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A

VINDICATION  
OF THE  
RESULT OF THE TRIAL  
OF  
REV. EPHRAIM K. AVERY;  
TO WHICH IS PREFIXED HIS  
STATEMENT  
OF FACTS RELATIVE TO THE CIRCUMSTANCES BY WHICH  
HE BECAME INVOLVED IN THE PROSECUTION.

—  
WITH A MAP.  
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BOSTON:  
RUSSELL, ODIORNE AND CO.  
134 Washington Street.  
DAVID H. ELA,  
62 Cornhill.  
1834.

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Trials

Entered according to act of Congress, in the year 1834,  
By D. H. ELA,  
In the Clerk's Office of the District Court of Massachusetts.

**CORRECTION.**—An error of date will be found on the 35th page, 3d line from the bottom, which should be corrected. For “30th of August” read “31st of August.”

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## PREFACE.

It was hoped that the result of the trial of the Rev. E. K. AVERY would have silenced his enemies, and satisfied all parties. Instead of this, a systematic and most extraordinary persecution has been carried on against him, and all those who believed him innocent and treated him accordingly.

The design of the following pages is to support the decision in his case by a brief analysis of the testimony given at his trial, and to strengthen this by the addition of new evidence. In order to this, many certificates have been inserted in the present work, bearing upon many of the same points with the testimony at the trial. Great care has been taken to insert no important fact without evidence, as well as to admit no evidence by certificate but such as the witnesses would have given upon oath.

Such is the character of what has been written against Mr. Avery and his friends, especially by the writer who signs himself "Aristides," that we have been obliged to use some severity in our animadversions. This was unavoidable. This writer has observed no fair rule of criticism or discussion, but has dipped his pen in gall, and dealt out slander and falsehood, without mercy and without measure. By the boldness of his assertions he practises upon the credulity of the unsuspecting, and makes an impression where he has not the shadow

of evidence to support him. We regret to be obliged to make any remarks upon the character of witnesses, or others; but this is unavoidable from the circumstances of the case. We have said no more than a sense of duty, and the course taken by Mr. Avery's enemies, have compelled us to say.

Vigorous and unceasing efforts have been made since Mr. Avery's acquittal, to blacken the character of his brethren and the New England Conference, as though they were leagued with a seducer and murderer, and were determined to force such a man upon the community as a minister of the gospel. These efforts have been witnessed by that body of men without *fear*.

It may, however, be proper to explain a few things.

A number of Mr. Avery's brethren attended his trial as witnesses; some assisted him in his defence, by looking up evidence, &c. As he had neither money nor relatives to assist him, they believed, and do still believe, that they owed it to him, to themselves, and to the public, to see that every thing was done necessary to a fair trial. They were led to make considerable exertion, and to bring many witnesses from a distance, by the unparalleled zeal on the other side, and by the formidable array of witnesses and circumstances which were raised against him. Was this wrong? But the most serious charge has been made against the New England Conference, because they confirmed him in his ministerial office, and gave him an appointment where it was requested. He had been virtually acquitted by the first Jury of Inquest; he had been acquitted by the Court of Examination, after a long and close investigation of the charges brought against him; and finally he had been acquitted by a Jury of his Country. Did the Conference do wrong, under these circumstances, in giving him an appointment? It is submitted to a candid public to say whether it was even an error of judgment; much less was it an act of diabolic wickedness, as some of the persons who have assailed the Conference affirm. The fact is, the Conference, in its official character as an ecclesiastical tribunal, had nothing to do with the question of expediency. That was not the question submitted to them, as every one must know who knows any thing of legal trials in church or state. The question presented was—Is Mr. Avery guilty of murder, or of adultery, or of any other moral offence that should disfranchise him from his ministerial office. The opinion of the Conference was, that he was not guilty. Did not *sheer justice* then require that he should be sustained in his office so far as the official acts of the Conference

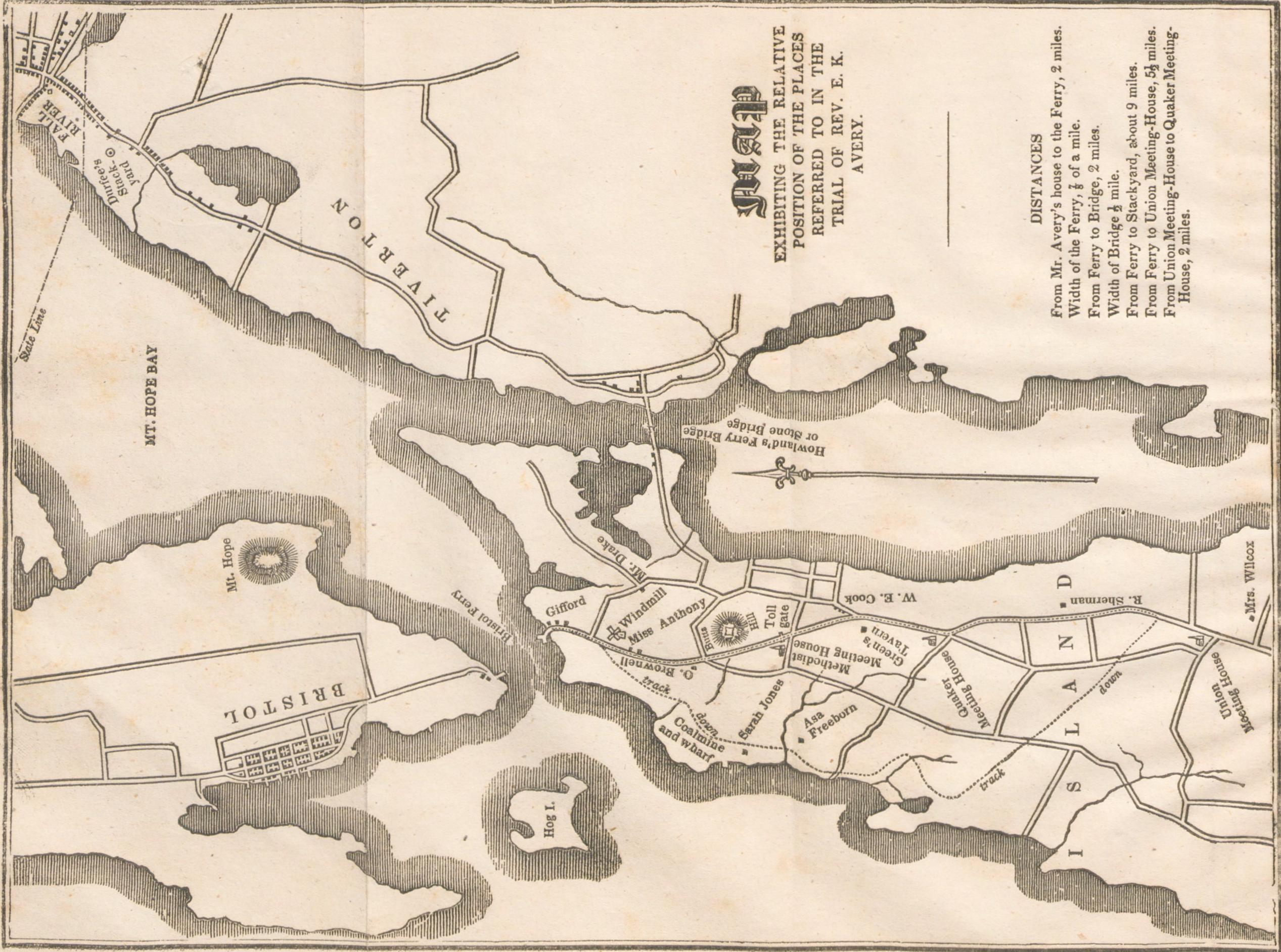
were concerned? As to the expediency of his continuing to preach, that is quite another question, and one that must be settled by private arrangement, according to circumstances. We have no doubt but Mr. Avery will be willing to be counselled on that subject, and take such a course as the good of the cause may require. But why the Conference should be arraigned for their judgment in this case, must be a matter of surprise to every candid and reflecting mind.

With this view of the subject, therefore, it seems to us that any attempt to vindicate the course the Conference took in the case, further than to show the ground on which they acted in deciding upon it, is wholly unnecessary. If then any should inquire why the Conference confirmed Ephraim K. Avery in his ministerial office, the answer is at hand—*Because they believed him innocent.* If it be inquired further—How they could judge him innocent? The answer to this question will be found by perusing the following Vindication.

The statement of Mr. Avery relative to his acquaintance with S. M. Cornell, and his excursion on the Island on the 20th of December, 1832, needs no remark in this place from us.

We have only to add, that the defence of Mr. Avery appears late, but it was impossible to send it out before. It was hoped that no defence would be called for; and when it was seen, from the course taken, and the efforts which were made to invalidate the decision in his case, that something would be necessary, it was deemed proper to let his enemies get through, that he and his friends might know what they had to do; and it was also supposed, that when the effervescence of public feeling had subsided, there would be a better opportunity for a calm and patient hearing of what might be said in his behalf. That time, it is believed, has arrived, and the subject is now presented in the following sheets to the public. It is hoped the reader will give it his serious attention, and decide the case of Mr. Avery in the fear of God. This is all he asks, and all that his friends ask for him,

T. MERRITT,  
J. A. MERRILL,  
W. FISK.



# MAP

EXHIBITING THE RELATIVE  
POSITION OF THE PLACES  
REFERRED TO IN THE  
TRIAL OF REV. E. K.  
AVERY.

## DISTANCES

- From Mr. Avery's house to the Ferry, 2 miles.
- Width of the Ferry,  $\frac{3}{4}$  of a mile.
- From Ferry to Bridge, 2 miles.
- Width of Bridge  $\frac{1}{2}$  mile.
- From Ferry to Stackyard, about 9 miles.
- From Ferry to Union Meeting-House,  $5\frac{1}{2}$  miles.
- From Union Meeting-House to Quaker Meeting-House, 2 miles.

# NARRAGANSET BAY,

WITH PART OF THE STATES OF RHODE ISLAND AND MASSACHUSETTS.



- 1. Island of Rhode Island.
- 2. Union Meeting-House.
- 3. East Greenwich.

- 4. Little Compton.
- 5. Canonicut Island.
- 6. Prudence Island.

AN impression has existed on the minds of many, that the Rev. Mr. AVERY has never given any account of himself during his absence on the afternoon and evening of the death of S. M. Cornell. Such persons, however, cannot have read either the Report of his Examination or of his Trial.

Mr. Avery has never exhibited the least reserve on the subject, but has always manifested the utmost frankness, and readiness to answer the questions proposed to him. So far from concealing any thing, the testimony shows that his first step, after hearing of the suspicions against him, and his first step after his arrest, were, to give to his friends and to the examining justice a detailed account of all he knew in relation to the girl, and of his excursion on the Island.

Many more signatures might be obtained to the following certificate were it deemed necessary.

*Bristol, January, 1834.*

We, the undersigned, hereby certify, that soon after the arrest of the Rev. E. K. Avery, and during his examination at Bristol, we severally held conversations with him concerning his tour to Rhode Island on the afternoon of the 20th of December, and concerning his knowledge of S. M. Cornell, at which times he was perfectly frank and open in his communications with us upon those subjects, and did not appear to have any secrets whatever about them.

NATHAN WARREN,  
WM. S. SIMMONS,  
BENJAMIN TILLEY,  
SAMUEL SPARKS,  
STEPHEN BARTLETT.

## MR. AVERY'S STATEMENT.

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I SHOULD have given to the public a statement of my acquaintance with the unfortunate Sarah M. Cornell, or Maria S. Cornell, and of my excursion on Rhode Island, Dec. 20, 1832, long before this time; but the following reasons have served to prevent:—

1. I had given a general, as well as particular account, in my voluntary statement respecting my acquaintance with the girl, which was used on my first examination, and was published in Judge Drury's report.

2. I had given to Rev. S. Drake and others, an account of my excursion on the Island, which he stated at the examination, and which was also published in that report.

3. I was advised not to be in haste to make any further statements, it being presumed that what had been said was already sufficient.

4. The peculiar situation in which I have been placed, has rendered my burden of affliction almost insupportable, and disqualified me for such a task. And I now repeat, what I have repeatedly stated, that nothing but a conscience void of offence towards God and man in this matter, could yield me the least support. This consciousness in the sight of God, however, has been my solace even until now.

Notwithstanding the above reasons, with others, it is now judged expedient that I should make some communication to the public on the above subject. Some reasons for this are,—

1. The statements published in Judge Drury's report, are not contained in the report of the late trial at Newport, not being made use of on that occasion; and also, the report of the examination had but a limited circulation.

2. There are some things in the narration which it may be proper should be noted and explained.

3. There are other circumstances which it would be proper to lay before the public, which may throw additional light upon my case.

4. I also feel as though I ought to acknowledge my obligations to God for that grace he has afforded me, and which has supported me

under all my trials, and to my friends and brethren for their kindness, prayers and friendship. Innocent as I feel and know that I am, I should a thousand times rather have been removed from the walls of Zion, than that this dark day should have overtaken me; but I have confidence that God has wise ends to answer, and when those ends shall have been accomplished, all will be cleared up to his glory and the good of his church. The hope that I shall witness this, now sustains me.

The course I propose in this, is to begin with laying before the public my voluntary testimony, making such explanations in notes as may be necessary, in order to a full understanding of it. I shall begin with some circumstances that preceded my arrest.

On Friday, the 21st of December, 1832, Rev. I. M. Bidwell came from Fall River to Bristol, and took me into a room, and stated that he had some unpleasant news to relate. He then stated that the girl we were conversing about (S. M. Cornell) was dead. I inquired what was the matter? He replied, that she had hung herself; adding, that on that morning he had visited the place where she was hung, had ascertained who she was, and had received information from Dr. Wilbur, which implicated me as having had illicit intercourse with her; and that he had, in compliance with a conviction of duty, come to inform me of the same. To which I replied, that it was altogether untrue, and that I was prepared to meet any thing of the kind. I felt at this time such a perfect consciousness of innocency, that I had not the most distant idea that it would ever amount to any thing serious. I invited Mr. Bidwell home with me, which invitation he accepted, tarried all night, and left next morning for Fall River. During this evening, we conversed over what I had before stated to him in regard to the girl's former character; and he agreed to accompany me the Monday following to Lowell, and there get testimony respecting her character, which I knew must rebut any assertions she might have made. Saturday, 22d, I wrote to Rev. Mr. Drake to come over from Portsmouth, R. I., which he did, arriving some time after noon.

I informed Mr. Drake of what Mr. Bidwell had stated to me, and before the interview between us was concluded, the stage from Fall River arrived, and the information was brought me that I was suspected of having murdered the girl. This intelligence, so unexpected, so gloomy in its character, and so well calculated in its nature to be a source of affliction and distress, produced the most solemn impressions on my soul, and I felt immediately to commit my case to God, first in secret, and after this in my family—after having, in as suitable a manner as I could, communicated the heart-rending and soul-chilling intelligence to my wife. In my religious exercises at this time, and at subsequent periods, I found as ready access to God, as much liberty in prayer, and confidence and trust in him, as ever I had; and I should lie against God if I were to deny that he comforted my soul; and I was blessed especially with this confidence—all would be overruled for his glory and the good of his church. After the information that I was suspected to have been instrumental in the death of S. M. Cornell was communicated, being interrogated, I gave Mr. Drake the account of my visit upon the Island, which he related in court at the examination.

At this time, I engaged Mr. Drake to preach for me on the Sabbath, which he did, and I spent this Sabbath at home in prayer and reading the word of God. Such a day I had never experienced. My feelings were such as to beggar description, and although supported by conscious innocence, to think of my wife, my infant children, and to inquire in my own mind what will become of them, produced the most thrilling emotions in my heart. But O, thought I, the church! the cause of my Redeemer! must this suffer reproach by having one of its ministers suspected of crimes that have been, and are, justly ranked as the most hateful among men? And shall this precious cause suffer through me? I do most solemnly declare that I felt more for the church than for myself.

Dec. 23, about sunset, I was arrested by the Government, on the charge of a crime, to name which would chill one's blood; but so it was, and I was kept in charge of the officer of justice against my examination. I this evening sent for Nathaniel Bullock, Esq. as counsel, who assured me he should be ready to render me what assistance he could; but his business was such he advised me to call in Joseph M. Blake, Esq. who would have much more time to devote to the case than he could himself. This advice I complied with, and sent for Esq. Blake on Monday, Dec. 24. When he came, I made a full statement to him of my acquaintance with the girl, and of my excursion on the Island, not omitting a single circumstance of which I had any recollection. Esq. Blake informed me that I might make such a statement to the court; but in case I should, and any thing appeared to contradict it, it would be to my disadvantage. I replied, I have no objections to make such statement; the truth cannot hurt me.

Dec. 25, I gave in my relation, which appears in the report of Judge Drury, and is introduced and stands as follows:—

*“The voluntary examination of Ephraim K. Avery, taken on Tuesday, the 25th of December, the Respondent being first advised by the Court that it could not be required of him, and would, if contradicted by proof, operate to his prejudice.*

“Ephraim K. Avery, of Bristol, in the County of Bristol and State of Rhode Island, &c. charged with the murder of Sarah M. Cornell, answers that he is not guilty of said charge, and that his whole knowledge of the deceased is briefly as follows:

“That my first acquaintance with and knowledge of the deceased was in July, 1830.\* I then resided in Lowell, Mass. At this time, she called at my house, and wished for employment in my family. Mrs. Avery not being pleased with her appearance, she was not employed. In August following, she again came to my house, and stated that she was going to Eastham, on the Cape, to a camp-meeting, and thence to Killingly, Conn., to visit her friends, and requested a certificate of regular standing in the Methodist Church. Having previous-

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\* It ought to be here observed, that I moved from Saugus to Lowell on the 1st of June, 1830. S. M. Cornell was then, and for some time before had been, a member of the church, though I never had any personal knowledge of, or the slightest acquaintance with her, until the month of July.

ly heard her accused of profanity, I hesitated to give one, but consented to give it conditionally, if I heard a good report of her conduct after leaving the meeting. If I did not, I told her I should write to the preacher of Killingly not to receive it.\* Instead of going from the camp-meeting to Killingly, she returned to Lowell, and retained the certificate in her possession. She then entered into another factory, belonging to the Appleton Corporation. A short time after, the overseer came to me to report her character, stating that the clerk of the corporation had informed him that he could swear it was very bad, and that, from her own confession, she had been guilty of illicit intercourse with two or more. One or two days after this, she herself came to converse with me on the subject.† She confessed she had done wrong, and had been a bad girl—she said she had had unlawful connection with a certain man, but with him only. I told her I had been informed of her having it with two or more, which she finally acknowledged, and asked what course would be taken. I told her there must be a trial in the usual way, and advised her to go immediately to her friends. She inquired if it would not do as well for her to go to Dover or elsewhere. I told her she could do as she pleased but she had better go to her friends. I told her that as the subject was of a delicate nature, she had better be with her friends at the time of her trial than in Lowell; that it should be a fair one, and if she was dissatisfied with it, she could have an appeal to the quarterly Conference.‡ At this time I asked for the certificate I gave her. She said she had lost it on the Cape. She finally consented to go to her friends agreeably to my advice, and immediately left town. Shortly afterwards I heard she was in Dover, N. H. Previous to her trial a physician in Lowell asked me if one Maria Cornell, was a member of

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\* It may be asked why I gave her the certificate after having heard her accused of profanity? The reasons were, 1st, there had been no regular charges preferred against her, and I judged I could not legally withhold it: the charge was only flying report—2d, she fully denied it, and having a very partial knowledge of her, I could not determine but that she told me the truth. I therefore gave her the certificate as stated in this examination.

† The overseer of the factory, in conversation with her, gave her to understand that he should inform me of her character, but she entreated him not to do it till she could see and give me information herself. On condition she would do it within a certain time, he engaged he would not; but she not doing as she agreed, he gave me the information, and she in a day or two after came herself.

‡ The reason why I advised her not to be present at the trial was, in addition to the subject being of a delicate nature, I considered her crime such that even confession and contrition would not be sufficient to enable her to hold her relation to the church; that to preserve the church from reproach, her expulsion was inevitable. She might, in due time, if she manifested proper humiliation and reformation, obtain a standing first as probationer, and then as a member amongst us. But such was her offence that she could not avoid excommunication. I told her explicitly that she would be expelled—her own confession of the crimes was sufficient evidence. I advised her to go to her friends if she had any, as I would advise any female in like circumstances.

our church. I told him there had been, but she was not then in town. He said he felt it his duty to inform me of the character of the girl—that she had applied for his professional assistance for the *foul disease*—that her case was as aggravated as any he had ever known—that she could not sit or stand still, and walked with difficulty; that in reply to his reproof of her conduct, she said she was not as bad as he thought; that she was a member of Mr. Avery's Church, and in regular standing. He expressed doubts of this, and the next time she came she brought a certificate to that effect. This information I communicated to the Committee before whom her case was tried—at the trial she was found guilty of lying and fornication, and expelled from the church.

