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BOSTON DAILY TIMES.

COMPLETE REPORT

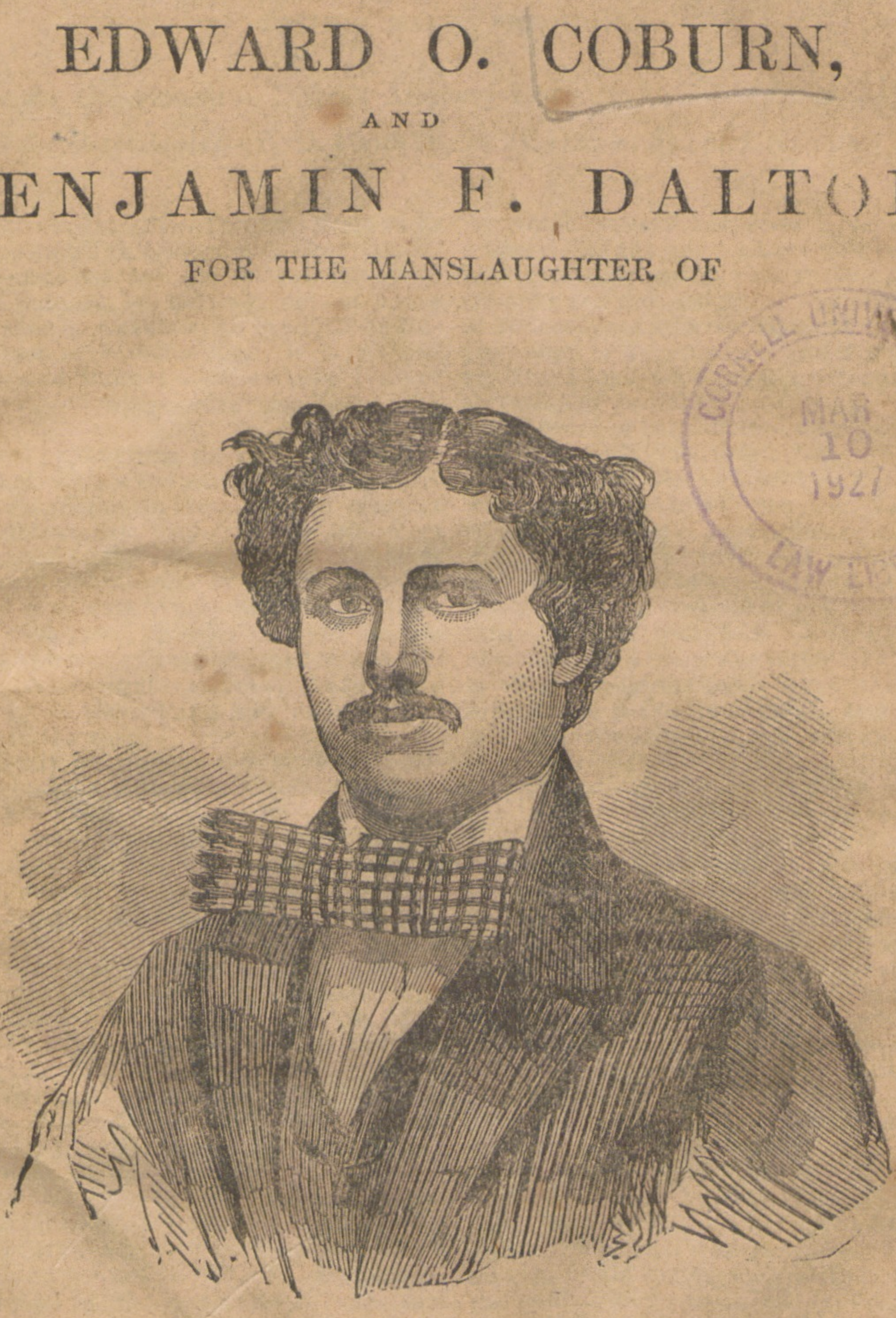
OF THE TRIAL OF

EDWARD O. COBURN,

AND

BENJAMIN F. DALTON,

FOR THE MANSLAUGHTER OF



WILLIAM SUMNER.

BY THE REPORTER OF THE TIMES.

BOSTON:

BURNHAM, FEDERHEN & CO.,

11 AND 13 COURT STREET.

TRIAL OF COBURN AND DALTON.

FOR MANSLAUGHTER.

MUNICIPAL COURT, BOSTON — CHIEF JUSTICE NELSON AND ASSOCIATE JUSTICE NASH, PRESIDING.

Counsel for Government — District Attorney COOLEY.

Counsel for Defendants — S. D. PARKER, R. H. DANA, Jr., and NATHAN MORSE.

THURSDAY, Jan. 24.—This morning, at 10 o'clock, Edward O. Coburn and Benjamin F. Dalton—indicted for the manslaughter of William Sumner, by beating him in house No. 84 Shawmut avenue, on the 17th of November last, of which wounds it is alleged that the said Sumner died on the 11th of December following—were arraigned for trial.

Before empannelling the jury, Mr. Parker stated that there were many unfounded rumors in circulation in regard to the conduct of the defendants, and as some prejudices might exist among the minds of the jurors injurious to the interests of the defendants, he asked the Court to propound certain questions to each juror, in order that the defendants might have an opportunity to show, if they could by legal evidence, that each or any juror was biassed and had expressed an opinion in the case.

The Court acceded to the request of Mr. Parker, and the following question was put to each juror before being sworn :

Have you expressed, or have you formed any opinion upon the subject matter now to be tried, or are you sensible of any bias therein, or are you related to either of the parties ?

The following gentlemen were then empannelled—Ezra Forrestall, foreman; Wm. Bacon, Reuben Balcom, Benj. Luckis, Chas. W. Bowker, Wm. Buss, Samuel F. Carll, Ralph S. Cate, David Clapp, John R. Copeland, Sylvender Forrestall, Manly Howe. The above gentlemen compose the second traverse jury of the Court, regularly drawn for the term.

The indictment was then read and the defendants plead NOT GUILTY.

The District Attorney then opened with a very able expositien of the case as expected to be proved by the government. He said that allusion had been made to the public feeling which existed against the prisoners, and he thought that in such a case of supposed crime it was material that the people should express their opinions freely and emphatically. But he was glad to know that within the minds of the jurors there was no bias to impair the calm deliberations of reason and judgment. He who comes into Court arraigned as a criminal, is to be regarded as innocent. The presumption of the law is, that all parties are innocent until found guilty. The government has no interest in any case except the fair administration of the law; and the jury have only to see that the charge against these, or any defendants, is established. This is the security which society has from a repetition of offences like the one we have now to try. It is my earnest desire that these defendants should have the benefit of any presumption of innocence up to the moment when their guilt shall be established; and if found guilty, then I look for a verdict without any reservation or partiality.

In regard to the different degrees of homicide Mr. Cooly instructed the jury that the crime of homicide is lawful and justifiable when committed in self-defence. In all other cases homicide is unjustifiable, and it has the degrees of murder and manslaughter. The distinction between murder and manslaughter is the absence of any malice in the latter. A man who kills another in a duel, although the killing was intentional, is guilty of manslaughter only, because the law allows for the infirmity of men's tempers, and mitigates the crime, unless previous malice is proved. Several other illustrations of the crime of manslaughter were given to the jury, to show them the various distinctions which the law makes in cases of homicide. In cases where the Court is satisfied that death was not intended, the punishment is in the discretion of the Court, and may be but an hour's imprisonment and a fine of one dollar. The extent of the punishment for manslaughter is twenty years imprisonment. If a man discovers another in the act of adultery with his wife, and he kills the adulterer on the spot, the law calls the crime manslaughter. But if in the same case when the man witnesses the act of shame, and subsequently he prepares himself with weapons and kills the adulterer, the law calls it a murder. In the case to be tried, it appears that the defendants enticed the deceased to their house. The plan was concocted hours before, and they deliberately carried it out, in the end inflicting great bodily injuries, the consequence of which was the death of the party. This was a case of manslaughter—some think that it was a higher crime. At any rate, it is sufficiently lenient, and we shall see that they have justice done them. The death of Sumner is directly traceable to the punishment inflicted by the defendants. This was the primary cause, and it will be a question whether the primary cause, as found by the government, was not the proximate cause of the death.

The District Attorney was occupied a little more than an hour in his opening argument, and his presentation of the case was marked by candor, perspicuity and logical reasoning.

The witnesses (twenty-three) for the gov

ernment were then called, and the examination commenced.

Agnes Keenan, called—In the month of Nov. last I was employed in Mr. Fera's shop, in West street; saw the defendants in the shop on the 17th of Nov., in the latter part of the afternoon; cannot fix the time with any aecuracy; saw a person there of the name of Sumner; did not know him by name; the defendants asked for Sumner, and I told them I did not know him by name to distinguish him from any other person who came there, but I might know him by his appearance; they sat down and waited a little while, when Mr. Sumner came in; soon after there was an interview between the three parties; I heard Mr. Coburn ask Sumner how long he had been acquainted with her; Mr. Sumner replied, "a very short time;" I heard nothing more said by them at the time; I know Mr. Porter; he had visited the shop with Sumner several times during the previous two weeks; they visited the shop about twice a week; I did not know Mr. Porter's name at the time; never saw Sumner come in with any other man; did not know where Sumner resided at the time. After the interview between Coburn, Dalton and Sumner, Mr. Coburn left the store, and Sumner and Dalton remained behind; they stood in the back part of the shop, about thirty feet from the door; Mr. Coburn returned in a few minutes, in a carriage, and Dalton and Sumner went into the carriage; Coburn remained in the carriage, and the other two passed out of the store and got into it; I do not know who drove the carriage, or where it went to; the horses were headed towards Tremont street.

Cross-examined by Mr. Parker—Mr. Sumner had been in the habit of visiting the shop for three weeks prior to the 17th November; I went to the shop about the last of October, and staid until New Year's; Coburn and Dalton partook of refreshments when they came in on the 17th November; they had chocolate and dry toast; they set down at a table; I was the only person in the store when they came in; they were at the table when Sumner came in, and got up to meet him; I saw one of the gentlemen shake hands with Sumner; their conduct appeared to be gentlemanly; I did not hear them ask Mr. Sumner if he came there to meet some person; I did not hear all of the conversation; as soon as the carriage came to the door Dalton and Sumner went out, without any invitation, and got into it; Coburn paid for the refreshments before he went for the carriage; Sumner and Porter came to the store about twice a week with two ladies. they always came with the same ladies; the doors of the saloon were always open; there was no private saloon; the gentlemen and ladies never came to the saloon together; sometimes the ladies came first and sometimes the gentlemen; never saw them go away in a carriage; they sometimes remained half an hour in the saloon.

Oliver Gregg, called.—I keep a stable in West street, about twenty rods from Fera's shop; I went to Fera's shop with a carriage in the month of November last; it was about the middle of the month; the person who spoke for the carriage went with me to the shop; it was between 3 and 4 o'clock in the afternoon; two persons got into the carriage when I arrived at the shop; I did not take any notice of the persons who got into the carriage; I drove them to Shawmut Avenue, and arrived there in ten minutes after leaving the shop; I left them at a house on Shawmut Avenue; they all went into the house; one of them paid me for the carriage, but I do not recollect which one it was.

Cross-ex. by Mr. Parker—I do not recollect the day of the week; when I went to Fera's shop I did not see any person go in, and I do not remember any conversation; I did not notice any thing unusual in the appearance of the parties at any time; I have never driven for the same parties on any other occaasion; did not hear any conversation while the parties were in the carriage.

At the close of Mr. Parker's examination of the last witness, the Court took a recess until 2 1-2 o'clock.

AFTERNOON.

The Court came in at 2 o'clock, and Dr. Lewis was called, who testified that Mr. G. E. Richardson, one of the government witnesses, was confined to his bed by severe illness, having recently undergone a surgical operation, and would not be able to leave his house for several weeks. He thought that Mr. R. was able to give his deposition in the case.

Mr. Parker objected to a deposition, on the ground that there was a discrepancy between Mr. Richardson's testimony and that of other witnesses, and he therefore wanted the witness to come before the jury.

The Court decided that the deposition could not be taken without consent of defendant's counsel; and the examination was continued.

Wm. Chadbourn called.—I am a police officer; was at the house of Mr. Coburn, 84 Shawmut avenue, on the 17th of November last; I arrived at the house between 4 1-2 and 5 P. M.; I went there in company with Mr. Richardson; when I arrived there a large company were assembled on the outside; heard no cries from the house; I rang the bell, and it was answered by Mr. Coburn, who admitted Mr. Richardson, Mr. Grant, Mr. Whiton, and myself; I am not positive that Mr. Grant went in; Richardson asked Coburn what the trouble was; this question was asked at the door; Coburn said there had been some trouble, and we went into the front room, where I saw Dalton and another gentleman whom I did not know; Coburn said that two men had taken improper liberties with their wives, and that they had got the two men to the hou e that day and given them a d—d thrashing; he then went on to describe the manner in which he got Mr. Porter there; [Conversation in regard to Porter objected to and ruled out] after describing the manner in which he got Porter there he said that he got Sumner there in the same way and treated him in the same manner; I cannot recollect the language he used; he then spoke of giving the *Herald* an account of the affair; he asked us to disperse the crowd outside, and we done so; he said "We" got Sumner to the house; he referred to Mr. Dalton as the other person; he mentioned Dalton's name in connection with the affair; cannot say it was before or after the conversation about the flogging; he spoke of

Dalton as his brother-in-law, and said the affair was about their wives; this was the substance of the conversation at that time; I went to the house again about 9 o'clock in the evening; I went there to get the names of the parties they had flogged; at this interview Mr. Coburn stated the same in regard to flogging Porter, and said that "we got Sumner up stairs in presence of the ladies, and asked him some questions which he could not clear up. We then took him down stairs and flogged him, and gave him the benefit of the back yard." Mr. Dalton, I think, did not say any thing about the matter at either interview; Coburn gave me the names of "J. Porter" and "W. Sumner;" he said Porter was a professional gentleman and lived in Cambridge, but did not know where Sumner lived.

Cross-examined by Mr. Parker.—I think that Dalton was in the front room when I first went into the house; eh directed his attention to the conversation between Coburn and Richardson; he had a friend with him whom I did not know; one of the police officers made the remark that "he guessed they had served Porter and Sumner right enough, and that he would have done the same thing." This remark was made after we had been in the room some twenty minutes; the remark was not made to any one in particular; I did not hear Dalton make any remark; the second time that I visited the house, a servant admitted me; I then saw Coburn and Dalton; while I was there Mr. Porter came in with two other gentlemen; the men who came in with Porter were officers; Coburn and Porter had some conversation about the affair; Mr. Dalton was present but said nothing to Porter; Porter said that he came to get some explanation of the cause of the assault; I did not hear any explanation given; did not see any proccss served at this time; I heard Coburn say that they cowhided Sumner and gave him the benefit of the back yard; did not hear him say that they assaulted Porter.

Mr. Henry Nutter, called.—I was in Shawmut avenue on the 17th November last; I was at work in the adjoining block, three tenements from Coburn's house; about five o'clock I came out of the house, and heard the cry of "murder;" I went to the house of Coburn, and heard the cry repeated; a female looked out of the third s ory window, and said that somebody was killing somebody, but I could not hear the names; she said something about bursting the door in; I rang the bell once, and it was not answered; I then tried to break the door open, but did not succeed; after this several persons tried to burst the doors in, but could not; I put my shoulder against the door; after I tried upon the door, I stepped out into the street, and could see the females at the third story window; one of the females would pull the curtain up and the other would pull it down; I then went after Mr. Richardson, who had passed the house a few moments previou,, and he came up with another policeman; he tried the door but could not get in; he said that he did not want to break the door in, and went after a posse of policemen, who came and went into the house; when I went to the door to get in, I heard a scuffling in the floor above the front door landing; I also heard the cry of murder from the same floor; it was a female voice that cried murder; the sound of scuffling receded from the front landing and I heard it no more; after the scuffle in the entry had ceased I heard the exclamation of—"Oh, dont, you'll kill me;" I did not go round to the back part of the house; there was no answer to the bell, and I did not hear any sounds that came from the furnace-rorm; the scuffle in the entry appeared to be a violent one.

Cross-examined by Mr. Parker.—The exclamation of "Oh, don't, you'll kill me," was in a female voice; 1 could not see into the entry when I went to the door; there was no light in the entry until after the scuffle; I did not hear a male voice in the house.

Jeremiah Donovan, called.—I was on Shawmut Avenue on the 17th Nov. last, employed in moving lumber; I saw a carriage drive up to No. 84, and three gentlemen got out; Coburn, Dalton and another gentleman went in; knew Coburn and Dalton by sight, but did not know the other man; it was about twenty minutes of 5 o'clock in the afternoon; the carriage drove off after the parties got out and entered the house; I cannot recognize the man who drove the carriage; think it was the witness on the stand this morning; in about fifteen minutes after, a lady put her head out of the window and called for assistance; she was a good deal excited; she called for help, and I gave the alarm to some carpenters near by; she opened the window a second time and called for help; the alarm was given from the third story window; after this a lady made an attempt to get at the window, and she was pulled back; I was then told by somebody to go through the area, leading from the front part of the house to the back-yard, and see if I could not get into the house; there is a door opening into the furnace-room from the area, and I tried to open it but could not; I then went into the yard and tried to open the door of the wash-room, but it was locked; I then tried to get the windows of the wash-room open, but they were also locked; I stayed in the back-yard about five minutes, and heard a noise like scuffing; I also heard somebody groaning, as if in pain; think it was a man; I looked in through the windows of the wash-room, but could not see anybody in the room; I did not hear any noise when I tried the door of the furnace-room; when I was at the front door I heard some scuffling overhead; I also heard some female moaning and taking on; I am familiar with the lower part of the house; the furnace-room extends under the whole of the main part of the house; there is a passageway between the furnace-room and the southerly wall of the house; the door of the wash-room opens into a passageway, and a door in the passage opens into the furnace-room; the passageway extends the whole length of the house.

Cross-examined by Mr. Dana—The passageway is an archway leading from the street to the back yard; the door opening into the passageway was unlocked, and any body might have gone through it; there are two windows in the wash-room; there were no curtains at these windows, and they fastened in the usual manner; they are about two feet from the ground; did not see any body else go into the back yard; there is one

window opening into the furnace-room from the yard; I do not recollect that I looked into this window.

Wm. Wilson, called—I was on Shawmut Avenue on the 17th Nov. last; saw a carriage drive up to No. 84 and three persons got out; I was close by the door of the house at the time; did not know the persons who got out of the carriage; they went into the house, and in about ten minutes a lady threw up the window, cried "murder," and told me to go in and take him away, that they would kill him; I told her the door was locked, and she told me to burst it open? I rang the bell and nobody came; while I was at the door I heard a noise of pulling and hauling in the third story; then it seemed to come down stairs into the basement room on the ground floor; I heard murder called down there; it was a female voice that cried murder in the basement; I heard somebody say "Don't do so, you'll kill me." I heard this exclamation a dozen times; this was the only exclamation that I heard; I did not hear any sound of blows; at times the exclamations appeared to be nearer the front than the back part of the building; it sounded to me as if in different parts of the furnace room; the sound continued five or six minutes; I made several efforts to push in the door with my shoulders and feet; no person came to the door while I made these efforts; I heard a struggle, like pushing and hauling, in the front entry; this lasted a few minutes and receded down stairs; heard no words used in the entry; I saw officer Richardson there; I was trying to break in the door when he came up with another officer; Mr. Richardson rang the bell, but it was not answered, and he went for assistance, leaving the other officer behind; while he was gone some person came to the door and spoke to the officer remaining behind; I asked him if the lady was hurt, and he said that she was not hurt, but excited about the cowhiding affair; he then shut the door and went in; he was in his shirt-sleeves when he came to the door; I am sure this was in the afternoon; about 12 o'clock the same day, I heard of the flogging of another man in the house; I saw the curtain pulled up and down in the third story by two or three females who stood at the window.

Cross Ex. by Mr. Parker—I am a carpenter by trade, and reside in Dover place; I had been at work in Shawmut avenue on the 17th November, in a building adjoining No. 84; I had previously seen Coburn and Dalton coming in and going out of the house; the person who came to the door was in his shirt-sleeves, but I did not recognize him; do not know Dr. Blake; when I heard of the affair, about 12 o'clock, I did not go to the door, and I did not see any body come out of the house; the noise in the house had subsided when the person came to the door; no one entered the house at the time; a few minutes after the other officers came and rang the bell; I think that the door was unfastened and they entered the house before any body answered the bell; I think that the person who came to the door was either Coburn or Dalton, but I will not swear that it was either of them; did not hear a man's voice in the house before the police went in; I staid until the police came out and went away with them; saw no person come out while the police were in the house.

Direct Ex—I have been into the furnace-room; it extends under the main part of the house; there is no door opening from the wash-room into the furnace-room; the doors of these rooms, inside the house, open into a hall which extends the whole length of the house; I think that the furnace room is in the front part of the house, and a small cellar adjoins it, separated by a brick partition; there is no door in this partition opening from the furnace-room into the cellar; there is a kitchen over the wash-room in the L part of the house; the outside fence in the back yard is about five feet high, and the posts and rails are on the outside; the side fence is also smooth on the inside; there is a vacant space adjoining the back yard; if a person got over the side fence he would be in another person's yard.

To *Mr. Parker*.—The house adjoining, on the northern side, has been occupied some time; if a person gets over the southern or back fence, he would be in a vacant lot; on the eastern side there was rubbish piled up nearly as high as the fence.

To *Mr. Cooley*.—There was no gate in the fence.

Henry M. Flanders, called.—I am a cousin of the defendant, Coburn, and reside in Woburn; I was at Mr. Coburn's house on the 17th Nov. last. Witness described the house as follows: In the basement, the furnace room extends the whole length of the main part of the house; the wash-room is in the L part of the house; the coal-hole is under the sidewalk front of the house; the back part of the furnace room is used for storage; there are two doors in the furnace room opening into an entry-way which extends the whole length of the house to the wash-room; the entry-way is a continuation of the front stair way leading from the floor above; there is no back staircase leading to this entry-way; there are two windows in the wash-room looking into the back yard; there is an archway leading from the street to the back yard; the fence around the back yard is three or four feet high; the floor of the wash-room is on a level with the yard; the back door of the wash-room is close to the door of the furnace room, so near that you can step from one room to the other. On the first story, there is a dining room, sitting room and a kitchen in the L part; there are two entries on this floor, a front and back one, separated by a door. On the second floor, there are two parlors. On the third floor, two chambers and a wash-room. I went to the house about ten o'clock on the 17th November; saw Coburn and Dalton there and the ladies; I staid there a short time, and then walked down Washington to Dover street; there I met Coburn and Dalton, going home; I turned round and went back to the house with them; Mr. Coburn invited me to return to the house; on the way, Coburn told me about the affair with Porter; when I got to the house, I went up stairs to Mrs. Coburn's room with Mr. Coburn; this was a front chamber in the third story; Dalton was in the room with us; the affair with Porter was mentioned, and Mr. Dalton said that there was another man who had got to take something similar; I think Dalton said this while

we were in the street; he did not mention the man's name; he said that the man had been intimate with his wife, but did not state in what way; I staid in the house some time, and then we went out; after we got out they said that they were going down to Vinton's to meet Sumner, and should try to get him into the house; they said if they did not get him into the house, they should whip him wherever they did find him, as they meant to whip him at any rate; think that they both said this; they did not say in what manner they should flog him, or how they should get him to the house; they then went down town and I went to Dr. Blake's office; this was about 3 o'clock in the afternoon; they spoke of the Porter affair at the same time as of a matter that had passed by; I did not hear the ladies request them not to flog Sumner; the only threat that I heard against Sumner was from Dalton, who said that "he was going to whip him;" Dr. Blake's office is 136 Shawmut Avenue, in sight of No. 84; I staid there till about 5 o'clock, and then went to Coburn's house in company with Dr. Blake; I rang the bell and the cook let me in; I went into the sitting room, and Miss Adeline Coburn and the nurse were in the room; I had been there a few moments, when I heard a scuffle upon the stairs, and presently I saw Coburn, Dalton and Sumner coming down stairs; I did not see them sufficiently to recognize them, but I knew that it was them; Miss Adeline Coburn had told me that Sumner was in the house, and I supposed that it was him and Coburn and Dalton who came down stairs; they came down together, and, I think, were abreast of each other; did not hear them say anything; I was standing in the door-way of the sitting-room; when they got to the foot of the stairs, Mr. Sumner attempted to get out of the front door; he went towards the door, and Coburn and Dalton pulled him along the entry, and went down the basement stairs into the basement; the scuffle in the entry lasted three or four minutes; I cannot say where they went into the basement; all I know is that they told me they took him into the wash-room; I went to the head of the basement stairs and thought by the noise that they were in the furnace room or entry; I heard scuffling and loud talking down stairs; I heard Mr. Dalton ask Sumner if he would ever recognize or go with a married woman again? he said he never would if they wouldn't hurt him; I cannot recollect whether he said "if tehy wouldn't hurt him," or "wouldn't hurt him then;" think he said—"if they wouldn't hurt him;" I also thought that I heard the sound of blows; cannot tell how often I heard the sound of blows; think it was not more than two or three times; they were not down there more than five minutes; the noise continued all the time that they were in the basement; I thought that the scuffling was in the furnace room, and that the parties went towards the back part of the house; when Dalton came up from the basement he was in his shirt sleeves; I was in the front entry when he came up; he went up stairs; I did not see him go to the front door in his shirt sleeves; he might have done so, but I think he did not.

Before concluding the direct examination of this witness, the Court at 6 o'clock, adjourned until this (Friday) morning at 9 o'clock.

SECOND DAY.

FRIDAY, Jan. 25.—The Court came in at 9 o'clock this morning, and the examination of government witnesses was resumed.

Henry Flanders' direct examination resumed.—I did not hear any exclamations before the parties came down stairs; they were on the front stairs when I first heard an outcry of women screaming and screeching; I did not hear them utter any words; they were on the first flight when the cries commenced; I do not recollect any words spoken on the stairs; did not hear any exclamations from females down stairs; there were no females in the basement to my knowledge.

Question—Did you, at any time, hear the words, "oh don't, you'll kill me?"

Objected to but overruled.

Answer—I do not recollect of hearing such words used by any body in the basement.

Q.—Did you hear that cry up stairs?

A.—I did not.

I heard people outside of the house while the noise was going on up stairs; heard somebody at the door; this was after the parties had gone down stairs; I was in the entry at the time; do not recollect that I heard the bell ring.

Q.—Why did you not open the door?

A.—I didn't think of it.

Q.—Did any person think of it?

A.—I think not; I did not hear any direction given by either of the defendants not to have the door opened; have no knowledge of the windows and doors being fastened especially for this occasion; there was a continual outcry from up stairs while I stood in the entry; after the affair was over in the basement I saw Coburn and Dalton come up; I saw no person in their shirt sleeves besides Mr. Dalton; did not see any more of Sumner after he went down stairs; Coburn and Dalton went up stairs to Mrs. Coburn's chamber, and I went up with them; I saw no blows inflicted in the basement; I did not see either of the defendants inflict any blows on Sumner; I did not see anything done in the basement; I only heard the noise; Dr. Blake, Miss Adeline Coburn, Mrs. Coburn, Miss Adelaide, a cook and a nurse, whose names I do not recollect, were in the house at the time; the cook and nurse were in Court yesterday; I did not see any other male persons in the house than the defendants, Sumner, Dr. Blake and myself; if any person had gone into the basement after the parties went down, I should have seen them; I did not see any person in the basement; I did not see any person go into the basement before they went down; Dr. Blake, the cook, the nurse, Miss Adeline Coburn and myself were the only persons on the first floor while the parties were in the basement; Adeline went up stairs after they passed down, the nurse stood in the entry; Dr. Blake went up stairs when the noise commenced up stairs; did not see him after the parties came down stairs.

Q.—Did you hear, proceeding from any room on the floor where you stood, the cry of "Oh, don't! you 'll kill me?"

A.—Don't think I did. When I went up to Mrs. Coburn's room, Mrs. Dalton and Coburn, Miss Adeline Coburn, Dr. Blake,

Mr. Coburn and the nurse were in the room; think Mr. Dalton was there also; I followed Coburn and Dalton into the chamber; the above parties were all that I saw in the room.

Q.—Was any thing said there about the affair which had transpired in the basement?

A.—I do not recollect what was said; I think they did not make any reference to what they had done. I think Mrs. Dalton said she thought "they had whipped him too severe;" she addressed this language to Mr. Dalton, and I think that she referred to him; I do not recollect that Mr. Dalton made any reply; think that no reply was made.

Q.—Did they make any answer that time and allude to it and to Mr. Porter?

A.—I do not recollect; think they did not.

Q.—What did they say to you after they came out of the basement?

A.—They said that they had given him a good flogging; I think they said this while on the way up stairs to Mrs. Coburn's chamber; think both of them said "we have given him a good flogging."

Q.—Did they say anything about the fence in the back yard in this connection?

A.—I thing they told me afterwards that they had put him over the fence of the back yard; they said that they had put him out the back way and made him jump over the fence; they said that they pulled him back while he was on the fence and struck him again; both, I think, said this.

Q.—Did they state with what they flogged him?

A.—With their hands and fists; this had reference to all they had done; they said nothing about kicking him, or of having any instruments in their hands; they said nothing about having pushed his head against a brick wall; they said nothing about pushing his head against any thing when he stooped down to pick up his cap; I did not see any implements or instruments in their hands while I was in the house; I heard kicking at the front door while they were in the basement.

