Crowell No. 1209

No. 8

TRIAL

OF

DANIEL GIDDINGS,

FOR SHOOTING

BENJAMIN WILTSHIRE,

AUGUST 5, 1882.

NEAR CHILLICOTHE, OHIO.

The Complete Record by the Official Stenographer, N. F. Dean.

HILLSBORO, OHIO:
PRINTED AT THE HIGHLAND NEWS OFFICE,
1884.

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THE TRIAL.

The trial was had before Hon. Thaddeus A. Minshall, in the Common Pleas Court of Ross County, at the Court House in Chillicothe.

The State was represented by Mr. Geo. B. Bitzer, Prosecuting Attorney, of Ross County, and Col. William E. Gilmore, of Chillicothe.

The defendant was represented by Hon. A. B. Cole, of Chillicothe, and Ulric Sloane, of Hillsboro, Ohio, and Mr. Cyrus Newby, of Hillsboro, Ohio.

—o—

THE INDICTMENT.

The indictment contained two counts, in the ordinary form, differing only in the particular that one count charged the death to have been occasioned by the gun shot through the heart, and the other that through the head.

—o—

THE JURY.

The jury was chosen during the two days, Dec. 4th and 5th, the defendant not exercising more thun half of his peremptory challenges. The following was the jury selected and sworn to try the case:

JAMES M. ABERS,	DANIEL M. BEARD,	ISAAC W. KEENER,
ANDREW J. PUMMELL,	ELBRIDGE C. BUTLER,	A. B. CLINE.
ALBERT STEVENSON,	JOHN MARSHALL,	IRA MOSHER,
WILLIAM KEYS,	ISRAEL BEIDEMAN,	J. D. SHOTTS.

ERRATUM.

For "analysis" in the 22d line from the top of page 428, read "analogies."

WEDNESDAY, DECEMBER 6, 1882.

MORNING SESSION.

OPENING STATEMENT TO THE JURY.

GEORGE R. BITZER, ESQ., Prosecuting Attorney, spoke as follows:

May it please the Court, and Gentlemen of the Jury: The indictment in this case charges that Daniel Giddings, on or about the 5th day of August, 1882, did unlawfully, purposely, and of deliberate and premeditated malice, make an assault, and so forth, with a pistol upon one Benjamin Wiltshire, and inflicted two mortal wounds, of which he then and there died; one wound being inflicted on the right side of the head, entering in the cartilage of the ear, almost immediately above the auditory canal, penetrating the skull and brain in a direction toward the opposite side of the head, and the ball lodging at a point immediately on the inside of the left side of the head; the other wound being inflicted on the left breast, first striking one of the ribs, then penetrating one of the spaces between the ribs, and passing through the heart.

We expect the evidence to show this state of facts: On the afternoon of the 5th day of August, about one o'clock in the afternoon, Benjamin Wiltshire was seen on the east end of the platform at the Narrow Gauge Depot, at Chillicothe, Ohio, in an intoxicated condition. At about two o'clock of the same day, or about an hour or so thereafter, he was seen in the saloon of Andrew Adler, on the east side of the south end of Paint street, the saloon you first went into yesterday; that while he was in there, and at a place where he had been before, and after he had been in there for some ten or fifteen minutes, perhaps, Daniel Giddings came in, met Wiltshire in a perfectly friendly way, called for the drinks for himself and Wiltshire, and paid for them, after which Daniel Giddings passed out of the saloon, calling to Wiltshire to follow him. As to what they drank in the saloon, my recollection just now is at fault, but I think that Benjamin Wiltshire took whisky, and Daniel Giddings took wine or beer. They passed out of the saloon, Daniel Giddings going first and call-