“Soon after she left Lowell, I ascertained (I believe by a sister from Dover) that she had made use of my certificate in Dover, as a proof of her regular standing in the Church. I immediately wrote to her, demanding a return of the certificate: alleging, that if the demand was not complied with, I should publish her in the papers as an impostor; and also to the Methodist minister at that place, the Rev. Mr. Dow, cautioning him of her character. In reply, I received a letter from her, enclosing the certificate, and another from Mr. Dow, inquiring the nature of the charges against her, and the course taken at her trial: to which, I replied, setting forth the facts, and informing him, that since her expulsion from the church, she had been suspected of theft. The next information I had of her was from Great Falls, Somersworth, N. H., from which place, she wrote me, saying she wished to make a full statement of facts, and confession of her crimes. She confessed unlawful intercourse with several men, but denied that she was ever afflicted with the venereal complaint. She charged the physician before alluded to, with an attempt to have intercourse with her. This letter I showed to a student of the physician, but did not answer it. About a week after, she wrote to me again, saying she had heard a sermon from Mr. Storrs on confession, and was constrained to make a yet fuller acknowledgment of her crimes—that she had been guilty of all the crimes charged upon her—that she had been afflicted with the foul disease, though ignorant of it at the time. This letter also was unanswered. From this time I heard nothing of her until the spring of 1831, when she called at my house in Lowell, of a Sunday morning, and asked my forgiveness—she said she had written to me, but I had taken no notice of her letters, and that she had come on purpose, and wanted it in writing. I gave it in writing\*—adding,

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\* My reasons for giving her the writing she solicited were, that the minister at Great Falls had been made acquainted with all the circumstances and facts relating to her case, months before, in a letter from me, setting forth the crimes charged and their extent. She had also been an attendant on his ministry for months, and professed to be reclaimed; and it should be understood that the writing only went to say to Rev. Mr. Storrs, that if, with all the information he was in possession of, he thought it advisable to admit her on probation, we at Lowell should not object;—this we did in conformity to the article in our discipline, “The gift of repentance shall not be denied.” The above writing was given on Sabbath day, and on Monday I wrote to Mr. Storrs of her falsehood, of which I was informed on that day.

forgiveness from me was nothing, she must seek it of the Lord. After this I heard nothing more of her till the August of 1832, when being at Thompson, Conn., at a camp-meeting, I was informed by Abraham D. Merrill, that she was on the ground. The brethren were cautioned of her, and I believe at my suggestion—I did not speak with her. I attended a four days meeting in Fall River, in the month of October last, I believe. In the afternoon of Friday, the Rev. I. M. Bidwell inquired if I knew a girl by the name of Sarah M. Cornell, I told him I did not—he said there was one of that name in Fall River, and it had been suggested to him that she was the girl with whom I had difficulty in the church in Lowell. I told him I had caused a girl by the name of Maria Cornell to be expelled from the church in that place, but knew nothing of any Sarah Cornell. At his request I described the girl that I had caused to be expelled, and told him the reason of her expulsion. Mr. Bidwell thought the girl he referred to was the same. In the evening after preaching, I was invited to stay through the night at Mr. Edward Mason's—as I was entering his house in company with Mrs. Mason, her sister and others, some one pulled me by the elbow and expressed a wish to speak with me. I immediately recognized Maria Cornell, and I asked her what she wanted. To see you a moment, said she. I told her I wanted nothing to say to her. But she replied, I *must* speak with you. I then told Mrs. Mason that I would be in the house in a moment, and turned to the girl and again asked what she wanted. She said, I have come to live in Fall River where I am not known, and don't want you to expose me. I told her I had no disposition to injure her, and it would depend upon her behaviour whether I exposed her or not. Don't, says she, ruin me here ; you have ruined me in Lowell and Dover, but don't here. I told her I had not ruined her, she had ruined herself. She said she had joined a class on trial, and if I did not tell brother Bidwell about her conduct, it would not be known. She again urged me not to expose her. I replied as before and left her. This conversation could not have lasted more than five or ten minutes. The Sabbath following I preached in Fall River and noticed her in the congregation. I have never seen her since.\*

“Signed,                   EPHRAIM K. AVERY.”

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\* When I had reason to suspect her being at Fall River, from the information of Mr. Bidwell, I gave all the information in my possession respecting her, stating the *charges* preferred against her, the *evidence* to sustain them, and the final result of the trial, viz. expulsion. I also informed Mr. Bidwell of the course pursued by Rev. A. D. Merrill and myself at the Thompson meeting, in regard to giving notice of her character, stating to him that if she was the same person he alluded to, I thought her a very unfit person to be in the church. At the time I ascertained she was the person I caused to be expelled from Lowell, I had no convenient opportunity to converse with Mr. Bidwell on the subject, and as he did not afterwards name it to me, and it did not occur to my mind when in his company, her name was not mentioned.

It may be proper in this place for me to say something in reference to the pretended interview with this unhappy mortal, on the evening of the 20th of October, the evening after I had a few words of conversation with her at Mr. E. Mason's door, when she requested me not to expose her character. The meeting on this *evening* was in the Anawam buildings. The meeting commenced late. By request I read and explained a chapter in St. Matthew's gospel, after which we had prayers and exhortations, and continued our meeting until nine o'clock, or a little past. I then left, and went on to the four corners—fell in with Mr. Luther Chase on the way, the distance of 120 rods perhaps from the Anawam block. We stood and conversed together a few moments; how long I cannot say, but if James Sherman stated correctly at Newport, what Mr. Chase told him, it was half past nine when we parted; I am sure, however, it was not so late when we separated; for it was only half past nine when I arrived at Mr. Bidwell's. When Mr. Chase and I parted, I went to Bennett's stable, where the horses belonging to the Bristol stage were kept, probably twenty rods north of the corners. Mr. Bidwell's house was in an opposite direction.

On my return, I crossed the bridge, travelling south till I came to the first street, and turned to my right. It being extremely dark and myself a stranger, I passed the street leading to Mr. Bidwell's house, and did not find my mistake until I had gone perhaps twenty or thirty rods below; having been but once before on this road, and that the day before. I now turned, when I found my mistake, and went to Mr. Bidwell's house, and Mrs. Bidwell asked me how late it was. I looked at my watch and found it was half past nine, and so informed her. This was on the 20th of October. The day before, which was the 19th, was the first time in my life I was at Fall River. I mention this because Mr. Lesure testified at Newport, that he had seen me at Fall River four or five times the summer before, in company with Mr. Bidwell, and at the stable. I can safely challenge the whole world to show that I was ever in that place till the time I state. Lesure is altogether aside from truth in the whole of his statements, so far as my person is concerned. And I will now affirm, that I never wrote a letter in the store of Iram Smith, or put one into the post office at Fall River, since I had a being. For the truth of what I now state, I can with much satisfaction appeal to that Being by whose sentence the destinies of all men will at last be determined. I never wrote the letter of the 8th of December; I never put it into the office; I never saw it until I saw it at the examination at Bristol.

All I am able to say in reference to the letter said to have been delivered to the Engineer of the steamboat King Philip on the 27th of November at Providence, is, that I never was in any way concerned with the writing or delivery of that letter; I never saw it until it was presented at the examination in Bristol; I never went into the store of Mr. James Snow to purchase or get in any way "pink colored paper." It is my duty to assert these things as a man bound to the judgment seat of Christ, whatever may be the effect they shall produce. I arrived at Providence in the stage, Monday evening, and was set down at Mr. P. P. Jillson's door. And I left Providence in the stage, and returned to Bristol, Wednesday afternoon. The reason

for my not continuing at Providence through the four days meeting was, that Thursday was the day of public Thanksgiving in the state, and it was necessary that I should be with my people. I never but once set my foot on board the steamboat King Philip in *Providence*, and that was on the 4th day of July, 1832, when I came first to my charge in Bristol from the Providence Conference.

I shall commence and give an account of my excursion on the Island a little more in detail than I gave it to Mr. Drake. From reflection and repeatedly revolving this route in my mind, I recollect some circumstances which might have served to corroborate the relation I then gave. I had an interview with my Presiding Elder at the time, or immediately after my first examination, and mentioned that between the toll gate and Bristol ferry, a female passed me near the commencement of the turnpike, that she passed so near that I could have reached her with my hand; but not knowing the woman, and she probably not knowing me, I thought it not proper to have it mentioned, lest the woman should not appear to testify to the facts, in which case it would be construed to my prejudice.

I had two reasons for making this tour:—1. I had a conversation with Mr. Nicholas Peck, of Bristol, about the Rhode Island coal, and it was mentioned that it could be mixed with other coal, and would answer a good purpose for fuel; and as it was cheap, I informed him I thought of examining and purchasing some if it was found to answer. He said he should like to join me in purchasing. 2. Soon after my appointment to Bristol I received a letter from my father, mentioning that he was stationed in Bristol in the American Revolution, representing the situation of Mount Hope, Philip's chair on the east side, near a beautiful spring of water, stating the scenery, pleasantness, &c., and also naming certain families with whom he was acquainted at that time, wishing me to inquire after them. In a second letter which I received from him a short time after, he stated that he was on Rhode Island with Sullivan's expedition, gave a description of the battle, stating that it commenced upon the west side of the Island, that the severer part was near the Friends' meeting house, &c. This excited a curiosity in my mind to visit the place. I mentioned to Rev. Mr. Holway, of Warren, my desire to visit the Island, and at a four days meeting at Portsmouth he agreed to accompany me at some future time; but he delaying to do so, finding the season of cold weather approaching, and fearing if I did not go soon I should not have an opportunity, I determined to embrace the first pleasant day that I could spare from other duties. On Thursday, the 20th of December, 1832, it being remarkably pleasant, I left home about 2 o'clock, P. M., visited a sick family, and then started for the Island. I walked to Bristol ferry, a distance of two miles, and was carried over, seven-eighths of a mile, by Mr. William Pearce, with whom I conversed about coal, and inquired concerning the coal mines. He pointed out their direction to me.

I had thought, before I got to the ferry, of calling on Mr. Drake to accompany me on my tour; but when I had crossed, the afternoon being short, and Mr. Drake living on the east side of the Island, which would be out of my intended course, I gave up the idea of calling on

him, and started for the coal mines alone. I went up the road and got over the wall a little to the north of the windmill, passed over the head of a small stream and some low ground, towards the coal mines, in a south-westerly direction. When near the mines, I met a man carrying a gun, dressed in coarse old looking clothes, and an old hat, somewhat dented in on the front part of the crown. He was, I should judge, rather short, well set, had much the appearance of a rustic. I asked him if the coal mines were worked? He said—"No." I then asked if there was coal for sale? He said—"No." I immediately passed on in a southerly direction, concluding it would be useless to make further inquiry, as the mines were not worked, and there was no coal for sale. I soon came to a gate, one side of which was either painted white or white-washed; and after going through the gate, I passed between two houses, continuing nearly in the same direction. I came into a lot where were sheep and young cattle. Here I saw a lad 10 or 12 years old; of his age, however, I could not determine certainly. As I had thought of calling on Mr. Freeborn, and having gone there through gates from the east, I inquired of this boy if Mr. Freeborn was at home? He said he thought not, for he saw him going away that morning with his wagon. I then crossed a stream or creek, and concluded to keep down on the west side of the Island until I should get nearly opposite widow Wilcox's, and then cross the Island and bring out to the east road, and call on her. In view of this, I continued on, keeping near the shore, till I came to a cove or pond of considerable size, the land being uneven and elevated near it. By the east end of this pond I passed over low, moist ground, and having travelled a little to the south, turned my course to the eastward, supposing I had travelled sufficiently far to lay my course for the east side of the Island and come out where I intended. It was now sunset, or perhaps a little past. I supposed the distance to the road on the east side of the Island to be not more than a mile and a half, or two miles at most, and pursued my course, as I supposed, in a right direction. It grew dark; the travelling was across pastures, over walls, and through fields very rough and uneven; and add to this, a weak ankle, which became very troublesome, owing to the repeated missteps I made in the dark, made the distance seem much longer than it really was. I crossed the west road, (which at that time I supposed to be a bridle way,) bearing to the east till I came out on the east road, as I supposed, a little north of the Union meeting house, which is about six miles from Bristol ferry. Some little distance before I came into the east road, I crossed a road running nearly in the direction of north and south, but should not judge it much travelled. When I came to the east road I did not know exactly where to find Mrs. Wilcox, as I had travelled that road but once, and that on a dark and cloudy day, in a chaise with Mr. W. E. Cook, who pointed out her house, situated some where on the east side of the east road, and standing some distance from the road, so that I should have to pass through bars or gates to get to it. It being dark, I thought I might be troubled to find it, and so took the direction for the ferry, calculating I might, if too much fatigued, stop at Mr. Cook's, three or four miles up the Island. I immediately moved on towards the north, and passed a chaise as I was descending the hill

north of the Friend's meeting house. I met two persons between this and the toll gate. I passed the gate, and near the school house I was passed by the woman before referred to. I came to the ferry. I had no idea of its being so late as it was, as I saw lights at the houses along the road, and near the windmill I heard the Bristol bell ring for nine o'clock. When I came to the ferry house I knocked, but no one answered, the family being in bed. I saw a light in a small house near by, and thinking probably the ferryman might live there, I went and knocked, and the people informed me that the ferryman lived in the large house. I returned and knocked again, when the man of the house let me in. I requested him to take me across the ferry; but he declined, inviting me to tarry all night, which I did, and his son set me over in the morning. Mr. Gifford asked me where I had been; I told him up the Island, and should have called at Mr. Cook's and put up with him had I known it was so late. Next morning Jane Gifford spoke to me and said—"I did not know you preached on the Island last night." I said I did not—I was over on business; and added, had I known it was so late, I should have gone to Brother Cook's. I am very confident I arrived at Gifford's house as early as a quarter past nine o'clock that evening.

I most solemnly declare that I was not at Fall River on the afternoon or evening of the 20th of December, 1832—that I had no interview with, nor saw Sarah M. Cornell on that evening—that I did not cross the stone bridge on the 20th of December, 1832—that after Mr. William Pearce carried me over Bristol ferry to the Island that afternoon, I was not off the Island until brought off by Mr. Gifford's son on the morning of the 21st.

In this account I have given a correct statement, as far as my recollection will serve; and for the truth of what I have said, I dare appeal to Him whose all-seeing eye marks every thought, every word, and every action of his creatures, and will bring into judgment every work, whether it be good or whether it be evil.

I have already had reference to some of the peculiar afflictions at the time of my arrest and examination. I wish, however, to say something more on this subject. I was permitted to remain with my dear family, and to witness their tears, their sighs and sorrows, during my painful examination. When out of Court, I was not locked up in a gloomy prison. To the kindness of the officer I am greatly indebted, and by me he will ever be affectionately remembered. During the first week of my examination, many of my ministerial brethren visited me and attended the Court. Their anxiety and solicitude I witnessed with feelings I can never describe. I realized, in some degree, what must be the solicitude of the church of Christ, what the feelings of those to whom I had administered the word of life, and especially those to whom God had made so unworthy a minister in any way a blessing. My heart bled, nor are the wounds yet healed. The first part of the second week of my examination, my Presiding Elder arrived, who had heard of my arrest but a few days previous. The meeting was distressing to me, and I have reason to believe it was so to him. When I last parted with him I felt he had confidence in me, and I was encouraged to expect that when he should make me his

regular quarterly visit, he would find the church in prosperity, and find us in peace. But O, the contrast! Myself a prisoner under examination for a crime of the darkest hue, the church in mourning, and my family in tears! God only knows my emotions, and the anguish I felt. The grace of our Lord Jesus Christ, and conscious innocence, alone sustained me. He commenced his counsel and advice in a way suited, as I judge, to the nature of the case. He said to me, with a heart apparently big with feeling—"Brother Avery, it is my duty to believe you innocent until you are proved guilty. You know, and your God knows, whether you are guilty or not; but I charge you, as you will answer it at the dreadful tribunal of heaven, not to add sin to sin. If you have disclosures to make, I do not ask you to make them to me, or to any of your brethren in the ministry; it would be too much for such to witness against you, which must be done; but to some other person. I must warn you not to add sin to sin. Don't do so on your peril," or words to this import. I replied most sincerely—"Brother Merrill, Heaven is my witness, that I never desired to touch, and I never did, that woman, in any unlawful way, since I had a being." These are the words I then used, or words to the same import, and they are what I have repeated to him since, and what I now say to the church and to the world.

My Presiding Elder never gave me, from the first, to understand any thing but his most fervent wish that the truth should come to light, however painful it might be to bear. I had no encouragement to expect any thing from him but his pity and prayers, should circumstances during the examination satisfy him that I was a guilty man; nor has he ever given me to understand any thing different since that time.

On my acquittal, I felt to bow my knees to the Father of mercies, and render the unfeigned thanksgiving of a poor heart. I felt to praise him for the divine support afforded me in the midst of my sorrows and distresses. I felt as if I would devote myself afresh to his service and work. Thus comforted, I spent a short season. And although I knew there was considerable excitement, I did believe, that when the report of the examination should be presented to the public it would be satisfactory; and all persons being convinced of my innocence, would consent that I should continue unmolested in my calling. But soon, very soon, was this pleasing train of reflections interrupted. One of my *counsel* gave me to understand that I was not yet safe,—that from what had been communicated to him, I was in personal danger; and he advised me not to expose myself unnecessarily. Such was the state of the excitement, that I was advised by him and several other gentlemen to retire from the place, and continue away until Judge Drury's Report should be circulated and the public mind disabused. To this I objected, stating I had rather stay and breast the storm, and live the opposition down; believing, as I then did and now do, that innocence will finally triumph—that although the innocent may suffer for a season, yet the time of their complete deliverance shall come.

I felt under obligations to my counsel and others who gave me advice to retire. I at last consented with reluctance, and went to a place of retirement, where I continued under peculiar sensations, and

more than once expressed a purpose to return to Bristol, and once made preparations so to do, but concluded on the whole to remain concealed until my counsel should advise me to make my appearance, or until the March term of the court at Newport. When apprehended by Harnden, I had not been in bed, as has been insinuated, had not on a pea jacket, and as to my beard, it was one week old, and no older, having shaved on the Monday previous. Being confined to the house, I was not so particular in shaving as when out in company. But I never neglected this work with a view to conceal my person from knowledge.

I was conveyed to Tiverton, had a partial examination, made no defence, and was committed to Newport jail to remain during a cold winter in a solitary cell. It is not possible, I am confident, to conceive the feelings I experienced upon being conducted to my dismal abode. I was placed in the criminal's cell, my ears assailed with the grating sound of bars of iron and the turning of keys, and the retiring footsteps of the jailor died away on my ear. O those gloomy walls! the recollection is enough almost to freeze my blood!—dark, solitary and confined!—my lodgings for the first night a little broken straw in an old sack, and a pair of blankets. I slept none for the night, and suffered extremely with the cold. I spent the night in walking my cell. The next day evening, Mr. Kent, who was ever kind and tender to me as a father, and whose tenderness I shall, I trust, never forget, came and brought me a bed for my comfort; but having been furnished with one that afternoon by Esq. Randolph, (who also was a father, a counsellor and a friend I shall ever value,) as also with a stove and fuel to keep me warm, the bed brought by brother Kent was not used. I was furnished with a Bible, Bible Dictionary, and a few other volumes to read, by Mrs. Allen, the jailor's wife, and other friends. I spent my time in reading, meditation and prayer. Mr. Allen and wife were kind, and I thought at times felt tender towards me. I no doubt had the prayers of many. For my wife and children my heart was excessively pained. I felt as if the habiliments of mourning covered the church, and the thought that I should be in any way involved in the affair—that I should cause the ways of Zion to mourn, pierced my soul with many sorrows. Yet I must declare, that at no time, even in my severest conflicts, did I lose my confidence in God. And strange as it may appear to some, while I was reprobated and condemned by many as a vile miscreant, confined under suspicion of an awful crime, away from my family, my friends, and the privileges of the sanctuary, I had seasons of refreshing from the presence of the Lord, and my soul exulted in the strong conviction that God would overrule all for his own glory. I had a belief, that let the case finally turn as it might with me, the church would not eventually suffer, for she had the promise that all things should work for her good; that she should be safe though the gates of hell should combine against her. But still the thought that she should receive pain on my account, sometimes almost distracted me.

During my long confinement, for the most part, such was the goodness of God to me, I was kept from despondency; and I felt a longing desire for the time of my trial to arrive. I knew not, it is true, what the issue would be, for I had expected the Grand Jury

would not find a bill ; but although disappointed in this, believing God had wise designs in suffering these things to come upon me, I was supported, and could leave my cause in confidence with him. Repeatedly, while on my knees beside my bed, surrounded by walls of stone, and my door secured by bars of iron, have I had ready access to God in prayer, and felt the down-lightings of his Holy Spirit, so that I could adopt most feelingly the language of the poet, and say—

“ While blest with a sense of his love,  
A palace a toy would appear ;  
And prisons would palaces prove,  
If Jesus would dwell with me there.”

One circumstance I will relate. A few of the first days of my trial my mind was considerably depressed ; my character, my family, and the cause of God all rising up before me. I did not feel that calm, perfect resignation to the will of God I desired ; I felt too much perturbation of mind ; and was distressed that I did not dismiss all improper solicitude. After spending a tedious day in court, I returned to my cell. I sat down to meditate and reflect,—my mind not sufficiently calm, my thoughts too much scattered, and my anxiety for the result of the trial too great. Under these circumstances I betook myself to prayer, about 11 o'clock at night, at the foot of my couch. I lifted my soul to God in fervent supplication for his blessing, and determined to continue until God should be pleased, in his infinite mercy, to send relief to my soul. While thus wrestling with God in prayer, I experienced such a manifestation of the divine goodness as I never before felt. My anxiety was gone ; all was sweet submission to the will of God ; and from that moment I became perfectly satisfied that all would, in some way, work for the glory of God. From that time till the close of the trial I was freed from that anxiety which I had too much indulged, and my greatest fear was, if I had one above another, that the jury would not agree. Had the choice been left with me, although I had no desire to choose, situated as I then was, I would have met my end declaring my innocence, rather than have remained in prison till another court, and have gone through another trial.—These feelings I expressed in conversation with my Presiding Elder the night before the verdict was rendered.

When the bell announced that the jury had agreed, I went to the court house with the utmost composure. I scarcely ever went to *any* place with more quiet feelings. I had committed all to God,—had thrown myself, my family, and all, upon his mercy and grace, and had the assurance that he would not fail me. And until I heard it said by the judge I was discharged, I felt no particular change. When this was done, I had such a view of the goodness of God, my heart broke, and I shed tears of joy and praise to Him for his unspeakable grace. My mind then returned to its calm and peaceful frame. On the same day of my discharge I returned to my family at Bristol, and embraced them. I found them all but drowned in tears of distress, that were soon turned to those of joy and rejoicing in God's delivering grace.

I attribute my salvation and acquittal to the special providence of God. Having gone through such an ordeal of examination as perhaps no other man in our country ever did, and having the kindness,

friendship and sympathies of my brethren, I should wrong my feelings, did I not express my obligations for their prayers while I was confined, and their friendship since.

I felt at the last Conference, when my case was examined by a Committee, to leave it entirely with God and my brethren. Had it then been thought advisable for me to have discontinued from the ministry for a season, I should have quietly submitted; and if the cause of God now requires it, or shall hereafter require it, painful as it may be, I hope to submit with readiness. I pray God, that, as I am in a very peculiar sense a creature of his providence, I may be able, without reservation or fear, to throw myself wholly upon that providence. Although my situation is trying, yet I hope God will open my way before me. Certainly it would be the height of ingratitude to distrust him; and may I ever be humble and submissive.

