere child, and that he stood in parental relations to her.

The District Attorney made no reply, and pursued that point no further. There was but one other position to which he would allude, and that was the connection of this question with insanity. The matter of insanity had been frequently under the consideration of this Court, and he would therefore simply refer to some doctrines which, with great solemnity and authority had been given at other times, bearing on the question now under discussion. He would refer particularly to the opinion rendered by the twelve Judges in England in the McNaughton case, in response to certain queries propounded by the House of Lords. That decision, as rendered by Chief Justice Tindall, appeared to him a model, not only of eloquence, but of judicial learning. Counsel read some of the queries and responses, commenting upon them as he proceeded, and referred to other authorities bearing on the same point, among them to Chief Justice Hornblower's ruling in Spencer's case. quoted in Wharton's Criminal Law, 7, 12.

His Honor himself had decided that it was not necessary for the United States to prove the sanity of the accused. This plea of insanity was in the nature of a special defence. Nay, in the nature of a plea of confession and avoidance. It was necessary for such a plea to be proved to the satisfaction of the jury. If a suit were brought against a married woman on a bond, and if she pleads that she is a married woman, unless she succeeds in satisfying the jury of the truth of that plea, issues of law and fact are both found against her.

Mr. Brady—How would it be if the general issue was on record?

The District Attorney—The question cannot arise except on a plea of confession and avoidance, and that admits the plaintiff's case; so a plea of insanity admits the charge.

Mr. Carlisle—The confession stands without the avoidance.

The District Attorney—Certainly. He would not put to his Honor the argument as to the facility with which insanity may be simulated or feigned, and how wrong it would be to let the party accused thus escape the just punishment which his crimes should bring down on his guilty head.

The prisoner having been brought into Court, from which he had been temporarily absent, Judge Crawford proceeded to address the jury. He said:

Gentlemen of the Jury: The Court is asked to give to the jury certain instructions,* whether on the part of the United States or on the part of the defence. The first instruction asked for by the United States embodies the law of this case on the particular branch of it to which it relates, and is granted with some explanatory remarks as to insanity, with a reference to which the prayer closes. A great English Judge has said on the trial of Oxford, who shot at the Queen of England, vol. 9 Carrington and Paine's Reports, p. 533, "That if the prisoner was laboring under some controlling disease which was, in truth, the acting power within him which he could not resist, then he will not be responsible." And again: "The question is whether he was laboring under that species of insanity which satisfies you that he was quite unaware of the nature, character and consequences of the act he was committing, or in other words, whether he was under the influence of a diseased mind and was really unconscious at the time he was committing the act that that was a crime. A man is not to be excused from responsibility if he has capacity and reason sufficient to enable him to distinguish between right and wrong as to the particular act he is doing, a knowledge and consciousness that the act he is doing is wrong and criminal and will subject him to punishment. In order to be responsible, he must have sufficient power of memory to recollect the relation in which he stands to others, and in which others stand to him; that the act he is doing is contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty. On the contrary, although he may be laboring under a partial insanity, if he still understands the nature and character of his act and its consequences; if he has a knowledge that it is wrong and criminal, and a mental power sufficient to apply that knowledge to his own case, and to know that if he does the act, he will do wrong and receive punishment, such partial insanity is not sufficient to exempt him from responsibility for criminal acts. Vol. 7, Metcalfe's reports, pages 500, 501 and 503. The second and third instructions asked for by the United States are granted. The fourth instruction asked for by the United States is answered by prayer eleven of the defence. The fifth instruction asked for by the United States, the Court thinks, is the law and grants the instruction.

Now we come to those asked on the part of the defence, the first of which is in these words—(See p. 87).

There is, gentlemen, a legal presumption of malice in every deliberate killing, and the burden of repelling it is on the slayer, unless evidence of alleviation, mitigation, excuse or justification, arise out of the evidence adduced against him. The alleviation, mitigation, excuse or justification must be such as the law prescribes, and within the limits already laid down in the instructions given to you.

In regard to the second instruction asked for by the defence, I would say:—The answer to the first prayer will be taken in connection with his response to prayer number two: "If upon any course of reasoning consistent with all the evidence," and the law as laid down to you by the Court, and the rules by which it is ascertained what is legal provocation, what is justification or excuse, you should come to the conclusion that there was such justification or excuse, or that the homicide was manslaughter, then the presumption of malice which every killing of a human being involves, is met. You will recollect that manslaughter is the killing of a man without malice.

The third prayer on the part of the defence is answered in the same manner as prayer number two.

The fourth prayer the Court declines to grant; manslaughter may exist, and most frequently does where the slayer intended to destroy life, but under circumstances which reduce the defence.

The fifth prayer cannot be granted, as to the jury belongs the decision of matters of fact, and to the Court the decision of matters of law, which it is the duty of the Jury to receive from the Court; and from the evidence and the law applied to the facts, it is the province and legal right of the Jury to return a guilty or not guilty of murder or manslaughter.

In regard to the sixth instruction for the defense, I would remark:

If this prayer refers to actual (existing at the moment) adulterous intercourse with the wife of the prisoner, the slaying of the deceased would be manslaughter, and by existing adultery, I do not mean that the prisoner stood by and witnessed the fact of adultery progressing, for it is easy to suppose the actual fact to be established simultaneously with the killing by other evidence, in perfect consistence with the law; if, for instance, the husband saw the adulterer leave the bed of the wife, or shot him while trying to escape from his chamber. If, however, a day or half a day intervene between the conviction of the husband of the guilt of his wife and the deceased, and after the lapse of such time the husband take the life of the deceased, the law considers that it was done deliberately, and declares that it is murder (Jarboe's case). The seventh and eighth instructions can be answered togetner. They are granted.