ing to Benjamin Wiltshire to follow him. They passed out, and the next place we find them, within a few minutes after, is in the saloon of Frank Struble, on the west side of the south end of Mulberry street, the second saloon that the jury visited yesterday. From this point they passed on south down Mulberry street, passing the slaughter house of Mr. Hunn, and across the old bed of the hydraulic canal, and through that clump of willows that grows near the creek, then across the cornfield to the logs where Benjamin Wiltshire was found lying dead. Joseph Seeberger, a witness in the case, was at Mr. Hunn's slaughter-house at the time they passed by, and watched them on their way across the cornfield, Daniel Giddings leading the way. Thomas McPickens was plowing in the field, and recognized the parties as they passed over. After they had reached the logs, Benjamin Wiltshire was seen to sit down on the log, and Daniel Giddings then and there, a few moments after, came nearer to him, when two reports of a pistol were heard, and the smoke was seen to rise up from above the logs, by one of the witnesses, immediately after which Daniel Giddings was seen running toward Paint Creek, and from thence up toward the Paint Creek bridge on the Massieville pike. Within a few moments after the shooting Daniel Giddings was seen passing down the Massieville pike, and in the afternoon of the same day he had found his way up to the east of Massieville, into a portion of country there that is wooded, inquiring his road to Massieville. Next, in the evening of the same day he is found at the house of Mrs. Blair, where he returns a 32-caliber revolver, which he had borrowed on Thursday previous. We expect that the evidence will show that at the post mortem examination, when the wound on the head was dressed and washed, there were marks of burnt powder found.

Now, I do not wish, gentlemen of the jury, at this stage of the case, to make any argument, or make any comments to bias your minds either way. I intend to leave that to the testimony, and to let that argue for itself.

—o—

ULRIC SLOANE, Esq., Counsel for Defendant, spoke as follows:

May it please the Court, and Gentlemen of the Jury: The Prosecutor has stated part of the case, but has not, by any means, stated all. He, indeed, has failed to state all, for purposes———as to the purposes I don't care to say a

great deal now, that is a thing the testimony will necessarily disclose hereafter, for your consideration.

The defendant, as you have already been informed, and know, stands indicted for the crime of murder in the first degree, and, in the language of the charge of the clerk to the jury, under the old English criminal jurisprudence, "Upon this indictment he hath been arraigned. Upon his arraignment he hath pleaded not guilty, and, for the truth of that plea, hath placed himself upon God and his country, which country you are; so that it is your charge to inquire whether he be guilty of the felony, or not guilty."

It has been deemed proper by our Legislature, in accordance with what is a custom long recognized in criminal jurisprudence, to provide that the respective claims of either party shall be stated to you in the outset. Knowing, or conceiving at least, what range the testimony will take in this case, I propose to give you what assistance I can in the outset by stating to you the entire history of this case, which will have to be gone over by you and considered by you.

The defendant now on trial before you, and whose cause you must pass upon, and between whom and the State you are sworn to true deliverance make, is still a young man. He is now about 38 or 39 years of age. He was born in Highland county. While it is not all necessary that I should say so, the fact of my having been called as Counsel for him in his defense by the relatives and friends is probably due to my having been the attorney and friend of his friends, relatives and many of the companions of his boyhood. He was reared and educated in Highland county, where he received an ordinary common school education. During all the time of his youth, up to the time of his entrance into the army, we will be able to prove to you by some of the best citizens of Highland county that, as boy and youth, he bore an irreproachable character for peace, quiet, kindness of heart, and a kindly disposition: that he was a boy, in many respects, odd and peculiar, differing from his fellows, not ordinarily caring for the amusements and occupations that usually belong to and are run after by boys of his age. When the war broke out, at the age of twenty he entered the service—I believe it was twenty—and he spent three years in the service of his country. During that period of time we will be able to show to you, and will show to you from the witness stand, by many of his comrades who went through all the scenes of that career of three years with him, that he was then kindly in his disposition, a warm friend, a true comrade,