Cross-examined by Mr. Parker.—I have been in the habit of coming to town once a week; I had no special business in town on the 17th Nov.; I had no work, and so came in; I usually called at my uncle's when I came in town; I had a particular object in calling at the house that day; it was about money affairs; I called principally to see Mr. and Mrs. Coburn; there was no particular intimacy between myself and Miss Adelaide Coburn; I usually inquired for Mr. Coburn when I called at the house; when I went to the house first I had some business, and not finding Mr. Coburn, I started to go down in town; I did not expect to witness any trouble at the house when I came in town; I first heard of the trouble when I met Mr. Coburn on Washington street; he told me about the affair with Porter when we went back to the house; I was not there by any design to meet Sumner; I did not stop at Dr. Blake's at the request of anybody; I stopped there of my own accord; there was no agreement to return to the house at 5 o'clock; Dr. Blake and myself returned to the house together; I believe that Dr. Blake had a professional appointment at 5 o'clock to visit the house; he told me so afterwards; I made no agreement with Dr. Blake to go to the house at 5 o'cl'k; I think that it was my intention not to return; did not think of going back to the house until after I left the office of Dr. Blake; in going to the depot from Dr. Blake's I was obliged to pass the house of Coburn; I cannot recollect when I first thought of returning to the house; we went into the house together and passed into the sitting-room.

Q.—Was anything said by either of the defendants to the effect that they did not intend to whip Sumner so badly as they had Porter?

A.—Think they said that Porter had got the worst whipping. I did not see any cowhide in the afternoon; they said that they had whipped Sumner with their hands; do not recollect that they said Sumner, in getting over the fence, fell among some rubbish on the other side.

To Mr. Dana.—I was in the habit of spending Saturday and Sunday nights at the house of Mr. Coburn; I had previously written to Mr. Coburn about some money matters, as I expected shortly to be married.

Q.—Did you come to town that day, in pursuance of an appointment made in the letter?

Objeeted to, but overruled.

A.—I think I did; it was about borrowing money; I first went to Coburn's house, and not finding him there, I started for his place of business again, when I met both of the defendants in the street; they were then going to the house, and I went back with them for the purpose of arranging my business; I did not arrange my business; Mr. Coburn said he had received my letter; when Dr. Blake left his office he was going to see Mrs. Coburn on a professional visit.

Q. by Mr. Cooley—Had you any thing to do with chastising Mr. Sumner?

A.—No sir.

Q.—Were you asked by either of them to participate in it?

A.—No sir.

Q. by Mr. Parker—Did you intend to have any thing to do with the flogging?

A.—I did not.

Samuel C. Blake, called.—I reside at No. 136 Shawmut avenue; my office is at the same place; Mr. Coburn lives No. 84 same avenue; I know the house; I was there on the 17th Nov. last; I was there twice on that day; the first time, I think, was near one o'clock; at that time I saw Mrs. Coburn, Mrs. Dalton and Miss Adeline Coburn; before I left the house, Mr. Coburn, Dalton and Flanders came in; I went to the house professionally; Mrs. Coburn was sick and confined to her bed; she was in an excited state and very nervous; I was informed that she had fainted away during the excitement of the Porter affair; she said that she had fallen down and hurt her side; she complained of her side very much; Coburn and Dalton came into the chamber; I do not recollect that I heard any conversation about Sumner that time in the chamber; they spoke of Sumner as I left the house; I cannot give their exact words; Coburn and Dalton were conversing about Sumner, and gave me to understand that they were going in pursuit of him to chastise him for improper intimacy with Mrs. Dalton; they said that they should get him to the house if they could, but they

were not certain that they should find him, as he lived out of town; they said that they should chastise him if they got him to the house; if they did not get him to the house they should chastise him wherever they found him; they did not state in what manner they should chastise him; this was all that they said at the time; this was about 3 o'clock; I cannot say how long I was in the house; there was a great deal of excitement in the house about the Porter affair; Coburn and Dalton, when they left the house, went down towards Dover street; Mr. Flanders was with me at the time; I went back to the house between 5 and 6 o'clock to meet an engagement with Mrs. Coburn; I am very certain that it was after 5 o'clock; Mr. Flanders went with me to the house; when I got there I rang the bell, and was admitted by one of the servants; I stepped into the sitting-room, and saw the nurse with a babe in her arms; a few moments after I heard violent screams from the chamber overhead; do not remember any particular exclamations, nothing but frightful screams; I immediately went up stairs; as I passed up three persons passed by me very rapidly; I did not recognize these persons; I could not say that they had hold of each other; there was no light in the entry; there was sufficient light to have recognised them if I had stopped to look at them; they passed by me very rapidly; the figures of two of the persons corresponded very well with those of Coburn and Dalton; I had not seen Mr. Sumner previously; I did not know there was such a man until that day when they spoke of him to me; I cannot say that Sumner was pulled down; I did not see them after they passed down; when I got up stairs I found Mrs. Coburn lying on the bath-room floor, at the head of the stairs; she was insensible; Mrs. Dalton stood in the door of her own chamber; I took Mrs. Coburn up and laid her in her own bed in the front chamber; Miss Adeline Coburn stood in the entry near her chamber door; she and Mrs. Dalton were screaming; afterwards Coburn and Dalton came up stairs into Mrs. Coburn's chamber; Mr. Flanders, I think, came up after them; he was in the room when I saw him; before they came up, I was occupied in applying restoratives to Mrs. Coburn; she had not recovered when they came up; she was not aware what she was about; I did not hear any noise down stairs while administering to her relief; I did not hear the cry of murder, nor any distinct exclamations at any time; I did not see any body pull up the curtains; it might have been done while I was attending to Mrs. Coburn; if anything had been said in the chamber, I think I should have heard it; Mrs. Dalton and Adeline Coburn were in the room with Mrs. Coburn and myself, before the others came up; I think that I saw Miss Adelaide Coburn in the house some time after; I first saw Adeline Coburn in the back chamber; she came into Mrs. C.'s room, and was there most of the time; she and Mrs. Dalton assisted me in helping Mrs. Coburn; Mrs. Dalton did not do much of any thing but scream; she was very much excited; when Mr. Dalton came up stairs I think he was in his shirt sleeves; Mr. Coburn had his coat on; I think that the three parties who passed me on the stairs had their coats on; after Coburn and Dalton came up stairs, one or both of them said that they had chastised Sumner, but that they had not flogged him so bodly as Porter, because they thought he did not deserve it so much; they said they had used some instrument in chastising Porter, but had not done so in Sumner's case because he was not so guilty; this was the reason which they gave for not using any instrument in flogging Sumner.

Q.—Did they use any profane words in connection with the thrashing of Sumner?

A.—I do not remember any particular words; they seemed to be satisfied with the result of the operation, or expressed themselves in general terms; they expressly stated that they had not used anything but nature's weapons in flogging Sumner; they did not say that they had pushed him against any wall.

Q.—Did they say anything about his getting over the fence?

A.—They said that they gave him the exit by the back way because they thought he did not deserve to go out the front way; they said that they pulled him back, and my impression is that they said they struck him then.

Q.—Where did they say that they chastised him?

A.—I think that they said it was in the basement, below the front entry.

To Mr. Parker—I do not remember of hearing them mention the wash-room.

To Mr. Cooley—I do not remember that they said they gave him a severe flogging; think they did not use any particular adjective, but said they had given him a severe whipping; this was said in answer to a remark made by Mrs. Dalton, who thought they had flogged Sumner too severely for the offence; I stayed in the room about an hour; I think that Mr. Dalton asked me to go down and speak to the crowd at the door; I went down and spoke to one or two persons, and tried to persuade them to leave; I did not go down in my shirt sleeves to the door, in the evening, when I visited the house, Coburn and Dalton talked about the attack on Sumner, and reiterated what they had said before; I was present when the officers came into the sitting-room; Coburn spoke to the officers and alluded to both Porter and Sumner; Richardson conducted the conversation; I think Coburn said that "two men had taken improper liberties with their wives, and they had given them a d—d thrashing;" one officer said they had served them right; in speaking of the affair to me, Mr. Coburn spoke of spraining his thumb in the affray with Sumner; cannot recollect that he said he sprained his thumb in beating Sumner.

Cross Ex. by Mr. Parker—I have visited the house frequently; there is a sky-light over the stairs; think it was sundown when I went into the house in the afternoon; did not hear any exclamations when the persons passed me on the stairs; I was at Mrs. Dalton's wedding in the month of July previous; Mrs. Coburn is the eldest sister, and has a child, which was born last February; the interval of time that elapsed after they passed me on the stairs and came back to the chamber was very short; it seemed to me as if they had

just about time enough to go down stairs to the back yard and come back again; I did not see any instruments in the hands of the parties; I did not see any coat on Mr. Dalton when he returned up stairs; I heard no screams by male voices; I was not there by any design other than to see Mrs. Coburn; I was not requested to go there for any other purpose than professionally; I did not expect to meet Sumner in the house; I first learned from the nurse that Sumner was in the house; the first recollection that I have of seeing Adeline Coburn was in the front chamber; it is customary to have the front door locked by a catch; I have been in the basement of the house; I went to the Hospital on the 17th Nov. to witness surgical operations.

Chas. B. Whiton, called.—I am of the firm of John Gove & Co.; I know Mr. Dalton; he is of the firm of W. S. Mudgett & Co.; previous to the first of December I was in a store in Federal street, and Mr. Dalton came in; he then mentioned that he thought of bringing a suit against Mr. Sumner; I told him that Sumner could retaliate and bring a suit against him; he said that Sumner could only bring a suit for assault and battery, as he only beat him with his fists.

[This witness was not cross-examined by the defence.]

Margaret Weare, called.—On the 17th November last I lived with Mr. Coburn, as a cook, at No. 84 Shawmut avenue; I remember the affair of Porter's on that day; it took place between twelve and one o'clock; after Porter left the house, Mr. Dalton came into the kitchen and told me that if another young man should come, to let him in; I cannot remember that he gave his name; he told me to show him in when he come; I told him "No, I would not, if they were going to beat him as they did the other young man"; Mr. Dalton said "they were not going to beat him, but give him a good talking to"; about an hour or more after that a carriage came to the door.

Q.—Was it after dinner?

A.—We had no dinner at all that day. [Considerable laughter in Court.]

When the carriage came, I saw Mr. Coburn, Mr. Dalton and another young gentleman come in at the door; I was in the kitchen at the time, and the door was open; there is a door midway of the entry, which divides it; when it is shut, you cannot see from one end to the other; it was open at the time they came in; they went into the sitting-room, and afterwards they went up stairs; I did not learn the name of Sumner while he was there; I did after he left the house; I was standing in the kitchen when they went up stairs; they stopped in the sitting-room a few minutes only; I could distinguish Sumner from Coburn and Dalton because he was so much smaller; there was no lamp lighted in the house; about five minutes after they went up stairs I heard a screaming by the ladies up stairs; I did not know whether it was Mrs Coburn or Mrs. Dalton that screamed; they both cry alike; [smiling in Court] I remained in the kitchen, and was not able to hear any words; the next that I saw was three persons near the front entry door; these were Coburn, Dalton and Sumner; I did not see anybody have hold of Sumner; they were scuffling, but I did not see either of them try to go out of the front door; I went back into the kitchen, not thinking that they were going to do anything to him; I closed the kitchen door when I went back; I did not see where they went after that; I next heard some scuffling in the basement; when I heard this noise I went to the dining room door, and I judged that the scuffling was in the wash-room; the noise was quite loud; I heard somebody down stairs ask forgiveness, and say he would never do so again.

Q.—What did you hear about killing? Objected to and ruled out.

W.—I did not hear any thing said by the boy (Sumner.)

Mr. Cooley asked leave to put a leading question, as the witness had forgotten her testimony given before the Grand Jury. The request was ruled to be improper.

Q.—Did you hear any expression indicating the injury done to the party?

A.—No, sir. I cannot recollect any other expression.

Q.—Do you recollect this boy telling any person "not to kill him; his cousin had brought him there?"

A.—No, sir.

Q.—Do you remember having testified on this subject before?

A.—Yes, sir. Witness described the Grand Jury room.

Q.—Do you recollect saying something upon the subject of killing, at that time?

A.—No, sir, I do not. The boy down stairs asked their forgiveness, and said he would not have been there if his cousin (Porter) had not brought him into the scrape. I did not hear him use the word "kill;" I did not see any instrument in the hands of the parties; the scuffling down stairs lasted about five minntes; Mary, the nurse, was in the sitting room at the time, and crying; I cried myself and halloed that they were going to kill him; [this was ruled out.]

Q.—Did you use the expression "oh, don't, you'll kill him?"

A.—I couldn't say that I said it. I did not see Sumner taken into the back yard; did not see Coburn and Dalton come up stairs.

Q.—Did you hear the nurse or any body on that floor say "oh, don't, you'll kill me?"

A.—I did not; about half an hour afterwards Mr. Dalton came into the kitchen, and I said to him, "You beat him, after all;" he replied, "He made more noise than he was hurt;" Mr. Dalton did not live in the house; he came there with his wife the night previous; they went away on Sunday, the 18th, the day after the flogging; Dalton, Coburn, Flanders, and Sumner, were all the male persons that I saw in the house at the time; Dalton had his coat on when he came into the kitchen, after the affair with Sumner; there are two doors leading into the back yard; the only way of getting into the back yard is by the door from the street, the door of the furnace-room opening into the archway, and the door of the wash-room; I did not go up stairs while Sumner was in the house; I did not know where Adeline Coburn was when the scuffle took place down stairs.

Cross-examined by Mr. Dana.—The door of the wash-room is always fastened except on washing days; the windows in the wash-

room are always fastened; the door of the archway is generally unlocked; the windows of the furnace-room looking out into the back yard are always fastened, also the door of the furnace-room opening into the archway; I had no orders to fasten the doors or windows on that day; the regular way to get into the back yard from the first floor is to go down stairs, pass along the entry to the wash-room and out of the wash-room door; when the persons were scuffling down stairs, I did not hear anybody say anything about beating or killing; I heard one person say, "If you 'll forgive me, I will not do so again—my cousin led me into it"; I might have made use of the expression, "You 'll kill him"; if I said anything, I said "Oh, don't! they are going to kill him"; I said this to Mary, because I was frightened, and not because I really thought or had heard that they would kill him.

To Mr. Cooley—I had never seen Mr. Sumner before.

Dr. John D. Hill, called.—I knew Wm. Sumner; he resided at Milton Upper Mills, at a place called Brush Hill Turnpike; he came to my office on Friday subsequent to the 17th Nov. last; he came to my office at 2 P. M., and stayed about half an hour; he was very warmly clad, and had his coat collar turned up, so that I did not recognize him when he first came in; when he came in he appeared dejected, so much so that I noticed it particularly; he laid down on my lounge and put his hands up to his head; he appeared to be suffering; I noticed a black and blue mark under his left eye, and as I approached him I saw that the wounds extended back to his ear; I brushed his hair back and my hand touched the soft part of his neck; he said that the touch hurt him; his neck was swollen under his ear; the bruise covered the posteior half of the ear, and it appeared to have been made by a direct blow which descended to the neck, and could not have been given by the fist; it was in a perfectly direct line across the ear, and extended down two or three inches; there was more of a redness on the neck than marks of any bruise; the color of the mark under the ear was very dark, the same as on the head; tke mark under the left eye was circular in shape, and the skin had been broken; the extent of the blow was well defined by the rupture of the skin; my impression is that the eye itself was not swollen, but the lower lid was so much swollen as to partly cover the surface of the eye; raising my hand by the side of his head, I passed it over his left shoulder, and he complained of the tendons hurting him; there was no discoloration on his left shoulder; I then passed my hand over his chest, and he complained of that hurting him, and of soreness there; I then passed my hand over the region of the pit of his stomach, and he shrunk from the touch immediately; he complained of being unable to eat anything, and said he could not keep his food in his stomach, and had vomited a great deal since, Saturday, the 17th; he also complained of a stiffness in his lower jaw, and had to bear it down with his fingers so as to swallow; he said that he noticed this on Saturday night (the 17th) when he was drinking tea. These were the only injuries that I noticed. I had known him intimately for six months previous, and he always appeared to enjoy excellent health; he attended the same academy that my office was in, and I saw him very frequently; his general appearance denoted very good health; I might have seen him on the 17th; I saw him immediately preceding that day; his appearance then was the same as always, and there were no signs of injuries about him.

[The Court here took a recess until 3 1-2 o'clock.]

AFTERNOON.

The Court came in at 3 1-2 o'clock, and the examination was resumed.

Dr. John D. Hill, re-called—I did not see Sumner again until after his decease, on the day he was buried; I was at his funeral and saw the body; I observed that the mark under the eye was about the same; the mark on the ear was not so bad; there was a discoloration on the neck; I should thing that a wound from an ordinary blow with the fist would not remain discolored for so long a time; a blow from the fist would not have made so well defined a mark, it would be more diffuse and have various shades of color; the blow under the eye was very deep and appeared to have been given by some instrument; Mr. Sumner was not related to me.

Cross examined by Mr. Parker—Mr. Sumner was never a patient of mine; he did not ask me for a professional examination; I made it voluntarily; I was a witness in the Police Court; I was the last witness examined; I made a statement to Mr. Porter, and he informed the District Attorney of my statement, and I was called; I have been a practiceing physician since 1850; I confined myself to general practice until within a year; since then I have confined my practice to diseases of the urinary organs, and have advertised myself in the newspapers; I have abandoned general practice in medicine.

Q.—Is this your advertisement in the *Bee*? Objected to on the ground that the witness had been called for the purpose of proving the extent of the injuries on Sumner and not their effects. The question was ruled in as admissible.

A.—It is my advertisement. Mr. Parker then read the advertisement in the *Bee* of the 19th October, in which the Doctor announces that he has abandoned general practice and now confines himself to diseases of the urinary organs.

I did not testify in the Police Court that the skin under the eye was broken, for the reason that I did not think of it; cannot say that I remember when the thought first occurred to me; when the skin was broken it would have bled a little and left a scab; the mark under the eye was apparent when the body was in the coffin; cannot say that the mark of the broken skin would be apparent to the medical men who examined the body; I am not intimately acquainted with Mr. Porter; I spoke to him about the matter because he was the nearest person to me; I was not invited to the funeral, but went as a friend; I am acquainted with the brothers of Sumner; my recollection has been refreshed since I was examined in the Police Court; I have not had any conversation with the family of Sumner about the flogging.

To Mr. Dana—At the time I saw the

wound under the eye, when Sumner called at my office, the skin had united; there might have been a scab under the eye then, but I did not notice it; I think blood must have passed from the wound; the cut was so direct and straight that I think the blow was severe enough to draw blood, perhaps very slightly; the blow must have been given by an instrument; it could not have been produced by a blow of the fist.

Mr. Cooley objected to the last answer,and it was ruled out.

To Mr. Dana—I think that a blow from the fist would produce a more diffused discoloration, and for this reason I think that the blow was not given by the fist; the mark on the ear was not so deep as under the eye; the glands under the ear were marked by a slight redness; he complained of a difficulty in opening his mouth and in swallowing; I mean to say that he complained of a difficulty in opening his mouth, and not any difficulty in swallowing; I do not mean that he could not swallow except with difficulty; he said he first felt the stiffness in his lower jaw while taking tea on the night of the 17th November; Mr. Sumner attended the Boston Mercantile Academy; my acquaintance began the latter part of last winter, and I became quite intimate with him; I first heard of the flogging affair two or three hours before he called at my office on the 23d November; I might have seen him a week previous; I cannot tell whether I had seen him at any interval between; the 23d was the first time that I saw any injury upon him; on thə 23d he said very little about the affair; he alluded to it, spoke of the defendants, and said, "I suppose you have heard of it."

S. Henry Stone called.—I am a merchant in Kilby street; on the 17th November last I met Mr. Sumner at Mr. Porter's office about 2 o'clock; Porter's office is 10 Railroad Exchange; I went to the office to see Mr. Porter on business; Sumner was then writing at his table; Mr. Porter was out; that evening Mr. Porter came to me and mentioned his affair, and in that way I fix the date; I had seen Sumner before; at that time I saw no signs of injuries on Sumner's person; I had some conversation with him, and had a full view of his face; I cannot fix the day when I next saw Sumner; it was after the examination of Porter's assault case; think it was on the Thursday following, at Mr. Porter's office; it was some day of the week following Porter's assault case in the Police Court; the last time I saw him in Porter's office was in the latter part of the afternoon; did not observe the clothing he had on; he showed me some bruises on his person; he had a mark under his left eye, also his left ear; I know it was his left ear from the position in which he was standing; did not see the extent of the discoloration on the ear because he turned it over; he had a piece of court-plaster on the mark under his eye; my attention was not called to his neck; his eye was black; I stayed in the office fifteen minutes; the swelling behind the ear was of considerable extent; I did not notice that he had any difficulty in breathing, but he said that he was troubled to get a long breath.

Cross-examined by Mr. Parker.—I saw Sumner twice after the assault, at Mr. Porter's office; I do not know that he had any business there; Mr. Porter was present both times; the assault was discussed, and more or less said about making complaints against Coburn and Dalton for the assault on Sumner; Sumner was advised by many people in the office to prosecute, but I heard no decision upon the matter; a great many people came in the office; his friends generally advised him to prosecute; I did not go to the office by appointment, nor with the expectation of seeing Sumner; I am not acquainted with Dr. Hill; after the interviews with Sumner in Porter's office, I did not see him alive; I went to his funeral.

To Mr. Cooley—I went to the funeral by invitation; Mr. Porter is cousin to Mr. Sumner.

Mary Hunter, called.—I lived with Mr. Coburn, 84 Shawmut Avenue, in Nov. last; I was employed to take care of Mrs. Coburn's child; I was in the house when Mr. Coburn, Mr. Dalton and Mr. Sumner came in; I was in the chamber where I generally sat when they came in; I went out shortly after they came in and went up stairs to my own room; I did not see them down stairs; I went down stairs a short time after; I stood in the front entry when Coburn, Dalton and Sumner came down stairs; I did not see them doing any thing; they were so close together I could not see what they done; I heard scuffling in the entry; I went into the kitchen and cannot tell where they went to from the entry; I did not hear any noise down below; I returned to the entry in a few minutes to see if I could observe what was going on; when I got into the entry I heard a noise of scuffling down stairs; I think that they were in the wash-room and the entry down stairs; the scuffling down stairs lasted three or four minutes; I heard no sound of blows; did not hear any person cry "oh, don't, you'll kill me;" I did not say it myself.

Q.—Did you hear any person say "Don't do so?" Objected to as a leading question and ruled out.

I did not hear any body say "Oh don't," or "Don't do so;" I saw several persons on that floor; I did not see Mrs. Coburn down stairs while I was there; I did not see Adelaide Coburn in the house until evening; I was not in the house all day; I heard cries up stairs, but no words; I saw Mr. Flanders in the house; I did not hear any kicking, but heard a noise at the front door and outside of the house.

Cross-examiued by *Mr. Dana*.—Mrs. Coburn's child will be one year old on the 17th of next month; I was in the chamber with Dalton, Coburn, Sumner and the ladies about three minutes; when Mr. Sumner came in he said, "How do you do, Nelly?" and held out his hand. She made him no answer, and gave his hand a slap; Nelly is Mrs. Dalton; I went right out; afterwards I heard Mr. Sumner say he was not the cause of it, he was very sorry for it, and his cousin had drawn him into it; this was all I heard him say; I went out to take care of the baby; I did not hear any more words while they were in the basement; the cries up stairs were made by the women; I heard no other; I had seen Mr. Sumner before in Mr. Coburn's house—about a week before; I opened the door and let him in once, and at another time I saw him going out; once was on a Satur-

day, but I cannot tell what day the ether was; he came in the forenoon, between breakfast-time and dinner; I let him in at his second visit; Mr. Coburn and Mr. Dalton were not in the house; when I let him in he asked if Mrs. Dalton was in, and I told him she was, and showed him into the sitting-oom; I went up stairs and told Mrs. Dalton that a gentleman wished to see her, and she went down into the sitting-room; I knew Mr. Sumnor by name then; Mrs. Dalton told me his name the first time that he came to the house; Mrs. Dalton had a dressmaker up stairs named Lucas when he came the second time; at his first visit I looked out of the window and saw him, and then I asked Mrs. Dalton who he was, and she told me it was Mr. Sumner; Mr. Sumner stayed in the house about an hour at each visit; when he called the second time I told her who it was; Mrs. Dalton did not live in the house; the first time that he called Mrs. Dalton had just come in the house to make a visit; the front door has a catch-lock; the doors and windows in the wash-room are generally locked; I saw Sumner after he got over the fence; he was stooping down to pick up his hat which, I thought, had fallen off when he jumped over the fence; he was then in an open space leading to Waltham street; I do not know how he got over the fence, or whether he fell in getting over; I did not see Coburn or Dalton in the back yard at the time, and did not hear their voices there.

To Mr. Cooley—Sumner was standing on the other side of the fence at the back side of the yard.

[A plan of the house and fence was shown to the witness, and she described the fence that Sumner got over as the one facing Waltham street.]

To the Foreman of the Jury — In getting over the fence he got into another man's yard and there was an alley way from this yard leading to Waltham street.

To *Mr. Cooley*.—There is no fence around the yard adjoining on the northerly side; it leads right out into Waltham street; I can see into this yard from the kitchen windows; I do not know where Coburn and Dalton were when I saw Sumner picking up his hat; I looked out the kitchen side window when I saw Sumner; nobody was there for him to run away from after he got over the fence; Coburn and Dalton were not in the yard; nobody has talked with me about the matter; the next day I told Mrs. Coburn and Mrs. Dalton that I saw Sumner over the fence; I have had no conversation about the affair except on that day to Mrs. Coburn and Mrs. Dalton.

Q.—Did you hear Sumner say, "Oh, don't do so, you'll kill me?"

A.—I did not hear any such thing.

The Court here adjourned until 9 1-4 o'clock Saturday morning.

TIHRD DAY.

SATURDAY, Jan. 26.—The Court came in at 9 1-4 o'clock, and in the absence of several witnesses to prove the assault, Mr. Cooley asked leave to introduce medical testimony in regard to the autopsy on the body of Sumner, and afterwards recall the witnesses for the purpose of their opinions of the cause of the death.

Mr. Parker objected, and he was sustained by the Court.

Josiah Porter, called—I am an attorney—reside in Cambridge; I was in the habit of visiting Fera's saloon in West street with my cousin, Wm. Sumner; our first visit there was two or three weeks previous to the 17th November last; my cousin was precisely my height; he was shorter than either of the defendants; he was fuller and more rounded than Mr. Coburn, and perhaps of about the same height; I never visited Fera's saloon with any other person of the name of Sumner; I was at the house of Mr. Coburn on the 17th November, about 1 o'clock in the afternoon, and received severe injuries there.

Q.—From whom did you receive the injuries? [Objected to as irrelevant. Objection overruled.]

A.—By Coburn and Dalton, the defendants here.

Q.—Did you see Sumner on the 17th November last?

A.—Yes, sir. I did not see him the day before, but within a day or two; he then appeared to be in sound health, and I saw no signs of injuries upon him; I saw him on the Thursday and Friday succeeding the 17th; Mr. Stone was at my office on Thursday following the 17th; Mr. Sumner then had the mark alluded to under his left eye, and he called my attention to the mark on his ear, and complained of a pain in his chest; I saw nothing further on his head; I merely noticed the discoloration on both of his ears; I did not see any discoloration except on the ears; there might have been some behind the ear, but I did not notice any; he was warmly clad for the season; had on a winter overcoat and a felt hat; one day when he came in he had a white handkerchief over his left eye; he took it off when he came in; I did not observe any swelling over the eye, nor any behind the ear; I visited Fera's shop once or twice a week for three weeks prior to the 17th.

Cross-examined by Mr. Dana.—I had known Sumner for a long time, and since I had opened my office, last summer, he was in the habit of calling quite regularly; before that time he visited my house quite often, but not regularly; we had grown intimate after I opened my office, and he made me a confidant; we went to the saloon sometimes by appointment with Mrs. Coburn and Mrs. Dalton.

Mr. Cooley objected to this line of interrogating the witness. Mr. Dana thought that the largest latitude should be allowed the defence; and, as this witness was called as an important one for the government, he wished to show the peculiar complicity of the witness and the deceased in the affairs preceding the assaults. He wished to prove that Porter was a biased witness. Mr. Parker also stated that the defence wished to show by this witness the amount of provocation.

The Court ruled that it is was immaterial to prove any provocation at this stage of the trial.

Mr. Dana said they did not wish to show what provocation was given by Porter, but only to find out whether the witness had not had a quarrel with the defendants.

Mr. Cooley said that this question should

be met at the outset. Any evidence which tends to establish inferentially the bias of a witness, is inadmissible. In regard to this matter, if such testimony is admitted the defence can go into an investigation of the whole lives of the witness and the deceased, and he therefore objected to it.

Mr. Dana thought that the jury could distinguish what evidence was pertinent to prove the bias of the witness, and the Court would see that the jury did not misapply it. We may show the amount of hostility of the witness against the defendants, and that he has already commenced a suit against them for assault and battery. We have a right to show how far the witness is biased on account of the alleged fact that the assault was made upon him and Sumner because they had taken improper liberties with the wives of the defendants. If we are allowed to examine the witness upon this point, we can show that the witness and Sumner were equally involved in the matters which led to the assault upon them, and further that the witness has strong reasons to conceal as much as possible of the transactions.

Mr. Cooley replied that the bias must be such as to prove that it has a connection with the subject matter testified to. The government had gone no further than to prove by the witness the identification of Sumner and his visits to Fera's shop, and he therefore objected to any further cross-examination than that which referred to the subject matter introduced by the government. All other testimony would be illegal. He then asked what possible bias could exist in the testimony of the witness that Sumner went to Fera's shop; that Sumner called at his office and showed him his wounds? There could not be any bias in this, and if there was it would not influence the minds of the jury. I have no right to yield the security of the law, as a public prosecutor. If I was allowed to use my sympathies, it might be another thing. Because the defence impute that a bias existed at the time of the assault, they have no right to go into an examination of other matters.

The Court stated that there were two streams of testimony running side by side,—one legal and the other illegal. Great care must be taken to prevent the mingling of those streams together, because they could not be separated thereafter. The Court then ruled that the defence might show what concert existed between the witness and the deceased in all the ordinary affairs of life, but not any thing relating to the intimacy existing between them in the matter now under examination. The Court also ruled that the defence could not go further than to show a bias.

Cross-examination continued.—I have been to Fera's shop quite a number of times by appointment; nearly every time I went by appointment.

Q.—At those times did you go with any person besides Mr. Sumner? [Objected to, and sustained.]