In reply to the ninth instruction the court responds thus: "It is for the jury to say what was the state of Mr. Sickles's mind as the capacity to decide upon the criminality of the homicide, receiving the law as given to them in relation to the degree of insanity, whether

* See pages 87 and 88 for the instructions prayed for.

it will, or will not, excuse, they (the Jury) finding the fact of the existence or non-existence of such degree of insanity." The gist of this prayer is "what was the condition of the parties respectively as to being armed or not at the same moment." So much of the instructions as I have now read, I grant without qualification.

The tenth prayer reads thus: "The law does not require that the insanity, which absolves from crime should exist for any definite period, but only that it exist at the moment when the act occurred, with which the accused stands charged·"

That instruction is granted. The time when the insanity is to operate is the moment when the crime charged upon the party was committed, if committed at all. The eleventh and last instruction asked reads this way:

"If the jury have any doubt as to the case either in reference to the homicide or the question of sanity, Mr. Sickles should be acquitted."

This instruction, as I mentioned in referring to prayer four of the United States, will be answered in conjunction with it.

It does not appear to be questioned that if a doubt is entertained by the Jury the prisoner is to have the benefit of it. As to the sanity or insanity of the prisoner at the moment of committing the act charged, it is argued by the United States that every man being presumed to be sane, the presumption must be overcome by evidence satisfactory to the Jury, that he was insane when the deed was done.

This is not the first time this inquiry has engaged my attention. The point was made and decided at the June Term, 1858. In the case of the United States versus Devlins, when the Court gave the following opinion, which I read from my notes of the trial. This prayer is based on the idea that the jury must be satisfied, beyond all reasonable doubt, of the insanity of the party for whom the defence is set up. Precisely as the United States are bound to prove the guilt of a defendant to warrant a conviction. I am well aware, and it has appeared on this argument, that it has been held by a Court of high rank and reputation, that there must be a preponderance of evidence in favor of the defence of insanity to overcome the presumption of law that every killing is murder; and that the same Court has said that if there is an equilibrium, including, I suppose, the presumption mentioned of evidence, the presumption of the defendant's innocence, makes the preponderance in his favor.

Whether a man is insane or not is a manner of fact; what degree of insanity will relieve him from responsibility is a matter of law, the Jury finding the fact of the degree too. Under the instruction of the Court, murder can be committed only by a sane man. Everybody is presumed to be sane who is charged with a crime, but when evidence is adduced that a prisoner is insane, and conflicting testimony makes a question for the Jury, they are to decide it like every other matter of fact, and if they should say or conclude that there is uncertainty, that they cannot determine whether the defendant was or is not so insane as to protect him, how can they render a verdict that a sane man perpetrated the crime and that no other can?

Nor is this plain view of the question unsupported by authority. In the case of the Queen agt. Ley, in 1840, Lewins C.C. p. 239 on a preliminary trial to ascertain whether a defendant was sufficiently sane to go before a petit jury on an indictment, Hullock, B., said to the jury: "If there be a doubt as to the prisoner's sanity, and the surgeon says it is doubtful, you cannot say he is in a fit state to be put on trial." This opinion was approved in the People vs. Freemen, vol. 4 Denio's Report, p. 9. This is a strong case, for the witness did not say the prisoner was insane, but only that it was doubtful whether it was so or not. The humane, and, I will add, just doctrine, that a reasonable doubt should avail a prisoner, belongs to a defence of insanity, as much, in my opinion, as to any other matter of fact. I believe, gentlemen, that that answers all the questions.

As the Judge ended, Mr. Brady stepped from his position near the dock and whispered a word in Mr. Chilton's ear.

Mr. Chilton rose and said: If it please the Court, I rise to renew the proposition which we made on Friday last, to submit this case to the Jury without further discussion.

The District-Attorney, half-rising from his seat, said: "We accept it."

Mr. Chilton.—I was going on to remark that I had the happiness to believe, from what was said on that occasion, that this proposition would be acceded to. I merely wish to state to the Court that I make it with the concurrence of all the counsel for the defense, and, of course, with the entire approbation of the prisoner. and while with some of your Honor's rulings we may not be entirely satisfied, yet we most respectfully submit we think that it is due to every one connected with this trial, more especially to the Jury, to commit this case now to their hands, that they may be relieved as early as possible from ihe very onerous duty that has been imposed upon them.

The District Attorney—On the part of the prosecution we concur entirely in the proposition just made, and on the instructions given by your Honor we submit the case now to the consideration of the Jury.

Mr. Brady—With the effect of your Honor's ruling, I am entirely satisfied.

District Attorney—No discussion if you please.

Mr. Brady (looking pleasantly at the Jury)—I would not inflict such a punishment on the Jury.

Judge—Mr. Marshal, give the indictment to the Jury.

The indictment was hand to Mr. Reason Arnold, and the Jury retired to their consultation room.

After a most anxious suspense of 70 minutes the door is opened. The Deputy Marshal calls out to make room for the Jury. In they come, one by one, and proceed to take their seats in the box.

Clerk—Daniel E. Sickles, stand up and look to the Jury.

Mr. Sickles stood up.

Clerk—How say you, gentlemen, have you agreed to your verdict?

Mr. Arnold—We have.

Clerk—How say you, do you find the prisoner at the bar guilty or not guilty?

Mr. Arnold—NOT GUILTY.

Clerk to the Jury.—Your record is, gentlemen, that you find Daniel E. Sickles "Not Guilty."

The Jury nodded affirmatively.

Clerk.—And so say you all.

Another affirmative nod from the Jury.

Mr. Stanton.—I now move that Mr. Sickles be discharged from custody.

Judge Crawford.—The Court so orders, and Mr. Sickles amid the cheers of the audience was taken out of the dock by Captain Wiley and Mr. Brega.

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