a man whose heart went out with the kindliest of feelings and disposition to those who, with him, were enduring the brunt of battle and undergoing all the toils and hardships of that service. He comes home, at the close of an honorable service, returns to his county, his native home, and to his family. A business venture to which he was solicited by one of his relatives, takes him to Erie county. While in Erie county he married the woman of his choice. To them, in the course of time, are born three children, three sons, the oldest of whom is now, I believe, about ten years. He remained in Erie county for some time; my memory does not recall, now, the exact number of years. To prove his character as being an upright man, fair in his dealings, liked by the citizens, peaceable and quiet, of a kindly disposition that gave no indication of harming any man, or laying the finger of violence upon any creature, we have witnesses from that county. Whether failing in that business venture, or for some other reason, I don't now recall, he came back to Highland county and lived about a mile and a half, or about two miles, rather, west, on the Cincinnati pike, from Hillsboro, for a considerable length of time. We have witnesses who will testify, also, to this continuing and seemingly permanently established character for peace, quiet, gentleness, and that of being a law abiding citizen during all of that time. I am taking upon me, gentlemen, to state the whole tenor of his life, for it is a principle not only recognized by our laws now, not only recognized as one of those conclusions or lessons that we learn from observation and experience in society ourselves, but recognized by modern and ancient law, that no man theretofore having a good character, an unblemished name, a kindly and gentle disposition, suddenly becomes a criminal. So that you should seek, and seek earnestly, to ascertain whether or not some great provocation, whether or no some great wrong suffered, or injury done, may not have wrought that almost sudden, perfect, and complete change in the man which makes him do an act of violence. I say that during that period of his stay in Erie county we will be able to establish and show to you for him an unblemished character, that he was a man of quiet disposition. We will also show you that he was peculiar and odd in his ways all duriug his life, but of kindly disposition, as I have stated. Shortly afterward he purchased a little farm in the neighborhood of Massieville, in this county. He has never been, during his life, what we would call a man always fore handed. He has had to walk along in the paths of poverty,

humble poverty; but it has not been from want of industry. He has been an industrions and a hard-working man; he has endeavored to do his full duty to those who are dependent upon him, and to his fellow men; but, as we know, he is one of those characters that seldom do become fore-handed; but whether from mismanagement, or generosity, or whatever cause, there was no wrong in it, and it may not be necessary for you to determine, but it is proper for me to state it here as part of the history of this case. He lived in the neighborhood of Massieville for a period of four or five years, I think, up to the commission of the homicide on the 5th of last August. We will be able to show to you by those citizens, by his friends and his neighbors who surrounded him, lived around him at Massieville, very clearly, that the character he had borne in childhood, that he had borne in youth, that he had borne during his service for his country, that he had borne in Erie county, the character that he returned with to Highland county, and kept with him while there, he retained and kept with him while here; and we will bespeak earnestly your due consideration of the heartfelt testimony of the neighbors who surrounded him and lived near him, in this regard. No sign had Daniel Giddings given yet, not one sign at all which would lead any one to believe or say aught but that he was an upright, peaceable, gentle, law abiding citizen in the community. His children were growing up around him, his wife was with him, his home was humble but the home of an honest man, a quiet man, whose name as yet had been untainted, and upon whose brow there was not yet written one mark or character of disgrace or shame. He meets, as one of the members of that community, the decessed in this case. Of him we have nothing to say unkindly of purpose. If the testimony in this case, as we shall proceed in it, should call upon us, in the just performance of our duty to this man, to speak what may seem to you harsh, recollect that it is not a matter of choice with either of us, Mr. Cole, or myself, but a matter of necessity flowing from our obligations in this case. He lived near the defendant. He was treated by him as his friend. The defendant believed him to be his friend. The testimony will show you that under the guise of friendship, as the serpent stole into Eden and destroyed man's happiness for all future years, that man, under the guise of friendship, received into the bosom of this man's family, treated as his friend and his boon companion, indeed, at times, permitted to sit around his fireside and in