I went there with Mr. Sumner most every time, but not by any appointment with Mr. Sumner; I was not in Fera's shop on the 17th Nov.; I made no appointment to go there on that day; I usually visited the shop with Sumner at about five o'clock in the afternoon.

The Court here ruled out all testimony which did not refer to joint and concerted action between the witness and Sumner.

Mr. Dana argued that, the fact that these parties went to Fera's shop together did show a joint action.

To the Court—We generally went to the shop together.

Q.—Did you go there by an appointment with Sumner, or by appointment with parties who are not to be named?

A.—I went there several times by an arrangement with Sumner, and sometimes by appointment to meet other parties. We sometimes met there by agreement in pursuance of appointments to meet other parties.

Q.—Did you go there by common agreement to meet other parties?

The Court ruled that this question had been answered affirmatively, and objected to any further examination on this point.

Q.—Had you been to ride with Mr. Sumner before this time? Objected to and overruled.

A.—I had been only once in a carriage with him for some three months previous; this was some time within one week of the 17th November; it may have been a day or two before, but I think not; we started from Court square; Mr. Sumner called for me at my office; we went from there to Cambridgeport and stopped; we went together there; we stopped in the street about five minutes; the stoppage was intentional.

Q.—What was the intention? Objected to.

Q.—Was it in pursuance of any arrangement? Objected to.

Mr. Dana thought that the question went to show one of the common-concerted actions between the parties, and was therefore admissible under the previous ruling of the Court.

The Court said that the utmost latitude would be allowed in the cross-examination, but it was useless to waste time by going into a geographical investigation of Cambridgeport. Ruled out.

W.—We stopped in Cambridgeport about five minutes, and then went to Brighton and stopped at a hotel there about fifteen minutes; we then returned to Boston and stopped near Shawmut avenue; it might have been on the corner of Shawmut avenue; I got out of the carriage there, and did not get in again; the coach then drove off with Mr. Sumner.

Q.—Did any body else get out of the carriage? [Ruled out.]

It was about six o'clock when I got out at Shawmut avenue; we left the city about 4 o'clock in the afternoon; during this ride Sumner and myself conversed together; we took some refreshments at the hotel in Brighton; I frequently rode with Sumner in the omnibuses, but not by any particular agreement; we generally rode to the South-End; we generally got out in the vicinity of Dover street; we had a particalar purpose in going up there; I did not live in that vicinity, nor did Sumner

Q.—Did you have a common purpose in going there to visit any body? [Ruled out.]

Q.—Do you know where Waltham street is? No. We used to get out near the park

we generally walked together when we got out of the omnibuses; we did not walk side by side but in the vicinity of each other, so near that we could speak together. we were not alone.

Q.—Who were the persons with you??—Ruled out.

Q.—Did you know about the movements of Sumner on the 17th.

A.—No, sir. I am acquainted with Mr. Stone; am not much acquainted with Dr. Hill; did not know that Sumner was acquainted with him.

[Witness was bere shown a letter which he identified as being in his own hand-writing. This letter was not put into the case.]

Q.—Did Mr. Sumner show you his correspondence ?

A.—Some of it. I do not recollect that I ever showed him mine. I don't remember of his ever showing me a letter until one day in a confectionary establishment; this was about three weeks previous to the 17th; he showed me a letter on one occasion afterwards; I think it was on the day of the ride or before the ride; I think that I met Sumner at Parker's, by appointment, after thc ride; I walked down town by going through Shamut avenue and down Washington street; this second letter was sent to him; he showed me one letter that he had written, and I think more; the letter that he showed me was in reply to one that he received first; the letters which he sent all referred to one person;I have seen Sumner's hand-writing.

[Witness was here shown a letter which he thought was in Sumner's hand-writing, and was written in his office.]

[The letter shown consisted of an amatory poem of Moore's, dedicated to "Nelly," by Sumner.]

W—I furnished the poem to Sumner, but did not assist him in getting it up; he did not read it to me after he had copied it; I think that I recollect he told me [witness was here stopped by the Court.]

Q.—Did he write any other letters in your office? Ruled out.

Q.—Was this correspondence alluded to of a business character? Ruled out.

Mr. Dana—Can we show that this correspondence was a confidential one between the parties? The Court refused permission on the ground that the contents of the letters were irrelevant.

Two letters were shown to witness, which he read through with considerable interest, and then asked for time to examine them.—He finally stated that he had seen one dated "Thursday, 15th, November," which resembled one of the letters now shown to and read by him. We are sorry to say that the witness did not read aloud. He thought that he had not before seen the other one shown him. The witness was about to make an explanation in regard to one of the letters, when Mr. Cooley put in a standing objection to all questions about particular letters,

To the Court—I do not wish to correct any of my testimony; I thought that an explanation would make the answer in regard to the letter better understood.

The Court then sustained the objection of Mr. Cooley.

Mr. Parker thought that they might go far enough to identify the letters, and the Court assented.

Another letter was put into the hands of the witness, and as it was not in the handwriting of witness, Mr. Cooley objected.

Mr. Dana stated that it was a letter which no other person living but the witness could identify, and it might be of service hereafter in the case.

The Court thought that such a letter could not be used in the case, but could not decide until it was introduced as part of the testimony.

Mr. Dana said it was the intention of the defence to put the letter in hereafter, and he assured the court that it did not refer to the degree of intimacy existing between any parties.

Mr. Parker further stated that the defence might show by the letter that Mr. Sumner had said he was but slightly injured.

The Court ruled that such would be heresay evidence, and therefore not admissible.

Mr. Dana stated to the Court that it was his present intention to offer the letter as proof of something else which had not been offered, and he only asked to have the letter identified now by the witness. The ground now stood upon, he said, was a very delicate one in the relations of counsel to clients and counsel to the Court. He wished to know if it was required of the defence to state their case, under the ruling of the Court, in order to obtain the admission of the letter as evidence. He could not now tell what bearing the letter may have in the case, and he did not think it right to his clients to develope the case for the defence at the present stage of the case, before the most material part of the government evidence had been offered.

Mr. Cooley thought that the defence should so far develope their case as to show the materiality of the letter as evidence, or else the letter should be ruled out. He had no objection to the defence proving that it was a genuine signature of the person who purports to write the letter; but he objected to their proving anything further in regard to the identity of the letter.

The Court decided that the defence might, upon their assurances that they intended to offer the letter as material evidence, now prove its identity.

Mr. Cooley renewed his objections, but they were overruled.

Q.—Did you ever see that letter before? Objected to, but overruled.

A —I think that I have seen it before; on looking over certain passages my impression is that I have seen it before; I think that I have seen the handwriting before.

Q.—Have you ever seen that letter in Mr. Sumner's possession ? Ruled out.

Q.—In whose handwriting is the letter? Objected to.

To the Court.—I do not, of my own knowledge, know the handwriting.

Q.—Has any person acknowledged to you that they wrote the letter ? Objected to.

Q.—Were you an attesting witness to the letter ?

A.—No, sir.

Q.—Is that the letter of the person by whom it purports to be signed ?

A.—The initials have a peculiar appearance; one is a little scratched, but the other looks natural; the letter is signed by two initials.

Q.—Do you know whose initials they are ? [Objected to, and ruled out.]

Q.—Have you ever seen that letter in the possession of Sumner ? [Ruled out.]

Q.—What do you mean by saying you don't know the hand-writing of your own knowledge ?

A.—I have been told——

The Court ruled that if a given person adopted that as his letter, it could not be admitted as the handwriting of the party who adopted it.

Mr. Dana stated that he was instructed that it was in the power of the defence to show that it was a letter of Mr. Sumner's, but not in his handwriting, and they wished to learn from the witness whether the initials are in the handwriting of Sumner, or whether he procured some person to write his initials.

Mr. Cooley objected, on the ground that any declarations made by Sumner in regard to his health could not be put in against the government as competent testimony, for the reason that they could not show under what circumstances it was written.

Court—The law is well settled upon the point of the admission of declarations, and it allows them to go further than the declarations to medical men by parties who decease.

The letter dated "Thursday, 15th Nov.," was then shown to witness, and he stated that the signature and body of the letter was in the same hand-writing.

Q.—Did any body whose signature is in the letter tell you whether it was his letter or not ? Ruled out.

Court—Did any body tell you that the letter was his ?

A.—No, sir.

Court—Did any body tell you that he got the letter written and adopted it as his?

A.—No, sir.

Q.—Did you ever see that letter in the possession of a person whose initials it bears?

A.—If I saw it at all it was in the hands of the person whose signature it bears.

Q.—Who was that person?

A.—If I saw it at all it was in Mr. Sumner's possession; my impression is that I have seen it before.

Q.—What is your best recollection of having seen it before? Objected to.

Court—Do you remember having seen that letter before?

A.—I think that I have; I recollect similar language; if I saw the letter before I did not read it through.

To Mr. Dana—I recollect language similar to language in the letter.

Q.—Do you think, upon the whole, that you saw that letter in Sumner's possession?

A.—I think I have seen a similar one; from my recollection of the general language of the letter and its character, my impression is that I have seen it before in the possession of Mr. Sumner.

Another letter was shown to the witness, and he stated that he thought it was in the same handwriting of the other.

Q.—Have you seen it in the possession of Mr. Sumner ?

A.—I don't think I have.

Q.—Did Mr. Sumner ever show you any gifts that he had ?

A.—He showed me a gold ring with a white stone in it, and marked with the letter D.

[The above question and answer were objected to and ruled out.]

Q.—Were you present at an interview between Mr. Stone and Mr. Sumner, in your office ?

A.—I was; the subject of prosecuting Coburn and Dalton for the assault on Sumner was referred to; Mr. Buckingham and Mr. Merrill were present; I have commenced a suit against Coburn and Dalton.

Rufus P. Sumner called—I am father of Wm. Sumner; reside at Milton Upper Mills; I am a farmer; the age of William was 20 years; he was 20 last September; he died on the 11th of December last; Mr. Porter was present at his funeral; cannot say that Dr. Hill was present, but I saw him looking at the corpse in the tomb; the funeral took place on the 13th Dec.; I do not recollect seeing Mr. Stone at the funeral; I am not acqcainted with Dr. Hill or Mr. Stone; my son came home injured on the 17th November; he came home at his usual hour in the evening; when he came into the house he had the appearance of a person injured; I saw that he was injured in the eye; the eye was inflamed, the skin was broken, and it bled a little; he had a handkerchief over it tied round his head; do not recollect whether his eye was swollen or not; there was a distinct mark on his eye; there was blood on his eye, and I cannot tell the color of it; the next morning the eye had swelled, and was of a dark red color; it grew darker in a few days, and appeared more like a black and blue eye; I did not observe any other injuries on his person on the night of the 17th; I did not examine to find any; I did not notice any other marks of injury; afterwards I did not examine him particularly, but some of the family did; his general appearance indicated that he was injured more than I knew of; he showed it by a loss of appetite and his spirits were not so lively as usual; in bathing his eye with camphor and other things every day for the first week; his mother and himself made the application; he made complaints of his stomach, face and left side of his neck; he complained of soreness in these parts; I do not know anything about his vomiting; I did not notice any mark behind his ear the first week; he nursed himself during that time; a week afterwards I saw a mark under his left ear similar to the mark under his eye; it was of a dark color like that of a bruise; the mark was about as wide as my finger, and an inch and a half in length; the second week after he was injured I saw a faint mark on his ear; it was a black and blue spot and covered the back part of the ear under his hair; I did not notice his neck particularly; I saw him bathing his neck at different times; after he was injured he laid down in the day time on the sofa quite frequently, and sometimes in the evening.

Two o'clock having arrived, the Court adjourned until Monday morning at 9 o'clock.

FOURTH DAY.

MONDAY, Jan. 28 —The Court came in at nine o'clock, precisely—and, after some consultation between the counsel, the examination of government witnesses was resumed. The second jury were dismissed for the term.

Rufus P. Sumner, called.—My occupation keeps me about the house most of the time; I have no knowledge of my son taking cold after he was injured; he usually went out well clad, and he never went out in extreme weather; I was at home all the time except one day, the 24th, when I was in Boston until three o'clock, P. M.; my work kept me about the house most of the time, and I was not away from my regular meals, except on the 24th; I was in and out of the house; I was in the house about three or four times each day, between meals, for most of the time after he was injured; my son never went away a great distance from the house, except once; he visited Boston once, on Thursday, the 22d Nov.; he left the house late in the forenoon, and went in the afternoon train, somewhere about one o'clock; I am sure it was not any later, it might have been the ten o'clock train in the forenoon, but I think it was not; my impression is that he also visited Boston on Friday, the 23d, but I did not know it at the time; the first time that he came in he had his coat on, and his mother tied a handkerchief about his head so as to cover his left eye and ear; I saw his mother tie the handkerchief to his head; his other dress was woollen, and he had on flannels; his coat had a velvet collar, and would cover his face and neck very well; it was not turned up while fixing to come in; the weather was pleasant but rather cold—not uncomfortably so; it was a sunny day; he returned home in the last train but one, about 6 1 4 o'clock; the depot is about a mile from the house, and I think that his youngest brother carried him down, but I cannot tell whether he brought him back or not; he had been in the habit of riding in Mrs. Hollingsworth's carriage; I don't know whether he rode from the depot home or not, on the 22d; I know from circumstances that he visited Boston on Friday; he was dressed the same as efore, I believe; when he returned he had on his overcoat and handkerchief; I did not notice that the collar of his coat was turned up when he returned home; on Friday he came home in the 6 o'clock train; I think that on Friday he left home in the 10 o'clock train; I saw him at home at 8 o'clock in the morning; at other times, after he was injured, he took his gun and went a short distance from the house to shoot some quails; I think it was some day in the first week after he was hurt; he was gone only a short time, perhaps half an hour; on the 23d, when he came in town, I think it was a pleasant day; as near as I can recollect, it was pleasant all that week; the 23d was, I think, a sunny day; when he went out to shoot quails he had on a sack coat and one under it, both of them woolen; I don't know of a day when he did not have his eye covered; on the day he went out to shoot he had his eye covered; he had thick boots and woolen stockings on; he also went out about an hour on Thanksgiving day; that is all the time that I recollect; he was well clad then, and had two coats on and had a handkerchief over his eye; he had on his brother's thick boots at that time; he bought a new pair of calf-skin boots about a week before he was injured, and wore them into the city on the 22d; I don't know why he did not stay out longer when he went a gunning; he went out with his gun in the forenoon, between 10 and 11 o'clock; I have no particular knowledge of his going out to kick football on Thanksgiving day; I think he went to his aunt's in the evening of that day; she lives about half a mile from the house; I did not see in which way he went from the house, I only saw him preparing to go with one of his brothers; the distance to his aunt's is two miles by the road and about half a mile across the fields and Neponset river; one of my sons went round by the road in a carriage and took some children with him; he returned home about 9 1-4 o'clock; he was warmly clad that evening; had on two coats and a woolen dress throughout; I did not see him put a handkerchief on; the roads were dry at the time and there was a good foot bridge over the river; I have no knowledge of his being out of doors at other times; after he received his injuries his spirits fell off very rapidly; previously he was very cheerful and fond of amusements and singing; after his injuries I do not recollect of his taking part in any amusements; on Thanksgiving day he took no part in his brother's amusements in the house; I do not know of his joining in any amusements made by others; he was not particularly downcast, no more than appeared by his not participating in any amusements; I cannot tell how often he laid down on the sofa after he was injured; before that he would generally go where his legs could carry him; he was generally at home nights; and I think that he was at home on the night preceding the 17th; he has stayed at Mr. Porter's a few times, and at a brother's in Cambridge; he was generally in town in the day time when he was well; the probability is that he was at home on the morning of the 17th; I never saw any signs of external injuries upon him before the night of the 17th; I have no knowledge of his having been injured after the 17th, not even of cutting his finger, or in any way—if he was injured it was unknown to me; his general health from his boyhood up to the 17th Nov. last was very good; about fourteen years ago he had the scarlatina or throat distemper; he was about six years of age then; I cannot recollect how long he was confined, but think it was not more than a fortnight; he had a physician at the time; there was nothing lett after he got well to show any affection of the throat, to my knowledge; on the second week after his injuries he attempted to assist his mother in putting down a carpet, but left it before he got through; his mother asked him why he didn't finish it, and he said it made his head feel bad, and he couldn't; I do not think that I saw him vomiting after he received his injuries; he had a lameness about four years ago; he had no signs of it after a month had elapsed; I do not recollect how it was caused.

Cross-examined by Mr. Parker.—I have testified three or four times in regard to these circumstances; first before the coroner's jury, next before the Police Court, next before the Grand Jury, and next in this court; I am not sensible of any variance except on one or two points; I may have stated more at this examination, and I may have omitted something which I have testified to before; if you will ask me questions I will answer them.

Parker.—I want you to tell me what you have omitted.

W.—If you will put it to me I will answer you.

Parker.—I want you to put it to me, and tell me what is in your mind.

W.—I do not know what you want.

Parker.—I want to know if you have not left out something that you testified to in the Police Court.

Mr. Cooley objected to this kind of cross-examination. He wanted questions asked the witness; and it was not the right of defence to ask the witness for a declaration.

The Court informed the witness that in making any declaration he must confine himself within the rules of evidence.

W.—I do not know of anything particular that I have omitted; I am perfectly willing to testify; I may not have used the same language, but I think that I told the same facts.

Mr. Parker then read the rules of evidence from Greenleaf to the effect that declarations of the deceased in regard to the extent of injuries received, could be introduced, when it was proved that the declarations were not feigned, and had been once introduced as testimony in a primary examination.

Mr. Cooley said that if illegal testimony was admitted in the court below, it did not make it admissible in this court.

Court—We must exclude all testimony that is illegal, and are not to take illegal testimony because it was admitted in the court below.

Mr. Parker—Did you caution your son against taking cold?

W.—I did, and also did his mother.

Q.—What did you say to him? Objected to, but overruled.

A.—When he went to Boston I told him that I thought he was not fit to go; he said that he must go in, and I told him to wrap himself up well and warmly; the handkerchief he wore over his eye was folded and fastened by a pin; it was worn diagonally; he had it on all the time during the first week; he had no physician then; the physician was sent for Dec. 4th, and came the next day; the weather on Thanksgiving Day was not particularly severe, but rather cold; it was quite uncomfortable and raw; we dined at 2 o'clock on that day; I was about the house nearly all day; the football game was, I think, after dinner; I did not see the game played; I understood that he rode home on the 17th Nov. from the depot to the house; the cars arrived between six and seven; the family was eating supper when he came home; he sat down to the table; he went to bed a short time after supper, about 8 o'clock; Mr. Hollingsworth lives about a quarter of a mile nearer the depot than I do; his first name is Aymer; my son was at breakfast the next morning; I don't know of his going out to shoot but twice with his gun; I do not recollect that he fired his gun; he went to shoot some quails on my cultivated land; my farm embraces about fifty acres; I did not watch him particularly when he went out with his gun the second time; one of his brothers went out with him; they were out about an hour and brought home a few birds; they had a dog with them; he went alone the first time and I saw him most of the time; he had a bandage over his eye the first week; the second week he had it off some of the time; I think he was out about the farm with the bandage off; don't remember that he had a bandage on Thanksgiving day when he went out; cannot say whether he did or not, but think not; I do not know of any cause for the depression of his spirits except his bodily injuries; do not recollect that he ever said whether his depression of spirits was caused by mortification of mind or bodily injuries; the cause of his injuries was never a subject of discussion with me; I found that it injured his feelings, and did not make any allusion to it; after I found that something injured his feelings, both mentally and bodily, I abstained from speaking to him about the injuries; I had heard how he got injured.

Mr. Cooley objected to the line of cross-examination, and Mr. Dana objected to any interference by him.

Mr. Cooley said he wanted to know whether the witness was giving his opinions or speaking of his knowledge, and he therefore objected to his giving any opinions.

Court.—The last answer is clearly inadmissible. The law allows us but this week to try the case, and the counsel must not waste the time so much as has been done. Personally, the Court is perfectly willing to have as much time taken as counsel desire, but the law limits the term, and the Court must be ruled by the law.

Mr. Parker said that he wished and had a right to show the state of mental depression.

Q.—What did you discover in regard to your son's mental depression?

A.—I did not discover anything particularly; Dr. Holmes prescribed for him when he was lame; the carpet was about 16 by 11 feet, and was tacked down; he put down about one-half of it; he had to stoop in doing so; this was before Thanksgiving Day; his voice was always clear and good; I knew of no difference in his voice.

Mr. Dana offered witness a letter to prove its identity, and asked him if it was his son's handwriting. The witness said that he was not familiar with his son's handwriting, and could not tell; his handwriting had changed; my son weighed one hundred and fifty pounds as I have understood; I do not recollect of having stated that there was any blood on my son's eye when he came home on the 17th; I saw his mother bathe his neck some day after he was injured; it was a day or two after; I know that he did not visit Boston but twice after he was injured; if any body told me that he was in on the 30th Nov. I should very much doubt it; if he had been away from the house for any length of time I should have noticed it; I did not see him when he came in the second time.

To Mr. Cooley—I think that he could not have been in Boston on Thanksgiving day; he was taken sick on Tuesday after Thanksgiving; he might have set up part of that day; he began to complain of his getting worse on the 1st December; he had complained of his eye previously, but at this time he complained more; he complained of his eye, more or less, after he got injured; I have reasons to suppose that he was at home on the 30th, but I may be mistaken; I was at home most of the time myself, and think that I saw him there.

Rufus W. Sumner, called.—I reside at Milton, Brush Hill; am a son of Rufus P. Sumner; I noticed my brother William on the night of the 17th, when he came home; I saw his eye; it was dark all under the eye and around it; the skin was very much bruised, and the eye itself looked red; the bruise extended from the cheek bone up to the eye, and the skin was discolored over the eye; I noticed that the left side of his face was swollen, and also his neck; all of the left side of his face appeared to be fuller than the other; the eyelids were much swollen compared with the other; there was a discoloration on the side of his throat; the next day I saw a mark on his ear; his lower jaw was discolored, and also lower down on the neck. [Witness described the mark as extending from the back of the ear under the lower left jaw.] The mark was wide enough to be seen, about the width of a finger.

To a juror—The skin was not broken in the neck.

On the Saturday following I noticed that the whole rim of the ear and the back of it was discolored; it was of a dark-blue color; he complained of his chest feeling sore, also that he felt sore all over, but no other place in particular; his mother, I heard, bathed his wounds; on the night of the 17th I saw that his eye was done up; I did not see him when he came home, but did immediately after; he was taken sick on Tuesday, and complained very much, and laid down on the sofa; he said that his eye pained him very badly, and that he felt sick; he took his bed on Wednesday; he died on the Tuesday following, about five o'clock in the morning; his spirits were quite different after he got injured; before, he took part in every thing that was going on; after, he did not join in any thing; his general health previous to the 17th was very good; I do not know that he had any sickness for many years, except a lame knee; this was caused by a sprain, and lasted about four weeks; he was in Boston most of the time; I recollect when the children had the scarlatina; it was twelve or fourteen years ago; I am not aware that he had any affection of the throat after that time; cannot say that he was at home on the night of the 16th of November; I never saw any signs of external injuries upon him before the 17th Nov; do not know that he was injured after the 17th; did not see any blood on his head on the 17th, nor any skin broken; on Thanksgiving day he went out to kick football; he went about ten rods from the house; he run a short distance to kick the ball, and I noticed that he stopped short, turned round and gagged, his face looked very red, and he then went into the house; the ball was moving towards him at the time; there were sides chosen in the game, but I do not know that he was chosen on one side or the other; he did not participate in the game any more than I have stated; I saw him when out and when he returned; I had noticed some days previously that he put his hands on his chest and vomited; I do not know of my own knowledge that he came in town after he was hurt; I heard that he did; in the forenoon of Thanksgiving day, I saw him coming towards the house with a gun; he had not been absent from the house more than a half hour; I did not hear him make any complaints when he returned; he wore a pair of thick boots belonging to me when he went out; was warmly clad in woolen clothes; I did not see him go over to my Aunt's in the evening; I asked him if he didn't want to go over, and he said that he did not feel able to go; I went over in a carriage and took some children; when I arrived he was there; this was about 8 o'clock; he attempted to play cards in the evening, and I remarked that he did not seem to take any interest in playing; there is a short route to my aunt's, about half a mile long; I saw him at home about 7 o'clock that evening; he returned from my aunt's between 9 and 10 o'clock; he was dressed warmly, but I did not notice whether he had a handkerchief on or not; I have no knowledge of his being away from home at any other time, except once at my brother's, on the Sunday after he was hurt; my brother lives about a quarter of a mile from the house; he staid there about an hour and returned home with me; he was well clothed at the time; he complained of his eye on the night of the 17th, and every day afterwards; I saw no appearance of his having any cold prior to or after the 17th.

Cross-examined by Mr. Dana.—Cannot distinguish my brother's handwriting sufficiently to identify it. [Witness shown a paper, but could not identify it as in his brother's handwriting, he thought that it bore a resemblance.] I lived at home most of the time; so far as I know he did not come to Boston after the 17th November; I do the marketing for the farm; I did not go gunning with him; think that he had the scarlatina when he was young; all three of the younger children had it, and William was one of the youngest; cannot say that he was very sick, or in what degree he had it; I think that he was the sickest child; this is my impression; it has been mentioned in the family since his death; I spoke of it to my mother, and it has been a subject of little conversation in the family; I am 33 years old; when I said my brother wore two coats, I meant a dress coat and an overcoat; I do not know whether he was at his brother Gilbert's on a Sunday evening; I do not know that he was at Gilbert's the day before Thanksgiving.

Q.—Did you state, after the death of your brother, that if he had made a confidant of any of the family he would still be living? Objected to as inadmissible, and the Court said it was irrelevant.

Mr. Dana thought that the question was relevant, as going to show the condition of the witness's brother after the injuries were received.

The Court ruled it out.

To Mr. Parker—The carriage that I rode in Thanksgiving evening was a covered one.

To Mr. Cooley—There was not any snow on the ground.

Mr. Cooley asked leave to put in Mr. Ham's testimony as given before the Police Court, Mr. Ham being absent from the city, and his whereabouts not precisely known.

The defence said that they would have no objection, if the government would admit Dr. Ware's testimony in the same manner.

The matter was postponed for consideration.

Dr. Christopher C. Holmes, called.—I am a physician; I saw William Sumner on the evening of Dec. 5th, last; it was on Wednesday; he was sick in bed, and had severe inflammation on the left eyelids; they were so swollen as to require considerable effort to open so as to show the ball of the eye; a dark discoloration covered the lower lid the whole extent; it was of a yellowish brown color; he had inflammation on the left side of the neck, just below the lower jaw, also some on the left cheek, about midway from the eye to the neck; he complained of pains in the head, eye, and soreness in the chest; he was very feverish; under the usnal treatment for inflammation, the next morning I found him less feverish; the inflammation subsided; the first day the inflammation subsided; the first day the inflammation of the neck was considerable; it covered about an inch in width and an inch and a half long; the redness on the neck was not much; I saw him each day and thought him improving, up to Saturday; on that day there was some evidence of inflammation back of the nostrils; Saturday afternoon, I learned from his brother, whom I met accidentally, that he had complained of sore throat; on Sunday I found him with severe inflammation of the throat, at times nearly causing suffocation; he was also delirious; he soon was somewhat relieved from the earlier symptoms of danger from suffocation; he passed a sleepless night in continual delirium, and through the day, on Monday, his throat was less troublesome, but his strength failed; another gentleman, in consultation with me, Dr. Miller of Dorchester, saw him on Monday night; he slept the first part of the night on Monday; was then delirious until a few moments before his death, which occurred about 5 o'clock, Tuesday morning; that is the history of the case up to his death.

Q —In your opinion, what was the cause of his death?

A.—Inflammation of the throat and air-vessels. I have heard the testimony in the case, and consider the external injuries the predisposing cause, and exposure the immediately exciting cause of his death.

Q.—What do you mean by saying that exposure was the immediately exciting cause?

A.—I do not know of any better means of expressing it than to say that I should have expected him to recover unless he had received additional injuries from exposure. I mean to express myself stronger than I did before.

Q.—What are your reasons for expressing a stronger opinion?

A.—Because I have heard rumors in circulation in Milton which have given me a better knowledge of the injuries he received.

Mr. Cooley—You are not to found your opinion upon rumors.

Witness—My testimony before was that his death was caused by external injuries, aggravated by exposure. This was my opinion to the best of my recollection.

Q.—Do you or do you not regard the injuries the primary cause of his death?

A.—I consider the injuries the predisposing cause, as I have stated, and I cannot answer it in any language that would better express my meaning.

Q.—What was the cause of the inflamation in the throat?

A.—It arose from a morbid state of his system, acted upon by inflammation in the neighboring parts, and affected by exposure.

Q.—Do I understand that the original cause of inflammation in the throat was caused by inflammation of the other parts, and that those parts were affected by exposure?

A.—I think that the inflammation in the air passages was caused by the primary cause of the inflammation in the throat, and extended in consequence of the morbid state of the system and exposure to the cold; I consider the inflammation of the throat as one of the first causes of death.

Q.—What relation did the injury to the eye sustain to the inflammation which caused his death?

A.—I should think that it had some relation to it, but not very much. I think that the inflammation of the eye had great effect upon the whole system. I wish to lay great stress upon the morbid state of the system; in my former testimony I did not make use of this expression, but I did before the Coroner's inquest; I did say before, in the Police Court, that the system was in a very excitable state.

Q —Do you not regard the primary cause which produced his death, the external injuries which he received, and the exposure to the cold the assisting cause?

A.—I think that he would not have had the inflammation if he had not had the beating. I cannot say that the beating was the original cause of his death, because it would imply that it was a sufficient cause; I say that the inflammation was one of the causes; it was primary in point of time as one of the two causes which produced death; it was an assisting cause, but I cannot limit the amount of its assistanco. I wish to be understood that there were two causes for the inflammation; the primary cause was the beating.

Mr. Cooley—I understand you to say that in consequence of the beating an inflammation began; that subsequently, from exposure, the inflammation increased. Am I right?

A —I wish to have it understood that the inflammation was getting better before the exposure, and the last attack came on.