I do most fervently intreat the prayers of the children of God, for me, and for my afflicted family, that we may ever stand accepted in the sight of God,—that I, who am the most unworthy of all his servants, may properly improve under the chastening of the Lord,—that my dear family may be saved from despondency and disgrace.

I have only to repeat, in the close, that I am innocent of the great crimes laid to my charge, and that I entertain no enmity towards my bitterest foes and most persevering persecutors.

E. K. AVERY.

*Bristol, January, 1834.*

## VINDICATION.



THERE are three classes in community who have been differently affected by the case of the Rev. E. K. Avery. The *first* have satisfied themselves of his innocence. The *second*, either from want of opportunity, means, or ability to analyze and weigh the testimony on both sides, are in doubt as to his guilt or innocence, or perhaps are convinced of the former, yet would be very glad to see the latter proved. These are entitled to respect; and the design of the following pages is, in part at least, to assist them in their inquiries, by setting the evidence clearly before them, and removing the obscurity in which the subject has been involved by designing men. The animadversions which will be found in the following work are not designed for these, but for a *third* class, who have been disappointed by the result of his trial—who have labored assiduously to make him appear guilty, and who, to accomplish their ends, have resorted to falsehood, misrepresentation of facts, and to the foulest aspersion of the character of his friends. Indeed, they have not hesitated to employ the basest means to accomplish their purposes.

That the reader may have the whole subject before him, let it be observed, that on the morning of the 21st of December, 1832, S. M. Cornell was found hanging to a stake in John Durfee's stackyard. A Coroner's Inquest was summoned, and after due inquiry and examination of the dead body, on the next day gave the following Verdict:—

“*State of Rhode Island and Providence Plantations, Newport, ss.—*  
An Inquisition taken at Tiverton, in the county of Newport, the 21st day of December, 1832, before Elihu Hicks, coroner of the town of Tiverton, upon the view of the dead body of Sarah M. Cornell, here lying dead, upon their oaths do say, that the said Sarah was found dead, hung up and confined, with a small cord or rope about her neck, to a stake inside of said stackyard,—and the jurors do further say, that they believe the said Sarah M. Cornell committed suicide by hanging herself upon a stake in said stackyard, and was influenced to

commit the crime by the wicked conduct of a married man, which we gather from Dr. Wilbur, together with the contents of three letters found in the trunk of the said Sarah M. Cornell, and so the jurors aforesaid," &c.

(Signed) RICHARD DURFEE, and five others.

Thus far there was no thought of murder; but after this inquest, a few lines in pencil mark were found in the band-box of the deceased, which said—

"If I should be missing, inquire of the Rev. Mr. Avery, of Bristol—he will know where I am. Dec. 20th. SARAH M. CORNELL."

This unmeaning slip of paper appears to have given rise to a suspicion of murder; and another Inquest was summoned, and a verdict of murder returned, founded on certain marks upon the dead body, and certain circumstances connected with the death, though the same marks and circumstances raised no such suspicion on the first inquest.

The village of Fall River was now in a great excitement. Mr. Avery was arrested, examined fourteen days, and acquitted, on the ground that there was not "probable cause to suspect him guilty." This judgment of the court of examination did not allay the excitement at Fall River, and Mr. A. was apprehended the second time, and making no defence, was committed for trial.

When the Rev. Mr. Avery was so unfortunate as to fall under suspicion of having been concerned in the death of Sarah M. Cornell, and even after his apprehension and commitment, the usual mercy extended to persons in such circumstances, that of forbearing to prejudice the case, was entirely overlooked; and without waiting till his trial, he was pronounced GUILTY, with a positiveness which nothing could justify but the verdict of a jury. It is but too apparent that some of the managers in the affair had fixed their object; they knew the classes in the community which were to be operated upon, and the means to produce the effect. Various groundless rumors were put in circulation. It was said that he was a Mason, and that that was the reason the examining Justices at Bristol did not commit him for trial. This was sure to produce an effect with a portion of a community among whom this had for a long time been an exciting subject. A story, as ridiculous as it was wicked, was fabricated, that Mr. A. could give no account of himself for ten years of his life, and that during that time he was among the pirates in the West Indies.

Soon after Mr. A.'s discharge at Bristol, by the advice of some of his friends, and especially of his counsel, who were apprehensive for his personal safety, he retired into the state of New Hampshire; when the movers of the excitement against him, under pretext of new and important evidence, got up and preferred a petition to the Legislature of the state of Rhode Island, then in session, to authorize or require (we do not know which) the governor to issue his proclamation for the apprehension, not of the murderer of Sarah M. Cornell indefinitely, but of the Rev. Ephraim K. Avery by name, and to offer three hundred dollars reward for his apprehension. This movement had the desired effect, which, with a large portion of those who knew nothing of the circumstances, was the same as his conviction of murder by so many witnesses. The news of this transaction flew into all

parts of the land with the speed of lightning, and the sound was as the prolonged roar of thunder. So complete was the success of this manœuvre, that even his friends paused, and knew not how to reconcile it with his innocence, till they learned that the pretended new evidence amounted to *nothing*. But Mr. Avery was pursued, apprehended and committed for trial, though the governor never issued his proclamation for his apprehension.

In the mean time, the inhabitants of Fall River were not permitted to slumber over this subject. Though the prosecution was in the behalf and at the expense of the State, yet, through fear that the officers of justice would not do all that might be done to procure the condemnation of the supposed felon, they raised money by resolution of the citizens, and by voluntary subscriptions and bonds, at several times, to defray the expenses of the prosecution. And thus were the citizens brought to feel a *personal interest* in the conviction of Mr. Avery, and, as it were, bound themselves to pursue him to the last extremity.

In the mean time, such presses as could be enlisted in the service, were put in requisition and made to teem with pamphlets, and essays, and placards, and caricatures, and songs. In some of these, Mr. Avery was unblushingly called the "murderer of the unfortunate Miss Cornell." These for a time were hawked about both city and country, while the movers in the business rejoiced to see the excitement extended. A gentleman who was grieved at these things, waited on an editor who had gone all lengths in this business, and expostulated with him on the injustice, inhumanity and mischievousness of this course, as Mr. Avery's trial was still pending, and he ought not to be prejudged nor the public mind prejudiced against him; and all he got for his labor was—"I believe him guilty, and will say so."

There is one transaction which deserves a more particular notice. Dr. Wilbur, of Fall River, testified before the jury of inquest. This document, which ought to have been returned into the office of the clerk of the court, was lent by the coroner to the deponent, and by him was altered, and then lent to an editor in Providence, who published it just before the sitting of the court, with the still further addition of his own endorsement, saying that "he believed it." And thus it went to help on the business.

This course of things was continued quite up to the time of Mr. Avery's trial. What wonder is it then that the excitement against him was higher at that period than it had been at any time previous? This was what his enemies designed, and what they had too successfully labored to accomplish. There needs no other proof of this than the extreme difficulty of obtaining a candid jury. Will the world believe, a hundred years hence, that the time was when *one hundred and twenty* men were returned as jurors, before *twelve* men could be found who had not made up a judgment in a case of life and death, before they had heard the evidence, or a single witness had been examined in court! Will it not be said—"That must have been a barbarous state of society indeed, when men were condemned to the gallows unheard! This was worse than the state of pagan Rome, where the law condemned no man before it heard him." Yet however difficult to be-

lieve, however reluctant to credit the fact, it cannot be blotted from the records of the judiciary, that in the state of Rhode Island, which boasts of its republicanism and the purity of its institutions, even in Rhode Island, there was a time when it was with the utmost difficulty that a jury of twelve men could be obtained, who had not judged in a case of life and death, without hearing it! Must not every good man and citizen deprecate such a state of society, as the most dangerous to life, liberty and property?

Where falls this censure? It falls on the heads of a few individuals who would sacrifice every interest of society to their implacable hatred of religion and clergymen. It was owing to the unwearied efforts of these men, that the friends of Mr. Avery were insulted in the streets of Newport, and in their boarding-houses, both by day and by night, by men and women. Even the place of justice could not protect either the prisoner or his witnesses from the most wanton insult and abuse. An instance or two may be given. A rough looking man, who was brought in for a juror, was asked by the prosecuting attorney whether he had formed an opinion as to the guilt or innocence of the prisoner: he answered with all imaginable effrontery, in a manner that spoke more than words, "*I have, and that opinion is that he is a GUILTY MAN.*" On another occasion, when a reverend gentleman, whose age and venerable appearance might justly have commanded respect, came into the court house, he was saluted with—"Here comes another of the D——D MURDERERS." We do not say these things of all the citizens of Newport, or of that part of Rhode Island; but we do say that if these things had not been countenanced by many of those who give tone to the feelings of the vulgar, they never would have been guilty of such gross abuse and insult. And we are glad to except in Newport many who neither did these things themselves, nor countenanced them in others.

And here we cannot but remark how signally the providence of God overruled this state of feeling in the acquittal of Mr. Avery. An acquittal under this excited state of feeling was a triumph. When men are put upon their oath, and brought to feel their responsibility to God and their country, they dare not act from those feelings which might influence their conduct under other circumstances.

But how were those secret persecutors of Mr. Avery, who had labored for months to produce this excitement, and his consequent condemnation, disappointed and chagrined when they heard him pronounced "**NOT GUILTY!**" This was like a dagger to their hearts. They were astounded as by a clap of thunder. They saw that all their efforts were in vain. "The prey was taken from the mighty, and the captive was delivered." They did not, however, rest long in a state of suspense. Recovering from the shock which his acquittal by the jury had given them, they resolved to do that in another way which they had failed to accomplish by legal process,—namely, to destroy his character and standing in society, together with that of his brethren in the ministry. The cause was a desperate one, and desperate measures must be resorted to to effect it. Besides, they would lose nothing by a failure, and if successful, their object would be accomplished.

While the most respectable journals, both religious and political, in the country acquiesced in the verdict of the jury, and asserted that it was unjust and inhuman to do otherwise, this *junto* were maturing their plans to make void the verdict of the jury, at least so far as respects his moral character and standing in society, and to involve the Methodists in his condemnation. For this purpose they resorted to the most unprecedented course, the most unwarrantable and dishonorable measures, and the honorable "*Aristides*" was elected in conclave, it is supposed, their chief spokesman and leader.

But who is Aristides? This personage we are not permitted to know. His name has been called for, and was "promptly" refused. Whether he be a lawyer in New York, Providence or Boston, we cannot tell; or whether he be a Universalist preacher, or one of the old "committee of five," who raised and carried on a persecution against Mr. Maffitt, some years since, we know not. It is enough to know that he "loves darkness rather than light, because his deeds are evil,"—that he refuses "to come to the light, lest his deeds should be made manifest." The thief and the assassin choose the cover of night for the perpetration of their deeds. For the same reason does Aristides conceal his name. "Strike, but conceal the hand," was the watchword of his brethren in France, when they meditated the overthrow of the Christian religion. Whether this writer thought his name would stamp his productions, or his productions stamp his name, with infamy, we know not; but it is probable that this effect would be reciprocally produced.

A reply to *all* that Aristides has said, either respecting Mr. Avery or the New England Conference, will not be attempted; it will be sufficient to show that he is any thing but a man of truth and candor.

Aristides says:—

"In the singular proceedings under review, it has been said, with much aptness, that S. M. Cornell, who was in her grave, and not Ephraim K. Avery who was arraigned at the bar of his country, was put on her trial; and instead of entering on an investigation of the *facts* in the case, the country was ransacked, every nook and corner was searched, and every possible means made use of, to draw out every musty and long-neglected old maid to relate and *swear* to every tale of gossip that had ever been told, either in jest or in earnest, either true or false, of S. M. Cornell, from her very infancy, to blast her character, and to prove her that abandoned wretch with whom an *honest* man and *Christian minister* might cohabit without shame, and afterwards murder without guilt. And yet, strange as it may appear, though a host of this species of testimony was admitted on the trial, not a solitary witness was called on to identify the murdered girl; they knew a person by her name, and there might have been forty; and the sins of the whole were laid upon her shoulders. It was well known that there was one who might have been mistaken for her, one of an abandoned character, still living; some witnesses, from their own subsequent confessions, did not know whether the facts they swore to related to one or the other of those persons, and yet on such equivocal testimony, is the character of the unfortunate victim of lawless violence loaded with an overwhelming weight of infamy."—*Strictures*, p. 9.

We have made this long quotation for two reasons; *first*, to show the reader the style and spirit in which this champion, Aristides, manages his subject; and *secondly*, to show his regard for religion and the characters of men. He says of the witnesses, "They knew a person of her name, and there might have been forty;" that is, of her *name*. But would it not have been a little remarkable if there had been "forty" females of the same name? But we would ask, If the testimony given did not go to identify the girl who was found dead in the stack-yard, why did the jury agree in their verdict on the testimony? Why did the Court allow it? Did they not sit on the case to prevent improper testimony from being given? But, above all, if the testimony was so irrelevant and loose, why did not the sharp-sighted prosecutor for the State discover it? Was there an agreement between all these and the witnesses to put the dead girl on trial, and to admit corrupt testimony and a perversion of justice?

Was not the girl of whom they spoke identified by many witnesses as the person who was expelled by Mr. Avery from the Methodist church in Lowell, and as the sister of Mrs. Rawson? Will Aristides assert that the Providence girl was so expelled, or that she is the sister of Mrs. Rawson? If Aristides is a man of truth, let him give his name, in connection with the assertion that no "witness was called upon to identify the murdered girl." But, let it be noticed, that the whole weight of the charges against Mr. A. rests on the fact that the *Sarah M. Cornell* found dead at Fall River, is the same person as the *Maria Cornell* who was excluded from the church under Mr. A's charge in Lowell. That person is directly proved to have been guilty of the basest crimes that stain human nature; and Aristides himself, when it suits his purpose, argues that they are one and the same. The name of the Providence girl was not given to the public till after the trial at Newport, and yet, providentially, the evidence of identity is most complete, in the testimony given at that time, and published to the world in the reports of the trial.

But one fact dashes the precious chalice from his lips.—The Providence girl is now but about *seventeen* years of age! Of course, she could have been but about seven years of age, when the other commenced her career. Aristides must have known these facts. We now ask this writer to produce one other—we will not say "forty"—of the same name; and till he does this, we shall set him down as the slanderer of men better than himself. Reader, what is your opinion?

But the spirit, design and object of Aristides are still more manifest from his manner of representing the characters of S. M. Cornell and E. K. Avery. His object every where is to extenuate her crimes, and to make her appear, if not absolutely immaculate, yet as having only the faults of youthful indiscretion, and as being unfortunately led astray by her seducer. Now why this attempt to palliate the crimes of one who stands unrivalled in complicated wickedness! The history of abandoned females will hardly produce an instance of one so young being so adroit in all kinds of wickedness and obscenity,—in lying, stealing, deceiving, both with her tongue and pen; in fornication and hypocrisy. Her deeds of lasciviousness, according to her own account, were sometimes committed on the Sabbath, and at noonday. She was afflicted with a filthy disease, the abhorrence of

all flesh; and her conversation was so obscene that the pen has never written it, nor the tongue pronounced it audibly. Add to all this that when Mr. Avery expelled her from the church and prevented her return into it, she swore revenge on him and on the Methodists. What wonder that a female so abandoned and wretched, should be frequently tempted to destroy her own life, and several times actually attempt it, before she finally succeeded. And yet this person has found a zealous advocate, nay more, a *friend*, to palliate her crimes, though proved by the most irrefragable testimony. And this, too, to criminate a man, as a seducer and murderer, who has sustained an unblemished character—against whom, all his enemies have been unable to prove so much as an impropriety of conduct; whose character the Attorney General himself, who had a previous acquaintance with him, acknowledged stood fair and unimpeached up to the affair of S. M. Cornell.

Can the man who takes this course be entitled to the consideration of his fellow citizens? Can he have a fair mind? Can he be influenced by any honorable motive? Will his course prove beneficial to the community? Or will it prove subversive of all law and order, of justice, charity and truth? How exactly has an inspired writer drawn the character of such men, where he says, "Their throat is an open sepulchre; with their tongues they have used deceit; the poison of asps is under their lips; whose mouth is full of cursing and bitterness; whose feet are swift to shed blood; destruction and misery are in their ways, and the way of peace they have not known: there is no fear of God before their eyes."

The truth of these divine declarations will apply in the following extraordinary case. Aristides, knowing he could not succeed in a direct attack upon the court and jury, has recourse to flattery. He professes to be satisfied with the verdict of the jury, because the evidence was of such a character that they could not condemn Mr. Avery, though "they," the court and jury, "most conscientiously believed him guilty." As the responsibility, in this case, rested chiefly with the jury, we have but a word to say respecting the court. Allowing that both judges and jury believed Mr. Avery guilty, it will not follow from that that he is guilty. Other men, of equal intelligence and candor, who heard the testimony, believe that he is innocent of the crimes laid to his charge. Besides, they are subject to like passions and prejudices with other men, and may have partaken of the same unholy excitement with their neighbors. As it respects the jury, we know that two of them, at least, acknowledged they had an opinion against him, but for the want of men who had no opinion on the case, they were taken. As it respects the judges, we leave it to a candid and intelligent public to say whether it be likely, even if they had an opinion of his guilt, they would descend so far below the dignity of their office as to lend their influence to a faction which has for its object the nullification of the decision in the case, and the subversion of law and order by means of popular excitement.

But as it respects the jury we have a little more to say. Aristides tells us they "most conscientiously believed him guilty." But when they were under the solemnities of an oath, they said he was **NOT GUILTY**. "True," says Aristides, "there was not legal evidence suffi-

cient to condemn him." What is meant by *legal evidence* here? It cannot be *positive* evidence, for every one knows that positive evidence is not, and was not in this case required to convict of murder. Circumstantial evidence is legal evidence, and is of itself sufficient for this purpose, and in most cases is all that can be had. The question then is, how much circumstantial evidence is necessary to convict a man of murder? There is only one answer to be given to this question, namely, so much as will convince a jury of guilt, whether it be little or much. But Aristides tells us that the jury in Mr. Avery's case "most conscientiously believed him guilty, although they rendered a verdict of *not guilty*." It follows, either that Aristides is guilty of unexampled *slander*, or that the jury stand perjured before the world, and can never again be believed, even though they speak under the obligations of an oath. This is a clear case; and it is no wonder that the man who concluded to write thus should conceal his name. For though he appears to have no sense of moral right or wrong, yet he would blush with confusion and shame to be known as the author of so foul a slander. Was his name known, he would feel as though the finger of scorn was pointed by every one he should meet.

But Aristides says positively, the jury "believed him guilty," though they rendered a verdict of not guilty. For his assertion he has given no authority, not even that of his own name, questionable as that might be. But we are in possession of information that justifies us in denying as positively as he affirms, that "they believed him guilty." Our word we believe will, at least, go as far as his; and when he shall produce his authority for affirming, we will give ours for denying that they have so said.

Among the means employed by the enemies of Mr. Avery, to make him hated, is that of a print which has been widely circulated, and which the public are assured is a good likeness. It was this assurance which induced the writer to look at it the more attentively; and he hesitates not to say, that every one who is in the slightest degree acquainted with the man, will pronounce it a caricature, done with the design to impress the beholder that he is a savage and libidinous monster. The veriest novice could have given a better outline, while it required the hand of a master to give it the expression.

To cap the climax, the Rev. Mr. Avery and Miss S. M. Cornell have been brought on to the stage, in the Richmond-hill Theatre, in the city of New York. And it may be regarded as a singular act of divine providence that this unhappy female should be exhibited on that theatre, which is reputed to bear about such a relation to other theatres, as she bore to the virtuous part of her sex. Thus, her involuntary associations after death are similar to her voluntary ones before.

At length Aristides arrived at his eighteenth number, which contains a virulent attack upon the New England Conference, and intimates that the writer's resources had now failed him. Since then, an irregular discharge of *small arms* has been kept up in the ranks of the enemy, just to show that their sentinels were still at their posts. Aristides has insinuated that Mr. Avery's *first* wife died of a broken heart under his unkindness to her, and attention to other women,—though his *present* is his *first* wife, with whom he has always lived agreeably.

For want of other means to keep up the excitement, which has prevailed for eleven months, not only has the "factory maid" been brought on to the same theatre again and again, but fac-similes of her letters, and those said to have been written by Mr. Avery to her, have been printed and circulated, with comments. Thus the subject is attempted to be kept alive, and the dying excitement, like the last efforts of an expiring taper, emits but a feeble and trembling blaze.

On looking over the history of this business, it is easy to perceive that a systematic persecution has been carried on, and is to be carried on, against Mr. Avery. This the variety of means employed sufficiently indicate. The most has been made of every circumstance however trivial. One day it is said that he has fled his country, the next that he is preaching still; then that his brethren have suspended him from his office, and then that they are pushing him forward and forcing him upon the public contrary to their wishes; now, that he has gone into a livery stable, having given up preaching, and anon that he is preaching.

These pious souls have ransacked the country and moved earth and hell to find matter to blacken his character, and do not fail to give exaggerated accounts of the drunken rabbles that cry out "away with him, away with him!" and of every effigy that is made, hung up, shot or burnt, with many that were never made, and then lay the blame on the "imprudent Methodists, who, by supporting a murderer, have awakened the just indignation of the public." But they never tell us that this just "indignation of the public" has been rewarded with liquor, and promises of more made to the mob as often as they would insult the obnoxious Avery; nor yet that this zeal for good order has on some occasions included the leaders in the temperance reform, and made both the objects of their "indignation" at the same time. And at Richmond-hill Theatre, in the city of New York, where the Fall River farce has furnished the entertainment for many a long evening, "the murderer of Miss Cornell," and camp-meetings, and the tract entitled "A strange thing," and "temperance and anti-tobacco societies," have all come in for their share in this virtuous "indignation." And the time and the reader's patience would fail, were we to notice all the arts which have been employed to keep this subject alive.