the family circle, used the opportunities thus offered him in friendship, to steal into the graces of the wife, to seduce her from her love and obedience to her husband, and make her a common thing, an object for the gratification of his own lust and his own unholy passions, and produce in her a spirit of discontent with her home. Suspicion begins to dawn upon the mind of the defendant. Loving his wife, and loving her intensely, loving her not only as his wife, and the first choice of his own heart's love, but as the mother of his children growing up around him, he crushed down, with as mighty a force as his will could command, all suspicions that were being borne in on his mind daily and hourly, and refused to believe it; he refused to allow his consciousness to conceive of the fact that the wife of his bosom should be untrue to him, or that his friend, or one whom he had regarded as a friend, should undertake to steal away the brightest jewel from his crown, the brightest flower from his domestic garden. That breeds discord. His suspicions, of course, are at times spoken. The wife becomes more and more estranged from her allegiance to her husband. She insists upon going to Erie county to her folks. She packs up certain of her things and her husband takes his wagon and brings her here, upon her request, with her goods, to the Scioto Valley Railroad Depot, with the expectation that she was going to Erie county, and he, expecting, in a short time, to get word from her, returned home, still believing, in the best of faith, that she had been true to him, refusing to believe that she had dishonored his bed at all, but that her mind at first had been so worked upon by that man as to estrange her feelings from him and bring discord into his home. When she got here to town, however, she stopped with a family, I forget the name now, and think it is unnecessary I should recollect, as the matter will appear in this case. She said to him to leave her goods there. Said he, "That is not the Scioto Valley Railway Depot." She said, "Never mind; leave them here, and I will attend to them." And he goes home.

She stays in town about a week; does not go to Erie county. He brought not upon himself the domestic difficulties which culminated in this tragedy. She comes back to his house once or twice during this week. The mother comes over—his mother, who is now here with him—and endeavors to soothe and calm him. After she had been here a while during that week he seems to have found that she is living here in open adultery, or while it may not be open, in secret adultery at least, with this Benjamin Wiltshire.

The State will show upon their part, it will be proven in their testimony that the defendant came here to town on two or three occasions with the intent to kill Benjamin Wiltshire. The State will show you by the reporter of one of the newspapers here and by 'Squire Mick, that he stated to them that he had come here for that purpose, on one or two occasions, but that reflecting about his children, thinking of the great wrong that might occur to them, the suffering that they might undergo if he should make himself amenable to the law, he thought better of it, repressed the instinct and the impulse, the impulse that was natural and honorable, and repressed them I say in behalf of his children, and of what he believed to be his better duty to society, and he returned.

The next he heard was of the elopement; their going off to Washington Court House together, which occurred about two weeks prior to the homicide. They remain at Washington living together on the farm of Mr. Anderson DeWitt and Mr. Hamer DeWitt, Mr. Anderson DeWitt's son, living there and passing her off as his wife, until she subsequently returned to her home. Acting upon this second and better expression of his, as to what he owed as an individual to society and what he owed to his children, and what might be the terrible consequence to them of his commission of some violent act, he had as I say repressed the first and natural impulse that came to his heart when the evidence borne in on his mind made him sure of the fact of the existence of this adultery of his wife with this man Wiltshire and the dishonor to his home and his bed; he repressed that thought which was natural, and to my mind a proper one, he repressed it and concluded that he would not violate the laws of his country. In furtherance of that fact that he had sought to repress it, that he had sought to perform and fulfil his better duties as a father and as a man, we will show you in our testimony, that he came to Judge Cole, my honorable colleague here in this case, and besought him to aid him, and he filed a petition for divorce, which will be in evidence before you, charging the adultery of his wife with this man Wiltshire. At the time the copy of the petition and summons was sent to the Sheriff of Fayette county to be served upon his wife, still thinking of that past which had been so dear to him, he sends her a letter. It is not proper for me to read that letter to you in this statement, because the question of its admissibility is one which will have to be determined by the Court. But we, deeming that it will be clearly admissible as showing the condition of this man's mind, the perturbation he was

suffering from, shall state briefly what it was. It was simply a cry of pity over her fallen condition; a statement that she had gone away with one who, when he had tired of her, would throw her off and she would rapidly sink into the depths of common prostitution. When she received that letter she began to consider; she began to think of her children and her home; began to look a little into the future and saw what must be the consequences of a life of sin with a man, and such a man, as Benjamin Wiltshire. She went and supplied herself with some poisonous drug, I don't know what, and came home determined, as the testimony will perhaps show you, that if her husband didn't take her back to her children, she would take her own life.