Cooley—Before the last attack he was getting better—and now where do you bring in the exposure and morbid condition?

A.—I consider his coming to Boston, and walking so far on Thanksgiving day, as imprudent for a man in his condition, and that the exposure was dangerous.

Q.—At what time did you thing that Sumner was getting better?

A.—The deceased told me, in answer to a question which I put to him for the purpose of understanding the treatment of his case—[Objected to.]

Mr. Dana argued that declarations to medical gentlemen by their patients, in regard to the condition of their health, had been admitted as legal evidence, and cited 1st Phillips, p. 191, and Greenleaf, sec. 122.

At this stage the Court adjourned until 3 1-2 o'clock.

AFTERNOON.

The Court came in at 3 1-2 o'clock, and, after overruling the class of evidence pertaining to the declarations of deceased to his med-

ical advisers, the examination of Dr. Holmes was continued, by the government

Mr. Cooley first read the testimony of Dr. Holmes already given, for the purpose of revising it, if necessary. The witness objected to the testimony as taken by Mr. Cooley, as being incorrect in some particulars.

1st. Q.—What was the cause of the inflammation of Sumner?

A.—I think that the inflammation was the result of external injury, as a predisposing cause, aggravated by exposure.

Q.—State whether you think that the exposure of itself was the cause of the inflammation which produced his death?

A.—I do not think that it would in a healthy man.

Q.—Would it in the case of Mr. Sumner?

A.—Not of itself.

Q.—Do you think that the exposure he was subjected to would of itself produce any injury?

A.—Not in a healthy man.

Q.—Do you think that it would have produced any inflammation in Mr. Sumner's case, were it not for the injuries he had received on his body?

A.—I do not.

Q.—Do you think that inflammation had arisen from these injuries before exposure to the cold?

A.—Some inflammation must have followed directly after the injuries were received.

Q.—Was not that inflammation considerable in this case, from what you have heard of the testimony? Objected to and sustained.

Q.—What was the extent of the inflammation before the exposure?

A.—I have no means of knowing accurately.

Q.—What do you mean by a morbid condition?

A.—I mean a condition which renders the system sensitive to disease.

Q.—What means have you of knowing what his condition was before exposure to the cold, and what do you see in the medical history in the case that indicates that the sensitive condition was attributable to any other cause than the injuries which he received?

A.—Prior to the second attack, I know of nothing to produce the morbid condition, except the injuries which he received.

Q.—On what day did the second attack take place?

A.—I first saw him on the 5th Dec., and then learned it.

Q.—Did exposure have any thing to do in producing the morbid condition up to the time of the second attack?

A.—Not that I am aware of.

Q.—What exposure was he subjected to after his second attack, that made it an assisting cause of the inflammation?

A.—His second attack I think commenced the second week after he was injured; I formed this opinion upon what I was told by Sumner himself or his brother when I called to see him on Wednesday, Dec. 5th.

Q.—What did he state? Objected to and sustained.

Witness—I then have no authority in stating that the second attack commenced the second week after he was injured, if I am to throw out these statements; I have reasons to suppose that the inflammation was aggravated by recent exposure before the second attack. The severe inflammation at the time was a proof that there was a recent cause in addition to the predisposing cause of the inflammation, viz: the external injuries.

Q.—What do you mean by a fresh inflammation?

A.—I mean that in some parts there may or may not have been an increase of inflammation; in other parts there was a fresh inflammation; the exposure which I have heard testified to operated to produce the second attack, in my opinion; I meant to refer to this as one of the causes of the sensitive condition of the body; I say that this exposure was the cause of the fresh inflammation on Saturday, Dec. 1st; I do not pretend to say that this exposure did not assist in producing the morbid condition, but I say that the external injuries were the first cause.

Q.—Do you mean to say that the exposure contributed with the external injuries to produce the sensitive condition?

A.—Yes, sir.

Q.—How is this an explanation of the answer that you have before given?

A.—I have no answer to give, except that I made a mistake; a man who is in the morbid condition that Sumner was after his beating was imprudently exposed in shooting, kicking foot-ball, walking a half mile, and visiting Boston twice; these circumstances would co-operate in producing the inflammation and add to the morbid condition.

Q.—Was the primary cause of his inflammation the external injuries, or the assisting cause, the exposure? Objected to and sustained.

Q.—Was the external injury the primary cause which produced his death.

A.—There was more than one cause of the inflammation.

Q.—Was the inflammation which produced his death anything more than an increase of the inflammation caused by the injuries.

A.—I think it was because for a certain time he was recovering, and then had a fresh attack produced by exercise and exposure that he was subject to; I refer to his walking, and ride on Thanksgiving night; from the fact of his taking this exercise I judge that he was getting better before the second attack.

Q.—Do you see anything that he did that indicates that he was getting well, except from testimony excluded by the Court?

A.—I cannot say that I do.

Q.—Have you anything to base your opinions upon that he was recovering before his second attack?

A.—I attribute the second attack to this exposure, which has been testified to on the stand. I think that he would not have been able to do what he did if he had not been improving. Another reason I have for supposing that he had been exposed, was the fresh inflammation that I saw on the neck, and afterwards on the throat; I mean the external inflamation.

Q.—Can you say that you can tell that the inflammation was fresh?

A.—Supposing that the inflammation which I saw on the 5th Dec. had commenced on the 17th Nov., there would have been a suppuration of the parts and a different appearance of them.

Cross-Ex. by Mr. Parker.—I was present at the *post mortem* examination, and the opinions which I have expressed were confirmed by that examination; Dr. J. B. S. Jackson, of Boston, conducted the examination; I reside in the same town as the deceased; there were some cases of scarlatina about half a mile from Mr. Sumner's in November last; people sometimes have this disease twice, but these cases are exeeptions; on the *post mortem* examination the appearance of the throat indicated that it was not so much affected as in cases of scarlatina; I think that I have known cases of sore throat, similar to Sumner's, produced by atmospheric changes; I think that the external injuries of Sumner were not adequate to cause death.

Q.—Do you think that he would now be living if he had not been beaten?

A.—I do not think that he would now be dead if he had not been beaten.

Q.—Was the beatiing a necessary and natural cause of the inflammation of whieh he died? Objected to, but ruled admissible.

A.—No, sir.

Q.—Was the beating a co-operation or essential cause of his death?

A.—I cannot say which cause was the strongest; on the right side of the neck, downwards, the glands were in a diseased state; I think that this was not the focus which produced the inflammation.

Q.—Might not this focus have predisposed the inflammation of the throat?

A.—It might.

Q.—Might not the upper glands of the throat been inflamed from a simple sore throat, without any external violence?

A.—I answer this question as I have before, that the morbid condition and exposure were the existing causes of the inflammation.

Q.—If there had been bruises and external injuries, other than those described, would they have been apparent at the *post mortem* examination?

A.—It would depend upon their severity; mental depression might have assisted in causing his death.

Q.—If injuries which he received did not seem apparent on the *post mortem* examination, might not mental and moral causes have produced his death.

A.—The mind has a great control over the body, but I cannot judge of the effect of his mental depression because I did not see him until he was brought to his bed; grief and moral depression would have a great effect upon the body; the second attack was a fresh one upon his condition at that time; a slight bruise would leave a mark for a few days; a heavier bruise would last longer; I judged from the appearance of the eye, that the bruise was not recent, and that the discoloration was disappearing.

To Mr. Dana.—I thing that if seven children in a family have the scarlatina, and another should only have a sore throat at the time, he has reason to suppose himself exempt from the disease; if scarlatina prevails in neighborhoods, we have reason to suppose that throat distempers will prevail; we look for such diseases then in the neighborhood; as a medical man I am often obliged to examine the mental and moral condition of patients; such affections of the mind might, in the end, prove fatal if physical diseases set in; these might produce physical diseases, such as loss of appetite and sleep; I cannot state how much the morbid condition of Sumner was the result of mental and moral depression; I think that the condition of his diseased parts were not caused by mental prostration.

Q.—Upon your knowledge of the fact that he was in low spirits for fourteen days before his second attack, do you not think that this affected his heal h?

A.—I think that it did. It would be difficult to state the exact amount of causations; I say that if the first injury made a strong impression, it cannot be told with any certainty how far the other causes operated; his brother told me that he had had a sore throat sometime previous to Dec. 1st.

Q.—How far back was this time that he spoke of? Objected to, and sustained.

Q.—Did you examine his throat before death?

A.—I did, and the *post mortem* examination disclosed an ulcerated sore throat; if a man receives a blow on the throat, it does not involve an ulcerated throat; a man may receive a blow on the body and ulcera ion will ensue in a short time; if a severe blow is given on the cheek, or eye, or ear, suppuration might not ensue, it might produce a chronic inflammation, lasting several days; if suppusation ensued, it would be within ten days; I am not sure but that there was a discharge from the eye in this case; I saw no signs of chronic inflammation or suppuration in the bruises on Sumner; in the absence of other causes testified to, I should have been satisfied that the death was caused by an ulcerated sore throat; by exposure.

To Mr. Cooley—I should not think that the wounds he received would have alone produced the depression of spirits; if he had come by the bruises in some other manner, I should not think that mental depression would have followed; the circumstances connected with the receiving of the injuries, detailed on the stand, I think would produce the depression of spirits, and I think would be enough to depress the spirits of any man; I do not pretend to judge the case, but the mere fact of his going through the ordeal which he did, impresses me that it must have been a powerful cause in depressing his spirits; I believe I stated that at the time I was called to him, I was not competent to judge of the effects of his mental depression; I say that this depression had some influence in producing the inflammation, but I say that it had its effects as a cause, but not as a principal cause; it was important in its action upon a morbid condition of the body; I think that I mentioned his mental depression and its effects, in the Police Court; I testified there "that the inflammation, acting upon a mind much wrought up, and upon a body in a weakened state, produced a delirium which caused death;" the inflammation arising from blows depends upon their severity and the condition of the system; I have made some inquiries in regard to Sumner within a few days.

Q.—By Mr. Dana.—Supposing Mr. Sumner to have been carried before the wives of two men, charged with having taken im-

proper liberties with them, and then taken down stairs and whipped, would not such occurrences produce mental depression in a young man, especially if the particulars were published to the world, and would not such mental depression operate unfavorably upon him?

A.—I think it would.

The examination of Dr. Holmes was concluded at half past six o'clock, when the Court adjourned until 9 o'clock Tuesday morning.

FIFTH DAY.

TUESDAY, Jan. 29.—The Court came in at 9 o'clock, and His Honor stated that there was but four and a half more working days of the term, and he wanted the counsel to govern themselves accordingly. The case must be tried this term, and if it exceeds a minute beyond that time it is all lost, and there will have to be a new trial.

Mr. Parker said that it would not be a fair trial if the District Attorney occupied nearly the whole time in the examination of witnesses.

Mr. Cooley replied that he had taken no more time than was necessary, and if the Court would take the responsibility of leaving out witnesses, he had no objection to let the case go.

The Court said that unless the examination progressed faster there would be a necessity of holding night sessions.

Mrs. Sumner, called.—I am the wife of Rufus P. Sumner, and mother of Wm. Sumner, recently deceased; he died Dec. 11th, at Milton, Brush Hill; his general health for several years prior to the 17th Nov. last was good; he had complaints like other children in his infancy, as measles, whooping cough, &c.; he did not have any sickness which left a serious injury, to my knowledge, prior to the 17th Nov.; he came home on the evening of the 17th Nov. last, and his eye was then very much bruised underneath; the skin was broken and it was swollen; I think that it was his left eye. [Witness here made the remark "that a mother who bathed his poor eye so much could not help knowing how it was," and then she burst into a violent fit of weeping.] I bathed and bound up his eye that night; I also noticed that his throat was swollen, but I did not notice on which side it was, as his eye was so bad; I noticed a red mark on his throat, but not much; I bathed or prepared things for him to do every day until he died; I think that I bathed it every day, and told him to do so; I did not see any particular mark upon him except his eye; I noticed that he did not sing or talk much, and he complained of his stomach; I noticed that his ear had a dark spot on it; it was blue flesh; I did not look back of his ear; when I touched his head he pulled away, and said that the back and top of his head was sore; he said that his chest was sore, and I laid poultices on his stomach; he came in one day, and I saw him at the sink and he gagged; he then went up stairs, and I went to the sink and saw some blood there that he had thrown up; I saw him do this several times; when he vomited he placed his hand upon his chest; he used to do the same when he walked across the floor; he came to Boston the next Thursday after he was injured; he did not come into Boston the day after he was injured, to my knowledge; I think he did not come into Boston Thanksgiving day; I should not think that he was absent from the house long enough to visit Boston, but once; he was about the house on Thanksgiving day; I do not know of his receiving any injury after the 17th November; I have no reason to suppose that he took any cold after the 17th Nov.; he always went out warmly clad; he had the scarlatina about fourteen years ago, and I was not aware that it left any injury on or about his throat; [here the witness sobbed violently] he never expressed any grief or mortification at having been concerned in any transaction; he did not before me; I read a little something about the affair the day before Thanksgiving; this was the first that I knew of it; it was not a matter that was talked of in the family; there was no reproof or harsh words uttered to him to my knowledge; I did not hear him complain of a sore throat until he was confined to his chamber; this was on Sunday, Dec. 2d; I can't say but that he came down stairs on Monday; I am not aware of any exposure that he was subject to that made him liable to take cold; he practiced bathing in cold water, and was not liable to colds.

Cross-examined by Mr. Dana.—He did not complain of a sore throat to me until Sunday, Dec. 2; he did to some of the family; I did not know at the time that he went out to play at foot-ball; he was not gone from the house long at any time; I cautioned him about going out, lest he should take cold.

To Mr. Parker.—He did not state to me how he received his injuries; he did not, to my recollection, make use of any penitential expressions in my hearing.

Question by Mr. Cooley.—What quantity of blood was thrown up by him in the sink?

Court.—You need not answer that question.

Luther A. Ham called.—I arrested Mr. Dalton on the morning of the death of Sumner; I took him to my office at 10 o'clock; I found him at his store in Congress street, and said to him; "I shall be under the necessity of arresting you; Mr. Sumner is dead;" "You don't say; it can't be possible; he has been out gunning;" he put on his coat and came out of the store with me; on our way to the police office he said all that was done to him was done with their hands; I don't know how he happened to say so; I told him that I had understood Sumner had been kicked in his privates; he said that he did not kick him, and that all he done was with his hands; he said it was a very unfortunate affair by the course they took in getting him at the house; that if they had flogged him in the street the public would have sustained them; he said that Sumner lived in Milton, on Brush Hill; in the conversation he said that I or any other man would have done the same in like circumstances; that is all that I recollect now; he said, "We made a great mistake in decoying him to the house."

Cross-examined by Mr. Parker.—I had no process to arrest him at the time; the complaint, by consent of his counsel, was made the next day; I waited until after I knew the result of the coroner's inquest before the complaint was made; they were put in jail on that night; I think he said to me that the public would have sustained them if they had met Sumner in the street and flogged him.

To Mr. Dana.—Dalton either used the word *entice* or *decoy*; I think that he used the word *decoy*.

George M. King, called,—I went to Mr. Coburn's house on the 11th Dec. last, and arrested him; I told him that Sumuer was dead; he said he saw something of the kind in the papers the day be ore, and thought of calling on the Chief of Police; he asked if Dalton was arrested, and I told he was; he said "this affair belongs to Dalton more than it does to me."

J. B. S. Jackson, called.—I am a physician and have practiced 24 years; I conducted the *post mortem* examination on the body of Wm. Sumner, on the day of his death; I think that I saw his father there at the time; the examination took place 8 1-4 hours after his death; externally the surface of the body was exceedingly livid; such lividity as would not be seen after death from natural causes, excepting in a degree; it was the same kind of lividity; below the left eye was a mark that I was told was the result of his bruises [Court ruled out what he was told] and there may have been a slight mark below the right eye; the head was first examined. On turning off the scalp there was found what might be called a slight bruise on the upper and front part of the head, between the scalp and the bone; on taking off the top part of the skull there was found an unusual adhesion between it and the parts beneath; I mean one of the membranes that overlies the surface of the brain; the brain was rather more congested than usual; the blood vessels contained rather more blood than is usual, some of them more and some of them less; the size of the brain on the head was as large as a finger nail, and looked as if one or two drops of blood were there; it was a very slight affair; about the lower part of the right lung there was an adhesion to the parts beneath, the results of some former pleurisy; the lungs were somewhat congested, but showed no disease; the heart contained blood that was quite dark and livid; the muscles exposed on the outside of the chest were quite dark; at the lower part of the windpipe, on the the right side, there was a mass of disease, situated, I presume, in the glands, and what would be called tubercular by the physicians, and popularly a scrofulous affection—a disease that may have existed from infancy, undoubtedly for many years; the throat was next examined; at the upper and back part—the very upper part, there was found an extensive ulceration, the result of an acute inflammation, and below this principal ulceration there was found some quite small ulcerations leading from the principal ulceration; the whole inside of the throat was covered over with a transparent and very viscid mucous—the result, I think, of a certain degree of inflammation; but, except for this, and the ulceration, and the enlargement of the glands or the soft palate, the throat appeared healthy; along the windpipe, in the interior, there was also found a considerable quantity of very viscid mucous, but it was somewhat opaque; the great divisions of the windpipes, as they passed into the lungs, also contained viscid and transparent mucous, and I suppose that it would have been found to have extended into the air passage if they had been opened, but they were not opened; the glands upon the left side of the neck were inflamed, as I supposed at the time, in consequence of the inflammation of the throat, but I have heard since, here upon the stand, so much evidence of tenderness and swelling on the left side of the neck, that I have thought that the inflammation of the glands might have been a part, more or less, connected with the original bruises, aggravated by the disease in the throat. The abdomen was next examined; the stomach contained several ounces of fluid colored by bile; the lining membrane, to a considerable extent, was of a deep red color; I felt no reason for a doubt, at the time, that it was in a state of *ecchymosis*, as we call it; by this I mean that the blood is effused into the tissues, the result of a blow; the parts may be red but if it is not caused by an extravasation of the blood from the vessels into the tissues, it is not in a state of *ecchymosis;* the spleen was large, very dark colored and soft; it was more than double its natural size, in a condition which we find it in cases of typhoid fever; some of the other organs of the abdomen were examined, but nothing unusual was found in their condition; these were all of the essential organs; the examination occupied about 2 1-2 hours.

Q.—What is your opinion of the cause of his death?

A.—Inflammation of the throat and air passages.

Q.—Judging from the testimony introduced in the case, and from the *post mortem* examination, what was the cause of the inflammation?

A.—From the *post mortem* examination it was impossible to tell the cause of the inflammation. From what I have heard testified to I believe that we must look back to the injuries which he received as the cause of his death. These injuries were severe, external and internal. There was also a mental as well as bodily injury; but from such injuries one would have expected, in the natural course of things, that he would have recovered. It is not impossible, however, that disease may have arisen spontaneously, so far as we could see and know of the cause and effect of his injuries. This is not impossible. I have heard causes, however, testified to—the gunning, kicking football, and the visits to the aunt's,—and though they were slight, I don't doubt that they would have assisted in inducing inflammation or disease. The gunning and visit to his aunt's showed that he was not in a condition to do either. The evidence shows that in kicking football he tried it as an experiment, and failed. He also went to his aunt's against his will. I agree with Dr. Holmes, that if he had not been beaten he would still be alive. I believe that his exposure assisted in producing his death.

Q.—Was the beating the first cause of the inflammation, or only primary in point of time? Ruled out.

Q.—Which was the original cause of the inflammation?

A.—The beating was the original cause, in point of time. The left eyelid was very badly bruised, and he bore the mark of it to his death. At the end of a fortnight that eyelid became inflamed, and then, or very shortly

after, the cheek and neck on the same side. He was getting better of this inflammation, when a further inflammation of the throat showed itself, and it was that which immediately caused his death.

Q --Would this party have had any inflammation except for the external injuries? Objected to and ruled out.

Mr. Cooley read from Greenleaf that "in some cases leading questions may be asked in a direct examination, and so, when from the nature of the case the witness cannot remember without a particular specification of the subject matter." Mr. Cooley thought that, under this authority, the above question should be admitted. He wanted to know whether Dr. Jackson thought that there would have been any inflammation if there had not been any beating?

The Court said it was perfectly easy to reach the matter in the usual way, and without putting leading questions.

Q.—Suppose there had been no beating, is there any evidence that inflammation would have existed?

A.—I have said already that from what I saw at the *post mortem* examination, it was not possible to trace the cause back to any external injury. I may say further that it could not have been traced back to any exposure by the *post mortem* examination. In regard to the causes of the diseases which have been testified to, I do not think that any evidence of his exposure would have produced dangerous inflammation,

Q.—What do you think the morbid condition of his body was caused by, other than the exposure?

A.—By the beating.

Cross-examined by Mr. Parker.—I made a record of the autopsy [a copy of the record was introduced for identification, and its admissibility, as evidence, was reserved as a question for discussion when it was offered, if offered as evidence in the case. The Doctor said it was a fair copy of his record and no objections were made to its identification].

Q.—Were any statements made to you by any of the family while you were making the examination?

A.—I think that none of the family were present. Dr. Holmes, when he came in for me to make the examination, gave me a general summary of the case. The examination was made for the purpose of ascertaining the condition of the body and its morbid appearances; I did not testify before the Coroner's Jury; I made an informal statement before the inquest was organized. The cause of death was ulceration of the throat and the air passages, as I have testified to before; the appearances in individual cases of what we call the same diseases, differ much; I don't remember that I ever examined a case where the throat presented the same appearance as in this case; I think that I never saw just the same appearances; the adhesion of the lower part of the right lung was of no account; he had entirely recovered from the cause of it; the disease of the glands he might have had in his infancy, and he probably would never have had any trouble from it; the mark under the scalp was of no importance; the mark on the ear showed that he had received a severe blow, but was recovering from it; the same may be said of the mark on the neck, behind the ear. The mark under the eye depended upon the severity of the blow and the condition of the body, as regards its disappearance. If the skin had not been bruised, I should have thought that the mark would have disappeared before; I judge, from the evidence in the case, that the second attack of the inflammation under the eye began on Saturday, Dec. 1st, and increased, more than was apparent externally, until the following Wednesday; it might have arisen spontaneously, but we presume very often that atmospheric changes are the causes, when we can find no other. The appearance of an old standing disease of the throat did not indicate that it would act as a focus for the tubercular affection of the throat, if irritated by exposure.

Q.—What effect did the mental and moral causes have in causing his death?

A.—They operated in producing it, but in what proportion I cannot say.

Q.—If physical wounds found at the autopsy were not sufficient to connect the beating with the sore throat of the 25th November, may the cause not be attributed to mental and moral causes?

A.—I would answer that he was injured in some other way than was obvious externally; but undoubtedly moral causes had their influence. Moral causes certainly have a great influence on diseases and in producing them.

To Mr. Dana.—My opinion in regard to the cause of his death is founded upon the history of the case. If it should appear that there was more exposure than has been testified to, it would alter my testimony. If it appeared that he stood in the cold with his hat and coat off for a half hour, and the time that he done so, it might change my opinion. The eye, at the time of his death, must have become much better than it was as disclosed by his mother's testimony. If I was called to see a body in which I found an ulcerated sore throat, and inflammation of the air passages, I should not look further for a cause of death in an ordinary case. In an ordinary case I should expect a patient to recover from such injuries as have been disclosed in this case. I do not think that the injuries which Sumner received, were of themselves sufficient to produce death, in my opinion. I do not understand he ever recovered from his injuries; but his death might be explained upon another hypothesis than the evidence of external injuries; extravasation of the blood occurs from other causes than external violence; it often results from congestion produced by excitement; mental excitement will cause congestion of the brain and apoplexy; I am not prepared to say what the condition of the spleen indicated; it is an organ that varies much in ordinary cases; it is an organ that we know very little of, but I considered it of importance in the case; I don't think from the condition of the spleen that one would have been led to suppose that it was caused by external violence.

To Mr. Cooley—I attribute his death to violent injuries and other causes. The external injuries, assisted by, but not to any great extent, the exposure, caused his death.

Q —Do you see any other causes for the inflammation but those which you have named?

A.—No, sir.

Q.—Do you know any reason for supposing, in this particular case, that the inflammation was caused by atmospheric changes?

A.—I do not see that atmospheric changes had any great influence in causing his death.

Q.—Do you mean to say that this death, as produced, was attributable to any thing else but violent injuries and exposure?

A.—No—so far as I have heard the testimony. If I may be allowed to make a statement, I say that the inflammation may have been produced by exposure, and if hereafter evidence of greater exposure is introduced, I may alter my opinion and think that the inflammation was the effect of exposure, and not the beating. I have not yet heard any evidence to make me believe that the inflammation was more than slightly assisted by exposure to the cold.

The District Attorney here announced that the Government had offered all of its testimony for the present, and Mr. Parker opened the case for the defence:

Mr. Parker said that he felt thankful that Mr. Dana was to make the closing argument for the defence, as he believed that the younger men should do the work. He, like the District Attorney, hoped that the jurors would judge the case impartially. The grossest and basest calumnies have been circulated by the press in regard to the conduct of the clients. The columns of the press are not a legal tribunal, and *ex parte* statements by the press are not to be taken by the jury as evidence. Even now the jury had not heard the case for the defence, and it is very important that the jury should have no bias. He believed that the jury was an impartial one, and he was willing to entrust the case to them.

In regard to the press, the public had a morbid appetite to hear every thing connected with a case like this; but the press should not administer to this prurient curiosity. Sums of money may have been paid to show false *ex parte* statements in the columns of the press, and it is therefore extremely necessary that the jury should not be biassed by any statements made by the press.

The parties were arrested without any process; taken before a Court where it was stated that the Court could not distinguish between manslaughter and murder. They next went before a Grand Jury, and there the crime was proved not to be a malicious one, and they were admitted to bail, and have now come to trial.

We now expect to show that letters were written by the ladies, and sent at the same time to Porter and Sumner, and it was expected that both would arrive at the house at the same time, when it was the object of the defendants to confront them with their wives and demand an explanation of their conduct, and with some reproof it was the intention of the defendants to let them go. But it so happened that Sumner did not receive his note, and the defendants went in search of him, and found him in the saloon, from which he went to the house without the use of any force. Mr. Dalton did not know Sumner when he met him in this saloon. After they took him to the house and brought him into the presence of the ladies, it was found that Sumner had a ring on his finger which, six months before, had been placed on the finger of Mrs. Dalton, at her wedding, by her husband. Other circumstances of guilt were revealed, unexpectedly, to Mr. Dalton, and these so enraged him that he attempted to whip Sumner in the room, but his resistance and that of the females prevented him from carrying out his purpose, and Sumner was therefore taken down stairs and chastised, and then made to leave the premises by the fence of the back yard. If you are husbands or brothers, you can understand the feelings of these young men, whose wives had disappointed them, and as the Court has ruled that we cannot show the amount of the provocation, we must appeal to you to place yourselves in the situation of the defendants when they chastised Sumner.

In this case the evidence shows that it was an involuntary homicide. The defendants expressly stated that they should only use their hands, as they thought Sumner was not so much to blame as Porter. If they intended to murder him they might have taken him out of town and beaten him to death, and no mortal arm could have prevented them. But they did not wish to chastise him severely, and we are prepared to prove that Sumner himself said that he got a slight beating for his improper intrigue, and that it was not so bad as Porter had received. There is no proof that any instrument, or cow hide was used. There is a great difference in the testimony in regard to the expression "Oh don't, you'll kill *me* or *him*," but it is most probable to suppose that the exclamation was made by one of the females, and that she said "Oh don't, you'll kill him."

We contend, in view of the testimony in regard to the amount of flogging, and the exposure afterwards, that the defendants are not guilty of any homicide. Mr. Parker then read several extracts from Greenleaf in explanation of the several degrees of evidence which sustain a charge of manslaughter. He contended that the Government must prove that the death was the natural, usual and probable result of the beating. The District Attorney had asked Dr. Jackson if the death of Sumner was the natural and probable result of the beating, and he gave a negative answer. When the evidence only proves that the death was accelerated by the beating, it does not sustain the charge of manslaughter. If two causes co-operate to produce death, and the defendants were only guilty of one cause, then the charge is not sustained. It is testified by Drs. Jackson and Holmes that Sumner was recovering until he exposed himself; and this was the second cause. He would have recovered from the beating had he not exposed himself; and therefore the defendants cannot be held responsible for his death; and so the court will rule to you. A mere predisposition to disease, caused by beating, is not sufficient to sustain the charge. The physicians testify that the beating was not sufsufficient to produce the death. Because he exposed himself and his mental depression brought about a second attack of the inflammation, and the beating only accelerated the disease, then the death ought not to be attributed to the beating. We have physicians who have examined the record of Dr. Jackson's autopsy, and who differ from him entirely in regard to the cause of Sumner's

death. Medical testimony has great effect, but medical men are very apt to form contrary opinions, and none of them are infallible.

In regard to mental depression, it may be caused by a fear of an exposure of the disgrace that a man brought upon himself by an improper course of life. We expect to prove to you by the evidence that Sumner took a ride alone with Mrs. Dalton on Friday, Nov. 10th; that when Mrs. Dalton returned, her conduct was exposed and the matter discussed, and a resolution made to invite Porter and Sumner to the house the next day, when an interview was to be held between the two husbands, the two wives, and the two lovers, and an opportunity was to be given the two lovers to explain their conduct. The interview was sought for to obtain explanations, and circumstances revealed in regard to the marriage ring and other matters, which I cannot reveal, were of such a character that Mr. Dalton was justly outraged and attempted to chastise Snmner on the spot. He took refuge behind one of the females, and had to be taken from the room. We can show that he got away and run to the fence, and fell over it. We have also proof that he was in town on the 30th of November, and pawned his watch and done some other business, and gave an account of his flogging. We have a letter to show that Sumner was sent for on Saturday, at 11 o'clock, which letter he did not receive. It was then found out that he had made an appointment to meet Mrs. Dalton at Fera's saloon in the afternoon, and the defendants went there after him. When they got him to the house he went to Mrs. Dalton's room with Mr. Dalton; Mr. Coburn did not go in at at first. The scene with the women and the flogging followed. Now, if he had a good character before, the public exposure which followed ruined it, and must have caused a great mental depression. The compunctions of his conscience must have created a great mental depression, and his sufferings were mental and not corporeal. His father says that the family avoided all allusions to the affair, because he seemed to be mortified when the subject was mentioned. This great mental agony must have made him extremely sensitive to atmospheric changes. He imprudently exposed himself, and was the cause of his own death.