Having thus far considered the history of this great excitement and some of its causes, we now propose to go into an investigation of the charges against the Rev. Mr. Avery, and the evidence on which they are supposed to rest. We have delayed this till his enemies should get principally through with their charges, that we might the better know what we had to do, and that we might ensure a candid hearing.

Mr. Avery was tried on an indictment for murder. In the indictment were three counts:—1st, strangling; 2d, beating and bruising; 3d, suspending or hanging. If convicted on either of these points, he was a murderer. His counsel go upon the ground that there was no murder in the case,—that it was a clear case of *suicide*. While all the marks found upon and in the dead body will, to say the least, agree as well with suicide as with murder, there are certain marks and facts which will agree with nothing but suicide. These are:—

1. Seth Darling (government witness) says he saw the dead body in John Durfee's stack-yard, and that the "right arm was bent up." Writers on medical jurisprudence tell us that this position of the arm is produced by an involuntary spasmodic affection, in strangling or suspension; but if, as the government suppose, this girl was strangled twenty or thirty rods from the stack-yard, where her comb was found, and then carried and hung up to the stake, the removal when the body was warm, must have displaced the arm: but if she hung herself to the stake, she was not removed, and, of course, her arm kept its position.

2. The same witness testifies that "the distance from the knot on the stake to the knot on the neck, was something less than six inches." Williams Durfee, another government witness, testifies that "the strings of her calash were under the cord that went round her neck." Hence it would appear impossible that the cord could have been put over her head without displacing her calash, especially if she made the least resistance. But she could herself have put the cord round her own neck without putting it over her head, made the knot, and fastened the other end to the stake, and then, through the opening in the cloak on the breast, which probably was left unhooked for this very purpose, she might easily have drawn the cord tight round her neck, and suspended herself upon it. The practicability of all this was exhibited in court to the full satisfaction of all present. That the cloak was left unhooked on the breast, see the first named witness.

3. Had she been suspended by another, the cord would have adjusted itself to the smallest part of the neck, as is found, in fact, to be the case in all instances of homicide by suspension; but in this case, the cord went round the neck not more than an inch and an eighth below the tip of the ear.

4. It may be regarded as a certainty that if she had been strangled, and afterwards suspended, there would have been two marks of the cord round her neck, at least on the side where the knot would be drawn above its first position by her weight when suspended on it.

5. Seth Darling, witness for government, testified, "there was some green grass in the [stack] yard, and some *fog* (that is, dead standing grass). It did not appear to have been trampled. There was nothing that indicated a struggle. The fence was about four feet high." Here it should be remarked, that the fog, or dead standing grass, must have been of some height, as the yard does not appear to have been either mowed or fed; and at that season of the year, (the 20th of December,) it must have been frozen, and would have broken on being trodden, and retained strong marks of the foot; but the grass did not appear trampled in the least, as would have been the case if there had been a scuffle between them, or the dead body had been brought into the yard by another person. But how was the dead body got over a fence four feet high, without leaving some marks either upon the fence, or the body, her clothes, or the grass in the yard?

6. It is supposed that her murderer had, some time previous to this, made an agreement with her to meet her at six on this very evening, at or near this place. But is it at all likely that after such an agreement in writing, he would have shown himself on the spot near two hours before the time, while the sun was yet shining, and men all

around, pursuing their avocations? Would he have seated himself upon a wall, or stood gazing about, as though to invite observation, when he knew he might be recognized by many whom he knew not, and then a few hours after commit murder, regardless of his letters and of those who had seen him?

7. Let it be remarked, that the murder was committed, if committed at all, between the public highway leading to the village on one side, and the river on the other, and near by. Is it then probable, that she was murdered and afterwards carried in a direction towards the road, when every step was, for aught he knew, bringing him into observation, and hung up to a stake in sight from the highway, instead of being carried and thrown into the river, every step towards which was carrying her away from observation? In which of these directions would a murderer probably have disposed of the dead body? Besides, the murderer might have found a place to hang her up nearer and less exposed to observation than the stake in the stack-yard. There was a tree near by, which afforded every convenience for this purpose, and also posts and bars over which she must have been carried, where she might have been hung up.

8. Writers on medical jurisprudence tell us that when a person is found dead, and it is doubtful whether he came to his death by his own hand or that of another person, we should inquire into the moral character of the deceased, and into his circumstances; if the character be vicious, and the circumstances afflictive, these are arguments in favor of suicide. And this is corroborated by our own observation. If we take this course in the present case, there is the highest probability that S. M. Cornell hung herself. There was scarcely a vice which she was not in the habit of committing. She had ruined her character in every place where she had lived. Her conduct had made her friendless. Without home, friends or property, she must shortly be confined. Her wretchedness was too great to be endured, and she resolved to put an end to her life.

9. This she had frequently contemplated, and according to her own story had more than once attempted. Her conduct on several occasions was strange, so that it became a question whether she was not slightly deranged in mind. See testimony of Dr. N. Martin and Dr. Graves. Once she was seen under circumstances which indicated a design to take her own life. All this is in the testimony given at Mr. Avery's trial, and is already before the public. See the testimony of Asenath Bowen, Mary Ann Lary, Nathan Howard, Lucy Davoll, &c.

10. And here it may be observed, that without knowing her character, from the bare circumstances connected with her death, the first jury of inquest rendered a verdict of suicide. The examining court at Bristol did the same. What then, it may be asked, led to the suspicion of murder? Most evidently it was the slip of paper in pencil mark, found in her band-box after the body was buried. It reads thus:—

“If I should be missing, inquire of the Rev. Mr. Avery, of Bristol, he will know where I am. Dec. 20th. S. M. CORNELL.”

But how this slip of paper should ever have suggested the idea of murder, or of her being taken to a place of secrecy, is difficult to see.

For if she apprehended a design upon her life by Mr. Avery, it is incredible that she should have gone to meet him. If she had had a desire and expectation of being removed to a place of secrecy, would she have directed the means to defeat the object? Or if she had had an expectation of being taken that night to a place of secrecy, would she have left behind her every article of clothing save what she had on? The only inference, therefore, which can consistently be drawn from this writing is, either that she was deranged in mind, and wrote without meaning, or that she intended by it to draw Mr. Avery into difficulty, and thereby execute an oft repeated threat of being revenged on him.

We trust that when the reader has reflected closely and seriously on all these points, he will agree with two juries and the court of examination, that there was no murder in the case.

Having disposed of this matter, we come to the camp-meeting at Thompson, where it is supposed by Aristides, that the connection took place between Mr. Avery and S. M. Cornell, which furnished the motive to murder her. But if, on the contrary, we show that no such connection took place between them, as is pretended, the motive to murder, on his part, is removed, and the presumption that the death was a case of suicide, is greatly strengthened, if not absolutely confirmed.

It is very fortunate for Mr. Avery, that the time of the alleged connection was *definitely* fixed by Mr. and Mrs. Rawson, from the statements made to them by the girl herself. The time previously agreed upon by him and the girl was, as she stated to them, on Thursday evening, "at the sound of the horn for preaching." She adds, "he came." The precise time being thus fixed, it was easy for Mr. Avery to prove an *alibi*.

"Notwithstanding," says Aristides, "the efforts made to account for the manner in which Avery passed the whole of his time at the camp-meeting, in Thompson, there is an evident failure to do so. Several times in the course of his story, he appears to have been lost sight of, and especially at the time, *the precise time*, spoken of by Miss Cornell to her brother Rawson, the 'blowing of the horn,' he is no where to be seen." p. 79.

How could this writer express himself in this manner, with the testimony before him to convict him of falsehood! The reader shall see the testimony. The range is not so wide as to "include the whole of his time at the camp-meeting at Thompson;" but "the time, *the precise time*," is fixed by Miss Cornell "at the blowing of the horn," according to Aristides himself.

Rev. Henry Mayo testified that on Thursday, about sunset, he found Mr. Avery in the Weston tent; that "he remained there till the horn sounded. He was helping to fix the tent at the time. I stepped out of the tent, but while waiting for him, my attention was attracted by something else, and he passed by without my noticing it. I passed towards the stand, looking for him, and about half way, six or seven rods, I saw him by a tree, talking with a man. I passed by to the preachers' tent. Mr. Avery came up in a moment. He spoke with Mr. Crandall, and afterwards we went together into the preachers'

tent, where we remained till the sermon was over, when he went out and joined Mr. Crandall. From sunset to this time, he could not have been out of my sight more than three minutes."

Louisa M. Whitney testified, "I was at the camp-meeting, and boarded in the Weston tent. I was there on Thursday afternoon. Mr. Avery came to the tent that afternoon, soon after preaching. At tea time he went out, and was gone twenty or thirty minutes. He then came back, and staid till after the horn sounded for evening services. After he came back, there was a prayer-meeting; when that was over, he remained talking with Mr. Mayo.

"I followed Mr. Avery out of the tent. About half way he stopped and talked a moment with a man. He then went on to the preachers' tent, but I did not see him go into it."

Capt. Milton Daggett testified, that "Mr. Avery was at the Weston tent when the horn sounded."

Rev. Samuel Palmer testified, that "on Thursday evening, after the horn sounded, he saw Mr. Avery coming as from the Weston tent, towards the preachers' tent, alone. A few minutes after, I stepped into the preachers' tent, and saw him conversing with brother Mayo. I went out for about fifteen minutes, came back, and found him still there. After the preaching was over, I went out with him; he met brother Crandall, and they went off together."

Rev. Phineas Crandall testifies, that on Thursday evening, he "went to the stand at the blowing of the horn, at half-past seven, to commence the evening services. I saw Mr. Avery standing by the steps as I went up. We passed a few words about going to Mr. Elliot's together to lodge, and he agreed to meet me at the place he was then standing at, immediately at the close of the services. As I stepped off the stand, at the end of the services, about or just before nine, I found him standing at the steps, waiting for me. We went into the preachers' tent to get some things, and from thence to Mr. Elliot's. We talked together, perhaps an hour, when we went to bed. We were together from the time of my meeting him at the foot of the stand till next morning."

Thus, from the testimony given in court, published to the world, and in the hands of Aristides himself, he is convicted of as gross a falsehood as was ever uttered, in saying, "at the time, *the precise time* of blowing the horn, he is no where to be seen. Even the sharp-sighted eyes of his watchful guardians, lose all traces of him, and leave us at liberty to suppose him *tete-a-tete* with Sarah Maria Cornell, according to her declaration above alluded to."

Aristides could not be mistaken in saying that "at *the precise time* of sounding, no traces of him were to be seen." He *knew* it to be a *falsehood*, for he had the testimony before him. This is not an ordinary falsehood either; but, by emphasising his words, "at *the precise time*," he shows a *contempt* for the truth. This is the man who accuses Mr. Avery of seduction and murder, and such are the means he employs to prove his charges!

Here let it be recollected, that S. M. Cornell herself fixed the time of her connection with Mr. Avery on Thursday evening, the 30th of August, at the blowing of the horn. But Mr. Avery has proved that he was on the camp-ground at that *very time*, and for some time before

and after, and that he was not with her at any subsequent period that night. Thus he has clearly and undeniably proved her statement false. And we challenge Aristides to find a flaw in this testimony. Nay, he has himself acknowledged, in language most emphatical, that it is unimpeachable and irrefutable, in that he has resorted to downright falsehood to get rid of it. There was no other way for him to carry his point. But this method will not always answer his purpose. The intelligent and candid will see and treat his effort as it deserves. And we ask how any statement can be proved false, if her's is not?

Nor is Aristides at liberty to say that the girl was mistaken in the day or the hour. She has fixed the day, "*the precise time*," and Mr. Avery proves an alibi, and shows that he was not within three quarters of a mile of the place mentioned by the girl, till the close of the evening services, when he returned to his lodgings with Mr. Crandall. This should satisfy all. This *will* satisfy the intelligent and candid. But those who are determined to believe him guilty, against the strongest evidence, will still assert what they please.

This alibi is sufficient of itself to prove Mr. Avery innocent of the charge of illicit connection with S. M. Cornell; yet his innocency is capable of being sustained by other evidence equally good. We will therefore proceed to lay before the reader some other facts which go to the same point, and show most conclusively that he had not the connection with S. M. Cornell which she pretended.

1. Mr. Avery had expelled her from the church, and was the means of preventing her re-admission. On this account she was highly exasperated, and swore revenge. Accordingly, she said at the camp-meeting, in the hearing of several persons, "she had not spoken to him, and did not wish to." And Mr. Avery himself agreed with Rev. A. D. Merrill, to give information of her character, in the tent. Is it to be supposed, then, that he would be so incautious himself as to be seen in conversation with her alone on the camp-ground, as she stated? (See Mr. Rawson's testimony.) Or is it credible that he would hazard discovery in a walk with her, &c. in the vicinity of the ground?

2. At this time he knew her character fully:—that she had been affected with a disease, the abhorrence of all flesh, and *might* be so now. Is it then reasonable to suppose that he would have had such intercourse with her as she states he had, even if he is presumed to be a vicious man?

3. She was actually suspected of being *enciente* at the time of the camp-meeting. See testimony of Rev. Henry Mayo, Patty Bacon and Almira Waters.

4. On Thursday, the 30th of August, she says he seduced her, and on the 21st of September, just twenty-two days after, she revealed her situation to her sister; that is, in Mrs. Rawson's words, "told her what she feared *might* be her situation." See Nancy Rawson's testimony.

How came she to be so strongly impressed as to her situation in twenty-two days? O, "she feared what it might be." But had she not also ground to hope that it might not be thus; or, if it should finally prove to be thus, that something might take place to prevent her guilt being known? Was it ever known that any, except the most aban-

done female, ever so far gloried in her shame as to make others acquainted with it before she knew her situation herself, and while she had as much ground to hope as to fear? How came her fears to preponderate against her hopes? If this had not been her situation before the camp-meeting, would she have been in so much haste to reveal it?

The conduct of Mr. Rawson and his wife is hardly less mysterious. If their sister had imprudently revealed her fears, it became them, being older, and of more mature judgment, to counsel her not prematurely and unnecessarily to expose herself and injure her connections. But instead of this, *they* seem to have "feared," and instead of waiting to see what the result would be, they consult the Rev. Mr. Cornell and Esquire McLellan as to the law; and "the conclusion they finally came to was, that she had better go to Rhode Island till she could certainly ascertain her situation, and then inform Mr. Avery what her situation was." We ask the attention of the intelligent and candid to these things. We ask them to decide whether it is admissible that the girl revealed to her sister and brother-in-law only "what she feared *might*" possibly "be her situation;" and whether they took measures in consequence of this fear, merely, and that fear grounded on the short period of twenty-two days, or from a *conviction* that this was her situation, and that she was so far advanced that there was no time to lose? And we leave them to decide in the case as it respects the brother and sister of the girl. But concerning the girl herself, we have something more to say.

The pretence that she "feared" she was with child, and that that fear was built on an observation of twenty-one or twenty-two days, is evidently a wilful, wanton falsehood, invented to glut her revenge on Mr. Avery, for expelling her from the church, and preventing her return to it. Let all the circumstances of the case be considered, and this conviction will force itself upon the mind. She was suspected of being pregnant at the camp-meeting. She is convicted of falsehood as to Mr. Avery's leaving the camp and going with her into the woods. Thirdly, she did not reveal to her sister and brother-in-law "what she feared *might* be her situation, (this is a shameful perversion of the truth,) but what she *knew* was the fact. There is not an honest and candid jury on earth that would have given her damages under such circumstances. But she had an object in view, and that was the ruin of Mr. Avery. She had threatened, and that many times, that "she would be revenged on him, if it cost her her life." See the testimony of Ellen E. Griggs, Lucy B. Howe, Meriden Libby, Mary E. Warren and others. One of the witnesses said, "she spoke this with a look that frightened me." No instance can be adduced in which she expressed any other feeling toward Mr. A. than the most bitter hostility, until it suited her purpose to charge him with seducing her.

The spirit of revenge which she had long harbored in her breast, now found an opportunity to gratify itself. Finding herself in this "situation," she resolves to accuse Mr. Avery, and probably to destroy him. Her plan is fixed. She first accuses him to her sister and brother-in-law, and then goes to Fall River, the better to carry the whole into effect. She there expresses her fears to a physician, asks his opinion as to her "situation," names Mr. Avery, and with hypo-

critical professions of respect for his office, regard for his family, and tenderness towards his person, speaks of oil of tansy, as recommended by him. In the mean time, she writes letters to him, and forges letters as from him, or her paramour does it for her. At length she resolves, as the crisis of her difficulties approaches, and her wretchedness increases, to free herself from them in a way she had before attempted, and frequently spoken of; that is, to put an end to her life. And, that Mr. Avery may not escape, she leaves a writing behind her that shall involve him in serious difficulties.—“If I am missing, inquire of Rev. Mr. Avery, he can tell where I am.” And in this plan she but too well succeeded, as the result has shown.

There is one point more to be considered in connection with this subject.

It has been said that she could have no ground of alarm as to her “situation” in the lapse of twenty-two days; that she knew, what others suspected at the camp-meeting, that she was several weeks advanced in a state of pregnancy at that time; but represented it as the object of her “fears,” the better to implicate Mr. Avery. Now for the proof of this.

Drs. Wilbur and Hooper opened the body after she was dead, and extracted the fœtus, which they found to be *eight inches in length*. But according to all the evidence on this subject, a fœtus to be eight inches long, must, in all ordinary cases, be from *five to six months old*. Six eminent physicians, among whom were Dr. Channing of Boston, Professor of Midwifery in Harvard University, Dr. Miller, of Franklin, who has been in practice since the year 1792, and Dr. Usher Parsons, of Providence, were called specially to give evidence as to the age of a fœtus that is eight inches long; and they all agree that it should be from five to six months old. Not one gives a shorter time than five months.

Now, apply this to the case of S. M. Cornell. The fœtus in her case was eight inches long, according to Drs. Wilbur and Hooper, two government witnesses. It must, then, according to all the physicians called as witnesses in the case, have been at least five months old. Yet it was but three months and twenty days, according to her account, from the time of her connection with Mr. Avery to the day of her death. This proves that she must, probably, have been pregnant as far back as June, and two months before the camp-meeting. This justifies the suspicions which were entertained of her at that meeting, proves that her accusation against Mr. Avery was false, and that she had laid a scheme to ruin him.

The innocence of Mr. Avery may be made to appear still more clearly. There is one author, (Beclard,) and *only* one, who gives only *four* months for a fœtus to become eight inches long. *All* the other authors, and all living physicians, are against him, and consider such a case as “out of the usual course of nature.” But the case of S. M. Cornell comes not within the view of even Beclard. In her case, there was only *three months and twenty days* for the fœtus to become eight inches long. If you condemn Mr. Avery, therefore, you condemn him without a solitary witness of any sort—without the shadow of evidence.

And a certain class of men, the haters of all clergymen, tell

us they believe him guilty both of seduction and murder in her case, and *Aristides* "believes him guilty!" And these men *will* believe him guilty. Yes, they believe him guilty, because they *will* believe it. With such men Mr. Avery has no arguments to use. He makes his appeal to a candid, Christian community, and asks what stronger evidence of innocence, in such a case, could be brought—what stronger evidence of a conspiracy against a man, than is here adduced? He asks what stronger evidence *could* be brought to prove a man clear of all suspicion of seduction and adultery, than the facts and circumstances in this case? How is it possible to have stronger proof, unless you could have ocular demonstration? Hence the motive to commit murder, in the Rev. Mr. Avery's case, according to the ground assumed in his trial, is wholly set aside.

And what has the advocate of S. M. Cornell—her *friend* and *champion*, the powerful *Aristides*, whose volition can call into existence the circumstance, person or thing he needs—to say on this occasion? All he has to say is thus summed by him in these words:—

"Mr. Asa Upham, a sober, industrious man, and a man of property and respectability, saw Avery and Miss Cornell walking arm in arm together in the woods near the camp ground, and knew them. Mr. Upham went to Newport to testify to these facts; but ascertained that the Methodists had procured three persons to attend court to testify against his character, on account of some difficulty with the Methodist church; he, being far from home, among strangers, and not wishing to expose himself to the venom of his enemies under these circumstances, left Newport and returned home sober; while at least two of the persons employed by the church against him, returned drunk. Being an inhabitant of another State, the government of Rhode Island could not lawfully detain him, or they would have done so. His character for truth is good." p. 100.

Who are *Aristides*' vouchers for these things? He has none. And as for himself, he has concealed his name, and is not, therefore, to be credited. Yet we shall bestow some attention on this case, for the sake of showing more fully, in what perfection he has the art of coloring.

There are two truths in what *Aristides* says here;—there is such a man as Asa Upham, and he was at Newport at the trial. The rest is fabricated.

It will not be necessary for us to say any thing about the character of Mr. Asa Upham. *Aristides* says, "his character for truth is good." Let this be remembered.

1. Mr. Asa Upham never had any connection or difficulty with the Methodist church.

2. Mr. Asa Upham never "saw Mr. Avery and Miss Cornell walking arm in arm together, near the camp ground, and knew them." He has repeatedly stated the contrary, before, at, and since the trial.

3. The government of Rhode Island could have *detained* him lawfully, when he was in the State, if they had thought proper to do so.

4. As to two of Mr. Avery's witnesses "returning drunk," let him give us some *better* evidence of the fact than his own word.

The following certificate goes fully to support what we have said at number 2.

"This may certify, that I, Hezekiah Olney, of Thompson, in Windham County, State of Connecticut, had a conversation with Asa Upham, after the trial of Ephraim K. Avery, at Newport, and Mr. Upham stated to me that he was mistaken in the person he saw walking with the girl, as has been stated. Mr. Upham told me he did not know Avery nor S. M. Cornell, but some person told him that it was Avery he saw. But Mr. Upham told me that when he got to Newport and saw Mr. Avery, he was satisfied that he was not the man he saw walking with the girl; and he stated that that was the reason he left Newport, and said that he told Josiah Sessions so at the time he was at Newport, and said if he swore at all he must swear that Avery was not the man. HEZEKIAH OLNEY."

"Thompson, Oct. 28, 1833."

Did, or did not, those for the prosecution know this at the time?

"I hereby certify, that being at Newport, R. I., at the late trial of Rev. Ephraim K. Avery, I had several conversations with Mr. Asa Upham, of Thompson, Conn. He came into the court house and took a seat near me, and inquired of me if Mr. Avery was there? I informed him he was. He then asked me, in a low voice—'Which is he?' I answered him, in a low voice, pointing to him—'That is he.' He said—'No, it is not.' I said—'Yes, Mr. Upham, this is the man, by the post.' He said—'No, it is not;' then pointing to a gentleman with glasses on, (whom it is understood was Esquire Ford of Fall River,) said—'That is the man.' I replied—'No, it is not.' He said, with some zeal—'I know that is the man; and will pay your board here a week if it is not Mr. Avery.' I said—'I will yours a month if it is; I well know Mr. Avery, he has preached at my house.' After he had picked out the first man, and I had convinced him he was wrong, he next picked out the foreman of the jury. The conversation then ceased, and we stepped out of the house, and on the steps I asked him whether 'he came as a witness?' To which he replied, 'he did.' I asked—'What do you know?' In answer to which he gave me to understand that all he knew was, that one day of the camp-meeting, about sunset, he saw a gentleman and lady in the main road, going south, some distance from Mr. David Elliot's house; but he did not know who they were.

JOSIAH SESSIONS."

"Thompson, Oct. 28, 1833.

We feel that we have dwelt longer upon this point than its merits required. None, except Aristides and his party, would ever think that the walking together of these two persons, if it were true, was a circumstance, of itself, sufficient to prove that Rev. Mr. Avery had illicit connection with S. M. Cornell, against all the evidence to the contrary. But the circumstance, small as it is, appears not to have existed, especially if, as Aristides says, "Mr. Upham's character for truth is good."

We now pass from this subject to the consideration of what is supposed to be the written correspondence between the Rev. Mr. Avery and S. M. Cornell. It is well known to all who have either

read or heard of the trial of Mr. Avery, that there were certain letters found among the things of this female, after her death, said to have been written by Mr. Avery to her, and which, if so, would go far to establish his guilt. These letters were presented and past to the jury by the State's Attorney, not on the ground of proof of hand-writing, as Mr. Attorney explicitly stated, but because one of them was traced into the hands of Avery by means of the Engineer of the steamboat King Philip. The Engineer swears positively that the letter on pink colored paper, directed to S. M. Cornell of Fall River, to the care of Mrs. Cole, was put into his hands by Mr. Avery himself. One other letter was afterwards passed to the jury, not on the ground of hand-writing, but as a part of the same correspondence, and as relating to the same subject with the other. The question, therefore, will turn chiefly on the first or pink colored letter. If that was delivered by Mr. Avery, it will have its weight in the public mind, not as having been written by him, (unless they assume a ground not taken by the court,) but as having a tendency to rebut the presumption of suicide. If, on the other hand, it shall be proved that this letter was never in Mr. Avery's hands, that he did not put it into the hands of Orswell, the Engineer, then it proves nothing against Mr. Avery. And if this letter fails, the other fails with it, according to the ground taken by the court.

Concerning this letter, for distinction sake called the "*pink letter*," we shall show that it was not, and could not have been delivered to Orswell, the Engineer, by Mr. Avery. Here let it be observed, that in November, 1832, the steamboat King Philip made her trips each way three times a week; and the days on which she left Providence for Fall River were Tuesday, Thursday and Saturday. See testimony of John Orswell. On Monday, the 26th of November, Mr. Avery went from Bristol to Providence to attend a four days meeting, and arrived in the latter place between 4 and 5, P. M., and returned to Bristol on Wednesday, the 28th. See testimony of Nathaniel Chadwick and Pardon P. Jillson. It must therefore have been on Tuesday that he delivered the letter on board the steamboat, if he delivered it at all. Here let it be observed, the better to understand what follows, that the steamboat lay on the east side of the river, about two-thirds of a mile by the bridge, and the same or more by the ferry, from where Mr Avery was on Tuesday morning. The time of day when the letter was delivered on board the boat must have been as late as 9, or later; as the time for leaving was at 10, A. M., and the time for kindling the fire, half past 8, and at the time the letter was delivered there was "considerable steam on." See Orswell's and Judge Pearce's testimony.

The object is to show that Mr. Avery could not have delivered the letter at any time between half past 8 and half past 10 on that day. The testimony given will cover more time than this, though this will be all sufficient.

Samuel Boyd saw "Mr. Avery about sunrise, going towards the Methodist meeting-house, (to the sunrise meeting,) and again at the 9 o'clock prayer meeting in the vestry of the church. The meeting, with six minutes' intermission, continued till half past 10."

Pardon P. Jillson testifies,—“Mr. Avery staid at my house during the four days meeting; he came down in the morning (the 27th) a

little after daylight; about sunrise he went out, and turned into Chesnut street, towards the Methodist meeting-house. I got home about ten minutes, or a little more, past 8. Mr. Avery was there. Mr. Avery and Mr. Ireson breakfasted with me. I should think Mr. Avery remained there twenty minutes, when he went out, observing that he had an errand at brother Fuller's," before the 9 o'clock prayer meeting, which he was to take charge of at Mr. Horton's request.

See also Rev. Joseph Ireson's testimony to the same points.

Rev. Abraham Holway testifies, that "Mr. Avery came to Mr. Fuller's, where he staid, between twenty and thirty minutes before 9 that morning—that he should think he remained between twenty and thirty minutes; and when he went out, said he had the prayer meeting to open, and asked me to go with him, [which he certainly would not have done had he been going to the steamboat:]—he should be afraid to say the time Mr. Avery was with him was less than twenty minutes, and judged from the conversation they had, and other circumstances, that he must have been there between twenty and thirty minutes."

Joseph Fuller testifies, that "Mr. Avery came to his house on Tuesday morning of the week of the four days meeting, thirty or thirty-five minutes past 8, and staid there till 9. He then rose up and said he must go, as he had the prayer meeting to open for Mr. Horton at 9. I looked at the clock and saw it was 9." The meeting-house was only twenty-eight or twenty-nine rods from Mr. Fuller's.

Rev. Jotham Horton, (preacher in charge in Providence at that time,) testifies, that "when he entered the meeting-house, about five minutes past 9, Mr. Avery was there. This meeting lasted till past 10. If Mr. Avery had gone out he says he should have seen him. He did not see him go out."

Rev. Samuel Palmer testifies, that "he saw Mr. Avery on Tuesday morning, at the 9 o'clock prayer meeting, about five minutes past 9, in the altar. At the close of the prayer meeting, Mr. Horton said—'There will be an intermission of six minutes;'—that he passed out in company with Mr. Avery,—they conversed a few minutes, returned together into the altar, and sat down together during the services;—that after they were over, they, with Rev. Mr. Merrill, walked to Mr. Anthony's, where they dined."

Now we ask, what time was there for Mr. Avery to go about two-thirds of a mile to the Fall River steamboat? He is seen and accounted for the whole time, except the very few minutes he was walking from Jillson's to Fuller's, a distance of not more than a quarter of a mile, and the time he was walking from the house of the latter to the meeting-house, a distance only of twenty-eight or twenty-nine rods. Five minutes is the longest time he was out of sight from sunrise till after dinner. It was 9 o'clock when he left Fuller's to go to the meeting-house, and there we find him *five* minutes after 9. Here is a strong *alibi* proved by the most unexceptionable witnesses.

If it be said that he might have gone to the steamboat between the time of leaving Jillson's and coming to Fuller's, the answer is easy. He left Jillson's about thirty minutes past 8, and arrived at Fuller's thirty or thirty-five minutes past 8, and remained there till 9. So that, as we said before, the longest time he is out of sight is five minutes,

viz., the time between his leaving Fuller's and our finding him in the meeting-house. Aristides himself says that it would have taken him fifteen minutes to have gone to the steamboat and back again. We now ask the candid reader whether Mr. Avery delivered the letter to the Engineer, as the latter says he did? It may also be recollected here, that the Engineer of the steamboat said at Bristol, in Mr. Avery's house, that he should be unwilling to *swear* that Avery was the man who delivered the letter. See Judge Pearce's testimony, and that of Mr. Paul, Deputy Sheriff, at the Bristol examination.

Aristides is a famous hand at asking questions full of meaning. Page 63, he says—"Did or did not E. K. Avery, very early on the morning of Nov. 27th, the morning on which Orswell received the pink letter, go into the store of Mr. James Snow, in this city, (Providence,) with slippers on, and procure quills and paper?" We answer, *No*, he did not. And Aristides might have known this as well as we, if truth had been his object. We have the certificate of Mr. Snow before us, in which he says:—

"I can testify and say, that E. K. Avery was not in my store or house on the 27th (of November,) neither had he any pink or white paper of me on said day. (Signed) JAMES SNOW."

What Aristides says of his knowing that a certain man saw Mr. Avery, on the morning of the 27th of November, walking very fast in a direction from the steamboat to the Methodist meeting-house—of his prospect of getting proof of the fact, and his subsequent disappointment, must all go for nothing, seeing he has concealed his own name and that of the person on whom he depended for proof. In proportion as this concealment of names puts it out of the power of Mr. Avery to defend himself, in the same proportion does it discredit the assertions of Aristides; and we hesitate not to pronounce it a creation of his own.

Here we might leave Mr. Avery in the hands of all the candid, not doubting but they would render the same verdict as did the jury of trial—NOT GUILTY. We have, however, something of importance to add.

More than a month after the trial of Mr. Avery, Mr. Nathan M. Spencer, of East Greenwich, (lying on the west side of Narraganset Bay, between which and the county of Newport and Fall River there is little direct intercourse,) being in conversation with one of his neighbors on the subject of a letter delivered to the Engineer of the Fall River steamboat; and learning that the Engineer had identified the Rev. Mr. Avery as the person who delivered it, recollected that he had himself delivered a letter on board that boat, and recurring to some papers which were dated on the day he delivered the letter, found it to be the 27th of November, 1832. The letter he delivered was written on pink colored paper, and he delivered it between 9 and 10 in the morning. These and other circumstances connected with the letter, induced him to go to Newport and make oath to the facts. He afterwards made oath to the same facts a little more in detail, but agreeing substantially with his former deposition.

He received this letter on the way to Providence, and observed that it was directed to a Miss Cornell of Fall River, to the care of some

other person, whom he could not recollect. When he returned home, he conversed with his family about the letter and the person to whom it was directed. This is sworn to by two of his brothers. These depositions are as follows:—

“I, Nathan M. Spencer, of East Greenwich, in the county of Kent, and state of Rhode Island, aged thirty-one years, cordwainer, on solemn oath declare and say: That I was born in said East Greenwich, and with the exception of a few years, have ever resided there. That early in the morning of the 27th of November last, according to the best of my recollection and belief, and according to a bill and note herein and after named, I left home in a one horse wagon to go to Providence to buy stock—that I went by the way of Old Warwick, and took a raw cowhide to Mr. Waterman’s of that place, tanner—that a few miles before I arrived at Pautuxet, I overtook a young man on foot, a stranger to me, took him into the wagon with me and carried him to the edge of Providence, when he got out and went on his way in the old road, I believe, while I kept on the new road into Providence. According to the best of my recollection and belief, it was on this day, when just over the edge of Pautuxet, I met two gentlemen on foot, one of whom came up to the wagon, handed me a letter, and requested me to hand it to one of the hands on board the Fall River steamboat. I think he told me that the boat left for Fall River at 10 o’clock, and he wanted the letter to get there that night. I don’t think I should know the man again—I think he was youngish and had a cloak on. I took the letter and put it into my hat. After riding some distance, I took the letter out to observe it more particularly, when the gentleman in the wagon with me said—‘Why you have got a yellow letter there.’ I observed, no, it is not yellow, it has a cast of red. Immediately after my arrival at Providence, I went down to the Fall River boat, the King Philip, stepped into the boat, and delivered said letter to a man, who, from his dress and appearance, I supposed belonged to the boat; this was between 9 and 10 o’clock, A. M. I do not recollect the conversation between the man on board the boat and myself. I think he at first hesitated to take it. In relation to the letter I recollect *distinctly* it was on reddish paper, directed to some person in Fall River, but to whose care I cannot say, nor should I probably have my recollection as to the person to whom it was directed, but for a conversation with my brother after my return from Providence, in which conversation I spoke of the letter before alluded to, and inquired if Mr. Benjamin Cornell, formerly of East Greenwich, had not a daughter, or daughters, in Fall River, or over that way. I have little or no doubt that it was on the 27th of November last that I received and delivered said letter. If the bill and note alluded to are correctly dated, I know that it was on the 27th of November last that I went to Providence by the way of Old Warwick, and took the stranger into my wagon, and am confident he was with me when I received the letter as aforesaid. It was he or one of my brothers, Richard or Thomas L. I seldom go to Providence. Did not go there within a month or six weeks before or after said day. When I went to Providence on the above mentioned day, I had on a blue camblet cloak, and colored under clothes, and a

black hat with a brim much wider than the brims of fashionable hats. I have been shown, by Mr. George C. Mason, the Clerk of the Supreme Court, the letter produced to the Court at the trial of Mr. Avery, as the one handed the Engineer of the steamboat, and the color and appearance of said letter is the same as the one handed me and which I put on board the Fall River boat.

“Soon after the trial of Mr. Avery at Newport, a conversation was had between myself and some of my neighbors respecting the trial of Mr. Avery, and particularly the Engineer of the Fall River boat, and his identifying the person of Mr. Avery, when he delivered the letter to said Engineer, as stated by him in his testimony. I then mentioned the circumstance of the letter aforesaid being handed to me, and stated I thought it difficult to identify a person under such circumstances as the Engineer referred to, for I do not think I should be able to do so in the case of the letter handed to me. I was then led to examine the bill of Sheldon & Mason of articles which I bought, when I went there by the way of Old Warwick and took the stranger into the wagon with me, and when, as I suppose, I took and delivered the letter aforesaid. This bill and also a note which I gave for the articles, and which I have since taken up, are dated on the 27th of November last. Before this the circumstance above related never occurred to me as having a bearing on the case of Mr. Avery. I knew Mr. Avery when he resided in East Greenwich. I am not a member of the Methodist Church, but have usually attended that meeting.

NATHAN M. SPENCER.”

“*Kent, ss.* At East Greenwich, July 6, 1833, personally appeared, Nathan M. Spencer, and subscribed and made oath to the truth of the foregoing deposition before me. And I certify that the deponent is a slim built man, of the height of five feet eight inches and a half, dark complexion, dark eyes and narrow face, has a scar on the middle finger of the right hand, and also a long scar on the middle finger of the left hand, and rather high forehead, with black smooth hair.

“Witness, NATHAN WHITING, *Justice of Peace.*”

“I, Richard Spencer, of East Greenwich, in the county of Kent, and state of Rhode Island, cordwainer, on solemn oath testify and say, that some time in November last, my brother, Nathan M. Spencer, went to Providence to buy stock. He left early in the morning, went alone in a one horse wagon, took a raw cowhide with him to Mr. Waterman's, in Old Warwick. When he returned, he spoke of taking a letter to the Fall River steamboat, and asked me if either of Benjamin Cornell's daughters lived in Fall River. I asked him where he got the letter; he said he got it at Pautuxet. My brother John asked, if one of Benjamin Cornell's sons gave it to him; he answered, No, for he knew all of them, and the man who gave it to him was a stranger.

“I was never with my brother Nathan when he received a letter of such description. I did not go to Providence with him between July and February last.

“Dated at East Greenwich, this 6th day of July, A. D. 1833.

RICHARD SPENCER.”

“*Kent, ss.* At East Greenwich, July 6th, 1833, personally appeared Richard Spencer, within named, and subscribed and made oath to the truth of the facts contained in the foregoing deposition.

“Before me, NATHAN WHITING, *Justice of Peace.*”

“I, Thomas L. Spencer, of East Greenwich, in the county of Kent, and state of Rhode Island, cordwainer, testify and say on oath, that my brother, Nathan M. Spencer, in the month of November last, according to the best of my recollection, went to Providence to buy stock. On his return, he mentioned that he had taken a letter at Pautuxet, to go to Fall River; that he put it on board the Fall River boat. I do not distinctly recollect that he told to whom it was addressed. I suppose he did, for I recollect the conversation as to Benjamin Cornell having daughters living in Fall River or vicinity. He said it was not one of Benjamin Cornell’s sons who handed him the letter, but a stranger. I was never with my brother Nathan when he received a letter of such a description. I have not been to Providence with him since the middle of October last, nor within a year previous to that time.

“Dated at East Greenwich, aforesaid, this 6th day of July, A. D. 1833.

THOMAS L. SPENCER.”

“*Kent, ss.* At East Greenwich, July 6th, 1833, personally appeared the above named Thomas L. Spencer, and subscribed and made oath to the truth of the foregoing deposition.

“Before me, NATHAN WHITING, *Justice of Peace.*”

There would have been no occasion to say any thing in support of Mr. Spencer’s deposition, had not Aristides labored by all the arts of sophistry in his power, to raise a cloud of dust to obscure the truth. For this purpose, he tries to render it uncertain what day of the month and week Orswell received the letter; that Mr. Spencer’s “story” is destitute of those characters of truth which are necessary to gain it credit; that it is involved in a “mass of contradictions;” and, finally, that Mr. Spencer denied to Mr. Mason, the clerk of the court, that the letter which he showed him was the one he delivered to Orswell. But he has no vouchers for any thing he has said, and has concealed his own name.

1. He tries to make it appear uncertain what day of the month and week Orswell received the letter from Mr. Avery, in order to induce the belief that there were two letters delivered to Orswell,—one by Avery, and the other by Spencer on another day. He says:—

“It will now be recollected that Orswell does not pretend to swear to the day of the week or month on which he received the letter.—You see, then, that even though the entire testimony of the opposing witnesses be literally correct, even to the letter, the testimony of Orswell remains untouched.” p. 19.

Let us now see how this matter stands. Orswell helps to fix the time definitely. He says it was in the latter part of November, during the time of a four days meeting in Providence, in the morning either of Tuesday, Thursday or Saturday, as these were the only days in the

week on which the steamboat went to Fall River. And we have seen in the testimony of Chadwick and Jillson that Mr. Avery arrived in Providence in the stage on Monday, the 26th of November, late in the afternoon, and left on Wednesday, the 28th. It must, therefore, have been on Tuesday, the 27th, before ten in the morning, that Orswell received the letter. This is confirmed two ways:

*First*, by Aristides himself. He produces an anonymous letter to show that a Mr. Angel saw a man deliver a letter to Orswell some time during the four days meeting, habited like Avery, and labors to make it appear that this was on the 27th of November. This was the day, too, when he thinks Mr. Avery got the pink paper of Mr. Snow.

*Secondly*, by Orswell and Miss Cole, of Fall River. Orswell testifies, both at Bristol and Newport, that he delivered the letter the same day he received it; and Miss Cole testifies that the letter was left at her father's house the evening of the 27th of November.

Now, if it was not on the 27th, but another day, that Mr. Avery delivered the letter to Orswell, as is pretended, it follows that the letter which was delivered on the 27th, at Mr. Cole's, in Fall River, was delivered by Spencer, and that he was the man seen by Angel, dressed in "dark clothes and a broad brimmed hat," and Mr. Avery had nothing to do with it. Further, if the letter which it is said Mr. Avery delivered to Orswell was not handed to him on the 27th, then it follows that there were two letters handed to Orswell, one on the 27th, and another on another day; both the same week, both the same hour in the day, both pink colored, both directed to S. M. Cornell, and both to the care of Mrs. Cole. This is the first time the public ever heard of two such remarkable letters; and so many coincidences are more difficult to be accounted for, than all the strange things that have fallen out in the history of Mr. Avery. Has not Orswell said that he received but one letter? And why has the mention of this duplicate pink letter been kept from the public so long? Or is it not much more probable that Aristides has undertaken a very difficult piece of work, which involves him in management, contradiction, tergiversation and falsehood? If this writer had not concealed his name, he might blush to his fingers' ends at such a disregard of truth, consistency, and even of his own words. And does he think a discerning public will give him credit for *all* he says?

This writer, who should be the last to complain of contradiction and unfairness, has represented Mr. Spencer's deposition as unentitled to credit, (and yet allows that he is a man of truth,) on account of various circumstances connected with his "story;" particularly "that he should have remained silent so long on the subject of the *pink letter*, at the time when there was such an excitement, and this subject was in every one's mouth." But two things will explain this. 1. He lives in East Greenwich, on the west side of Narraganset bay, where he is separated by water many miles from Fall River, and having but little intercourse with the scene of action. 2. He is, as the State's Attorney expressed himself, "a man who minds his own business, and lets the world alone." And it would have been well if Aristides and some others had been as silent as he. What this writer finds fault with, is, in part at least, the virtue of the man. "He minds his own business, and lets the world alone." We apprehend it may be said of

Aristides that he busies himself with other men's matters, and neglects his own most important affairs.

It is not strange that a man of Mr. Spencer's character, and situated as he was, should not have known the importance attached to the *pink letter*, in the trial of Mr. Avery.

Aristides finds fault with Mr. Spencer, that he has "not condescended to recollect the time in the morning he left East Greenwich—at what time he reached Warwick—where he stopped—at what time he took up his passenger, or put him down—at what time he met the man who gave him the letter, or whether he arrived in Providence at seven, eight, nine or ten o'clock." There may be as much, and there *may* be more propriety (though we cannot see any more) in mentioning these things, than how wide the street was, how many houses, barns and blacksmith's shops there were on all the distance to Providence. It is enough to know that he received the letter that morning on the way, and delivered it "between nine and ten o'clock." See p. 44.

He also labors hard to show that Orswell is entitled to more credit than Spencer, because he swears "*positively*"—is "certain—that Avery is the man who delivered him the letter." But Aristides tells us plainly that Orswell is not certain as to the day or week when he received the letter from the hand of Avery, and it might have been on another day than the 27th of November. But Spencer swears *positively* that it was on the 27th of November that he delivered the pink letter on board the steamboat, and is enabled to fix the time with *certainty*, by means of certain writings dated on that day; Orswell swears he delivered the letter the same day he received it; and Miss Cole swears it was received at Fall River on the 27th of Nov. Aristides is in trouble, and there is no way to extricate himself but by contending now that it was on the 27th that the letter was delivered, and *anon* that it was on another day.