It will be enough for us fo show that the wounds which he received were not adequate to cause death. We shall show that the wound which he received in the eye would have got well in a fortnight, had not mental and other causes supervened. The intervening cause was the sore throat, produced by his imprudent exposure, and therefore the beating was not the cause of his death. We have some medical testimony to offer which will show that the beating had no connection with the cause of his death.

If the beating is disconnected with the cause of death, then the defendants must be acquitted. If doctors of equal ability and truth disagree, who shall decide? You are not medical experts, and must have it proved to your entire satisfaction that the beating was the cause of death.

We may show many things to alter the opinions of the physicians who have testified for the government; and until all of the testimony is in, an opinion should not be formed upon the medical testimony. The jury must be satisfied that the death of Sumner cannot be explained upon any ethor hypothesis than the evidence of his injuries received, before they can find the defendants guilty of his death.

Mr. Parker closed by stating that the defence would not prolong the case more than could be helped, as he nor the jury would like to spend the Sabbath in the Court House.

At the conclusion of Mr. Parker's opening the Court adjourned until 3 1-4 o'clock.

AFTERNOON SESSION.

The Court came in at 3 1-2 o'clock, and the examiuation of witnesses for the defence was commenced, conducted by Mr. Morse.

J. O. Mason called—I am a builder, and have examined the premises of Mr. Coburn, 84 Shawmut avenue, and made a plan of the same. The plan was in troduced and shown to the Court and jury as a correct one. After an explanation to the jury of the rooms, and the purposes for which they are used, the dimensions of the back yard and the height of the fence was given. The witness testified that the back fence is seven feet in height, and has rails on both sides. The fence facing Waltham street is five feet in height. The wash-room floor is six inches above the level of the yard. The stairs which lead down to the basement are light and open ones. A person wishing to go from the house to the back yard would go through the wash-room. The water-closet, down stairs, is 2 1-2 feet square.

To Mr. Cooley—I do not know that there is a water-closet down stairs, but there is one drawn in the original plan. A man can stand in the front entry and look down into the basement entry and see nearly the whole length of it. The basement stairs are about eight feet from the front door; I mean to say that a person standing at the bannisters around the basement staircase can see as far as the wash room in the basement; he could also see direcly into the coal hole; the door of the coal hole is at the foot of the stairs. I took this plan last week; I was in the house before the 17th November, and during the whole time that the house was building I was all over it; the partition between the furnace room and the entry is a wooden one covered with plaster; I think that the back fence was raised before the 17th November—in fact, I am sure of it; the fence on the side of the yard is not more than four feet eight inches from the round.

J. W. Payson, called.—I reside in Boston and keep a Mercantile Academy in Summer street; it was formerly in Winter street, I was acquainted with Wm. Sumner; he attended my school, commencing about the first of last May and left in November; for three or four weeks, or two months prior to his leaving, he was not so constant as usual at school; I taught him writing lessons. [Witness was shown a signature which he identified as in Sumner's hand writing. He was also shown a letter dated "Thursday, Nov. 15th," which he did not recognize except in the signature; a second letter was shown him which he did not identify.]

J. S. Ellis, called.—I am a specie broker in State street. [Witness was shown a paper

which he said he had seen before.] I bought a watch, and that paper is the bill of sale written by me, with the exception of the signature; it is dated Nov. 31st, but I suppose that it was written on the last day of Nov. or the first day of Dec.; the mistake in the date was not made intentionally; the transaction took place in my office and was signed in my presence; I did not know Sumner at the time, and have never seen the man who signed the instrument since the time it was signed; the man who signed it was a young one about 19 years of age; about that time a young man came into my office who had a mark under his eye; [witness produced the watch which he bought at the time the paper offered was signed;] a person has been to my office since to get the watch.

Q.—Who was that man? Ruled out.

Cross-examined by Mr. Cooley—My attention was first called to this transaction about the time the first trial was held.

Mr. Cooley was going on to cross examine upon the identity of the paper, when the Court suggested thai if he done this, the paper must be considered as admissible evidence.

Mr. Dana said that the paper was put in to show that the person who wrote the signature upon it was in the city at the time, and as the paper bears the signature of Wm. Sumner, he thought that they ought to be allowed to prove that he was in Boston at the time, by such evidence as they could command, viz:—the paper, the watch and the description of the party who signed the paper and sold the watch.

The Court said that if the paper went in it would amount to a declaration of Sumner's, and was therefore inadmissible.

Mr. Dana said that he did not want to put it in as a declaration, but as an act of Wm. Sumner's, The government may object to the evidence of the act, but they did not wish to prove the declaration in the receipt.

The Court said, that looked at in this light, it presented a different point, and the signature might be proved.

Mr. Cooley said that if the signature was proved, and not the date, the paper proved nothing in regard to Sumner's being in town at any time. The simple fact of it being proved his signature did not prove that he was in town at any time.

The Court ruled that the signature might be proved.

Edward Sumner, called.—[Witness was shown a watch.] I am a brother of William Sumner, who is now dead; he used to wear a watch similar to the one now shown to me; I should judge that it was his watch; he did not have that watch about him during the last week that he lived; my brother said it was sold before the 17th November; I never saw the watch on him after he told me; I fix the date only from the fact that he stayed at the Parker House that night; it was before the 17th that he stayed at the Parker House; I have been to see Mr. Ellis about the watch; I went there after my brother died; within a day or two after his death; I am not familiar with my brother's handwriting since he went to writing school; I testified in the Police Court on the examination of Coburn and Dalton; I do not remember the date of it; I testified there on the subject of kicking foot-ball; I have been in this Court every day since the trial commenced; I was engaged in the games of foot-ball; I cannot tell how many games were played, I think three or four, we chose sides, and my brother William was chosen on the side that I was; it was after dinner; we might have played a quarter of an hour or more; my brother Willard, two of the neighbors' boys, and my younger brother George, were engaged in the games; I do not remember whether I went out of the house with William, or whether I found him there; William was there, but went into the house before I did; I played five minutes after he left the field; we all went out to play about he same time, and we all got in the field about the same time; I only saw William participating in the game once, when he run down the hill adjoining the house; I saw him come back, put his hands on his side, turn red and then go into the house; he dined with me that day; think that he went into the house about 4 o'clock, but cannot state exactly; I cannot state what time it was when we went out; my recollection of the time is as good now as when I testified in the Police Court; I am 17 years old; we dined about 2 o'clock, and went out in about an hour or three-quarters afterwards; think the weather was pleasant that afternoon, but cannot state whether it was warm or cold; I was told that my brother went gunning, but did not see him; I went to my aunt's that night with Frederick, Gilbert, and Henry; we walked over across the fields; I rode back with my brother William; we played cards at my aunt's, and William took a hand at cards; think that he did not play checkers; I don't remember that I was at my brother Gilbert's the day previous; I was there with my brother William one evening; my brother lives a short distance from father's; do not recollect what date it was; he came to Boston on Thursday following the day he was hurt; I saw him in Porter's office that day; I am a messenger in the Maverick Bank; leave home at 8 A. M., and return at 6 P. M.; except holidays I am in town every day; I was in Boston Thanksgiving Day, and returned home in the 2 o'clock train; my brother was not at home when I got back, but came in a few minutes afterwards; he told me that he had been gunning.

Cross examined. — I was at the Parker House about the first of Nov.; I entered my name on the register, and so did my brother; I know that it was the last day of October; I never stopped there at any other time with him; I cannot remember who entered the names on the register; I met my brother on the steps of the Merchant's Exchange; he exhibited some money to me that day, but I do not know the amount.

Q.—Did he state to you how he got the money?

This question was objected to, and the District Attorney said that he wanted to prove that the money was the proceeds of a watch sold by Sumner on that day, and he thought that it was admissible as evidence of an act already consummated.

The Court said it would be a declaration, and as such it would be ruled out.

W.—I did not go with him to any shop on that day; he used to wear his watch with a

silk guard; I saw him have a watch when he got up that morning; I slept with him the night before; in the morning I asked him what time it was, and he took up his watch and told me; he had worn the watch for two or three months previous; he was at home nights during most of the time; he boarded at home when he attended school in the city; I did not see the watch after the 31st of October until I saw it in the broker's office after the death of my brother; the watch was asked for after he died, and I told the folks I knew where it was and could get it; I knew when he bought the watch and when he sold it; I went to the place where he bought it after he died; after the 31st of October I did not have any information from anybody as to where the watch was; when I did go to the shop where it was bought I did not see the watch; I did not hear where the watch was until after my brother died; after I went where the watch was bought, I went to another place and saw Mr. Ellis, the witness who was on the stand; he did not show me the watch the first time that I saw him, but told me to call again; the second time that I went Mr. Ellis showed me the watch; I moved in town on the morning of the 30th Nov.; my brother did not visit Boston on Friday or Saturday after Thanksgiving, to my knowledge; I was not at home on the 1st Dec.; I did not see him in town after I moved in, and I have no knowledge of his having been in town after Thanksgiving; when we were playing football my brother ran down the hill a few rods; he kicked the football as it came to his side, to throw it back; this was all I saw him do in the game; if he had done more I think I should have seen him; he was in the field when we chose sides in the game; we dined about quarter after two o'clock, and I think we set at the table an hour; after dinder we set in the parlor about three-quarters of an hour; I do not think that we were out playing ball more than fifteen minutes; I think that we went to my brother Gilbert's on Sunday the 25th November; he was warmly clothed at the time and stayed in a warm room while he was in the house; my brother Wm. went to school, and had been employed in my brother's store; I know nothing about his having cut up pigs; I saw that the back of his ear was black and blue; he called my attention to it in Porter's office; the mark extended down the neck underneath the jaw.

To Mr. Dana—Mr. Porter was present when the mark on the ear was shown to me, but do not know that he saw it, as he was in another part of the room.

Q.—Did you not state in the Police Court that you went out to kick foot-ball about three o'clock, and returned to the house about five o'clock?

Mr. Cooley objected; and Mr. Dana said that the great variation in the testimony of the witness and that of his brother in regard to the game of foot-ball, made it an object for the government to keep him out, and therefore he was not called. Mr. Cooley admitted this as his reason for not calling the witness.

The Court ruled out the question.

J. Andrews, Reporter of TIMES, called.—I saw Wm Sumner at Mr. Porter's office on Thursday, Nov. 22d; I noticed nothing but a mark under his eye; it had the appearance of a common black eye about recovering; the mark was on the lower eyelid, extending downwards about an inch, and was covered with a piece of transparent court platster or gold beater's skin; I did not see any bruise or scar under the eye; he appeared cheerful; some person asked him how he felt, and I think his reply was, "I feel preity well;" I did not hear him make any complaints about his injuries; I was with him about half an hour; it was between two and three o'clock; I went there to obtain information in relation to the Shawmut avenue affair: I asked as many questions as I thought he would be likely to answer; he was chatting and laughing most of the time; his general appearance was that of a person in good health, with the exception of the mark under his eye; he conversed about the manner in which he had been treated in Shawmut avenue, and some matters preceding the assault; I went to Mr. Porter's a second time, in the afternoon, between five and six o'clock; I then saw Sumner standing in the hall outside of Mr. Porter's office; the weather was quite chilly, and Mr. Sumner was standing with his head uncovered, and, I think, he did not have any overcoat on; I wore an overcoat myself, and felt somewhat chilly while standing there; I remained about fifteen minutes, and then returned to the office; Sumner went into Porter's office when I left him; I reported the testimony given at the examination in the Police Court, but do not distinctly recollect the testimony of Sumner's father in regard to his son's exposure after he was injured; I could refresh my memory by referring to the report.

Mr. Cooley objected to having the witness refresh his memory by reading the report, and the court reserved its ruling until the close of the examination of witness.

W.—Sumner said nothing about his condition of health, the second time when I saw him.

Questions in regard to the notoriety of the Shawmut Avenue affair at the time and the probability that Sumner had read accounts of it as published in the newspapers, were objected to and ruled out.

Pending the cross-examination of witness, at 6 1-2 o'clock the Court adjourned until 9 o'clock Wednesday morning.

SIXTH DAY.

WEDNESDAY, Jan. 30.—The Court came in at 9 o'clock, and the examination of witnesses was resumed.

J. Andrews, cross-examined. — Stated last night that he had seen Sumner standing in the hall of Mr. Porter's office, on his second visit, but wished to correct his statement; Sumner was not in the hall when I went there, but was in the office, and afterwards we went out together, accompanied by Sumner's brother; conversed there fifteen minutes; do not think the door was open during the conversation; am pretty certain that it was about fifteen minutes in length; Mr. Porter was in his office at the time; cannot recollect the names of any others there at the time; it was on Thursday at nearly dark; have looked over the minutes of my report since yesterday, and can testify to the substance in question both from recollection and from the minutes; the minutes were made by myself at the Coroner's inquest; the

substance of Mr. Sumner's testimony was that he thought he had taken cold; nothing was said as to the time he had taken cold.

At the close of this cross-examination, Mr. Parker rose and corrected his statement in regard to the ring found upon the finger of Sumner. He said that it was not the wedding ring, but one given Mrs. Dalton by a schoolmate.

Isaac W. Hart, called.—I reside in Dorchester and am acquainted with Mr. Sumner's family; I was acquainted with Wm. Sumner, and saw him on Thursday, 22d November, in the forenoon; he came to my house, and I went with him to Dorchester Lower Mills; we rode about five miles; I saw him again next week in the field near his father's house; it was in the forenoon and he had a gun; I was with him about ten minutes, and perhaps not more than five; his father lives on an elevated spot, on the south side of the hill; I saw him on Thanksgiving day and his brother Edward was with him; I saw him the next Sunday in his father's house; when I went to ride with him he appeared to be rather low spirited; we rode in a covered buggy.

Cross-examined.—I saw him about 10 1-2 o'clock in the forenoon of Thursday following the 17th November; we got back from the ride about 11 1-4 o'clock; it was about 11 o'clock when I saw him on Thanksgiving day; I was a gunning when I saw him; I did not hunt any other day that week; I spoke to his brother Edward at the time and we counted our game; he had his father's horse and carriage when we rode out; after he left me I suppose he went to his father's house; he said that he was going to Boston that afternoon.

To Mr. Dana—He had a mark upon his face when he rode out; the mark was under the left eye.

To Mr. Cooley—I did not see any other mark.

Wilder Broad, called.—I reside in Milton, within a quarter of a mile of Rufus P. Sumner; I knew William Sumner, and used to see him frequently, but not very often after the 17th November; I saw him at my house the night before Thanksgiving; I cannot say what time it was, but it was after dark; it was between seven and eight o'clock when I got home, and Sumner came there after I got home; he came with his brother, and helped cut up a pig; William Sumner had worked in his brother's provision store, in Bromfield street Boston; I have seen him there; the pig was cut up in the shop where I do carpenter's work and keep some of my carriages; he stayed there about an hour, and took an active part in cutting up the pig; the weather was not very cold; he went home about twelve o'clock that night; there was no amusement in the house after the pig was cut up; his brother Gilbert assisted in cutting up the pig, and I held the light; there was no fire in the room when the pig was cut up; I did not see William Sumner again after that night.

Cross-examined.—I meant to state that I did not see him after the night before Thanksgiving; I made a mistake in the date when I said it was the 17th of November; there was not any fire in the shop when the pig was cut up; the room was not cold; it is what I call a warm shop in the winter; about one-half of the room is under the ground; I felt comfortable enough while I was there, and I was in my shirt-sleeves at the time; we went into the shop from the house without going out of doors; I only held the light; William understood the business, and gave directions how to cut up the pig; he assisted in cutting up the fresh meat, but his brother done the lifting and most of the cutting up; I do not think that William Sumner took any cold at the time; I didn't; he wore no gloves while he was cutting up the pig; I cannot tell how he was dressed; there is a stove in the room, but I know that there was no fire in it.

Q.—How do you know it?

A.—Because I know it.

I think that we were not over an hour in cutting up the pig; perhaps not more than half an hour; I cannot say how he came or how he went away; I think that he attempted to sing while he was at my house, but he did not go through with it; I did not hear him make any complaints, I saw a mark on his person.

To Mr. Morse.—There is an outside and an inside entrance to the shop; I am accustomed to work in my shirt sleeves at that season of the year.

Horace Broad, called.—I reside with my father, Wilder Broad; I knew Wm. Sumner, and saw him at his house on Thanksgiving Day, about 7 o'clock A. M.; I saw him in the shed at the time; I saw him again that day in the shed, about 12 1-2 o'clock; I turned a grindstone for him to sharpen a knife; I turned the stone about 20 minutes; he used water on the stone; there was no fire in the shed; I saw him again a little before 2 o'clk, and I kicked a football towards him and he kicked it back again: he then went into the house, but came out again after 2 o'clk, while we were kicking football in the field; he did not kick the ball then, but he was there; James, Willard and George Sumner and myself chose sides; William kicked the football once; he ran about five rods and hit the ball first; I also ran after the ball, and had a little tussle with him to get the ball; he finally got it from me; I should think we ran together about six rods; I was engaged in playing ball about an hour and a half; William was out in the field about five minutes after Willard came out of the house; some of them went in the house, but James stayed out most of the time; I think William was out about half an hour in the afternoon; I think that he had but one coat on when he first came out and kicked the ball; the second time that he came out he had on two coats; he was out about five minutes the second time; I did not see him again that day nor afterwards.

Cross-Ex.—I saw Mr. Morse last night, also another gentleman, about my testimony; William was only out twice; the first time he only kicked the ball once and ran back; he was out twice after that; it was after dinner when he came out; he was out in the field kicking the ball, the second time that he came out; the third and last time he was out about 20 minutes; I dined about half past twelve o'clock; I think Mr. Sumner's family dined about 1 1-2 o'clock; I saw them at the table; I could see them from the shed where I was standing.

To Mr. Dana—I think that William was out about half an hour.

Gridley Coburn, called.—I am brother of the defendant, Edward O. Coburn, and live with my father, Joseph W. Coburn, at 68 Shawmut Avenue; I was there on the 17th Nov. last, and recollect the affairs which transpired that day; on that day I carried a message to Mr. Porter and also to Mr. Sumner, from my brother. [This last answer was objected to, and the jury were dismissed ten minutes, while the counsel argued upon the admissibility of the answer objected to]

Mr. Dana argued that the evidence in regard to sending these letters to Porter and Sumner at the same time, went to show that they were not decoyed there to be beaten separately, or that the defendants intended to take any unfair advantage of them. He thought that the letters went to show the state of mind under which the parties acted.

The Court replied that the only material evidence in the case is that which describes the assault and its effects. It is not material to show whether malice existed or not.

Mr. Dana said he thought that every thing which did not refer to malice aforethought had a tendency to show the minds of the defendants and he amount and kind of beating which they inflicted on Sumner. He contended that legal malice existed in cases of manslaughter, or else there was no criminality; therefore the amount of legal malice or criminality is allowed to be shown by the defence under the ruling of Judge Story.

The Court ruled that interrogatories in regard to the letters referred to and their character were clearly inadmissible. In cases of assault and battery, no words are adequate as a provocation to justify the assault; no man has a right to execute his own wild notions of justice when he is provoked by words. His Honor also ruled that it was immaterial to show for what purpose Sumner was taken to the house, or whether he was decoyed there or not.

Mr. Dana requested the Court to make a record of its ruling, as he intended to take exceptions to it.

Miss Adeline Coburn, called.—I am sister to Edward O. Coburn; I live at 68 Shawmut avenue, at my father's house; I know the wives of the defendants; Mrs. Coburn is called "Fanny," and Mrs. Dalton, "Nelly;" Mrs. Dalton is about 18 years of age, and was married last Summer; I was at No. 84 Shawmut avenue on the 17th November last.

Q.—State how you happened to be there. Ruled out.

Witness—I went to the house about nine o'clock in the morning.

Q.—When did you first know about any difficulty between Mr. and Mrs. Dalton? Ruled out.

Q.—When did you first know of any difficulty between Mr. Dalton and Mr. Sumner? Objected to.

Mr. Dana said he purposed to show that witness knew nothing about the affair until that morning, and that she was called in to assist in bringing about a reconciliation.

Court.—Mr. Dana, I will not allow any questions of the kind to be asked. I will not allow the forms of law to be played with any longer. Mr. Dana was about to explain, when the court peremptorily ordered him to stop, and said, "I do not wish to have you, Mr. Dana, ask questions for the purpose of arguing them to the court."

Mr. Dana said that he had an infirmity in not being able to make himself understood.

Court.—I do not know that the Court has shown any infirmity in its ruling, and the two last questions are ruled out—for the present, at least.

Ex. resumed.—I was at the house when Mr. Sumner came there; I was in the front room in the third story; Mrs. Dalton was there at the time, but she did not live there; she boarded at a house in Summer street; Mrs. Coburn, Mrs. Dalton and myself were in the room; I knew that Mr. Sumner was coming; I was at the window when the carriage came; I had never seen Mr. Sumner before; when he came in I went out of the room and down the front stairs to the story below; I then went back to my chamber, before the gentlemen came up stairs; Mr. Dalton and Mr. Sumner came into the room where Mrs. Coburn, Mrs. Dalton and myself were; Mrs. Coburn did not enter the chamber with the gentlemen.

Q.—Will you now state all that took place in the chamber? [Objected to, and ruled out. Exceptions taken by Mr. Dana.]

Q.—What did Mr. Dalton do when he came into the room?

A.—He introduced Mr. Sumner to his wife; Mr. Sumner offered his hand, and said "How do you do, Nelly?" The parties then sat down; there was some conversation then between Mr. and Mrs. Dalton and Mr. Sumner; inquiries were made by Mr. Dalton of Mr. Sumner, and Sumner made replies; I saw something done respecting a ring.

Q.—What was it? Ruled out as immaterial, unless there was something in it connected with the actual assault.

Q.—What was the next thing you saw done, after the transaction about the ring?

A.—Other questions were asked and answered; I then left the room and was absent a few minutes; I returned and found the two ladies and three gentlemen in the room; when I went in the ladies were screaming; Mr. Coburn and Mr. Dalton were not then doing any thing to Mr. Sumner; he was standing in the front part of the room; Mr. Coburn and Mr. Dalton were not near him; Mrs. Dalton screamed murder, and opened the window; I shut down the window; at that time nothing had been done to Mr. Sumner; I closed the window because I did not wish to have the neighbors hear her cry; I saw no reason for her making the outcry of "murder." [The witness began to weep, and her examination was suspended for a few minutes.] Mr. Sumner was then asked several times to go out of the room; he went out with Mr. Coburn and Mr. Dalton; before this Mrs. Coburn fainted and I went after some water for her; when I returned the gentlemen were in the room; Mr. Sumner did not make any outcry in the room; no blows were struck nor any force used in the room; I did not see in what manner the gentlemen went out of the room.

[Mr. Dana asked if he could inquire whether Sumner was ordered to leave the room. Mr. Cooley objected to the question. The Court said that a man's house is his castle, and he has a right to order a person out of it; but, in this case, the fact would not be very material, but still admissable, and it was ruled in.]

Q.—Was Mr. Sumner ordered from the

room, or was anything said to him in the nature of an order?

A.—They told him to leave the room; at the time he was standing in the front of the room, by the third window, which is over the front door; Sumner was about twelve feet from the door of the room; the room is the whole width of the front of the house; the bed stands in a recess which is over the front door; he did not leave the room, nor go towards the door; Coburn and Dalton were at the door; they had no weapons in their hands, and had not threatened him with any violence at the time; they told him to leave the room several times; there is a space between the foot of the bed and the window; he did not leave the room at any time he was ordered out; he did not make any motion to go towards the door at any time when he was ordered to leave the room; the last that I saw of him he was standing at the foot of the bed; I went to the back part of the room to get the water, and when I turned round to face the gentlemen they had left in the room; my back was towards the gentlemen while going after the water; Mrs. Dalton has lived in the house ever since the 17th of November; Mr. Dalton has not been there since.

[Mr. Dana asked leave to interrogate the witness in regard to the questions and answers which she heard in the chamber respecting the punishment to be inflicted, as tending to show the minds of the defendants and the probable amount of punishment they would inflict, and whether they did not use more violence than they otherwise would if Sumner had left the room when he was ordered out.

The court said that the jury would be instructed what amount of force a man can use in expelling a person from his house, if the person refuses to go until force is used. If the defence wished to show that what was done in the room was excusable, and a friendly or amiable state of mind existed between the parties while in the room, such evidence might receive some consideration. But as nothing of the kind had been mentioned in the opening argument of the defence, or was now proposed to be shown, it was not a pertinent inquiry.

Mr. Dana said he did not wish to show that the parties were in a judicious state of mind at the time of making the assault, as it would imply that they had a preconceived determination to make the assault. He only wished to show that, from the frame of mind that the defendants were in they had no avowed purpose in making the assault

The Court ruled that the testimony in regard to the state of mind existing when the assault was made did not mitigate the force of the assault, and was therefore immaterial and inadmissible.

Miss Coburn, re-called and cross examined —Mr. Dalton was not in Mr. Coburn's house after the 17th November, to my knowledge; on the night of the 17th, I stayed at my father's; I went home about half-past six o'clock; Mrs. Dalton was there when I left; Mr. Dalton was not there when I left, to my knowledge; he might have been in the house without my knowing it.

Q —Was it after Mrs. Coburn was brought in from the bath-room, when you handed her the water?

A.—I cannot say whether it was before or after; I cannot say whether Dr. Blake was there at the time I got the water or not; I think that I gave Mrs. Coburn water only once; I started for the water when Sumner was ordered to leave the room; when I came back he had gone, also Mr. Coburn and Mr. Dalton; I got the water from a sink in the chamber, where they wash; Mrs. Coburn fainted once before, in the morning, just after the Porter affair; it was half past 12 o'clock; I do not know that she fainted in the bathing room; she fainted in the afternoon in her own room.

Q —Do you remember saying any thing about the orders when you testified in the Police Court?

A.—I don't remember.

Q.—Were you down stairs after Coburn and Dalton went down until they came back again?

A.—I think I was not.

W.—So far as I know, Mrs. Dalton has lived at Mr. Coburn's since the 17th Nov; I was there a week after the 17th, and she was not there at the time; I did not visit her in Summer street; I do not know of her living at any place except Mr. Dalton's after the 17th Nov.; I did not see Mr. and Mrs. Dalton together in the house after the 17th Nov.; I knew nothing about the occurrences which took place down stairs at the time; I was attending to Mrs. Coburn while the gentlemen were down stairs; I did not go into the back chamber until after Mr. Coburn and Dalton returned up stairs; I went out of the chamber once and left Mr. Sumner in the room.

To Mr. Dana.—I testified in the Police Court, and was very much excited at the time; I fainted away several times; my best judgment is that Dr. Blake was not in the chamber when I got the water; the last order given to Sumner to leave the room was when I got the water

Dr. F S Ainrworth called.—I am a practising physician and surgeon in Boston; I have been a demonstrator of anatomy for several years at the college in this city; my attention has been called a good deal to medical jurisprudence; I have attended this trial and have heard the whole of the testimony; I have read the autopsy of Dr. Jackson; I attended the trial at the request of counsel for defendants.

Mr. Cooley objected to the admission of the copy of Dr. Jackson's record of the autopsy. He also made further objections to it as being merely the minutes of the autopsy, without any opinions expressed; and as Dr. Jackson was present at the autopsy he was more competent to express a correct opinion than Dr. Ainsworth, who was not present.

Mr. Parker said it was a proper document to base a scientific opinion upon, as it is usual in such cases.

Court—I think it desirable to exclude the document, if possible. It is a partial document, by whomsoever made, and it has been passed round among the hands of experts, who would be likely to draw partial inferences from it, as they could not have seen what Dr. Jackson did. I never heard of a case in which a record of an autopsey was admitted as evidence, and great care should be taken in establishing a precedent.

Mr. Parker said it had been identified by

Dr: Jackson as correct, and it was now introduced as memoranda upon which the opinions of Dr. Jackson were based.

Court —It appears to be nothing but a memoranda, and might be used by Dr Jackson to refresh his memory. I do not see how it can be used by an expert to base his opinions upon. The testimony of an expert must be based upon the legal evidence in the case, and the record of the autopsy must be ruled out.

Q.—After having heard all the testimony in the case, what, in your opinion, was the cause of the death of Mr. Sumner? Objected to, and ruled out.

Q.—From all the testimony affecting the medical questions, what do you think was the cause of death? Objected to and sustained.

Q —Assuming the testimony in the case to be true, what in your judgment as a medical man. was the cause of the death of Wm. Sumner? Objected to as a general question, involving all the facts in the case, and the law prohibits a medical man from giving his opinion on all facts except those which appertain to medical testimony in the case.

Mr. Parker replied that the Courts had allowed medical experts to give their opinions in cases of insanity after hearing all of the facts in the case, both medical and otherwise.

Mr. Cooley illustrated the case, by supposing that if one person testifies that a party had a cold and another person that the party had not a cold, the jury are to decide whether the party had a cold or not. If a medical expert is to give his opinion in the case, it is taking it from the jury who should decide upon the fact. The opinion of the witness should be called to particular diseases testified to in the case.

Mr. Dana contended that it was both legal and proper to ask a witness for his opinion, supposing certain facts to be true. It is proper to put a hypothetical question, and the jury were left to judge upon the facts in the case before them.

Mr. Cooley cited authority to show that when scientific men are called they can only give their opinion upon the facts proved.

The court desired time to consult authorities before giving any decision upon the question, and an adjournment was taken until 3 o'clock.

AFTERNOON SESSION.

The Court came in at 3 o'clock.

His Honor stated that in regard to the points raised in the forenoon, it is undoubtedly true that the rule is that an expert need not particularize upon the facts.

Dr. Ainsworth, recalled —Q.—Supposing the facts testified to by the medical gentlemen to be true, what, in your opinion, was the cause of Wm. Sumner's death?