But we cannot think that Orswell is very *exact* in swearing, though he is very *positive*. Like many others who swore against Mr. Avery, his memory and recollection seem to have improved with the lapse of time, and to become more perfect the farther things are seen in retrospect, though this be contrary to the laws of nature and of mind. The day he came from Fall River to Bristol to see Mr. Avery, if we may believe Judge Pearce's testimony, (and surely no man's word will be received with less hesitancy by those who know him,) and that of Mr. Paul, he said "he should not like to swear that Mr. Avery was the man who gave him the letter." At Bristol, a short time afterwards, he swore that "according to the best of his judgment, the prisoner was the man." Several months afterwards, he swore in stronger terms, "*positively*," "that Avery gave him the letter," and he now recognized his features as well as his dress, &c.

At Bristol, Orswell swore that the time the letter was delivered, was "about nine o'clock, or between nine and ten;" some months afterwards, namely, at the trial of Mr. Avery, he swears that it was "between eight and nine, or a little after nine." This is not swearing exactly, but it is swearing *positively*. There is one bad feature about this "positive" swearing; it includes half an hour before the fires were kindled, when the witness elsewhere allows, not only that the fires were kindled, but that "the steam had risen considerably." Once more. At Bristol he swore that he "did not recollect the color

of the prisoner's hat;" but several months afterwards he recollects and "swears *positively*," that "his hat was *black*."

These discrepancies rest on no uncertain grounds. They are all, except one small item, (that furnished by Judge Pearce,) in his own swearing at different times. If Aristides could find one instance of discrepancy in Mr. Spencer's deposition, equal to the least in Orswell's, we should think less of it than we now do.

One remark more concerning Orswell. There would have been an apology for his "positive" swearing, if he had not foolishly deprived himself of it, by still persisting that Mr. Avery was the man who delivered him the letter. There was a sufficient resemblance between the two men, Spencer and Avery, in their complexion and stature, habited as they were, to render it pardonable in a man unacquainted with both, to take one for the other. Mr. Spencer is a mechanic, and his work being within doors, his hands are whiter than those of men who work in the sun and air. He is more than commonly circumspect in his speech. He also "had on a blue camblet cloak and a black hat, with a brim much wider than the brims of fashionable hats." See his deposition, and Justice Whiting's certificate.

Now hear Orswell's description of the man who delivered him the letter. "From the delicacy of the man's hand, and the manner of his speaking, I guessed he was a minister." In describing his habit, he says, that his cloak was either black or blue, (see his testimony at Bristol,) and a black hat, (see his testimony at Newport.) Orswell may swear *positively*, as many times as he has fingers and toes, and he will never satisfy the candid that he may not have been mistaken.

The "story" of Mr. Nathan M. Spencer carries honesty and truth on the face of it; but as it is sometimes agreeable to hear what a man's neighbors will say in his favor, we subjoin the following certificate.

"East Greenwich, Oct. 24, 1833.

"We, the subscribers, being well acquainted with the character of Nathan M. Spencer, of East Greenwich, R. I., hereby certify that his character is good—that for truth and veracity he has ever sustained an unblemished reputation. We consider Mr. Spencer entitled, in whatever he affirms, to the fullest confidence of the public.

(Signed,)

DANIEL GREEN, *Mem. of Legislature.*

SILAS WEAVER, *Clk. Supreme Court.*

JEREMIAH SLOCUM, *Justice of Peace.*

JOHN BROWN, *Clerk of C. C. Pleas.*

STEPHEN GREEN,

SIMEON WEAVER,

JAMES C. GREEN."

We will now state, upon good authority, that the Attorney General, who managed in person the prosecution against Mr. Avery, for the State of Rhode Island, and who lives a near neighbor to Mr. Spencer, has repeatedly said that Mr. Spencer is a man of truth; and has himself mentioned as a reason why Mr. Spencer did not come forward at the trial in Newport, that "he is a man who minds his own business, and lets the world alone, and that probably the circumstance of the

letter and its importance did not occur to him till the time mentioned in the deposition.”

Aristides says, on his 27th page, “When Mr. Mason, Clerk of the Supreme Judicial Court, at Newport, showed Mr. Spencer the pink letter, to ascertain if it was the letter delivered on board the Fall River steamboat, he, Spencer, said, ‘the color is not right;’ which is the same as to say, ‘This is not the letter I delivered.’”

But who is Aristides? He is nobody. Who are his vouchers? He has none, and we cannot believe him. What he tells us, without the slightest authority, stands opposed to the testimony of Mr. Spencer under oath, and to the following certificates.

“*East Greenwich, Oct. 24, 1833.*

“I do hereby certify, that when Mr. Mason, Clerk of the Court, at Newport, showed me the pink letter which was introduced in Mr. Avery’s trial, I did not say the color was not right, nor any thing of the same purport, nor make use of any expression denoting a doubt that it was the same I delivered to Orswell.

(Signed,) NATHAN M. SPENCER.”

“*East Greenwich, Oct. 24, 1833.*

“I hereby certify, that I stood beside Mr. Nathan M. Spencer, all the time he was in Mr. Mason’s office in Newport, and that Mr. Mason did not ask him whether the pink letter was the one he delivered to Orswell, and that Mr. Spencer did not say, ‘the color is not right,’ nor any thing of the same purport, nor make use of any expression denoting a doubt that it was the same which he delivered to Orswell.

(Signed,) JEREMIAH S. SLOCUM.”

It may be proper to state here, that Mr. Orswell has stated that there was but one letter delivered to him on board the boat; that if Spencer delivered it, Avery did not. He also stated to the Rev. Mr. Bidwell, in June last, about the time the delivery of the letter by Mr. Spencer began to be talked about, that “some other person than Avery might have delivered him that letter.”

On the whole, the testimony of Mr. Spencer is invulnerable; and that the letter he delivered on board the Fall River steamboat was the pink letter, about which so much has been said, there is no room to doubt. This, in all propriety, should decide the question of the other letters; as they were passed to the jury, not on the proof of hand-writing,—this the State’s Attorney did not pretend to,—but under cover of the pink letter, as relating to the same subject. Concerning the pink letter, the State’s Attorney said, “This is not a charge against the prisoner of writing that letter. I do not ask the Court to pass it to the jury as his hand-writing, but as a paper found in the possession of the deceased, and traced from her to him,” through the hands of Orswell, who swears that he received it of Mr. Avery. But if Orswell was mistaken in the person who delivered it to him, there is not the slightest proof that it was ever in Mr. Avery’s hands. And if Mr. Avery did not write this letter, he did not write either of the others; for it is not credible that two persons corresponded with the deceased on the same

subject. In all fairness, therefore, the fate of this letter should decide the fate of the others. The whole matter turns on this question, Did Avery or Spencer deliver this letter to Orswell? We believe it has been satisfactorily shown that Spencer delivered it.

But still there is some mystery hanging about the letters, and it may be asked, as it frequently has been, "Who wrote them?" This question will, perhaps, never be answered: it will be sufficient to show that there is no probability that Mr. Avery ever wrote one of them.

Our laws have wisely provided that no person shall be convicted of crime on similarity of hand-writing. To prove hand-writing, there must be witnesses, and witnesses who are not only acquainted with the hand-writing of a person, but who have also *seen him write*. The reason for this is, that it is easy for one person to counterfeit the hand-writing of another, and this is frequently done. No attempt has been made to prove that the letters in question are Mr. Avery's hand-writing. Had they been introduced on this ground, Mr. Avery was prepared to prove by witnesses brought for the purpose, that they were not in his hand-writing; but as no such pretence was made, there was no occasion for them to testify.

There is now in circulation, what purports to be a fac-simile of letters said to have been written by Mr. Avery to S. M. Cornell and others; and there appears to be a correspondence in the orthography of the same word in different places, and in the form of certain letters, and in some other respects. But all this proves nothing. The question is, are these letters an imitation of, or a disguised hand-writing? In answer it may be remarked, that whatever is characteristic, either in the spelling or writing of Mr. Avery, would naturally be the first objects of attention with the counterfeiter, and here his skill at imitation would appear. On the other side, if the hand-writing were attempted to be disguised, it is natural to suppose that the same peculiarities, especially the formation of letters, would be as sedulously guarded against: unless we can suppose him so foolish and destitute of thought as to make no attempt to disguise his hand, when it would be most easily done, and when, if not done, it would be sure to betray him. The sameness in these respects, therefore, is a stronger proof of an imitated, than of a disguised hand.

It should be observed, also, that the letters attributed to Mr. Avery exhibit marks of penmanship which he could never pretend to. And it is unreasonable to suppose that a disguised hand could exhibit marks of better penmanship than the common hand of the writer.

But we shall take a different method to account for the letters and the mystery in which they are involved. We believe there was a *conspiracy* to ruin Mr. Avery. If we can show this, the mystery will be accounted for, though we may not know all the persons concerned in it.

1. Why should we not believe there was a conspiracy against Mr. Avery? S. M. Cornell had repeatedly threatened revenge, even "if it cost her her life." Had she ever relinquished this resolution, or repented of this sin? There is no evidence of it, but the contrary. At the Thompson camp-meeting, she said, in the hearing of several persons, "she had not, and did not wish to speak with him;" and at Mr. Mason's door, at Fall River, she told him he had "ruined her at Low-

ell and at Dover." This shows that she still owed him a grudge, and felt the same revengeful disposition towards him as she had formerly done.

2. She found herself in a state of pregnancy, and this was a favorable time to carry her threat into execution against Mr. Avery. She informs her paramour of her situation, and makes him acquainted with her design. This affords him an opportunity to exculpate himself: he encourages her, and promises his assistance to carry out the project.

3. She was so far advanced that there was no time to be lost, and she resolves to accuse Mr. Avery forthwith, though but twenty-one days had elapsed since the unlawful connection, and she pretended that she knew not her own circumstances. She does so; and a plan is laid between her brother-in-law and his wife, for her removal to Fall River, that she may be near Mr. Avery, still not knowing her circumstances. Here let the reader pause and reflect.

Would a female who had been overtaken in a fault have adopted this course? Would she be in so much haste? Would she have accused her accomplice, he being a married man, before she knew her own circumstances? Would she accuse him before she made him acquainted with her circumstances? Her object would be to secure his affection and obtain his assistance; and his would be, if guilty, to secure profound secrecy: by accusing him, therefore, before she consulted him, she was defeating her own object. For when once it should be known that she had accused him, she could not calculate either on his affection or assistance. The course taken is certainly not the natural one. It bears not the marks of truth and consistency, but in every circumstance favors the presumption of conspiracy.

But this is not all. Her brother and sister Rawson and others concert a plan for her to go to Fall River, and there wait till she should "know her situation," and then accuse Mr. Avery. We shall leave the reader to make his own remarks on the conduct of Mr. and Mrs. Rawson in this business, and follow the girl to Fall River. And almost as soon as she arrived there, instead of waiting "till she had ascertained her situation" before she accused Mr. Avery, as had been arranged before she left Woodstock, we find her consulting Dr. Wilbur, as to her circumstances, and before she ascertained, accuses Mr. Avery again, and mentions oil of tansy as recommended by him. Would he have recommended the oil of tansy, before she or he knew her situation? Would any female, in an ordinary case, have taken this course? It cannot be pretended that this was necessary before she *knew* her own circumstances, and before she had informed him of her situation.

And how will her conduct in this respect agree with her professed regard for him, his office and family? If she regards him as she pretends, why thus unnecessarily and prematurely accuse him of a crime which, sooner or later, whether she be with child or not, must prove his certain ruin? Were hers the tears of sincerity, or those of the crocodile weeping over its prey? There are no marks of truth or consistency in her conduct; but upon the presumption of a conspiracy, it is all natural, and what we should expect to find.

At length she ascertains, what she undoubtedly knew long before,

that she is pregnant; and the preconcerted plan requires that a correspondence by letter be commenced, as with Mr. Avery, for which she herself, or her real accomplice, had long been exercising and preparing; and at length, the letters said to have been written by Mr. Avery were brought forth in due time and order. These letters are before the public, in a fac-simile, which we will take for what it purports to be, a well executed document.

We shall briefly notice the several points which demand attention in his letters, and those attributed to him; in doing which, we shall have occasion to notice those of S. M. Cornell.

We shall follow the references to Mr. Avery's letters, as they stand at the end of the fac-simile.

“*Note 1.* The letters attributed to E. K. Avery, are all directed to Miss S. M. Connell, instead of Cornell.”

*Remark.* Mr. Avery's uniform method of spelling her name, as we are here given to understand, and as we believe, was with a double *l*; but in the letter of the 8<sup>th</sup> of December, attributed to him, the name is spelt with one *l*. This is therefore an indication that he did not write that letter.

2. “*See tine* written for *time*, in his letter to Mr. Storrs,” &c.

*Remark.* It appears that the writer of this note is mistaken in supposing that Mr. Avery wrote *tine* for *time* in his letter to Mr. Storrs. What he calls an *n*, was undoubtedly Mr. Avery's *m*, where the circular stroke was designed for the third down stroke of the *m*. This seems evident from the fact that the same form of the *m* occurs six times in the same letter, and in words where he could not have mistaken the sound of the letter, as in *from*, *acknowledgment*, *name*; and in the word *from*, in the letter to Mr. Bidwell, in the second and third paragraphs. This remark is confirmed by the same singularity in the *n*, in the letter to Mr. Storrs, in the words *morning*, *into*, *standing*, *in*, &c., where the *n* is formed of one down stroke and one curve or horizontal stroke.

Now if Mr. Avery has uniformly written *time*, not *tine*, as we suppose, in the letter to Mr. Storrs, then why has he written it *tine* in the yellow letter? And if he has written *tine* in the letter to Mr. Storrs, why has he written *time*, *twice* in the yellow letter? See third and eighth lines from the bottom. And it is clear in the yellow letter that it is *tine*; the hand-writing is such that there can be no mistake.

Now if the word *tine*, which occurs but once in the yellow letter, is evidence that Mr. Avery wrote that letter, then the word *time*, which occurs *twice* in that letter, should be double evidence that he did not write it.

3. “Observe the space between the down stroke of many of his letters, and the hair stroke of the following letter,” &c.

*Remark.* The space occurs frequently between those letters in the pink letter, in which it never is found in Mr. Avery's letters.

4. “Compare the capital *P*'s in the pink letter with those of any of the letters, acknowledged or attributed.”

*Remark.* We have compared them, and find them very dissimilar. We would ask the reader to compare the capital *P*'s in the pink letter with those in her letter on the opposite page, and with the *J* in the word *Jesus*, near the bottom of her letter to Mr. Bidwell.

5. "He [Mr. A.] uses no punctuation, except a straight line at the end of his sentences, thus ———."

*Remark.* This is no reason whatever, as the same may be said of many writers; yet it might be noticed and copied by an imitator.

6. "Compare the word 'haste,' which terminates the yellow letter, with the same word at the end of the extracts from his letter to Mr. Bidwell."

*Remark.* We have compared them; and find that between none of the letters is there the least resemblance, with the exception of the *e*'s, and they are very dissimilar.

7. "Observe his *g* and *y*, at the end of words, and his *d*, formed almost uniformly like *el*."

*Remarks.* 1. *g* and *y*, in the yellow letter, oftener differ from Mr. Avery's than agree with them. 2. As it respects the *d*, the coincidence is not very striking, at any rate, inasmuch as this is common to many hands.

8. "Observe the singularly formed *c*, in the middle of words, as in the words receive, reject, &c."

*Remark.* This way of making the *c* is not so singular as is supposed. S. M. Cornell very frequently makes her *c* in the same way. See her letter to her brother Rawson, and in all her letters.

9. "Dates."

*Remark.* The similarity certainly not very striking.

10. "The acknowledged letter of E. K. Avery to Rev. Mr. Bidwell, is written on paper of the same color, size and quality, precisely, with that on which the letter is written to S. M. Cornell, and sent by the steamboat King Philip, from Providence. It is worthy of remark here, that all the acknowledged letters, (except that to Mr. Bidwell,) viz. one to Mr. Storrs and one to Mr. Drake, and all those attributed to him, written to S. M. Cornell, are written on half sheets of paper, and folded precisely in the same way, which brings the superscription on the outside, near the bottom of the letter.  See dotted lines."

*Remarks.* 1. It is nothing wonderful that different persons in different places should use pink colored paper of the same color, size and quality, seeing that some manufacturers of paper make this in large lots for market, as well as white paper. And paper of the same lot, if not of different lots, would be "precisely" the same in appearance. Witness the pink letter to S. M. Cornell, delivered by Mr. Spencer to the engineer, now before us, which is said to be on paper of the same "color, size and quality" with that on which the letter to Mr. Drake was written.

2. That letters are frequently written on half sheets of paper, and folded so as to bring the superscription on the outside, near the bottom of the letter, we *know* to be the fact.

3. The pink letter *was not so folded or superscribed.*  See the dotted lines.

We shall now make some remarks of our own on Mr. Avery's letters, and those attributed to him.

1. In all Mr. Avery's letters, the lines run straight across the page, and are equi-distant one from another; but in those attributed to him, especially in the pink letter, the lines towards the right incline downwards, and are at unequal distances one from another,

2. In the acknowledged letters of Mr. Avery, the lower part of the letters *g*, *p* and *y* are long and slender; but those attributed to him, are broken off with a heavy, square stroke.

3. The capital *B*'s, in the acknowledged and attributed letters, are strikingly dissimilar.

4. In all the capital *D*'s acknowledged to be Mr. Avery's, there is a striking sameness; in one of those attributed to him, that of Dec. 8th, the imitation is not exact, and in the pink letter it is most strikingly dissimilar, not only to any thing in Mr. Avery's letters, but in the letters attributed to him. Yet it should be remarked that while the capital *D* in the pink letter agrees with none in any of the other letters attributed to him, it is a perfect fac-simile of the girl's capital *D*, in her letter to her friends.

If the pink letter was written by Mr. Avery, it is a most singular phenomenon: while the points of agreement between that letter, and the letters acknowledged as his are few, and easily made by imitation; it appears to us impossible so to *disguise* the hand, as to preserve an exact uniformity (as is the case in that letter) of style of hand-writing in all the other parts of the letter, covering a whole page in small characters.

The yellow letter also differs materially in style of penmanship from the letters of Mr. Avery. We shall only remark here, that it is a rounder and more elegant hand than Mr. Avery ever used, and we may add, can use. And it strikes us as absurd to say that a man can so disguise his hand as to write in a better style of penmanship than his common hand.

Leaving this kind of evidence from the letters, which we believe goes to support the assumption of a conspiracy, let it be remarked, that in the pink letter Mr. A. is made to say to S. M. Cornell, "Direct your letters to Betsey Hills." Miss Hills was the niece of Mrs. Avery, and had lived in Mr. Avery's family seven years. Mr. Avery perfectly well knew her name, which was not Betsey Hills, but Betsey E. Hills. Is it then to be supposed that Mr. Avery would make such an egregious blunder as the giving one name for the other? As he knew her name, so he would not fail to give it rightly; for, otherwise, she might direct the letters intended for him into the hands of another person, when the whole correspondence would become public, to the certain ruin of his character, which was the very thing he is represented as guarding against. We might almost rest the question of conspiracy on this single point. If Mr. Avery did not make this blunder, (and it is inconceivable that he did,) then he did not write the pink letter:—it follows that it was a forgery, intended to involve him in the most painful difficulties.

The letter of S. M. Cornell, dated Fall River, Nov. 18, 1832, and directed to Mr. Grindall Rawson, her brother-in-law, is such a farrago of contradiction, perfidy and familiarity on the subject of her disgrace, as can never be reconciled with a consciousness of truth on her part. It seems she was prepared to expect Mr. Avery's denial that her child was his, and had "told her friends that he would deny it;" she told him "he must not deny it, if he did she should expose him *immediately*," and yet she professes not to know her circumstances, and has "hopes" as well as "fears;" she pledges "her word and honor" that she will

not expose him, if "he will settle it;" and in the same letter copies his letter to her, because he wanted the original, and then sends the copy to her friends, and keeps the original herself, that one or both may be sure to witness against him. She then enters into a familiar and pleasant conversation on her circumstances—seems to think it a light thing for one in her condition of life—says "it will not make half the noise in Fall River that it would in the country," and mentions a case where a "girl had a child, and got into the factory again in six weeks, and got her child boarded for fifty cents a week," &c.

Now, is this what we might expect in an ordinary case of the kind? Will Aristides, or any one else, undertake to reconcile these discrepancies, and exculpate this perfidy? Would the girl herself have taken so crooked a course, if she had not been engaged in the management of a *crooked* concern? Why, after pledging her *sacred honor* "not to expose him,"—then copy his letter for a circle of friends—then keep the original to convict him, after he had agreed, according to her own account, "to do all she asked?" Her own conduct convicts her of a design to involve him in difficulty.

The plan to ruin Mr. Avery was laid with much art, and carried on with great address. Means were employed, as it would seem, to ascertain his movements, to watch his going out and his coming in, and measures were taken according to the information obtained. A four days meeting was to be holden in Providence, and it was naturally supposed that the neighboring ministers would attend. On Monday evening one of the conspirators was hanging about the Methodist church, for observation; when, lo! Mr. Avery was there! and the fair presumption was, that he would be present on the morrow. The course was at once adopted, to be on the road to Providence, early the next morning, and put a letter into the hand of some man going to the city, and engage him to deliver it to the engineer of the Fall River steamboat, directed to S. M. Cornell, of Fall River, to the care of Mrs. Cole. As is not unusual, the providence of God permitted a concurrence of circumstances to favor the designs of the wicked for the present, that he might overthrow them the more signally when the measure of their iniquity should be full,—and suspicion fell on Mr. Avery, as was designed. And there is very little reason to doubt that the mystery hanging about the other letters is to be resolved into a conspiracy against Mr. Avery.

That there was a deep-laid plot for the ruin of Mr. Avery, there can be little doubt. His going to the island on the 20th of December, 1832, was probably the means of saving his life. There were persons prepared to swear, before they learned that he was on the island, that he crossed the river between 11 and 12 that night, at Slade's Ferry, some distance north of Fall River. From all that has yet transpired, the evidence in this case would have been more positive and difficult to rebut than any that has been brought against him.

These conjectures and facts are founded on the letter of John Howe, Esq., of Bristol, a gentleman of high standing, and a distinguished lawyer in the State. Esquire Howe was first examining justice at Bristol. His letter of Sept. 23, 1833, is addressed to the Rev. J. A. Merrill, and is as follows:—

"Bristol, Sept. 23, 1833.

"Rev. Joseph A. Merrill,

Dear Sir—A late letter of yours, now mislaid, was shown me by your correspondent, and I am now requested to answer some queries contained in it concerning Mr. Avery.

"I well remember taking the Boston stage at Providence, a day or two after examining that gentleman's case, and holding conversation with the passengers on the subject, to this effect:—Some gentlemen from New Jersey inquired respecting the location of Gifford's ferry-house, relatively to Bristol and Fall River, and on my answering their inquiry, another man asked if I really supposed that Mr. Avery staid at Gifford's on the night of December 20th, and on my answering him affirmatively, observed that he *knew he did not*. I asked how he knew, and where Mr. Avery staid, and several other questions; to which, with an air of great confidence, he replied, that he crossed Slade's ferry in the same boat with Mr. Avery that night, between the hours of eleven and twelve, coming from Fall River; that he knew him very well, had heard him preach, and was confident that he was not mistaken. He stated, in answer to my inquiries, that he was at Fall River on the Saturday after passing the ferry with Mr. Avery, and gave information of the fact, and expected to be called on to verify it by his oath. I terminated the conversation with him by remarking that I did not know whether he was deceived himself, or intended to deceive others; but I had no doubt, notwithstanding his declarations, that Mr. Avery staid at Gifford's that night, and was in bed before the hour he mentioned. I intended to have learned something more of this man, but he left the stage at Fuller's, in Walpole, undiscovered by me until we started from that place, when I could find out nothing more about him. But this interview strongly reminded me of one at my office, on the morning after Mr. Avery's apprehension, with a Mr. Sherman of Fall River, who, with another gentleman of that place, was out, as I understood them, in quest of information. In his detail of discoveries made, he mentioned Mr. Avery's passing Slade's ferry late on the night of the 20th, and appeared much surprised at my informing him that Mr. Avery staid at Gifford's that night, and arrived there a little after nine o'clock. I remember, however, that on my mentioning this circumstance, he turned to his companion and exclaimed, with an expression of astonishment, "Worse and worse!" Whether the exclamation resulted from distrust of the veracity of his informant, as to Mr. Avery having passed Slade's ferry, and finding such a defect in his evidence supplied; or whether he really thought that Mr. Avery's coming to Bristol ferry a little after nine o'clock, was more to his purpose than his crossing Slade's ferry between eleven and twelve would have been, I do not know. But I was left under a strong impression that if Mr. Avery had been in his own bed on the night of the 20th, without any other witness of the fact than his wife and infant children, more positive, and confident, and direct testimony would have been adduced, to trace him from Fall River, via Slade's ferry, than was found to establish any other important point.

I am, dear sir, very respectfully,

Your friend and obedient servant,

JOHN HOWE."

The contents of the above letter naturally suggest the following queries:—By whom could Mr. James Sherman and his friend prove that Mr. Avery crossed Slade's ferry between 11 and 12 o'clock on the night of the 20th of December, 1832? Who and where are the witnesses who were ready for this service? Why have they hid themselves and remained secreted till this hour? If they were honestly mistaken in the man they took for Mr. Avery, why remain hid—why not come forward like honest men and say they were deceived? Does not their silence, and the circumstances connected with it, render them justly suspected of unlawful design? Was Justice Howe's companion in the stage one of those referred to by Sherman? Was he not prepared, had circumstances been otherwise, to have sworn against the life of Avery, and would he not have done so? Is there no appearance of conspiracy in all this? And, finally, was it not a special providence of God that directed Avery to the Island, to save his life?

We have another case to present to the reader on the subject of conspiracy. While Mr. Avery was in prison in Newport, he received a letter from some person, calling himself a physician in Providence, and offering, for *fifty dollars*, to put him in possession of the means to clear himself, upon his saying, through the Newport Mercury, that "A physician's proposition is complied with." This letter was the subject of consultation between Mr. Avery's counsel and friends; and it was finally concluded that it was probably a snare laid for Mr. A., and that the safer course would be to make no use of it, and say nothing about it. The following is a true copy—the original may be seen:—

"Providence, Feb. 17, 1833.

"Rev. E. K. Avery—

You are accused of the wilful murder of S. M. Cornell, and in a few days will have your trial for that crime. Whether you are really guilty or innocent, the public opinion is almost unanimous against you. It may be supposed by a few, that positive proof is requisite to induce a jury in this state to convict a person of premeditated murder; but circumstantial evidence, when perfectly concurring in all its parts, and when abundant, too, is and must appear to a jury to be stronger and more certain, than scanty positive proof. Such a chain as that of corroborating testimony is prepared against you; but notwithstanding this fact, strange as it may seem, I believe you not guilty of the horrible crime alleged against you. So thinking, I am inclined to counsel you for your acquittal of this charge, not only by the jury, but also in a great measure by public opinion. You no doubt are surprised at this communication; but it's scarcely more unexpected to you, than was to me the change in my own opinion of your guilt; and were I not a physician, I probably should not now have changed my mind, or have discovered a clew by which to acquit you. This aid I am ready to give you; but as I believe it to be by far the most important to you of any counsel you will get, so I shall hold it for a fee. The trifling sum of fifty dollars must be deposited with some one, who, in case you avail yourself of the suggestion I may give you, or your counsel for you, and you shall be acquitted, will give on the day of your acquittal the

money to me, otherwise, should you not be acquitted, will return it to you. The whole to be strictly confidential between your counsel, the gentleman who has the money in trust, and ourselves.

“Should you think proper to accept of this proposition, you will cause to be inserted in the editorial column of the Newport Mercury of the 23d inst. the following—‘A physician’s proposition is complied with.’ You will then immediately hear from me.

“Respectfully, &c.”

“I certify the above to be a true copy.

“Attest,

A. KENT.”

This letter seems to be conclusive evidence of a conspiracy against Mr. Avery; for we cannot suppose that any person friendly to Mr. A. having such knowledge would hold it for a fee. Whether the facts alleged by the letter writer be true or false, there was a conspiracy. If the facts and circumstances are true, they are of themselves evidence that a conspiracy existed;—if false, the falsehood is evidence of conspiracy, seeing it was designed to betray Mr. Avery into a method of procuring testimony by bribery, that would prove his ruin. View it which way you will, therefore, there was a conspiracy.

We come finally to the question, did Mr. Avery go to Fall River on the 20th of December, 1832, or did he pass the afternoon and evening in Portsmouth, on the Island?

The most difficult thing for Mr. Avery to account for, and that which has thrown the greatest suspicion over him, is the striking coincidence between an appointment made by some one, as appears by one of the letters, to meet S. M. Cornoll on the evening of the 20th, and his going to the Island, which, as far as the ferry, was on the way to Fall River, that afternoon. But that it is *possible* for him to be ~~innocent, notwithstanding this coincidence~~, must be allowed by all. As strange coincidences as these have taken place, and therefore are not, of themselves, to be made the ground of taking the life of man.

We shall not tread over again all the ground which has been passed over in the testimony on both sides, which is already before the public, but shall briefly notice what Aristides has said, and offer such additional evidence as, we trust, will convince the most skeptical on the subject.

Aristides pretends that he has convicted Mr. Avery of falsehood, by the testimony of Jane Gifford, who states that he said he “had been to Mr. Cook’s on business.” Page 33, Aristides asks:—

“How does he attempt to get rid of this testimony? In the most base and cruel manner. In a manner that, in my humble opinion, ought to fix an eternal stigma on his name, and all that knowingly aided him in the nefarious work. Basely they attempted to blast the reputation of a young, an interesting, and respectable female—to hold her up to the world as an habitual liar, by means of witnesses blinded by prejudice, destitute of the milk of human kindness, and one of whom, at least, if he was aware of the meaning of the language he used, must have been a perjured scoundrel of good standing in the Methodist

church! This young lady was also a member of the same church till after the Bristol Examination. Her character was fair, even among the members of that church, until that period. She was excommunicated, and branded as a liar—and for what? ‘Tell it not in Gath, publish it not in the streets of Askelon’—she was excommunicated from a church of professing Christians, and witnesses, members of the same church, swore on the stand that she was a liar, because she presumed on her solemn oath to state what she knew to be truth, and against which not a tittle of evidence could be produced but Avery’s own word! This attempt was the more base and cruel, because there was no necessity for it, and because there was abundance of the most respectable testimony to show that her character for truth was unimpeachable. It was unnecessary, or at least unavailing, because, without her evidence, the proof of Avery’s falsehood is full and conclusive.”

We have made this long extract, that it may be seen in what fine style Aristides writes, and in what manner Mr Avery has been pursued. In his statement above there are no less, certainly, than three positive falsehoods. 1. It is a falsehood that Jane Gifford was a member of the Methodist church till after the Bristol Examination. 2. It is not true that her character was fair with the members of that church till after that period. 3. It is a falsehood that she was excommunicated for testifying against Avery. We say not these things without evidence, as the following certificate will show:—

“This may certify, to all whom it may concern, that we, the subscribers, were called upon, in October, 1831, by our pastor, Rev. ~~Samuel~~ <sup>Samuel</sup> Robbins, to sit as a committee of trial on the case of Miss Jane Gifford, who was under report of unchristian conduct. It appeared from her own confession that she had been in the habit of illicit intercourse with men, and she was accordingly expelled from the Methodist Episcopal Church; since which time she has had no connection with the said Church.

(Subscribed)

JOHN TALLMAN, JR., } Committee  
DAVID L. DAVOLL, } of Trial.

“Portsmouth, Oct. 24, 1833.”

It may be proper here to add, that from the Report of the Examination at Bristol by Luke Drury, Esq., it appears that Mary G. Anthony, Nancy Sherman, Clarissa McCurrie, Patience Anthony, Elizabeth P. Hall, John B. Cook, James Brownell, and John Tallman, testified that the character of Jane Gifford for truth and veracity was bad;—all the witnesses within two and a half miles of her.

After what took place at Bristol with respect to this witness, it was certainly injudicious to bring her forward again to testify, especially as her character was too well known to be bad for “truth and veracity” to admit the most distant prospect of its passing unimpeached. Indeed who could see—who but *Aristides* and his *friends*—could see one who confessed herself a prostitute, brought forward to swear against the life of a fellow creature, be he never so wicked, and not interpose the immorality of her character.

What *Aristides* says of “Mr. James Sherman, a member of high

standing in the Methodist Church," becoming "reluctantly" convinced that "Avery's whole story was a sheer fabrication," by a visit of inquiry to the west side of the Island, may pass for what it is worth. We know nothing of it, and care nothing about it, and will only add, to show with what care and diligence he has collected the materials of his book, that Mr. Sherman is not, has not been for some years, a member of the Methodist Church. But when he says, p. 25, that "the coal mines were not probably thought of until affairs assumed a serious aspect," he stands convicted of falsehood by the testimony of William Pearce, jr., a government witness, who ferried Mr. Avery over to the Island on the 20th of December, and who says—"Avery inquired of me where the coal mine was"—and "there was some conversation about coal." See also the testimony of Mr. Nicholas Peck, and that of Rev. Mr. Holway. The reader will draw his own conclusions here, as to the character of Aristides for "truth and veracity."

Mr. Davoll testified at Newport that Mr. Cranston, the toll gatherer at the stone bridge, said to him on Christmas day, that he knew Mr. Avery, having seen him pass twice; and that if he had passed on the 20th he should have known him." Aristides says that "Davoll has since acknowledged that he was in error in respect to the conversation with Cranston. The following is Mr. Davoll's certificate:—

"I hereby certify, that I never stated to any person, that I had any doubt as to the conversation which took place between me and Mr. Peleg Cranston in regard to his knowing the Rev. E. K. Avery. On this subject I know what I stated to be perfectly correct."

(Signed)

DAVID L. DAVOLL."

"*Portsmouth, Oct. 24, 1833.*"

Aristides informs us that a "Mr. Gideon Dennis, of Portsmouth," on the night of the 20th of December walked some distance with a Methodist minister, after crossing the stone bridge, whom he had seen before, but did not know his name, and did not inquire. He has much to say about Dennis, and the motives which kept him from testifying, and utters a philippic against H. Y. Cranston, Esq., for saying that he, Dennis, "is a worthless fellow." Aristides admits that "Dennis has his faults with other men," which is much for him to admit concerning any man who will testify against Mr. Avery. Aristides might have kept his temper on this occasion, for, allowing all that Dennis says to be correct, which, however, we have good reason to question, it proves nothing against Avery. Dennis says he did not know the man, and did not ask his name. How then does this prove against Mr. Avery? The story of Dennis proves it was not Avery; for he says, "about 9 o'clock he heard some one ahead" of him, and "soon came up with him." Here let it be remarked that this man could not have been Avery, because, on the supposition that he was at Fall River that night, he could not have left the stackyard till about 9 o'clock, and of course he could not have been at the stone bridge, a distance of six miles, "about 9;" that is, a little before or after. Besides, this incautious writer should recollect that if Avery was at Fall River that night, he was rather flying, than walking so slow as to be "soon overtaken;" as we shall see shortly, that he had less

than an hour to walk from Fall River to Bristol ferry, a distance of about nine miles.

Aristides intimates that Dennis was kept back from testifying at the trial in Newport, by his aversion to "shedding human blood." We suspect that this was not the true cause. This man was at Newport at the trial, and no doubt expected to be allowed to testify, as he was heard to say that "Avery would *quail* when he came to hear his testimony." We would ask Aristides whether there were not some passages in the history of this man that prevented any use being made of his voluntary offers to testify in the case. But one remark however is necessary concerning Gideon Dennis, which is, that the government did not deem it proper to bring this man forward to testify against the life of a fellow creature. He was on the spot, and no doubt was known to the prosecuting attorney as willing to testify; for he had said, as before noted, that "Avery would quail when he came to hear his testimony."

In the remarks which we shall make, and the evidence we shall give on Mr. Avery's excursion on the Island, it will not here be necessary to remark on the testimony given at the trial, by which it was made very probable that his account of himself was true. The reader will find the substance of this, with the opposite testimony, examined and weighed with a nice discrimination and great exactness, in an article at the end of our remarks, and with which this part of the subject will be closed.

It will be recollected that Mr. Avery, in describing his excursion on the Island, speaks of a man with a gun, who informed him that the coal mine was not worked; that he then altered his mind and thought to go to Mr. Asa Freeborn's; that in crossing the lots he saw a boy and some sheep; that learning from the boy that Mr. Freeborn was not at home, after some reflections and half formed resolutions to visit one or two other families, it being night, and he being lame, he resolved to set his face towards home; that a little before 9 he was overtaken and passed by a female whom he did not know.

In addition to the testimony of several witnesses, who saw a stranger, in appearance like Mr. Avery, passing across lots where Mr. A. says he passed, and at the time he should have been there according to his own account; and in confirmation of that part of his account which relates to the boy and sheep, and of his being passed by a female, we now introduce the following certificates:—

"I, William E. Norris, of Bristol, in the state of Rhode Island, merchant, do hereby certify, that on the 31st day of December, (1832,) I was called upon by some friends of Mr. Avery to go to Rhode Island for the purpose of discovering, if possible, some person or persons who might have seen him on his alleged excursion that way on the 20th of December. I consented to go; and at my request Mr. Avery informed me of the particulars of his route, after leaving the ferry wharf. He pointed out to me, with as much minuteness as could have been expected, his course, what persons he saw, the brooks or streams, and lands he crossed, the houses he passed, and other objects and localities as he had noticed them. With this description

I repaired to the Island on the 2d of January, and endeavored to pursue the course pointed out to me by Mr. Avery; and being myself a stranger to the route and the objects described upon it by Mr. Avery, I was forcibly struck at the time with the near correspondence of the objects I saw and the description Mr. Avery had given me of them. Mr. Avery had informed me that he met a boy in a lot, and near by there were some sheep; that he inquired of the boy for Asa Freeborn's house, and that the boy pointed it out to him, the roof or top of which only could be seen from where he stood, the rest of the house being hid by a rising ground and some intervening trees or bushes; that the boy also informed him, on being inquired of, that Mr. Freeborn was not at home, as he believed, for he had seen him go away with his wagon in the morning. Immediately on my return to Bristol, I asked Mr. Avery whether he crossed a stream just *before* or *after* he saw the boy? He instantly replied, "just after." In this he was correct; for after he had crossed the stream the house of Freeborn was in full view. Near the place where Mr. Avery said he saw the sheep, I also saw a number. I furthermore found, on inquiring at Mr. Freeborn's house, that he was absent on the 20th of December. (Signed) Wm. E. NORRIS."

The following certificate corroborates the above:—

"I, Samuel Martin, of Bristol, Rhode Island, yeoman, do hereby certify, that I was present with Mr. Norris at Mr. Avery's, and heard his description of an alleged excursion on the Island, and took the same route most of the way taken by Mr. Norris, and I concur in the facts, and circumstances, and correspondences stated by him. (Signed) SAMUEL MARTIN."

Mr. Freeborn says:—

"This may certify, that on the 20th of December, 1832, I left home at 7 o'clock, A. M. for Fall River, and returned at 6 o'clock, P. M. (Signed) ASA FREEBORN."

On these certificates it is proper to remark, that besides the general agreement between Mr. Avery's statement as to the course he took and the objects he saw, and what Messrs. Norris and Martin found on personal observation, there are these very striking facts,—that from one place mentioned by Mr. Avery, only the roof or top of Freeborn's house was to be seen, and from another the whole house was in full view, and that a stream ran between those places; and he was asked by Mr. N., immediately on his return, "whether he crossed the stream just before or just after he spoke with the boy." The right answer to this question was all important to Mr. A.; for if he had said, *before*, it would not have agreed with the fact, that "only the roof of the house was to be seen;" but he answered without the least hesitancy, "just after," and thus proved his statement correct. This is a circumstance that can hardly be accounted for by resorting to accident, or by saying that his answer *happened* to be right.

The same is to be said of what the boy told him of Freeborn's being from home. Is it reasonable to suppose that Mr. A. would

have said that a boy told him he "saw Mr. F. go away in the morning," he thinks he said "to Fall River," when, if it were not so, his own words would inevitably go to convict him of falsehood? Surely it is not to be supposed that he was so fool-hardy as thus to lay a snare for his own life. But how stands the fact? The reader has seen. Mr. Norris went to Freeborn's and there heard that he was absent from home on the 20th of December; and Mr. Freeborn himself certifies that he went to Fall River on that day; and thus the words of Mr. A. are proved to be true.

Again: It will be recollected by those who have read the trial of Mr. A., that Amy Anthony testified, that as she was returning home, a little before 9, she overtook and passed a tall slim man, as he walked very slowly, in dark clothes, whom she did not know. This she mentioned to her sister on her return home. This circumstance Mr. Avery mentioned in a conversation with the Rev. J. A. Merrill, several months before either of them knew that any person would testify to the fact, and neither of them mentioned it, as it was not known that any person would dare, in these times of excitement, to avow the knowledge of the fact, and if not, it would only be multiplying points of attack for his enemies. It may easily be imagined what were the feelings both of Mr. Avery and Mr. Merrill, when they understood that Miss Anthony would testify as above. The following is the Rev. Mr. Merrill's certificate relative to this fact:—

"I hereby certify, that soon after the Rev. Mr. Avery's Examination at Bristol, R. I., he stated to me, that as he was coming from the toll gate towards the ferry, on the 20th of December, 1832, a female overtook and passed him, near the north end of the turnpike; that she passed so near him that he could have reached her with his hand, and that this was about 9 o'clock in the evening. After hearing there was a female who could testify to these facts, and being at Newport, I gave Mr. Avery the information.

(Signed)

J. A. MERRILL.\*

Here is a very striking coincidence of testimony. First, Mr. Avery states in conversation with a brother minister, as a fact connected with his excursion on the Island, that a "female overtook and passed him on the road"—Mr. Merrill certifies that Mr. Avery told him this some time before it was known that any person would testify to the fact—Miss Anthony comes forward at the trial and testifies that she overtook and passed a man who was walking very slowly, and that on the night in question, and precisely at the time and place given by Mr. Avery. To all which it must be added, that Miss Patience Anthony also testified at the trial, her sister told her when she came home, that "she had overtaken and passed a man walking slow." All these circumstances, thus stated and connected, show very satisfactorily that Mr. Avery's account of his excursion on the Island is

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\* As the Rev. Mr. Merrill had undertaken to aid and assist Mr. Avery in his defence, he was not called upon to testify at the trial. Mr. M. has been 26 years a travelling minister, and 11 years of that time Presiding Elder, and is so well known to the public, that it is deemed proper he should be heard by his certificate.

T. MERRITT.

correct. So many circumstances agreeing in support of a falsehood were, perhaps, never known. But if Mr. Avery's account of his excursion on the Island on the 20th of December is true, he was not at Fall River on that day or night.

The following remarks and observations are by a literary gentleman who has paid great attention to this subject. His reasoning is very clear; and in particular he proves, according to the testimony of government witnesses themselves, that Mr. Avery could not have been at Fall River on the night of the 20th of December, as was supposed. This he does by showing the time when he must have left Fall River, and the time when in fact he arrived at Bristol ferry; the whole time for performing this journey being less than one hour for walking at least eight miles and a half.

T. MERRITT,  
J. A. MERRILL.

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#### EXAMINATION OF THE EVIDENCE ADDUCED TO PROVE THE ROUTE OF MR. AVERY ON THE AF- TERNOON OF DECEMBER 20.

It is proposed in this paper to inquire, by a brief examination of some of the most important points in the testimony, whether there is any thing in the events of the afternoon and evening of December 20th, to convict Rev. E. K. Avery of the charge brought against him in the late trial.