A.—He died of an inflamation of the throat and of the air passages leading from the throat to the lungs.

Q —Supposing the same facts to be true, did or did not the inflammation of the throat and lungs furnish an adequate cause of death?

A —I think it did.

Q.—Supposing all the testimony to be true respecting external injuries, and taking all the evidences of appearances before and after death, in your judgment was, or was not, the external injuries the usual, ordinary or probable cause of death? Objected to, but not sustained.

A.—I think it was not. I think you could not predicate death upon the injuries he received.

Q —If you had been called to a patient like the one described to have been in the evidence, and no suggestion had been made of external injury, would or would you not have thought it necessary to inquire about external injury?

A.—I think that if I had been called Dec. 8th or afterwards, the symptoms of inflammation then would not have attracted my attention to external injuries; I mean the inflammation of the throat.

Q.—What amount of delirium would attend such a condition of the throat?

A.—Delirium may attend any case of violent inflammation. Whenever there is any fever caused by inflammation delirium may attend it; in this case I think there was inflammation enough to produce delirium; I judge from the description of the throat after death as given by Dr. Jackson; I think no vital part was affected by external injuries in this case; the testimony of Dr. Jackson does not disclose any inflammation of the parts said to be originally injured; when false membrane is in the throat, that appearance generally indicates a natural disease, as croup in children; it is the effect of disease well known as croup among physicians; in judging of the degree of violence in a blow we look at its effects; when a blow on the head produces insensibility, it is a severe blow; when the skin is broken a severe blow must be given; I have seen nothing of the kind in this case; another effect of the blow following insensibility or abrasion of the skin, is an inflammation of the part where the blow was received; this would be either an inflammation of the tissues or erysipelas; the latter would extend to parts adjacent; when erysipelas does not intervene. inflammation tends to create ulceration and abscesses; I have seen nothing of the kind in this case; in young people, in full health, ulceration would follow rapidly; the process would begin within a week and might be longer, without the intervention of other causes; in this case I have made up my mind that the patient was recovering; there is no pause in nature, the patient must either get better or worse; there is no evidence in this case that the patient was any worse a week after he received the injuries, and I infer from the facts that he walked and rode out, he was getting better; while this process of recovery was going on he exposed himself to great vicissitudes of climate, and under such circumstances it is not improbable to suppose that even a well man might suffer; his exposure on Thanksgiving day and the day after was such as to produce the results described by Dr. Holmes as having been seen Dec 5th this exposure affected the parts weakened by previous injuries, from the effects of which he was recovering; I see no immediate or adequate cause for the state of his health Dec. 5th, except the exposure; I see no cause to have prevented his recovering before Dec 5 h except the exposure; I include both mental and physical injuries operated upon by exposure; I cannot give the proportion between the mental and physical injuries which

produced his state of system; I think mental causes operated in producing his state of system; his mental depression, if assumed to be true, would operate upon the body in such a way as to render it more susceptible to the invasion of any disease from without; added to the invasion of disease it would depress the powers of nature so much as to render a fatal termination of the disease more probable; I should think it of importance in this case to examine the mental condition before administering to the causes of the disease; in investigating any case to determine the causes which produced its effects I should consider the state of the mind a very important item; I think, from the evidence of Dr. Holmes, that he would have recovered from the second attack of inflamation; this is strengthened from the fact that Dr. Jackson found no traces of inflammation about the eye, although Dr. Holmes says the eye was swollen and inflamed on Dec. 5th; the attack of inflammation in the throat I think was a third and distinct attack; I think that there is no evidence in the case to explain the access and moving cause of this third attack on December 8th, except the general cause of atmospheric influence; there is nothing peculiar in this case, as being any thing more than what might have happened to any body; the inflammation of the throat and air-passages might have arisen from general causes; a spontaneous cause, means a cause that medical men are not able to trace to any particular act of the patient; it is often the case that we can date an attack of inflammation in the throat from exposure, and very often we cannot, but include it as one of the causes; the same exposure would not operate alike upon different states of the system; the causes of death in this case seem to be remote from the external injuries; I mean to say that in measuring the space of time the diseases of which he died were far remote from the effects of the injuries which he received; by remote, I mean that the injuries received being of the skin, and cellular tissues underneath it, were different and unconnected with the disease of the mucous tissue, of which he died; the remote point of time when the injuries were received diminishes the probability of their effect in causing the death; it is a common circumstance when persons have sore throat that they expectorate blood; the appearance and amouut of the blood as described by the mother, makes it impossible for me to tell where it came from, and from my knowledge of the case I should not look beyond the sore throat as the cause of it; it is not unusual for persons who have a cold to have pains in the chest and a difficulty of breathing; the scrofulous glands found show a scrofulous tendency, but as there was no apparent or recent disease found, I think he did not have a strong scrofulous tendency.

Cross-examined.—I think that the scrofulous appearances described by Dr. Jackson show that he had what is known popularly to be a scrofulous affection, according to Dr. Jackson's own statement; a scrofulous disease is applied to a very extensive class of diseases; the mere fact of expectorating blood does not enable me to state the cause of it, unless I could see the blood; from the mere fact of a person having received an injury I could not tell that the probable result would be an expectoration of blood; I do not see evidence enough in this case to render it probable that there would have been any expectoration of blood after the injuries were received; it is a common circumstance to expectorate blood in severe cases of sore throat; in Sumner's case expectoration of blood might have taken place at any time after he had a sore throat; a simple expectoration of blood may follow from a sore throat so slight as not to excite the attention of the sufferer; I have never seen any effect of a violent injury that could not be traced from the time the injury was received to its results; the effects of Sumner's injuries were in process of recovery the first fortnight, and then they retrogated in consequence of his exposure; the most probable effects of the injuries were to enfeeble those portions injured, and determine an inflammation arising from other causes, or any disease, to those parts; inflammation from a blow is caused by an effect of nature to restore what is destroyed by the blow; the inflammation of the throat was only caused by an effort of nature to restore the throat to a state of health; an inflammation of the throat would be produced by a direct injury or laceration of the mucous membrane; one inflammation cannot be traced to another unless it makes a continuous disease from one part to the other; a blow on the throat might produce a sensitive condition which atmospheric influences would operate upon more readily than upon any other part; in this case three causes operated upon the system, viz: the original injuries, the mental condition and the exposure; these three causes produced the disease in the throat; I cannot say that the inflammation of the throat was not produced alone by exposure; I think it possible for any person to have an inflammation of the throat by exposure; in a hundred cases of throat inflammation fifty might be produced by no greater amount of exposure than is testified to in this case; a person's liability to take cold depends upon the conditions of the mind and body; as a general rule an inflammatory fever or violent sore throat can be traced to exposure; the third and efficient cause of Sumner's death was the suffocation; I attribute his death to the three causes named, and one of which I am not now cognizant; I cannot say that Sumner would probably be alive to-day, if he had not received any external injuries; he would have been much less likely to have suffered from exposure if he had not been beaten; I see no cause for his condition Dec. 5th except the exposure acting upon the effect of the injuries received on the 17th; there must have been some intervening cause to produce the state he was in Dec. 8th; the external injuries were an assisting cause of his death; I cannot say that the external injuries were a necessary cause, as I have not formed my opinion.

The cross-examination of Dr. Ainsworth closed here with the understanding that it might be resumed to-morrow.

To Mr. Dana.—There is no evidence in this case that the inflammation of the throat is traceable to any injury on the neck.

To the Court—Inflammation in one tissue may extend itself to a similar tissue in another part of the body; in this case . should

say that there might have been an inflammation of the lungs; I should say that a disease of the brain would not affect the throat; a diseased part will affect another part in sympathy with it.

Dr. J. B. S. Jackson, called. –The autopsey contains a correct account of the *post mortem* examination.

Mr. Cooley objected to all testimony in regard to the autopsey.

Mr. Dana wished to use the record of the autopsey to base hypothetical questions upon, in interrogating the witnesses.

The testimony was ruled out by the Court.

Dr. H. G. Clark, called.—I have not heard all of the testimony in the case; I did not hear Dr. Jackson's testimony, and only a part of Dr. Holmes', on his cross-examination; in a neighborhood where fever and inflammation of the throat existed, I should find them an adequate cause of death; external injuries are not the common causes of such diseases, and I should not look for them; the common causes are exposure to the weather, scarlet fever, and spontaneously; inflammation of the throat most often arises from exposure to the cold; I should not think that it would arise from external injury; so far as I have heard this case, I think external injuries did not produce the effects described; there is most always more or less expectoration of blood in cases of ulcerated sore throat; expectoration of blood may occur in any case of sore throat; without a sore throat, I should not be able to assign any cause for expectoration of blood, unless I was told of some cause; unless a blow externally was very violent I should expect the part to recover with or without treatment. In cases of external injury the blood may be effused into the tissues around the part struck. The effects of a blow would be first, a swelling, next a discoloration, going through several degrees of color until it disappeared. I should not think that a blow producing a swelling and discoloration under the eye would extend so as to produce an inflammation of the throat, except in cases of erysipelas; it is not unusual in cases of severe inflammation to have delirium accompany it. Severe inflammation of the lungs is often accompanied with delirium. Diseases of the throat are very common; a person scrofulous or having large tonsils would be likely to have diseases of the throat; exposure to the cold, or exposure to any atmospheric changes which produced a chill might produce a disease of the throat. I suppose that anything which diminishes the vitality renders a person more likely to be attacked by diseases. Depression of mind diminishes the power of resistance against external injuries. The causes of mental depression are also among the causes which invite disease. Mental depression operates to affect the powers of digestion and to cause loss of sleep. These effects vary in different cases.

Mr. Dana then supposed a case like that of Sumner's, and asked what would be cause of death.

W.—I think that the death would be caused by the inflammation of the throat; the external injuries would have no immediate connection with the sore throat, and only so far as they made the party liable to the attack, by prostrating and debilitating the constitution; if there was no great evidence of physical prostration, but of mental depression. some time after the injuries were received, I think that the effect of the mental depression would have some effect, but what amount I cannot tell; if there was no evidence from the autopsy of any inflammation of the parts originally injured, I should look for other causes of a sore throat than the injuries.

Cross-examined.—Mental depression may result from external injuries alone; the moral effects of injuries differ very much in individuals; I should not give so much importance to the evidence of mental depression, so far as I have heard it, as to the physical effects of the injuries, the exposure and the spontaneous cause of death; the mental effect of injuries depends very much upon the constitutional sensibility of the person who receives them.

Mr. Cooley supposed a case similar to that of Sumner's, and asked whether the external injuries were not the most important cause in rendering the party liable to the disease of which he died?

W.—I think the physical injuries would make him liable to disease from exposure to the cold; the external injuries were not the most important agency in producing death; I think that the sore throat arose from exposure, and was, by no means, the result of physical injuries; I don't think any body knows the cause of Sumner's sore throat; it arose while he was recovering from his external injuries; judging from the evidence in the case, and assuming that Sumner was a healthy man before the 17th November, the probability is that he would not have had a sore throat if he had not been injured externally; but for the injuries he received I think that he might be alive now.

To Mr. Dana.—The external injuries put him in the range of the attacks of sore throat; mental depression would operate to produce a state of system that would make him liable to an attack by disease.

To the Court.—If severe external injuries produced a loss of appetite, the spirits would be depressed.

The examination of Dr. Clark was concluded at a quarter before seven o'clock, when the Court adjourned until 9 o'clock Thursday morning.

SEVENTH DAY.

THURSDAY, Jan. 31—The Court came in at 9 o'clock and the attendance of spectators was as large as usual.

Dr. C. H. Stedman, called.—I have practiced many years in this city at the U. S. Hospital, the City Hospital, and the Institution for the Insane; I have heard very little of the evidence in this case.

Mr. Dana then put the case of a young man with an ulcerated sore throat, inflammation of the air passages, and a delirium, and asked if it was not an adequate cause of death?

A.—I should think it was, sir; in such a case I should think death would not be unusual or extraordinary; it would be a severe state and attended with danger to life; delirium would not be an infrequent result; delirium arises from a fever produced by any cause; it is not a disease *sui generis*, but would result from disease of any sort, more especially from an ulcerated sore throat, because it is an acute disease of the air pas-

sages, which are a vital part; I should look for mental disturbances; delirium would more quickly ensue when the throat is inflamed, because it throws the arterial circulation to the head; expectoration of blood is not unusual in cases of sore throat; in a case like the one described. I think the disease would account for the expestoration of blood, more especially if the blood was in small quantities; I should no look for external injuries; if here is much fever attended with the sore throat described. I should expect to find the stomach quick irritable.

To the Court—The throat sympathises with the stomach; in a case of *ecchymosis* of the stomach the sore throat would affect it in a degree.

To Mr. Dana.—An inflamed sore throat might affect the stomach, and I should not be surprised to find it producing an irritable state, and vomiting would not be unusual; vomiting is caused by a nervous disturbance of the system; I should think vomiting an extraordinary phenomena in cases of ulcerated sore throat; some persons are more subject to vomiting than others; unless vomiting was violent and continuous I should not look for remote causes; the causes which produce ulcerated and sore throats are exposure, atmospheric changes, malaria, and vitiated states of the atmosphere; scarlet fever indicates the existence of malaria in the neighborhood; such a case of inflammation of the throat as described I have never known to be caused by external injuries; in cases of cold and the liability to take it, something depends upon the mental state of the system, but I cannot tell how much without some data; the effect of mental causes upon the system, so far as I have seen, would be highly operative in many cases to a severe degree and of much importance; emotions may be depressing or exciting.

Q.—In a case of mortification producing a depressed state of the spirits what would be the effect.

[Mr. Cooley objected to all questions which were not based upon facts put into the case, and the Court sustained the objection.]

Witness.—A mortification of the mind would depress the vital energies and exhaust the nervous system; it is difficult to say how it depresses the nervous system, but such is the fact; it depresses the circulation, and there probably are some chemical changes undergone, according to medical authorities; the amount of sensible perspiration is found to be affected by such depression; there also appears to be a change in the constituent elements of the blood: pleasing sensations remove the carbon from the blood; depressing sensations allow the carbon to accumulate; the venous blood is increased in quantity under a depression of mind, and this being in preponderance cannot be so readily acted upon by the lungs, so that congestion might follow such a state of things; feebleness is caused by venous blood and the digestion and appetite suffers under a depressed state of mind; the appetite suffers, the stomach becomes more or less irritable, constipation is likely to follow, and secretions and excretions are liable to be disturbed; it is also supposed to effect the lining membrane of the stomach, as was found in the case recorded by Dr. Beaumont, in Canada, where a person had a perforation in the stomach, and experiments were tried upon the digestive organs; very few hours are sufficient to produce an effect upon the body by a depression of the mind; grief and fright are causes which produce these changes; the case of the "Prisoner of Chillon" is one instance that occurs to me.

Q.—Suppose the stomach to be in a state of *ecchymosis*; should you trace the cause of death to external violence?

A.—I should not. An ulcerated sore throat often arises spontaneously, or without any visible cause; this is nothing miraculous, but the cause cannot be found out; it may occur when a person keeps within doors.

Q.—Suppose the eye to be affected by a blow, and also the ear, and there is no evidence of congestion immediately after, and the person rides and walks out a few days afterwards; would you not expect the person to recover?

A.—I should, under such circumstances.

Q.—Suppose a case of inflammation eighteen days after injuries are received, and meantime the person injured exposes himself by walking, gunning and running, would the external injuries be the reasonable, original and probable cause of death, if the party was recovering from the injuries before the exposure?

A.—I should think not. If, on a *post mortem* examination, the physicians saw no reasons to attribute the immediate cause of death to external injuries, I should agree with them; if a *post mortem* examination disclosed no effects of external injuries, it would confirm my opinion; discoloration or lividity after death is a mechanical action of the atmosphere; if there were no indications of inflammation after death of the parts injured, it tends to show that those parts were in a process of recovery; if the *post mortem* examination shows no transmission of inflammation from the parts injured, through the mucous membrane to the throat, it would confirm my opinion that the external injuries had no effect in producing death; I never heard of a case where inflammation is transmitted from one part to another by the mucous membrane; I should not be able to conceive of such a case where the inflammation of the eye could be transmitted to the mucous membrane of the throat, unless the throat was crushed, and then death would be likely to ensue.

Cross-Ex.—In a case of ulcerated sore throat I should think it sufficient to cause death, without looking for any other causes: it would be the usual effect of such an inflammation of the throat as in the case described by Mr. Dana: delirium may arise from any acute disease in any part of the body: there is a distinction between expectoration and vomiting of blood; expectoration of blood would come from the bronchi or the lungs: vomiting of blood would come from an *ecchymose* state of the lining membrane of the stomach, but it does not always and in the absence of any other cause I should think it came from this state: if a person had been violently beaten on the pit of the stomach I should not be surprised to see vomiting of blood, but it would be likely to follow immediately after the beating; it would not be so likely to escape from an *ecchymosis* state of

the stomach, as the blood is then coagulated; a sore throat would be an adequate cause for the spitting of blood: if a person had been beaten on the head, in the region of the eye, and the ear. and the chest, I should not look for an expectoration of blood from the throat, but an effusion of blood from the parts inflamed: if I was satisfied of the amount of inflammation in the throat, I should not think that the vomiting of blood was connected with any violence used upon the stomach weeks before, and of which no signs were then visible externally; three days would be a long interval after injuries are received on the stomach, to expect there would be an expectoration of blood; if the blood raised was of a small quantity, I should expect it to be raised immediately after the injuries were received; if blood was vomited in small quantities for several days, I should think the injuries received were more severe; if the vomiting commenced before the sore throat, it would be traceable to the injuries received, if no other cause existed; the vomiting might be traceable to other causes than the sore throat, even after the sore throat commenced, but the sore throat would be the most likely cause; I never knew of a case of sore throat, like the one described, produced by external injuries; it is much more likely to proceed from atmospheric changes; I should consider external violence, that weakened the system, a predisposing cause, and exposure the exciting and proximate cause of the sore throat; I do not regard external violence as a cause for depression of spirits, any more than from any disease; moral causes are difficult to estimate in their effects; in a case like Sumner's, I do not see sufficient physical cause to depress the spirits, but I do see a sufficient mental cause; a man may come off victorious in a *melee*, and yet have cause to be ashamed of himself; in a case like the one supposed, I should not consider the external injusies sufficient to produce any delirium.

To Mr, Dana.—The external injuries, without the disease in the throat, were not sufficient to produce death; the great mischief was in the throat; there is a technical difference between expectoration and vomiting of blood; it is of entimes difficult for physicians to tell where the blood comes from; phlegm in the throat oftentimes produces nausea, and causes vomiting; expectoration of blood is the most common.

To the Court.—I should not look for a transmission of inflammation from one tissue to another in a different part of the body.

Cross-examination, resumed —I never knew of the transmission of inflammation except in cases of gout and rheumatism

At the conclusion of Dr. Stedman's examination Mr. Dana rose and said that one feature of the case to be argued to the jury would be the medical question whether the sore throat was not the immediate cause of the death, and whether this sore throat was not caused by exposure and the morbid condition of the body produced by mental suffering. He wished to show that the morbid condition was caused by the mental and not the physical condition of Sumner. The government have attempted to prove that the morbid condition was caused by the physical injuries. The defence contended that the morbid condition was caused by mental depression, and while in this morbid condition, produced by mental depression, his exposure produced the sore throat, of which he died. He thought that the defence had a right to show how far the mental depression acted as a co-operating cause; and for this purpose he wished to introduce testimony to prove that the mental depression must have been very great. The government had contended that there is an adequate physical cause for death, supposing there was no mental depression. The defence wished to show that mental depression must have been a powerful co-operating agent in weakening the system; and to prove this they wished to introduce evidence of what transpired in the chamber at Coburn's house—letters, and other facts of equal force and pertinency.

Mr. Cooley said that this evidence had been ruled out several times, and still it is brought up again. It is not to be offered to prove that the charge against the defendants is true or false. It is only put in to show that it might have a tendency to establish a state of mind. Such speculative evidence is not admissible. Unless they can show the deepest mortification of mind, like that of a person who loses the accumulations of years at one blow, then the evidence is only inferential in regard to the amount of grief or shame which was produced and existed. This much is a clearly settled principle of law that if a party is assumed to be guilty of adultery, and he is killed, the provocation is no justification of the killing. The testimony is therefore not admissible.

Mr. Dana said that Mr. Cooley's objection was only to the amount of mental depression to be proved, and he therefore yielded the whole question as presented by the defence. In Greenleaf, sec 102, the same principle is laid down that it is competent to prove the amount of mental depression which co-operated to produce a state of the system which predisposes a party to contract a fatal disease. The evidence which he wished to introduce would tend to prove that the mental condition of Sumner did operate to produce a physical prostration and invited the disease of which he died. Because the government had the first chance to prove the physical condition, they have no right to shut out other testimony in regard to the mental condition. Because they say the death was caused by physical violence, they have no right to prevent us from showing that mental depression had its effects in causing death. Mental depression is a legitimate cause of physical prostration, and because the District Attorney says that if a man's honor is destroyed, and he afterwards receives a slight blow, and subsequently dies, the man who struck the blow should be hung for murder, he did not hold it to be the law of any civilized nation.

The Court stated that in view of the various aspects under which such testimony would present itself, the modes of rebuttingit, by newspapers and the conduct of the females, and of sustaining it by a thousand things, perhaps some of them as remote as the fall of Sebastopol, he could not allow it to be introduced. It would be too difficult to distinguish what effect the various causes had in producing the morbid condition of the body, and the testimony was therefore ruled out.

Mr. Dana took exceptions the ruling,and reduced them to writing.

The Court took a recess of five minutes, and at the expiration of the intermission Mr. Dana asked leave to prove that the flogging of Sumner was a public rumor at the time or soon after it was committed. The Court ruled it out, and exceptions were taken.

Mr. Dana then asked if he could be allowed to show Sumner's statement, not written by himself, but published as his statements of the transaction in Shawmut Avenue. He did not wish to show what he stated, but the article which was written upon the statements made by him. The Court ruled it out as inadmissible. Mr. Dana then stated that he had no other evidence to offer.

Mr. Cooley called the following

REBUTTING TESTIMONY.

Dr. J. B. S. Jackson, called.—I would change my testimony so far as this, that the amount of exposure is greater than I supposed, and that he would be more liable to be attacked by disease in the condition that he then was; my opinion is the same, that the injuries were the predisposing cause of death, and that he would be alive now but for the external injuries; Dr. Stedman, I think, was in error in supposing that the ecchymosis was under the lining of the stomach, it was in the lining; if the ecchymosis had been under the lining, I should not have thought that any blood would have been vomited from the stomach.

William Wilson, called.—I was before the Grand Jury, and heard the examination of Mrs. Hunter, the nurse.

[Mr. Dana objected to the admission of testimony given before the Grand Jury, to contradict a witness called by the government, because that evidence went against the government The objection was reserved for ruling]

Margaret Wier called.—Mr. Dalton has been at Mr. Coburn's twice since the 17th of November: on the night of the 17th November they stopped at Mr. Coburn's house and occupied one room together: they lived together where they boarded until he was arrested; Mr. and Mrs. Coburn lived together about a fortnight after Nov. 17th.

Cross-examined.—I have not seen Mr. Dalton at Mr. Coburn's since he was arrested; Mrs. Dalton has lived there since her husband was arrested, but he has not been here to my knowledge; she has seen him since, but not in the house, to my knowledge; I am in the house most of the time; don't think a person could come to the house at night and go away in the morning without my knowing it; Mrs. Dalton has been there every night since she came to live there; Mrs. Dalton saw her husband at the jail after he was arrested, but I have not known him to call upon her since he was first arrested.

W. H. Richardson, called.—I know the defendants; Mr. and Mrs. Dalton lived together three or four weeks after the 17th November.

Cross-examined.—I do not know that he has or has not seen his wife for the last five or six weeks; during the last five or six weeks, I cannot tell where Mrs. D. has lived, but think she has lived at her father's most of the time; she has been at my house one or two nights since Mr. D.'s last arrest; I married a sister of Mrs. Dalton's; I think Mrs. D. has lived most of the time at her father's Mr. Gove, 84 Shawmut Avenue; I have the impression that Mr. D. has not seen his wife since his release from imprisonment.

Mr. Cooley here announced that he had no more testimony to offer in the case, and the defence also announced that they had concluded the examination of witnesses.

After a short consultation of counsel on both sides with the Court, it was announced that an adjournment would be taken until 9 o'clock to-morrow morning, in order to give counsel time to prepare their arguments.

EIGHTH DAY.

FRIDAY, Feb. 1.—The Court came in at 9 o'clock, and the attendance of spectators was larger than usual.

The District Attorney, preceded the closing argument of Mr. Dana, by the citation of several legal authorities in regard to the various degrees of homicide and the amount of proof required to sustain an indictment for murder or manslaughter; also the relation which provocation has in extenuating the crime of homicide, and reducing it from murder to manslaughter.

At ten o'clock, Mr. Dana commenced his

CLOSING ARGUMENT FOR THE DEFENCE.

In the gospel according to St. John, it is written, "Judge not according to the appearances, but judge righteous judgment." Time was when arrests, trials, sentences and executions took place between the rising and setting of the sun, and it was only in cities of refuge and in the sanctuaries of the church that persons had an opportunity of defence. But in our days, Justice sits in her own temple and pronounces righteous judgment. I do not know of a case that demonstrates the difference between ancient and modern trials more forcibly than the case now before us. In ancient times such a case as the one before us would have been settled summarily, on the appearances of the moment. Now, the case has been delayed until every person has had a sufficient time to calmly review the facts in the case and form a proper judgment. We have not been allowed to present certain evidence which proves the amount of provocation in this case, but you, gentlemen, are not to suppose that there was none. And on the other hand, you are not to suppose that the deceased was decoyed to the house, or were intentionally separated, because we have not been allowed to prove that it was otherwise. Only one witness has stated that the defendants did use the werd decoy, but we could, if allowed, show that the intention was to have the deceased at the house at the same time with Mr. Porter.

You are not to assume either that the defendants inflicted a severe chastisement for a very slight cause, because the newspapers, and even a higher authority, has called it a mere flirtation between a giddy woman and a boy. We could, if allowed, show a different state of facts, and therefore you must not assume that the provocation was slight. You are not to assume that the acts committed were done after deliberation. My clients have not had a hearing upon this question, and I know you will not do them the injustice to suppose that that they proceeded calmly and coolly in the infliction of chastisemen

upon the deceased. If, in the case of Sumner, they called him to a room, and then the developements of his acts and the infatuation of both Sumner and the woman, made them suddenly resolve to punish him, they cannot be presumed to have had any deliberate malice.

Mr. Dana then recapitulated the acts and the appearance of Sumner from the time of the assault up to Dec. 5th, as presented by the evidence, and asked if his death could be attributed to the assault upon him. Even the physicians, and they the most skillful, have said that the injuries were not the cause of death. Had all the facts which have been presented during this trial been spread before the public through the columns of the press before the trial, public opinion would have been much changed, and perhaps the arrest and trial of my clients would never have occurred. The deceased, as shown, never intended to prosecute the defendants for any assault, although some of his friends advised him to do so. Had the press published these facts instead of catering curiosity and passion, who can say how much the aspect of affairs would be changed? But we are not to suppose what would be the condition of things under different circumstances, but take the facts as they are presented, and upon them found our judgments; and therefore I shall confine myself to the testimony.

In the early summer of 1855 Mr. Frank Dalton, then a very young man of 22, was united in marriage with Nelly Gove, then of the age of about 18. Dalton was a man of unimpeachable character, engaged in business, looking forward to the building up of a character in the community by temperance, by chastity, by fidelity, by business capacity, by attention to, and the faithful discharge of, the duties of life, hoping for peace, comfort and happiness, where young men place that hope, in their domestic relations. He promised fidelity, leaving all others to adhere to her alone to comfort and cherish her to his life's end; and that promise on his part he has kept and performed.

In less than five months thereafter, a cloud is cast across his way of life. He finds himself in the cell of a felon, charged with the crime of murder; arrested while engaged in business, with no more idea of escaping justice than justice had of escaping him; before any complaint had been made, before the *post mortem* examination had taken place, which would have shown the cause of the death, he was arrested by an officer and dragged to prison, and for weeks not bailed—the law not providing bail until he could be examined by a grand jury, among the worst of criminals and murderers.

Not only so, but the press was seized upon by those who were opposed to him, to influence the public, excited by that prurient curiosity which seeks to pry into that which may gratify a morbid fancy or taste. Every thing operated against him, while he was advised by counsel to wait till public opinion could subside to its proper level. But there was a something still harder to bear. A person may bear confinement in a prison, but to be a mark for "the hand of scorn to point its slow unmoving finger at"—all this he had to bear in silence and with patience. He has looked forward to an hour like this.

He is disappointed, to be sure, in the degree of the investigation; but still, to its extent, he is satisfied. The time may yet come, when a further vindication may take place than the rulings of the law admit here. Why, gentlemen, has this taken place? Death, gentlemen of the Jury, is common. To the reflecting mind, death would seem to be the rule and life the exception. Of those who are born into the world, how few survive infancy, and of those how few reach manhood, and how very small the proportion of those who reach old age.

This frame of the human body, through which all the work of a world is to be done, which holds the mind, the intellect, and the spirit—which governs creation, and has dominion over the animals, and over the world, —is the frailest and the most uncertain of all things—more frail, even, than any work of man. Only a miracle carries it beyond a certain period, and it may break at any time. One single cause may produce death: it requires a combination of causes to preserve life. Instead of its being extraordinary that a man should die, it is more extraordinary that he should live.

Well, here, among the hundreds of thousands who die daily, from various causes, in Milton, on the 11th day of December, died Wm. Sumner. He died, as every physician has said, from an ulcerated sore throat and inflamed passages. Every physician called by the government, or called by us, has testified that that was the cause of the death. That testimony, uncontradicted, is, that it was the natural, common, and adequate cause of death. Not only so, but the physicians have all said that they never knew such a state of things as existed in this case to follow from external violence. Never, never. If that state of things was produced by external violence, it is the first case ever known, says Dr. Stedman, and it cannot thus be accounted for. Since the world began was it not heard that a man died of the disease of which Wm Sumner died, resulting from violence. In our climate, the most fickle of any in the world perhaps, diseases of this kind, on the sea board of New England are common, and death is a common result. In such a climate and at a season when the weather was most changeable, with the warmth of summer and the cold of winter in a single day, at a time when the place where Wm Sumner lived was visited by a miasma, producing scarlatina, he was taken sick and died. He died of that cause.

Well, gentlemen, what is that to us? No persons have more cause to regret that death to-day than my clients. For had Wm. Sumner been living to day no complaint of any kind would have been brought against these defendants. Not even in his dying declarations did he utter a word implicating these defendants. And even in his last moments, he did not authorise nor would he tolerate his name to be used against these defendants. They are the real sufferers by his death.

There is another operation of his death which is unfortunate to my clients. Death gives a retroactive effect to the memory and the imagination. How differently do we judge of the acts of a man who is deceased from what we did in his life.

So true is it that epitaphs are proverbially false. How natural it is that the father and

the mother and the neighbors of this young man should have their memories and their imaginations affected by the spectral and unreal light which death has cast over the acts of Wm Sumner. They heard nothing from his lips to condemn my clients, but from the newspapers, some of which were taken possession of by the enemies of my clients. How natural, but how unreliable then is the memory of persons in such a situation. But from these persons the government produces those who are affected the most and who know the least, as witnesses in the case.

William Sumner died. We are charged with having killed him. The government says he died "of a mortal wound," inflicted by us Not instantly, but, of this wound, gradually languishing from day to day, he of that expired. How is the fact? Let me ask attention to the medical testimony in the case. We have the testimony of Drs. Jackson, Clarke, Ainsworth, Stedman, and Holmes. What do they all say of the cause of the death?

In the first place, Dr. Holmes, the family physician of Wm Sumner, and a popular and successful practitioner in Milton, says, "in my judgment the cause of death was inflammation of the throat and air passages." He says if he had not known of external violence he would not have looked beyond the sore throat and exposure for causes of death. These were adequate and sufficient.

Then Dr. Jackson, at the head of the profession in the department of morbid anatomy, says, "in my opinion the cause of death was inflammation of the throat and of the air passages. He also says that in ordinary cases he would not have thought of looking beyond the inflammation and ulceration for causes of the death. His death might be fairly and reasonably accounted for on other hypotheses than that of violence."

Dr. Ainsworth, a distinguished demonstrator, says, "he died from inflammation of the throat and air passages leading from the lungs." This, he says, did furnish a sufficient and adequate cause of death.

Dr. Clark, known to all this community for his skill and good sense, says, "I should call that state of things described in the throat an adequate mode of accounting for his death. It is very often fatal. I should not have had my attention called to the subject of any external injuries. I should never think of external injuries as the cause of such a state of things. I never heard of external injuries as the cause of such a state of things."

Then we produce Dr. Stedman, a very skillful physician, having had charge of some of the Institutions of Boston in a medical capacity for many years, and a man in active professional practice at the present time. He says that the inflammation of the throat and the air passages was an adequate cause of death. Delirium is not unusual in those cases. He would not have had his attention called to any other cause.

Then, we have the medical opinion as to that state of facts; we have the concurrent opinion of all the physicians that there was an adequate cause of death in the inflammation of the throat and air passages, nad that it was the immediate, operating cause.

They all say that the external injuries were not a natural, adequate or probable cause of death. This they say distinctly, every one of them. Dr. Jackson answers this most satisfactorily; and he says, "from such injuries as have been detailed by the government, one would have expected him to recover; I should not have expected any bad consequences from the external injuries which were indicated, neither that to the neck, nor to the ear nor to the eye. From all that the *post mortem* examination showed, I should not have expected any serious consequences."

Nothing can be more satisfactory than that. The same question was put to Dr. Ainsworth. He says external injuries were not the usual, natural probable causes of the death. There were no indications that any vital parts were affected. All the physicians testify that none of the vital organs were affected.

Again, Dr. Ainsworth says, the injuries were not the foundation of the causes of death. Dr. Clark says, "by no means would I consider the beating as an operative cause of the inflammation of the throat. The ordinary and usual result of such injuries would be that he would recover.

Dr. Holmes says, "I mean that I should have expected him to recover from any injuries he had received if no other cause had intervened." This is stated in answer to a question on the part of the government. Dr Holmes would not say that the beating was the original cause of the death, for that would be to say it was a sufficient cause. He says it was not a natural and probable cause of the inflammation of which he died.

Further testimony to the same effect was cited from Dr. Stedman, who said in answer to a question on the part of the government, "my opinion is confirmed that external injuries were not a cause of the death."

Then we have the actual *post mortem* examination. Then for the first time science came to our aid. When the excited passions and the inflamed imaginations and memories of parents and neighbors were operating against us, then the clear light of science came to show that the death was the result of natural causes. The report of Dr Jackson was the first stay to the sea of public opinion which was bearing down my clients and overwhelming, in its course, not only the peace, the happiness, but the reputation, and perhaps the reason, of at least one of them.

The testimony of Dr. Jackson was again referred to, and also that of Dr. Stedman, who said, "I cannot by any conceivable mode trace the passage of inflammation from the parts injured to those parts from the inflammation of which he died." So all the physicians say they could not trace any inflammation transmitted from the external injuries to the sore throat from which he died. They not only say this, but they say they never heard of such a case.

The inflammation could not cross from the injured parts inflamed. The maker of our bodies has placed there guards, thin, transparent, almost invisible, but more absolute protections than walls of brass or iron.

Again, all the medical testimony goes to show that up to the time of the prevailing miasma in Milton, William Sumner was recovering. Dr. Holmes says there was a fresh attack of inflammation. He says the inflammation was violent and acute.

One fact important to be noticed is the manner in which the evidence has been brought forward in the case. Those who knew the most about the conduct of William Sumner were not called to testify, but those were

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called who knew the least about Rufus Willard Sumner, the brother who was with William a short time when they were playing ball, is called; and James. George and Edward, who were in the field a long time, were not called. Gilbert Sumner was sitting in Court, and he knew that the testimony on the part of government would be likely to show that Wm. was scarcely ever out of the house. He knew that this was not so, that Wm. was with him and assisted in cutting up a pig on Thanksgiving evening, that he sat up till after midnight with him.—He knew that he was up early next morning, that he was out gunning that forenoon. Was he called? No. He sat here in silence, permitting the case to go to the jury with the knowledge on his conscience that they did not know half the truth.

Edward, who slept with him every night, to the first of December, was not called. If there was pain or distress, he knows it. When the jury see that there is something to be concealed, and that those who are struggling for truth have to go to rather hostile sources to procure it, they are always ready to believe that there is even more behind.

The testimony of Rufus P. Sumner was then recited; that William had no bandage on his eye for the first week; that he had not on Thanksgiving day; that he was "taken sick" on Tuesday after the first of December.

But according to the indictment, we had inflicted a mortal wound 22 days before he died and he was all the time "languishing" and expiring of a "mortal wound."—How absurd to attribute his death to such a source. The exposures account for the sore throat of which he died. Wilder Broad says, that William came to his house after 8 o'clock on the evening before Thanksgiving; that he walked from there to his father's; that in the evening he assisted to cut up a pig.—William did not do the easy work of holding the light, but took hold and helped to cut the pig. They stayed there an hour, and then went to the house and stayed till midnight.

Was he then an invalid? Was he sick? Was he conscious of any sickness? Was he languishing of a mortal wound? This was twelve days after the affair in Shawmut avenue. Why did not Gilbert Sumner say to him, "You are not fit to be here: you are languishing of a mortal wound: you have but a few hours to live—go into the house." None of them saw the slightest reason why he should not cut up as many pigs as he pleased, nor why he should not sit up as late as he pleased.

The testimony of Mr. Broad and of Mr. Hart was then commented upon, to show that the reason why William did not sing a song that he commenced was because of his sore throat, and to show that he was out gunning on Thanksgiving day, from eleven o'clock in the forenoon till two in the afternoon.

Horace Broad says that he was out kicking football, and Wm. Sumner was out there, and when the ball came towards him he kicked it in a most natural manner, the same as any body would. In this connexion, it should be rememocred that the footoall game was after dinner, and as it is most probable that Mr. Sumner had eaten rather hearuly, it is not improbable that his overeating caused his sickness when he ran after the ball. He ran five rods down hill and struggled for the ball, but Horace Broad says nothing about the gagging. Only one member of the family testifies to the gagging, while another brother says that he only saw him put his hand to his side and turn red in the face. Now, after the football game, he eat a hearty supper, and after that he walked to his aunt's, half a mile distant, in the evening. This shows a good day's work, even for a well man, and does not look like the labor of a person who is languishing of a mortal wound Before Thanksgiving, his actions do not resemble those of a person who is languishing and expiring from the effects of a mortal wound. Even the whole amount of his exposure is not shown, as it cannot be supposed that, if he was able to do all that I have mentioned as facts in the case, he did not do more. It is also shown by witnesses that on the Thursday after the assault, Sumner did not complain of his injuries, but said he felt pretty well, and showed no marks upon his person except under his eye, and this was covered by a piece of court plaster. His exposure in the hall on this occasion may not have been material, if he was in a condition to walk and talk with his friends all the afternoon in Mr. Porter's office. It is evident that Sumner himself felt well and did not apprehend any dangerous results.

In regard to the public reports that Sumner was taken into a coal hole and brutally whipped, these have been disproved by this examination, and so has the more frightful rumor that they attacked the private sources of life itself. Every physician has testified that he was recovering from his physical injuries when he was attacked with the inflammation in the throat. He would not have died of the external injuries, and science proves it But it is needless to pursue this point. The opinion on which the public mind will finally settle is this: that the young men received a pretty severe chastisement, which they richly deserved, which the defendants naturally, but, in law, unjustifiably inflicted upon them, but that they did not kill the deceased. Here we see a young misleader of the young, by the confession of the deceased; this was partly known by those who chastised him. They knew and said that they did not consider him the most culpable, and it is therefore supposable that they did not inflict a chastisement of equal severity upon him.

[The Court took a recess of five minutes.]

It is highly proper that everything should be investigated to show whether the defendants did or did not kill Sumner. The examination of the body shows that the inflammation arising from the physical injuries was not communicated to the sore throat, and it has been fully and conclusively proved that Sumner died of an inflamed sore throat. Homicide is the killing of a man, and it may be criminal or not, according to circumstances, and the law only takes cognizance of it when it is criminal. If a man kills another criminally, the law divides the criminality into several degrees. If the killing is done without premeditation, it is called manslaughter; if with malice aforethought, it is called murder. Manslaughter, again, is subdivided into two classes. If it is intended, it is called *voluntary;* as where a man finds another man with his wife, in the very act of

adultery, and kills him instantly, it is voluntary manslaughter, because he intends to kill, although the intent is not deliberate. Involuntary manslaughter is where a person dies from the effect of wounds which were not given with any intent to kill. The government have called this a case of involuntary manslaughter, which is a great remove from the original charge of murder. We say it will result in a still further remove from murder, and end only in a case of assault and battery. The government has evidently been disappointed in the testimony brought forward to sustain the charges of involuntary manslaughter. Its only hope is in a "predisposing cause." But there is not enough to constitute homicide. If a man unlawfully knocks off the hat of another, and he takes cold, and so being "predisposed" takes a mortal disease and dies, it is not manslaughter.

Dr. Jackson was asked if he did not think that Sumner would now be alive if he had not received the injuries, and he replied that he did, but he did not say that he believed so without any reasonable doubt. Dr. Jackson testified that physical and mental causes co-operated in producing the weakened system. We are not responsible for the effects of mental depression, and the law in cases of homicide obliges the testimony to prove the cause and its direct effects, and none other. There must not be a reasonable hypothesis that there is any other cause of death except the one alleged and upon which the indictment is founded. In this view, the testimony that Sumner died of an inflamed sore throat must be thrown out, and you must be satisfied beyond a reasonable doubt that the physical injuries alone caused his death. If a person receives a wound, not mortal, and in consequence of its unskilful treatment the person dies, then the law does not hold the party who gave the wound guilty of manslaughter. If death is not traced to a wound, but to a supervening accident which operated upon the original wound, then the law cannot hold the party who gave the original wound guilty of manslaughter. On the other hand, the mere developements and necessary stages of the blow, you are answerable for. If you strike a man and it causes congestion, then you cannot escape by saying the man died of congestion and not of the blow. But if the wound given is not mortal, but independent supervening causes make it so, then the party who gave the wound is not guilty. To make a case of manslaughter it is necessary to prove that the blow given was the natural, probable and adequate cause of the death.

If you inflict a wound upon a man and it kills him, it makes no difference in what condition of health the person was at the time he was struck. If a man is injured, and while in process of recovery he is injured again, and while recovering from the two injuries he is again injured, and dies, the only party guilty of manslaughter is the one who inflicted the last injury. In this case it is proved that Sumner was recovering from his injuries until a second and a third cause intervened, and he died. The second and third injuries were the exposure and the sore throat, and these were not caused by the defendants. Is it shown that Sumner, or his parents or friends, ever thought of calling a physician until the 4th of Dec., seventeen days after the assault. There is no evidence that even Dr. Hill was asked for advice, and Mr. Sumner's own mother did not have her attention called to the marks on the neck and behind the ear. Sumner did not complain to her of injuries on the neck. Porter, who was his confidential friend, did not notice any discoloration over the eye or marks upon the neck. Mr. Andrews, who went to see Mr. Sumner in his capacity as reporter, and would have been likely to have exaggerated, says that Sumner looked very well while he was in Porter's office. I mean that if Porter's influence could have had any effect, the condition of Sumner would have been represented at its worst. (I do not refer to the *reports* in the TIMES, for I am told that its report of this trial are full and accurate.) I shall not allude to the testimony of the genito-urinary Dr. Hill, the "no cure, no pay" practitioner, who has left general practice, or, more likely, general practice has left him, and now confines himself to diseases of the genital organs. I do not believe him capable of giving a reliable statement of Sumner's state of health and physical injuries, when he saw him. Some testimony is introduced to show that Sumner's stomach was injured, and one or two witnesses say that he vomited. His father and the brother who slept with him did not know anything about his vomiting. His mother saw him vomit blood once, and in this connexion the physicians say that in ordinary cases of sore throat expectoration of blood is very frequent. None of them connect the vomiting of blood with the external injuries, but all concur in one opinion, that the blood most probably came from the sore throat, and that vomiting was caused by the suffocating effects of the ulceration.

Dr. Jackson says that in his *post mortem* examination of the stomach he could not see that the ecchymose state was caused by external violence. The defendants instruct me to say that they did not touch Sumner except with their hands, and that they did not strike him on any part of his stomach. I have no doubt of this, but you can only say whether it has been proved by the evidence.

Dr. Stedman describes the effect of the mind upon its slave and servant, the body. It is absurd to suppose that the mind does not affect the body, and we could show, if allowed, that Sumner was, as he should have been, great depressed in mind. Cheerful men are healthy; and, on the contrary, grief, care, anguish, sorrow and shame, destroy life. I take a pride in feeling that the mind controls the body. A man of noble spirit may contend against the effects of an honorable wound, and recover. The spirit of a man sustains his infirmity, but a wounded spirit who can bear." Do you suppose that this young man Sumner, who did not consider his injuries severe enough to call a physician, was reduced to a morbid condition by his injuries which were recovering? There was a disease that the physicians could not find on examining the body. There was a disease wherein "the patient must minister to himself"—the mind diseased. A young man in the prime of life, is misled into disgrace and exposure and shame, is arrested in his career and has time to reflect upon

his conduct, is there not enough in this to produce a morbid condition? The chain of moral causes in this case goes to prove that the mental condition did co-operate in reducing Sumner to a morbid state, but to what extent we cannot tell,—it may have been the greater or the lesser cause, it was a *cause*.

We justify no assault and battery, the law does not allow it; nor can public opinion take the law into its hands and make the parties guilty of a manslaughter which has not been committed. Mr. Dalton has done wrong, but he is more sinned against than sinned. The manner of getting Sumner to the house is shown to have been a quiet and natural one. There was no force used. Sumner knew Mr. Coburn when he saw him in the saloon, and he knew that the carriage was to be driven to No. 84 Shawmut Avenue, where he had been before to meet Mrs. Dalton, without her husband's knowledge. He did not hesitate in going, there was no decoying and no force used. When he arrived at the house, he was not decoyed up stairs, but entered the chamber in which Mrs. Dalton was, and addressed her with the familiar title of "Nelly," in presence of the injured husband. They all took seats. After questions had been asked and answered, which we have not been allowed to put in, he was ordered to leave the house. What did he do? He got behind the bed, when Mrs. Dalton shielded him, and proclaimed her love for him in presence of her husband. Was noi this enough to require the husband to see that those eyes, those heads never met again—the infatuated lover and the infatuated wife. They took him down stairs. On their way they inflicted such punishment as indignation, pity, contempt, wounded honor, with no plan or settled purpose, would inflict, and then ejected him ignominiously from the house. Nor was this done to a stripling, but to a man larger than themselves, for Porter testified that Sumner weighed 150 pounds, and was round and robust in his person.

AFTERNOON SESSION.

The Court came in at a quarter past three o'clock, and after waiting some little time for the District Attorney, Mr. Dana continued his closing argument for the defence, by referring to the prejudice which has been produced against Mr. Flanders and Dr. Blake, from the impression that they were at the house of Coburn by agreement, to assist in chastising Porter and Sumner. The testimony in the case, which would go to prove that this was not so, was recited. Dr. Blake was at the Medical College attending a lecture when he was sent for to attend Mrs. Coburn, who had fainted in consequence of the affair with Porter, previous. He was their family physician.

He further recited the testimony of the persons who were present at the time of the affair, to show that there was no plan on the part of Coburn and Dalton, further than to confront the defendants with their wives. There was no cry of any one but of women. The door at the front of the house was not fastened. Nothing but the common latch closed it. On this subject there has been great misapprehension. It has been said that they were decoyed into a secret place out of the sight and sound of any one.

In closing the case, Mr. Dana said the jury were entitled to return a verdict of guilty of assault and battery. They were not required to do it; but if the government ask it you are entitled to give it.

Mr. Dana closed by stating that he had treated the case from the beginning as he would a civil case, as though it depended upon the preponderance of testimony; and upon that he claimed they had shown that no homicide had been committed, within the meaning of the law. The question for the jury was whether it had been established beyond a reasonable doubt that a homicide had been committed. By acquitting of homicide, no stain would be put upon the character of the defendants, and no imputation would rest upon any person living or dead. They would simply say that what was done then did not kill Sumner, that other causes intervened.

The defendants may have done wrong in attacking him—they did. But under what provocation the jury do not know; the defendants do know. There is a little danger from the sympathy of the jury here. But they should regard the character and the future of the living, whose character and efforts have been clouded and broken.

I cannot ask the jury to consider any of these things. You are only to pronounce your verdict upon the facts. If you find the defendants guilty of assault, say so. But from *blood guiltiness* deliver them.

Mr. Dana concluded his argument at quarter-past four o'clock, having spoken five hours, and making one of the most ingenious, elegant and forcible arguments that we ever listened to.

The District Attorney then commenced the

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Gentlemen of the Jury:—When you were called upon in this case, you were also called upon to make your solemn attestations before Heaven that your minds were not, and would not be, prejudiced by a public feeling, in judging of the case. I should not have required this of you, for I have seen you during the whole term, and know that you were men of sterling principles, and would not set upon the jury had you felt any bias. I came here, at the commencement of this trial, with no prejudices against the defendants, so help me high Heaven. If I had seen any admission of an influence formed by public opinion to operate against the defendants, I would have pushed it back, though I stood alone in doing so. I have no p ejudices in the case, and many eminent legal gentlemen have expressed the opinion that the indictment against the defendants is not sufficiently commensurate with the offence. Whatever the claim of public opinion may be, whether for or against the defendants, it should not enter the Court House, if I could prevent it. If it was my last public act, I would not do the defendants an injury—not if public opinion surged against the foundations of the Court House. Trusting the character of the jury, I would not have required an oath of you that you were free from prejudice in this case. I have the utmost confidence in you as gentlemen of honor and principle. Many persons look upon the prosecuting officer as hard and inflexible in his efferts to convict all who are brought before him. As a prose-

cuting officer, I have only a desire to see that the law is administered justly in all cases. In this case I only desire to have the law faithfully and impartially applied, and I fully believe that you do so, even if you have read the newspapers. I do not believe that you will form your verdict upon public opinion, but upon the conscientious conviction of your own minds.

With these preliminary remarks, let me pass to another point, that in this case is presented by the defence. Mr. Dalton alone was singled out as the greatest sufferer. I will not allude to the reason why this is done, and I hope it will not affect your minds. It has been said that the defendants had hopes in life which have been blasted by the acts of their wives and the young men who were chastised. Does the conduct of Dalton, after the assault, show this? It has been proved that on the same night, after the assault upon the young man who now lies in his grave, Mr. Dalton slept by the side of his wife; and would he have done so if she had been very guilty, or if Sumner had committed any criminal offence with her. And the same may be said of Mr. Coburn.

If I have any professional discernment, I say that this charge against the defendants carries with it no imputation that they designed to kill Sumner; but, looking at the injuries, I can see no cause for any apology in bringing the indictment of manslaughter against them, and if you think that there is not evidence enough to support the indictment, I hope you will acquit them. If the verdict should be one of assault and battery, and the counsel for the defendants wish to show the amount of justification in mitigation of the crime, I will myself ask the Court to be influenced by it. I do not ask for a verdict of assault and battery. I believe that if you look at the case as I do you will find the defendants guilty of manslaughter. Under our law, manslaughter is a felony and punishable in the State prison. The indictment contains four counts, and we are to find if the defendants ars guilty of one or all of them. We know that Wm. Sumner was a healthy person up to the 17th of November; that he then received violent external injuries, and that he died on the 11th of December. He received no other injuries except those of the 17th of November; he had no chronic diseases, to shorten life; and yet, I have heard something about a spontaneous cause of death. It seems to me that the medical men have run this "spontaneous cause" a little hard. I refer more particularly to the testimony of Dr. Ainsworth, who has stood by the defendants, and assisted them to the extent of his ability. Dr. Ainsworth commands my respect, and I do not believe that he would try to sustain a theory upon false reasoning; but I think that he did run the "spontaneous cause" rather hard.

It is also intended by the defence to give you the impression that Sumner visited Fera's saloon on the 17th Nov. to meet Mrs. Dalton by appointment, but they have not offered any evidence to prove it. It may have been so, but it has not been proved; perhaps it will be. We see that Porter was flogged that morning by the defendants, and subsequently we see them leaving the house in company with Flanders and Dr. Blake. In this connection I would say that we went into a reluctant camp to obtain testimony. I do not believe that we have got too much of our evidence from this reluctant camp. I am inclined to think that we have not got half of the story of what transpired in the house in Shawmut Avenue. I am inclined to believe, and I do think, that Dr. Blake and Mr. Flanders were in no manner connected with the flogging. I believe what they say was their object in going to the house. If the argument is true that Porter and Sumner were sent for at the same time, and that a joint meeting at the house was intended for the purpose of talkiug over matters with them in a friendly way, it is a little unfortunate that the cow-hide was so near at hand when Porter arrived. It is also a little unfortunate that they expressed their determination, after they had whipped Porter, to flog Sumner wherever they should meet him. These facts, admitted by the defendants themselves, do not show a very friendly intention, and negative the idea of an intended joint and friendly meeting. Even if this had been shown, it would not have had any legal or justifiable significance. It might go to prove the amount of ferocity used.

If it be true that the letters were sent to Porter and Sumner at the same time, I do not see that there was any friendly intent. I remember that Dalton said to Margaret Wier that he should not flog Sumner, and when he left the house a few minutes afterwards he said that he should flog Sumner wherever he found him. These circumstances remove the supposition that the intentions of the defendants were friendly towards Sumner and Porter. But even if they did intend to get them to the house to admonish them, and thereafter finding affairs were much worse than was expected, they ordered Sumner from the house, and because he did not go, it was not necessary to drag him down stairs and violently assaul him in the basement. It is therefore immaterial whether the purposes of the defendants were friendly or not. It is also something new in my experience to hear that a woman can leave her dressmaker and go down stairs and remain an hour with a gentleman. A wowan will not leave her furbelows for the contents of an East India vessel. And yet the nurse says that Sumner did call at the house before the 17th Nov., and this is about the first we hear of the intimacy between him and Mrs. Dalton—and Mrs. D. left her furbelows and spent an hour with Sumner. She was marvellously willing to accommodate him, if she did so.

I have heard nobody raise a voice for these women, but who was it that suggested the statement that one of them had parted with her wedding ring, and afterwards retracted it, and the counsel was obliged to raise and correct his statement to you? The defendants, it is shown, did not believe them to be false to their marriage vows, for they lived with them in the marriage relation, after they had flogged their alleged lovers. May it not then be possible that the women have been unjustly accused? It is a marvellous fact that the defendants did live with their wives and slept with them up to the time of their arrest; but after their arrest it is shown that they did not live with them.

EDWARD O. COBURN.

MRS. COBURN.

Was not this latter act done to create an impression against the women and in favor of the defendants? But was it not done too late? The testimony in regard to the introduction of Sumner to Mrs. Dalton in the chamber, and his familiar remark, "How do you do, Nelly?" was most ingeniously offered to prove the identity of some letters, which were sought to be put in as evidence, and which were probably addressed to Nelly and not to Mr. Dalton. The amorous poetry of Moore's was addressed to "Nelly."

The whole conduct of the defendants leads to but one supposition, that they had a suspicion that there was an improper flirtation between their wives and Porter and Sumner, but not that the latter had taken improper liberties. Accepting the supposition that there was only a flirtation, it would have been more proper for the defendants to have reasoned with their wives and admonished them that it was wrong. They should not have flogged the young men and then have gone to the newspapers and had the affair published as something to boast of, and spoke of it to others as a brave and manly act. They took Sumner to the house on a declared purpose to flog him for having taken improper liberties, which I think means simply a flirtation. They took him to the chamber and after he had been ordered out, it is pretended that he lingered about the bed of Fanny or Nelly, allured by the charms of the females. This is quite poetical, but what a different aspect do the facts present to the judgment. Were not the defendants standing at the door with their purpose gleaming in their eyes, the women screaming and fainting, and was not Sumner prevented from going out through fear of a chastisement? Were their purposes friendly in dragging him down stairs, and when he attempted to go out of the front door, in pulling him down into the basement, where, as they stated, they gave him "a d——d thrashing." What is the meaning of "a d——d thrashing?" Does it mean a tap on the hat, or a scratch on the finger from which lockjaw ensues? The people on the outside of the house heard cries and scuffling in the entry, which some testify receded to the back part of the house, and others say they seemed to go up stairs. It is said that the cry of "Oh don't, you'll kill *him*, or *me*," was in a female voice, but might it not have been the voice of such a young man as Sumner, in the position he was in at the time. Whether he made the cry or not, it goes to show that the assault was severe, and alarmed those who were in the house. Flanders says that while he was standing at the head of the basement stairs he heard blows struck. The cook says that she heard scuffling down stairs about five minutes. Two men can give one man "a d——d thrashing" in five minutes. It is said that the doors and windows down stairs were usually locked.

This of course was known to the defendants. But why did not the cook, who told them not to beat Sumner, open the front door when the people outside rung the bell? Was she forbidden to do it? That Sumner was beaten while getting over the fence is proved by the confession of the defendants to Flanders. Now take the autopsy, and does it not show that Sumner was violently beaten, and that his injuries predisposed him to take the disease of which he died.

[An intermission of five minutes was taken here.]

Mr. Cooley resumed—I have not thought it necessary to go over all the details in regard to the partieular bruises and the number of them on the person of Sumner. The aggregate result is the question which the jury will determine upon. The character of the bruises is well shown by the marks which Sumner bore upon his body when he died. Dr. Hill's testimony is important and the defence have tried to dispose of it by stigmatising his reputation as a physician. There was no effort made to impeach his testimony, but he must be got rid of by an attack upon his medical practice. I think he has done no more in this case than some of our most eminent surgeons. He may be of humbler character and his practice less honorable, but his testimony appears as honest and fair as any given during the trial. It was not necessary that he should be a physician to enable him to testify to the appearanee of the wounds on Sumner. A person who never saw a medical work might have given the same testimony.

It is said that the government did not call upon Gilbert Sumner who knew that his brother had exposed himself to cold by assisting in cutting up a pig. Gilbert's testimony was of no consequence if his brother died of disease which had a spontaneous cause. It is said that the family did not think of prosecuting the defendants for their assault upon William Sumner. That family had something else to think of besides rushing into litigation. One of their most cherished members, whose cheerful music and happy flow of spirit made the family circle pleasant, had suddenly become almost dumb, and they looked to his injuries and their treatment, rather than to litigation,

In regard to the sensitiveness of Sumner after the 17th of Nov. which produced, it is said, mortification and grief, how is it that the had nerve enongh to plan the seduction of another man's wife. It is not the person of a sensitive mind who plans the seduction of a woman. And yet Sumner is represented to have been extremely sensitive, after the 17th of November, and his spirits were depressed by mortification and shame. Is it not more likely that his depression of spirits was caused by the injuries which he received.

Great stress is laid upon his exposure; but if Sumner was a healthy man before the 17th of November, and the injuries which he received on that day were but slight, as it has been attempted to prove, then is the amount of exposure testified to a sufficient cause for his weakened state of system. Sumner was fortified against cold by his habit of bathing in cold water. On every occasion when Sumner exposed himself to the weather, none of his companions contracted a cold. The effect of the argument in regard to his exposure goes to show that he must have been in a very weak state, and what caused this but the injuries which he received.