One or two things, however, should be premised before proceeding to this investigation. It will be recollected by those who read the Report of the New England Conference Committee, that the two important points which were urged as laying the foundation of the supposed events of the 20th of December, viz., criminal intercourse with the deceased, and an epistolary correspondence, proposing, among other things, a personal interview on the 20th, were found, as the Committee and the Conference thought, wholly unsupported by testimony. Nay more; by the alibis and exculpations established on the trial, it appeared morally and *physically* impossible that Mr. A. should be the father of the child; and also it appeared, that while his hand *was not concerned* in the "pink letter" delivered to the Engineer of the steamboat, the hand of another was concerned in it. Since the trial, the testimony of Mr. Spencer on this point has been added, to remove, if any thing more was necessary, the last vestige of *just* suspicion from the most incredulous mind. And as was justly urged by the prosecution, if Mr. A. was not concerned in this letter, he was not in the others; for they had a common authorship, and related to the

same subject. I touch upon these points, to show that the circumstances of the 20th of December, be they more or less, must not only stand alone, unsupported by preceding facts, but must also be sufficiently strong to counteract the testimony by which the accused is exculpated from all participation in the preceding stages of this mysterious affair. The proper inquiry in the case then will be the following:—Can the circumstances of the 20th of December bear their own weight? In other words—Are the circumstances against Mr. A. stronger than those for him?

It will be necessary here to refer the reader to the map of the Island, Fall River, &c., and to give some statements respecting the situation of the places; for I find many are much confused on this subject, supposing that the Island, coal mines, &c., where Mr. Avery says he was that afternoon, are in the neighborhood of Fall River. This is wholly a mistake. To go to either place you cross Bristol ferry, which, however, is not far from Bristol town. From the ferry, Fall River lies north-easterly, on the main land, about 9 miles distant by any practicable route. The coal mines and the western coast of the Island, down which Mr. Avery says he travelled, are in a nearly opposite direction, south-westerly from the ferry. John Boyd, government witness, says—“I should think the route travelled by Avery, as described to me, might be eight miles to the Union meeting-house; thence to the ferry, by the road, is six miles.” Making in the whole, according to Mr. Avery’s statement of his route, about fourteen miles travel.

These preliminaries being settled, let us select out of the mass of matter introduced in the trial, the following points, which are supposed to constitute the principal evidence against Mr. Avery:—1. As it regards the consistency of his own account of himself. What should induce Mr. Avery, on a winter’s day, to make such an excursion? Why did it take him so long? Why did not some one see him? Why, if he spoke with a man and a boy, as he says he did, are they not forth-coming to testify in the case? And, 2. As it respects his being at Fall River. A man answering to his stature and dress is traced, it is said, from the ferry to Fall River that afternoon, and is seen there just at night, not only at the public house in the village, but also near the very spot where S. M. Cornell was found dead the next morning.

It should here be distinctly noticed, that there are two suppositions to be examined. The one is, Mr. Avery’s own account of himself that afternoon and evening; and the other is, the assumption in the prosecution that he was at Fall River and murdered S. M. Cornell. And the question is not, whether either supposition is entirely free from difficulty and embarrassment, but simply, which of the two is embarrassed with the fewest difficulties. And if it be found that Mr. Avery’s account of himself has, on the whole, the fewest embarrassments, in that case we must believe his statement, or be guilty of the absurdity of embracing a more improbable of two suppositions. Let us bring them to the test.

1. What motive had Mr. Avery for visiting the Island?

*Ans.* It is proved that he had had several conversations respecting the coal mines, and that he inquired about them that day in crossing the ferry. It is also proved that he had expressed to several persons

a curiosity to visit the Island—an Island of itself sufficiently interesting to claim a half-day's ramble from any stranger, especially one possessed of the contemplative turn of Mr. Avery, and particularly as it stands connected with our revolutionary history, and with the services of his own father in the revolutionary army. But passing all this, I might answer, by asking, what motive could he have for going to Fall River for the purposes alleged? For the more extraordinary act he ought to have the stronger motive. But to visit Fall River for the purpose supposed, is inconceivably more extraordinary than to visit the Island for the purposes pretended. A motive for his going to Fall River is *assumed*, I grant, but none is *proved*. Will it be pretended that he must have had a motive, because he was there? and that therefore he was there, because he had a motive? Or will it be presumed that he *must* have had a motive for going to Fall River to commit murder, *because* the reasons he assigns are not thought to be an adequate inducement for him to go a less distance, in an opposite direction, for a common and an innocent object? I leave those who can see no motive for Mr. Avery's going on to the Island, and hence conclude he was at Fall River for murderous purposes, to answer these questions.

2. Why did he stay so long and so late?

*Ans.* By comparing the time and the distance, it will be found that he averaged about two miles an hour. This, considering he was on an excursion of observation, in a pleasant afternoon,\* and considering also the weakness of his ankle, was not very slow travelling. For myself, I can say, I have made many an excursion at a slower rate than that, especially when walking across lots, as Mr. Avery did, if he took the route he describes. But leaving this point for the present, we shall find more, much more than an equal embarrassment on the other supposition, in other parts of the investigation.

3. Why was he not seen by some one?

*Ans.* If by this is meant,—Why was he not seen by some one who knew him, or could clearly and positively identify him afterwards? it may be answered thus,—Why, if he went to Fall River, as this was a much more populous route, and in a region too where he was better known, was he not seen by some one who knew him, or could clearly identify him afterwards? Some person of his height, dress, &c., *was seen* by several persons, at times and places answering to his account of himself. (See the testimonies of Sarah, Oliver, and Sally Brownell, of Sarah Jones, corrected by her own first version of it, and by the circumstance of her father's going to mill, and also the testimony of Amy Anthony.) Now although a person or persons resembling Mr. Avery were seen in the direction of Fall River, yet this is not so singular, since that was on a very public road, where persons of all sizes and costumes were frequently passing; whereas this other direction was a retired place, where, as all agree, strangers are very rarely seen.

4. But if he spoke with a man with a gun, and a boy with sheep, as he says he did, down on the Island, where are they? why have

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\* "The thermometer was two degrees above freezing point." See James Taylor's testimony.

they not come forward at the public call, and testified to the fact, and thus set this matter at rest?

*Ans.* It is indeed singular that these persons are not found. But one was a young boy; and some men, *from dissipation and other causes, are not to be depended upon.* But leaving all these considerations out of the question, if the contrary supposition has more and greater difficulties than this, the alternative, having the fewer difficulties, *must be believed.* In the first place, if Mr. Avery was not on the Island, but invented this story to cover his wickedness, would he be guilty of such unaccountable folly as to feign and repeat circumstances, which he must know would decidedly operate against him? In either case he had a motive for mentioning this circumstance of seeing the man and boy. If he was there, he mentioned it with the evident hope that the man and boy would be found, and thus his account would be corroborated. If he was not there, he knew they could not be found; and yet, after he knew he was suspected of the murder, he thus, by a specific statement and of set purpose, cast a deep shade of suspicion over his own cause and character. But again, if it is a wonder that these persons, said to be seen by Mr. Avery, have not been found, it must, on the supposition that he was not there, be at least *equally* wonderful that the man or men, who were seen in the neighborhood of the coal-mines, &c. on that day and week, have not been found. If it was *one and the same* person who was seen by the Brownells and others, in the very place where Mr. Avery had said he was, before he knew that any one would say he was seen there, then this is almost proof positive that he was there. If it were *different* persons that were seen by these individuals, then so much the more surprising that *not one* of them has ever been found to say, "It might have been I, for I was there." Which supposition leads to the greatest difficulty? Once more. If Mr. Avery was the murderer of S. M. Cornell, then it was not the man who took tea with Isaac Alden (see his testimony) at Lawton's tavern, in Fall River, on the evening of the 20th December, for Alden swears that this man was not Avery; and yet this man has never been found. Where is he? Further; very few, if any, I think, will believe that Mr. Avery was the other man who took tea at the same tavern, the same evening, wearing a cap, and drinking *at once* a half tumbler of clear brandy, (See Margaret B. Hambly's testimony,) and yet he is not found. Where is he?

Having inquired into the consistency of Mr. Avery's account of himself, on the afternoon and evening of the 20th December, and compared the difficulties of this account with the contrary suppositions, I now pass to notice the other part of the subject, viz. the supposition that he was at Fall River on that evening. This rests entirely upon the testimonies of several, who say they saw a man of his stature, dress, &c. going towards Fall River, and of others, who saw a man of similar appearance, about sunset, near the place where the deceased was found suspended on the morning of the 21st, and of others, who saw a man at Lawton's tavern. None of these, however, could swear that the man he or she saw was Mr. Avery. That it was *one and the same man* whom these different persons saw, does not appear, but rather the contrary; one thought he had on a spencer; some say the man they saw had a cane, others say the man they saw had none.

The man seen at the tavern at Fall River had a cap; on other occasions, the man seen had a hat, &c. In short, the direct evidence that the man seen in the direction of Fall River was Mr. Avery, is very little if any stronger, than the direct evidence that the man seen down on the island, &c. was Mr. Avery; while the latter supposition gains much strength, from the consideration that in the latter case the man was seen at the time and place when and where Mr. Avery was, according to his own previous account. And this, in fact, is the only circumstance which gives much force to the testimony in either case. The fact of seeing a man in any given place, having a stature and a dress resembling any particular individual, is of itself, independent of other circumstances, a very slight evidence indeed that the man seen was that particular individual. Let the mind of any one be free from any previous idea, that Mr. Avery was at Fall River that night, and how far would such testimony go towards convincing this person that Mr. Avery was at that place? It is asked, I know, if the person (or persons) thus seen was not Mr. Avery, who was he? Why has he not shown himself? But by the same rule we may ask, if the person (or persons) down on the island was not Mr. Avery, who was he? Why does he not show himself? Indeed, the latter question is more pertinent. For the man there, whoever he was, has no motive for concealment; but the man seen near John Durfee's stack-yard, whether guilty or innocent, would, under existing circumstances, prefer being unknown. If Mr. Avery was that man, we see no reason why the man that was on the island does not make himself known; but if Mr. Avery was this latter man, as he says he was, this fact is accounted for, and we readily see why the other man keeps concealed.

But we may take another view of this subject, which it is believed ought to have an important bearing upon the question. If Mr. Avery was at Fall River, and was seen by these different individuals, he knew he was thus seen; and he must also have been tremblingly alive to a consciousness of his guilt, and to a fear of detection. Like others guilty of blood, he would think every eye scanned him through and through. He had preached at Bristol, at Fall River, and on the Island; he had crossed Howland's Ferry Bridge before; he knew what every public man, and especially every minister knows, that many knew *him* whom he did not know. And yet, according to the supposition we are now examining, he travels a public road, through a populous country, surveys the ground of his approaching tragedy in the presence of several individuals, goes to a public house and takes supper, goes out and commits the fatal deed, and then returns back to Gifford's, tells them he has been down on the Island, tells the same story to the Rev. Samuel Drake on Saturday, and repeats the same in detail on Sunday to Justice Howe, in the presence of the officer who had come to arrest him for the alleged murder! And when Mr. Howe advised him not to do so, he persisted in making his statement, saying, "The truth cannot hurt me." Is this the course that might have been expected from any man of ordinary intelligence, especially from such a man as Mr. Avery, whose cool deliberation, from the beginning, has been a subject of remark by friend and foe—whose account of himself has never varied in a single point, and whose tongue, through all

his scenes of trial, *has never been caught tripping or faltering in a single instance?* The least share of prudence would have led him, as we should think, to have invented the most plausible excuse he could for his visit to Fall River, and at any rate to have avoided a statement which he must know would, in all probability, be contradicted in a few hours, to his inevitable ruin. And here the reader should be reminded, that Mr. Avery's denial that he was at Fall River, and his account of himself on that afternoon and evening, were incorporated into the trial by the prosecution, doubtless with the expectation, that, by disproving it, his conviction would be made sure; and yet his statement has never been disproved in a single point, only so far as any one might think it disproved, by the *appearance* of a man resembling him, in the direction of Fall River, as evidenced by the testimonies above alluded to.

But I propose to take one other view of this subject, and then shall close an article extended already beyond my original design.

When any fact, or series of facts, is attempted to be proved by circumstantial evidence, the circumstances, to be credited, must be *con-* *sentaneous*, and must all correspond with some *definite probable hypothesis*. In every complex transaction, the circumstances of *place, time, manner, &c.* should all correspond. If, for instance, out of twenty circumstances which are adduced to prove that an individual committed murder, some indicate that he committed it at one place, and some at another; some that he did it at one time, and some at another, such contradictory circumstances would prove nothing, except the *innocency* of the accused; for circumstances, as well as witnesses, may contradict each other. Hence the necessity that the former, as well as the latter, should be sifted, examined separately, and, if I may so say, cross-examined and compared, in order to get at the truth. And hence, too, the necessity that we should let no circumstance influence our judgment, that does not correspond with some definite and fixed assumption. It would be safe indeed, when circumstances look suspicious, that, without any assumed position, we should, by a patient analysis and induction, follow out those circumstances, until it should be ascertained whether a sufficient number concentrated in a common point, to produce conviction. This course, however, cannot be pursued in a legal process. The charge must be made, and then investigated. In this case it becomes the duty of those conducting the prosecution, to ascertain the character of their testimony and then assume such an hypothesis as can be best sustained by the circumstances of the case. But if the evidence contradict the hypothesis, then the prosecution must fail, and in every case where the assumed hypothesis is the best that the circumstances of the case will admit of, and yet the evidence contradicts the hypothesis, then, not only must the prosecution fail, but the accused *is proved to be innocent*. These general remarks must be sanctioned, I think, by every reflecting mind. Let us apply them to the case before us.

The hypothesis is, that Mr. Avery murdered S. M. Cornell by strangulation, at a distance of about twenty-three rods from the stack-yard, where she was found suspended, and at a time specified by William Hamilton, who heard "a squall or shrill cry" in that direction "like that of a woman in distress;" and that after she was thus

strangled, the accused carried her to the stack-yard, and suspended her to a stake to avoid suspicion. (See the indictment, the opening of the prosecution by Dutee J. Pearce, Esq., and the summing up by the Attorney General.) It is not necessary for me to stop to show the reasons which the conductors of the prosecution had, for this hypothesis. It is enough for our present purpose to know, that the prosecution was ably conducted, as all agree, and that this position was taken as the one on which the prosecution could be best sustained. And hence if this will not stand the test of examination, we have a right to suppose no other will. My remarks in respect to it will be confined to one inquiry, viz: *Whether it is possible that E. K. Avery could have murdered S. M. Cornell at the time and in the manner specified, and then have reached Bristol Ferry at the time it is proved he arrived there?*

William Hamilton left Benjamin Hambly's store to go home seventeen minutes before nine o'clock, by Hambly's watch. (See their testimonies.) He had been walking "three or four minutes" at the time he heard the cry above alluded to; this fixes the time at thirteen or fourteen minutes before nine. But Hambly says his time was fifteen minutes faster than the factory time, and ten minutes faster than the time of Goodwin, who was a watch-maker at Fall River, and kept a regulator for himself and neighbors. Goodwin's was more likely to be the true time; but as I wish to have this argument such as to preclude all reasonable doubt of its correctness, we will suppose the true time to be between Goodwin's and the factory time. I do this with the more confidence, because that will bring the time assumed within a minute of Bennett's time, which, as we shall presently see, was assumed by Harvey Harnden as the true time, in his attempt to correct Gifford's clock. This will fix the time of the cries heard by Hamilton at twenty-three or twenty-four minutes before nine o'clock. These cries, according to the hypothesis, were uttered by the deceased when under the murdering hand of Avery. It would take a few minutes for life to become extinct; then the body was carried twenty-three rods through a piece of ground, "rough" with "pudding stones, bushes, and briars," over two fences, one before you come to the stack-yard, and this too in the night; then the body was put over the yard-fence, for the fence was not down—suspended to a stake—clothes adjusted—shoes taken off and placed by themselves, &c. &c.—not to dwell upon the delay *which might* be occasioned by fixing on the place of disposing of the body, by the difficulty of going directly to the yard in the night, and by the care necessary to prevent the calash and shoes from being lost by the way. Must we not conclude, that at the lowest calculation twenty minutes were consumed in this business? I believe the great majority would judge, that even more time would be requisite. But say twenty minutes, and then we shall have the murderer ready to leave the yard at three minutes before nine o'clock. He now has eight and a half or nine miles to travel to reach the Ferry-house. Here let us inquire at what time he arrived at the latter place. Jane Gifford, daughter of Jeremiah Gifford, keeper of Bristol Ferry, says she heard her father say, as he was waiting upon Mr. Avery to bed, that it was *half past nine*. Her father, however, says that it wanted a quarter to ten. But as from his (Avery's) own account, which is confirmed by the testimony of

both Gifford and Hicks, Mr. Avery knocked at both Gifford and Hicks's houses, and waked them up, made inquiry about getting over the ferry, &c., we may fairly conclude, that he arrived at Gifford's as early as half past nine by Gifford's clock. The next inquiry is, was Gifford's clock right? Samuel Drake, who "visited the family frequently," said, in the examination at Bristol, that he "considered the clock too fast." The Giffords, who were *government* witnesses, say nothing of the clock being wrong. A stage-driver, William D. Fales, says "he did not observe the clock very often, but when he did it was always slower than the Newport time." Harvey Harnden, a *zealous* witness for government, made some comparison of time in the fore part of January, by a patent-lever watch, regulated "by Bennett's time at Fall River, said to be the true time." By this watch Hambly's time was nine minutes too fast, and Gifford's twenty minutes too slow. By what authority this *ex parte* patent-lever calculation is incorporated into the testimony, it is not necessary now to inquire; suffice it to say, that we have no reason to look for any thing from *this source any more favorable* to Mr. Avery than the truth will warrant. Let us, therefore, for the sake of putting the subject as much against Mr. Avery as the most zealous against him can claim, allow Harnden's calculation. We shall then find Avery starting from the stack-yard at three minutes before nine o'clock, and arriving at the ferry ten minutes before ten o'clock. In this calculation we have allowed Mr. Avery only fifteen minutes, if we take Gifford's account of the time, and nothing, if we take his daughter's, for knocking twice at Gifford's, once at Hicks's, going backwards and forwards from one house to the other, and conversing "three or four minutes" with Gifford after he got up. Some time it certainly did take him for all these things, and we believe none will say we have allowed him too much. Thus it appears he travelled nine, or at least eight and a half miles, in fifty-three minutes! Does any one believe this possible? Which is the most credible, that a man, when at leisure and surveying the country, should take seven hours to walk fourteen miles, or when in haste, should walk nine miles in fifty-three minutes? Can the man be found who can walk eight and a half or nine miles in fifty-three minutes? We confess we do not believe it. The thing is in itself incredible.

A young man of Fall River, by the name of Philip R. Bennett, had a purse made up for him for the purpose of making an experiment, to ascertain in what time Mr. Avery could travel over this distance. He travelled it in *one hour and twenty-nine minutes*. And this he did by "trotting half the way," and "leaving his coat on the road." (See his testimony in court.) But he started fresh, and had day-light for his tour. On the contrary, Mr. Avery, if he was the man at the stack-yard at sunset, had travelled from Bristol town since two o'clock, a distance of twelve miles, in a little more than two hours, had a weak ankle, wore a coat and surtout, and travelled, on his return, in the night; and yet he must have accomplished the whole in fifty-three minutes!!

It seems to be altogether useless to pursue this subject further; and *that* seems to be a strange public delusion, that has made it necessary to pursue it thus far. But as some public journalists and others, for

motives best known to themselves and their God, have been exerting themselves from the beginning to excite public feeling against Mr. Avery, and are still exerting themselves to excite public indignation, not only against him, but also against the Conference and the Church of which he is a member, I felt it a duty that I owed to the Church and to an afflicted man, to say what I have.

W. FISK.

### CONCLUDING REMARKS.

THE reader has now gone through this long and laborious case, and is required to render his verdict. It is hoped that no one will excuse himself on account of its length, or the difficulties in which it is involved. A fellow creature, a brother, a ministering brother, appeals from the prejudiced decision of Aristides and his coadjutors, to the decision of an enlightened, candid, and Christian community; and by all that is just, humane, and sacred, you are bound to decide one way or the other—either that the Rev. E. K. Avery is GUILTY, or that he is NOT GUILTY of the crime of murdering S. M. Cornell. He asks not for mercy, but justice. If he be a murderer, let him die the death; but if he be innocent, you are the persons appointed by God in this case to deliver him out of the hands of his enemies, who have pursued him with the malice and ferociousness of harpies. Had he thrown himself on your *charity* in a cold night, when hungry and frost-bitten, you would not have turned a deaf ear to his cries; and will you refuse to pay sufficient attention to his case, now that he has “fallen among thieves and robbers,” to have a judgment of your own? Would this be doing as you would that others should do unto you under similar circumstances?

Mr. Avery asks you on what part of his case you can pronounce him guilty? Have you weighed the circumstances and facts connected with the death of S. M. Cornell? Are you prepared to say that she did not hang herself?—that she was murdered?—that E. K. Avery was her murderer?

Have you carefully gone over the evidence for and against the charge of seducing S. M. Cornell at the camp-meeting? What proof has been exhibited that he was the father of her child, except her own word, and that under very suspicious circumstances? Was he not found to be in the camp at the very time when she said he was in the woods with her, near a mile distant? Was he not accounted for every moment from that time till the next morning after breakfast? And was there not much other evidence to prove him innocent of that crime, particularly the age of the foetus, as determined from its length by all the physicians?

Have you sure proof of his being the author of the letters said to have been written by him to the girl? In particular, did he deliver the pink letter to the engineer of the Fall River steamboat on the 27th of November? What time had he for this? Five minutes is the longest time he can, with any appearance of truth, have had for that purpose;—could he have walked two thirds of a mile out and the same back, and have had time for the conversation with the engineer which is said to have taken place, in five minutes? Is it not found that Mr. Spencer delivered just such a letter on that very day, and at the same hour that the engineer swears he received this? Is not Mr. Avery's account of his journey on the Island, corroborated as it is by the evidences and circumstances in the case, much more probable than the hypothesis that he was at Fall River on the afternoon and evening of the 20th December? Are not the mysteries in this case accounted for very satisfactorily on the ground of a conspiracy? And is there not internal evidence in the whole machinery of this plot of such a conspiracy? And if we discard this idea and adopt any other theory, shall we not find the difficulties increasing a hundred fold? If, under such circumstances, a man is still to be persecuted to an extent that a thousand times exceeds the tortures of the rack, who can assure himself of safety? Does it not become every respectable citizen to put down such a persecution with his most decided disapprobation?