It is stated that scarlet fever prevailed in the neighborhood; but Sumner had the scarlatina fourteen years previous, and was not likely to be affected by the same disease

again. If there was a malaria in the air, why did not some other member of the family become affected by it? They were not in a weakened state; they had not received any severe external injuries. A spontaneous cause for death must be looked for, if the malaria fails to produce the inflamed sore throat. This, the physicians tell us. With all due respect for medical gentlemen, I think the physicians are mistaken in their opinion in regard to the cause of the inflamed sore throat, and I am glad that the rights of the government and the defendants are to be determined by men of common sense, and I thiuk the jury and myself are as competent as any body to pass upon the question of the cause of Sumner's death. I do not mean to say that the medical gentlemen who have testified to spontaneous causes, are not men of common sense, but I think that plain matter-of-fact men who have the evidence in this case presented to them can find some other than a spontaneous cause for death. The great error of the defence, if I may speak of it as an error, is the argument that the injuries were not the immediate cause of death, and if a cause at all, a remote one. In law, the cause, however remote, of the proximate cause, is the immediate cause.

[At this point, while the learned District Attorney was going on to illustrate, His Honor adjourned the Court until 9 o'clock Saturday morning. Mr. Cooley spoke until 8 o'clock, four hours.]

NINTH DAY.

SATURDAY, Feb. 2.—The court came in at 9 o'clock and the attendance of spectators was very large. After a delay of half an hour, Mr. Cooley concluded his

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In the position which the counsel for the defence have taken, they place great stress upon the spontaneous cause of death. They go behind the post mortem examination, which revealed a proximate cause and an immediate cause of death, and they take up the spontaneous cause. The physicians all say that although the external violence was not sufficient to produce death, in their opinions the death would not have occurred except for the external violence. The supervening causes, exposure and mental depression, would have had no effect unless the external violence had been administered.—The tendency of the injuries was to weaken the system, and if this weakened system created a spontaneous cause for death, then the injuries were a proximate cause. Take the case of Daniel Webster, who was thrown from his carriage, and some weeks after he was attacked by a disease which science traced directly to the injuries, although the injuries were not to be seen externally. The medical men did not look for a spontaneous cause; they saw in the injuries an adequate cause for the weakened state of the system. In this case, the calm and tranquil mind of Dr. Jackson has seen that the injuries were the predisposing cause of death. And yet, on his post mortem examination he did not see any connection of the external violence with the disease of which he died. But he and every one of the medical men, say if it had not been for the injuries of the 17th November, Sumner might have been alive and well. They also say that a well man might have been attacked by the disease of which Sumner died. This might have happened, I grant, and so might Sumner have been killed on a railroad, or be stabbed to the heart. But because he did not receive any other injuries after the 17th of November, and these were not sufficient to kill him outright, are we to look for a spontaneous cause? If science could not find any other cause for the inflamed sore throat, it did not throw much light or radiance in favor of the defendants. The same science which finds an assignable cause in the injuries and mental depression, merely says that the inflamation might have had a spontaneous cause. I therefore will dismiss the spontaneous cause as worth nothing. Let us take the injuries, the exposure and slight mental cause, and the bridge is made upon which we can saefly walk from the external violence to the inflamation and death. Assuming the theory to be true, that inflamation cannot be transferred from one tissue to another, I would ask the light of medical science how inflamation can be transferred from the interior of the neck to the exterior, if it cannot be transferred from the exterior to the interior of the neck. Dr. Jackson says that the exterior inflamation on the neck, was caused partly by the external violence aud partly by the interior inflamation of the throat of which he died. This opinion sets the matter at rest, that the external injuries were the predisposing cause of the inflamation of which he died.

In regard to the effects of exposure in producing the inflamation, what is its relative influence? To ride into Boston, to walk about the farm, to kick a football, to cut up a pig, to ride five miles in half an hour, to stand in a hall fifteen minutes, to ride to his aunt's, these are all dangerous to a system fortified by good health. And it is even said that it was hazardous for Sumner to lay down in the house, lest some spontaneous cause should play the old Harry with him. This is absurd. All the physicians have testified that the system was in a morbid condition, or rather they said that the system was prostrated by the influences of external violence, exposure and mental causes. What are the influences of the assigned, compared with the original cause, the external violence? There was no mental anxiety on the 17th of Nov., but we are told that it commenced immediately after. Have we seen any physical changes in the defendants, who have been arrested for a crime, and who believe their wives to have been false, a thing which is tended to wrench a man's mind most terribly?

The effects of mental depression, under various circumstances, were reviewed by the District Attorney, and by his reasoning he said it appeared that not more than one man in a hundred sink under the effect of moral causes. Depressing emotions may produce most disastrous effects, according to the testimony of Dr. Clark, but he also says that upon the evidence in this case he cannot think that moral causes operated very strongly in producing the weakened state of the system. And if he was depressed mentally, was not the cause of it the external influence?

There is no proof that he had any great and heavy sorrow on his heart.

We may dispose of the spontaneous cause, the influences of the exposure and several causes operating upon the system, and see that the great primary and appreciable cause of death was the external violence. If he had not been beaten he would now be living. The defence contend that it is necessary to prove that the probable, reasonable and original cause of death was the external violence. They contend that the consequences supervening have no connection with their responsibility. They say that they are only accountable for the natural result of the violence used. If this is so, there is no distinction between manslaughter and murder. Murder is when death is directly traced to a blow given. If there cannot be an involuntary homicide there is no such thing as manslaughter. If we are to trace death to the direct blow, and not to its natural, probable and reasonable result, then we cannot make a case of manslaughter. You are to judge of the natural consequences which followed the injuries, and if they placed Sumner in a condition to contract a fatal disease, then the defendants are guilty of an involuntary homicide.

I have stated that whatever your verdict is, I will, if requested, ask for a mitigation of sentence from the Court. If you wish, you can bring in a verdict with a recommendation to mercy, and I am contented. But I do not wish to see a repetition of somnambulism in this Commonwealth. Let it rest as the intellectual idosyncracy of that great man who we all like to honor. I ask to have your opinions founded upon your own judgments, without being swayed by prejudices from any source. I have discharged my duty. If you think that you ought not to go higher than a verdict of assault and battery, then you should return such a verdict, and no other. But remember your responsibility to society, and think whether your verdict will be one that will not take a single security from the guards around society. I fully rely upon your judgments; and now, thanking you most cordially for your kind attention in listening to me through this trying and difficult case, I commit the case to your hands under the instruction of the Court.

The District Attorney closed at 11 o'clock, making his argument six hours in length. The Court then took an intermission of five minutes, after which Judge Nash delivered

THE CHARGE.

Gentlemen of the Jury:—The defendants stand arraigned before this tribunal, charged with the manslaughter of Wm. Sumner, by inflicting mortal injuries upon his person on the 17th day of November last, of which injuries he died on the 11th day of December. Under this indictment, if you do not find the main charge sustained, it is competent for you to render a verdict for assault and battery.

During this long and laborious trial a Mississippi of inadmissible testimony has been flowing close by the side of the legitimate current of investigation, and the Court has strenuously endeavored to preserve the dividing embankment and keep pure the fountains and channels of the administration of criminal justice. Nothing can be more foreign to the true procedure in this case than to go aside from the main issue into extraneous investigation. Whether the deceased has been a party to a foolish flirtation between a thoughtless woman and a thoughtless boy, or stood amenable to a charge of a graver character, is beyond the province of your present inquiry. Another tribunal, another occasion, would have been the proper place for its consideration.

Carefully banish and eliminate from your minds all disturbing biases and discoloring impressions, whether existing before this trial, or caught up in the shifting phases and side insinuations of this hearing. Let the "dry light" of abstract intellect and passionless intelligence be brought to the determination of their issue, with the calm and equable thought that works out a mathematical problem.

The consideration that the defendants are liable to be sentenced to an imprisonment of twenty years in the State Prison—let it not operate in their favor, to induce a verdict of acquittal. And do not render a verdict against them any readier because they may only be only punished by a fine of one dollar or confinement in jail for one day; such being the extremes of the statutory penalty for manslaughter.

Let not any alleged provocation operate in their favor. In law it is no justification. Society is undermined, law and justiee a deluslon, and the great work of human government, with its array of legislation, tribunals, armies and municipal law, a failure, if a person deeming himself wronged is permitted to "take the law into his own hands," instead of resorting to the regular tribunals of the land. The popular sympathy with the "wild justice" sometimes executed by private vengeance, is not sanctioned by the sober reason of a civilized society, and has its foundation in barbarous instincts, not fully tamed out of the human heart. Lynch law justice is the justice of savage life. The grandeur of human government culminates when pure law, purely administered, pervades and controls a community more by its inherent reason than its penalties, and human institutions then approximate the repose and equity of secular Christianity, that perfect type of a perfect civilized society

Neither let the manner of the assault operate against these defendants. Whatever revolt of human feelings may follow a dastardly deed; however human nature may cry for fair play, and against unequal odds, so that statesmen sometimes boast of it as characteristic of a people to be proud of; however cogent the maxim, never to strike a man that is down, which constitutes the chivalry of mobs, and redeems the brutalities of the ring; all this is foreign to the matter before you. Banish it from your minds; it is a discoloring ray in the white light of a fair judicial investigation.

Nor does the popular opinion enter within these walls. Listening, as you do, under the sanctions of your oaths, to the testimony, face to face with the witnesses; judging, from their appearance, of the credibility due to each; watching the shifting aspects of the case, and the ebb and flow of testimony upon points as they rise and recede; you see much that cannot be reported to the community at large,—and it is your prerogative to form, not to follow, public opinion—to rectify it, if wrong; to confirm and establish it, if right.

The charge against the defendants is for what the law terms involuntary manslaughter. Involuntary manslaughter is where it appears that death was not intended, but is accidentally caused by some unlawful act, or act not strictly unlawful in itself, but done in an unlawful manner and without due caution. Involuntary manslaughter is where death is accidentally caused by one in doing an unlawful act.

The reason why a person perpetrating one crime, and therein accidentally killing another person, is responsible for the resultant homicide, is, "that a wrong-doer cannot apportion his own wrongs"—can not halve his criminality—cannot be allowed to say "I went somewhat further than I meant to in the perpetration of one crime and committed another;" "I set fire to the house in the night time, but did not propose to burn the inmates"—"I intended to stun with the slung-shot, but not to murder." Were such pleas to be admitted, human life and property would be unprotected and human society disorganized; for the allegations could hardly ever be disproved, and it would be impossible for jnries to determine at what point the less criminal intention stopped and the more atrocious begun. The wrong-doer must abide the consequences.

Was there an unjustifiable assault committed by the defendants upon the person of William Sumner? There seems to be no evidence in the case tending to establish a justification—an order to quit the house—a man's castle—only justifying a reasonable and adequate force; a finger's weight beyond it constituting an assault. 1st, Did the defendants inflict on William Sumner great bodily injuries? 2d, Did William Sumner die of those injuries? The mass of the material testimony in this case will gather round these two points, and some subsequent subdivisions under the latter. [The evidence bearing upon these two points was recapitulated by His Honor, in a brief and comprehensive manner.]

Before proceeding to lay down the specific principles of law I conceive applicable to this case, I will refer, by way of illustration, to some general principles and recorded cases, tending to elucidate the law and medical jurisprudence, which is to govern your investigations:—2d Arch. Crim. Pr. and Pl. 221-6, 221-7, 261-15 to 261-21, 262, 209, 213; 1st Hale, P. C. 428; Commissioners Rep. Cr. Code Mass. "Homicide" pp. 13, 14, 15.

From these citations the following general principles may be collected:—If, in the course of doing an unlawful act, an accidental homicide is committed, or death is accidentally caused by said unlawful act, it is manslaughter.

If a wound, given in the course of doing an unlawful act though not in itself mortal, (for want of proper application or from neglect) turn to a gangrene or fever, and the gangrene or fever is the immediate cause of death, the party so giving said wound is guilty of manslaughter, (1 Hale, 428.) for the wound is the cause of the disease.

If the intervening disease (say inflammation or fever) is traced directly to the injury, and the injury is done in the course of doing an unlawful act, it is manslaughter. The injury must generate the disease in the ordinary course of life and nature.

From the general principles, and from the recorded cases, I deduce the following specific rules to guide you in arranging the facts in this case, and forming thereon your verdict.

The injuries inflicted must necessarily not exceptionally, proximately not merely remotely, be connected with the death; and may be connected either immediately, or mediately by their direct devolvement of results, or progress and stages of resulting diseases;—or if the injuries cause an inflammation, and the inflammation mechanically suffocates, or the inflamed parts suppurate or ulcerate so malignantly as to cause death.

If the death was caused by the gross negligence of the deceased, or of his physician, and you are convinced that the deceased would, in all probability, have recovered from the injury, except for such gross negligence, the defendants are not guilty.

If the injuries caused the death, and were adequate to such a result, it is no answer or excuse for the defendants, that, under other circumstances, with more care and prudence, or by sooner calling in a physician, or by employing greater medical skill, death might have been averted.

What did Sumner die of?

Dr. Holmes says—"The cause of his death was inflammation of the throat and air passages."

Dr. Jackson says—"The cause of death was inflammation of the throat and air passages."

Dr. Ainsworth says—"My opinion is, that he died of inflammation of the throat and of the air passages leading from the throat into the lungs."

Drs. Clark and Stedman give substantially the same opinion on a supposed case, not having heard the testimony.

The medical testimony thus agreeing upon the immediate cause, the inquiry follows, as to the cause of this inflammation, causa causati. And the general principle running through the whole investigation is that—It is only material that it be shown that the deceased died of the injuries inflicted, as their natural, usual, and probable consequence.

As to mental depression—Was it dependent, i. e., resultant from the bodily injuries and the shock to the system? or independent, i. e., resultant from extraneous and other influences?

So far as mental depression was the direct and natural consequence of the injuries inflicted by the defendants, if it contributed to the death directly, or mediately by rendering the system more morbid and sensitive, and destroying its recuperative power, in necessary connection with physical pain and bodily suffering from the same cause, it may be weighed by the jury in determining upon the cause or connected causes of death; and to these considerations the government are entitled.

But the defendants are entitled to have weighed in their favor any independent mental depression; independent, that is, not resultant from or caused by the battery, but from and by other and extraneous events; and if it was the substantive operating cause of death, or one of two or three substantive operating causes of death, which cannot be reasonably apportioned, so that the jury cannot say that the alleged cause was the true cause, the defendants are entitled to have this fact weighed and considered in determining the real cause of the death. And before recapitulating the evidence upon this point it is necessary to consider the doctrine as to co-operating causes.

If two causes co-operate to produce death, each independent, one not growing out of the other naturally and by necessary sequence, the one caused by the defendants, the other not, the law does not permit the death to be predicated upon the one alone. Two independent causes of death co-operating, the law attributes death to the latter, whether the latter agency is a person or a disease; as, for example, and speaking somewhat mathematically, if a man one-half dead by previous disease receives what may be termed a semi-mortal blow by a person, and both the half-mortal agencies, co-operating, produce full death, the latter agency is the culpable one, and the person is guilty of the homicide. On the other hand, if a person receive a half-mortal wound, and an independent, half-mortal disease sets it ALIUNDE, jointly producing full death, the law predicates the death upon the agency of tthe disease, and the inflictor of the wound is not amenable.

All severe injuries, such as wounds, bruises, and shocks to the system generally, produce disease, such as inflammation, general debility, and sometimes gradual decline and sinking of the vital powers; and when heterogeneous diseases, diseases of a radically different character supervene, it is comparatively easy to trace up and compare the respective agencies; as when a person has a chronic or acute inflammation in consequence of wounds, a slower or more rapid inflammation, in the course of the treatment or otherwise catches the small pox, or the yellow fever, or falls from his bed, or happens to take poison, or his physician maltreats the case; here there is no complication or difficulty in severing and distinguishing the respective agencies. The great difficulty is, where a homogeneous or similar disease supervenes upon another; as where a fever caused by bruises is followed by a fever from independent sources; where an inflammation from wounds is followed by, or complicated with, an inflammation from atmospheric causes; or where injuries causing a general feverish state of the system are found nearly contemporaneous with local fever; or especially, where inflammation caused by injuries to one part of the system, is followed by, or complicated with, an inflammation in closely continuous parts, parts adjacent to the injured parts. When there are such joint and entirely independent causes of death, it is considered beyond the jurisdiction of the law. It is deemed hazardous to allow a too minute balancing of the weight of conjoint agencies. The criminal procedure cannot add or substract, divide and subdivide, in such cases; its province being to administer law, not arithmetic; jurisprudence, not comparative anatomy.

The test question, in such cases, will be—Was it (1) a new and independent disease setting in, and causing death or (2) was it the natural and ordinary growth, development, and progress of the disease caused by the original injury and shock to the system? If the former, the defendants are not guity. If the latter, guilty.

(1). Was it a new and independent disease supervening? In considering this question it is necessary to recapitulate the testimony as to actual exposures as causing or not causing a new and independent disease, and also the medical evidence.

[His Honor fully and clearly recapitulated the evidence bearing upon this question, but for want of space, we must refer the reader to the report of the testimony.]

Such being the substance of the evidence as to the actual exposure, and of the testimony of the experts, as to its effects, to it is to be applied the test before suggested.

Was William Sumner recovering from the original injuries? The defendants contend that he was, pointing to the positive testimony of the physicians to that effect—and also alleging that it is proved by the facts that if the old inflammation had subsided; that if it continued, it must long before have suppurated or ulcerated; that there was a new and acute inflammation, which all medical science pronounces not generated from the previous inflammation or the injured condition of the system, but absolutely demanding a fresh and distinctive cause; that the primary inflammation as well as the secondary, was acute, and no medical theory can connect the two, so far severed were they in point of time;—that the inflammation of the neck from the original injury, though locally near, was anatomically remote from the final and fatal inflammation in the throat; and that all this is demonstrated, on the post mortem examination of the body, physiologically by laws as unerring as those according to which the structure of the earth, geologically, reveals its history and convulsions.

This theory the prosecution controverts, and alleges that there was a continuous sinking and debilitation of the bodily energies from the original in-

juries, the loss of appetite, and bruises on the stomach That Sumner's inability to sing showed a permanent lesion of the throat and air-passages, of which the inflammation was only the natural and legitimate developement and consequence, and that his corporeal frame—"fearfully and wonderfully made"—was so broken down and disorganized that his food turned to poison, and the atmosphere of heaven was to him malaria.

If, however, you are convinced that Sumner was actually recovering, and a new and independent disease—an inflammation not substantially generated from the original injuries—supervened, which inflammation was the substantive cause of death, the defendants are not guilty.

(2) On the other hand, the government contends, that the severe injuries—the bruises upon the eye, the ear, the skull, the great reservoir of nervous energy,—on the jaw and neck and throat, delicate organs, with important vital functions,—upon the chest, at the pit of the stomach—the unnatural enlargement of the spleen,—the extravasated blood of the lining membrane of the stomach, so important an organ in the digestive and restorative powers of the body—the general shock to the system, the shattering of the harp of a thousand strings, whose daily harmonious action is a daily miracle—the depression of the vital spirits from the injuries and the shock, deadening the recuperative powers of nature, destroying the VIS VIVIDA of life, poisoning the blood wherein is the life of man,—the slow, morbid, and sullen progress of inflammations, chronic or acute, more rapid or more retarded, in a system of low vital action,—inflammation developing inflammation—one stage of morbid affection gliding into another—the stomach sympathizing with the brain—and each depressing and weakening the vital action of the other—that all these together consittute A CAUSE OF DEATH predominant over, and exclusive of, all minor influences, and being directly traceable to the injuries inflicted, sustain the allegation of the indictment, tbat the defendants gave William Sumner mortal injuries, of which he continously languished, and languishing did die.

Gentlemen, the cardinal point of the case is here. The testimony is before you. The law has been presented to you as drawn from the best established authorities. The eminent thoroughness and fidelity, as well to the Commonwealth as to these defendants, with which this protracted investigation has been conducted, have left no pertinent evidence unproduced, and no produced evidence unsifted; and the toil has been relieved by the impressive oratory of the Commonwealth's Attorney, and the scholarly eloquence and culture of the counsel for the defendants.

The protecting shield of their presumed innocence, in obedience to the great maxim of the criminal law, the Court has advanced before these defendants, up to the present stage of the trial, and now transfers the same to you to be in like manner upheld to the moment of your last and decisive ballot. Certainty, moreover, beyond a reasonable doubt, must test every link in the chain of criminality to be drawn around the respondents,—not a mathematical certainty, impracticable and impossible in human transactions, but that abiding conviction upon which you would act in your own grave and important affairs. And this vital and operative maxim of conviction beyond reasonable doubt is not merely of great consequence to the defendants, but of decided importance to the general theory and operation of the administration of criminal justice; for nothing is so fatal to the essential reverence for law and respect for its administration, as that there should be the reality or even the suspicion that the guiltless have been pronounced guilty. But if a great wrong has been done to a former member of society, and through him to the rights and interests of society in general, its vindication is committed to you. Those rights of society, and the fate of these defendants, are in your hands. Consider of your verdict.

His Honor concluded his charge at a quarter before one o'clock, having occupied one hour and three quarters in its delivery. The charge was a most impartial and comprehensive one, and must have satisfied all parties.

The Jury retired to their room at the conclusion of the charge.

After waiting an hour for the verdict, and it not being returned, the Court was adjourned until 4 o'clock.

At 4 o'clock the Court room was again thrown open, and the public soon filled every part of it, all anxious to hear the final result of the trial. As the Judge did not make his appearance it was soon believed that the jury had not agreed; and all sorts of opinions were expressed upon the question whether the majority of the jurors were in favor of a verdict of manslaughter or one for assault and battery.

The Court came in at 4 1-2 o'clock; and after waiting about fifteen minutes His Honor announced that no communication had been received from the jury, and therefore the Court would stand adjourned until further notice.

The immense concourse of spectators slowly departed from the room, exhibiting much disappointment at the protracted deliberations of the jury.

At 7½ o'clock the Court came in again, accompanied by a goodly number of distinguished members of the bar, physicians, and other spectators. After patiently waiting an hour, without receiving any communication from the jury, His Honor adjourned the Court until 11½ o'clock, and the spectators once more departed with the general impression that there would be no agreement in the jury room.

THE VERDICT.

Punctual to the time, at 11½ o'clock His Honor Judge Nash came in with the counsel on both sides and the defendants, Coburn and Dalton. About one hundred spectators were present. In a few minutes the Jury came in and took their seats, and by their appearance it was judged that a verdict favorable to the defendants had been found. Unfortunately for the anxious ones, the efficient Clerk of the Court, Mr. Phillips, was not present, and it being necessary to have him present to record the verdict, he was sent for, and arrived in about an hour.

The utmost silence reigned when the Clerk rose and asked the foreman if the Jury had agreed. The affirmative answer being given, the Clerk then put the momentous question:—"What say you, are the prisoners at the bar, Edward O. Coburn and Benj. F. Dalton, guilty or not guilty, on the charges alleged in the indictment?"

Foreman of the Jury:—NOT GUILTY on the charges in the indictment—but GUILTY OF ASSAULT AND BATTERY."

The verdict was then recorded, and after complimenting the jurors for their promptness in performing their arduous duties during the whole term, His Honor dismissed them, and the Court was adjourned sine die. As soon as the adjournment took place, Messrs Coburn and Dalton received the congratulations of many friends, and they manifested much emotion at being relieved from all suspicion of having shed the blood of a fellow creature, and in being, as Mr. Dana expressed it, "delivered from blood-guiltiness."

The crime under which they now stand convicted, is one that can be punished severely, but in view of the amount of provocation and justification, and the well-known humanity of the District Attorney, we think that Judge Nash will temper his sentence with the god like attribute of mercy. We feel assured that whatever the sentence may be, it will be based upon the great principles of Justice.

As there is some curiosity to learn the opinions of the jurors while they were deliberating upon the case, we have made inquiries, and ascertained that, on the first ballots a majority were in favor of a verdict of manslaughter. After they had been out about 5 hours they were equally divided upon manslaughter and assault and battery. Subsequently a majority were in favor of a verdict of assault and battery, which finally became unanimous. Those who were

most anxious to find a verdict of manslaughter were the meekest looking men on the panel, who hung their heads down and looked very doleful as they passed into the jury room.

In closing up our report of this protracted, but interesting and exciting trial. we feel it a duty to speak of the able and impartial manner in which Judge Nash has presided, and we but repeat the opinion of all who were engaged in the trial in saying that he has proved himself to be eminently qualified for the judicial beneh, and will confer honor upon the Court in which he has been appointed to a Judge's office. As a last word, we tender our most grateful thanks to all of the officers attached to the Municipal Court, for the many courtesies which they have extended to the Reportorial corps during the trial, and they are also entitled to great credit for the admirable order and stillness preserved in Court throughout the nine days (and nights) ef the trial. We do not hesitate to state that the officers in this Court are more gentlemanly, efficie nt and capable than in any other Court in this County or State, and we are only sorry that there are not more like them.

[We have, most unintentionally and accidentally, made Chief Justice Nelson the presiding Judge during the foregoing trial, whereas, in point of fact and of justice, Judge S. G. NASH alone presided, and is entitled to the honor as well as the responsibility attached to the interesting and important trial.—REPORTER.]

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DAN RICE, THE CIRCUS CLOWN AND MANAGER.—There are at the present time, and always have been, in all ages and professions, certain individuals, who may most appropriately be entitled "universal men;" persons who, though they may not have been seen, are "known of all men," the favorite of no ction, but the favorite and the honored of the whole country, whose reputation goes before, and whose coming, bodily, verifies Scripture in its definition of faith as "the substance of things hoped for, and the evidence of things unseen." Such a person is DAN RICE, who is at present performing at the Circus in the National Theatre, in this city. It is the first time he ever appeared here professionally, and hardly any other way; but when the announcement was made that he was to come, it would in fact have been insulting a man to have told him that he did not know Rice, and that his appearance would be a novelty; for so universal has his fame become as a wit and a jester, that every one honestly thought that they had seen him before, and greeted him as an old friend or acquaintance.

The peculiarity of Rice's humor is this — as a clown in the ring, he is confined to no set phrases, being ready for any emergency, thereby contributing variety to a performance and showing himself to be an embodiment of those great creations of Shakspeare, the court jesters, who, through the kings whom they served, were more powerful for the good of nations, by means of the edge of their wit, than their masters were by means of the axe of the headsman. A keen observer of human nature, and having naturally a fund of genuine humor, united with a high order of education, the experience of travel and active life have developed these faculties to a wonderful degree, and Dan Rice now stands at the head of humorists, not merely in the ring, but in every day conversation.

Another great faculty possessed by Mr. Rice is that of training animals, as evinced in the case of his horses EXCELSIOR and HENRY CLAY, more beautiful animals than which have never been seen. His Mules, too, are perfect wonders, and may well convince those who contend that brutes are possessed only of instinct, that they are wrong, and that reason guides beasts as well as mankind.

We learn that Mr. Rice is shortly to proceed to the eastward, to give a series of performances, with his unrivalled company of equestrians; and we are much mistaken if the inhabitants of our own and neighboring States will not endorse the above remarks most fully. To dispute his talent, would be the same as to dispute the statesmanship of a Webster, the oratory of a Clay, the genius of a Shakspeare, and the veracity of the Bible.

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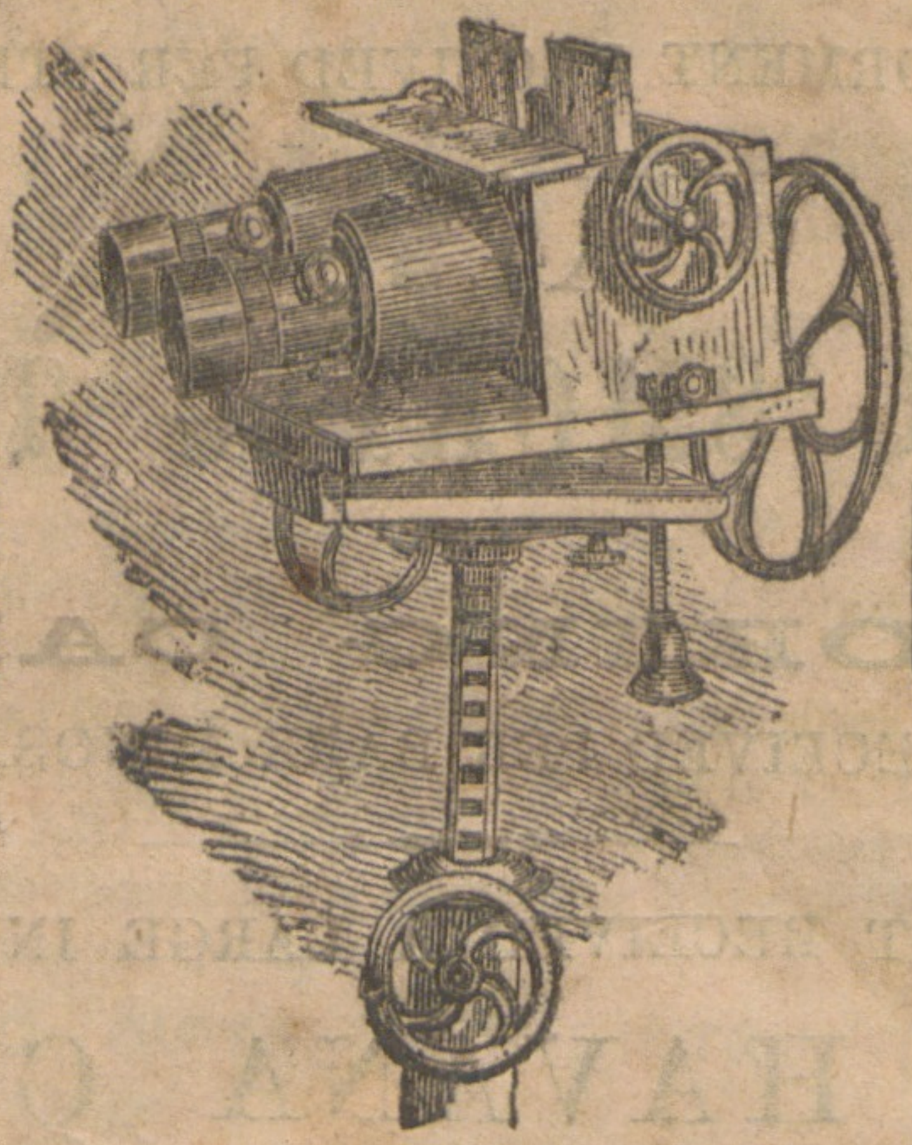

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