Col. Gilmore.—I submit to the Court that such statements as that are incompetent and ought not to be made to the jury.

The Court.—Such matters you will just refer to indirectly.

Mr. Sloane.—That is what I did. I stated here with a previous caution, that she came back there. This is proper testimony and will be proven, we claim. Then there may be much that we claim to be testimony, that the Court in the exercise of his judgment, may hold will not be competent, but this I think will be so clearly competent, and knowing that we will have means wherewith to prove it, I think I have a right to state it. She besought her husband there with tears and cries to take her back and let her resume her position as wife and mother and she promised that she would do better and would lead a proper and upright life again. Wronged as he had been; deeply injured as he had been, on account of the children, he having gone home night after night, day after day, from his toil to find his three children motherless and crying for mother, all that being painted upon his imagination, when she comes back there and asks him to take her back to her home and children, he sinks the husband in the father and as a father he takes her back to his home, to his bed, to his board, takes her back again to be the mother of his children, upon her earnest assurances and promises, that she no more will be lad aside from the path of virtue, but will be his dutiful wife. She came home on Wednesday evening prior to this homicide. When she had gone away she had taken her goods and they had remained at the depot at Washington Court House. She and her husband came to town on Friday morning. But I am getting ahead of my story. When she came down she told him, after the reconciliation takes place and he had permitted her to come in again and resume her duties there as a mother

and a wife, she tells him that she had a great deal of trouble and fuss in getting away from Wiltshire, and that Wiltshire had threatened that he would come down and take her away from him again, or kill Giddings. And we will prove to you, in that connection, gentlemen, by some of the best gentlemen of Fayette County, of Washington Court House, that he made and reiterated these threats before leaving town there, that he had as much right to that woman as Dan Giddings, and that he was coming down here to take her away from him, or take his life; that he would see whose hide would hold the most bullets; that he proposed to take her away from him. We will show you in testimony, that he said that just before starting on that fatal Saturday morning, on the day on which he lost his life—his unworthy life. On Thursday evening the defendant went to a neighbor by the name of Blair and borrowed of him a pistol, the pistol with which, in all probability, the homicide was committed. He said to Blair when borrowing the pistol—and that I think the testimony of the State will disclose, for I am assuming that they will put upon the stand the witnesses they had in the preliminary examination—"I am going to take a trip to-morrow." I don't know whether he said to Washington Court House or not, but "I am going to take a trip to-morrow and want to protect myself." That is how he came in possession of the pistol which he had and which was surrendered to the officer. On that Friday morning he came to town with his wagon, which he left at Mrs. LaBeau's and they went to Washington Court House for the purpose of getting those goods, which they did. They returned on Friday evening, saw nothing of Wilsthire during the day, but heard of the threats that he had made. They came home Friday evening. The next morning Dan Giddings—I want you to bear these facts in mind as reflecting very much upon his intention and upon what is claimed by the State to be the element of premeditation and deliberation in this case, came to town and went to see Mr. Lindley, a real estate agent here, for the purpose of getting him to sell his litttle farm with a view of moving from this town, going West, or somewhere, and taking his family and children to some place where the disgrace they have suffered and undergone should not be known, where he might bring his children up in a proper manner, and where his wife might be free from the temptations that had surrounded her and seduced her from the path of virtue and duty. He started from Mr. Lindley's and came down here to some point on Paint street to take his dinner; came back to see Mr. Lindley again

about something further, about some other trade they had talked of, but I don't know just what one at this time; left, and in going down to cross Paint Creek bridge, on the way to where he lived, he stepped into Adler's saloon, the one which you first examined on Tuesday, to get a drink. Mr. Wiltshire was in there. Daniel Giddings knew nothing about his being in there, and nothing of his having come down from Washington Court House, at all. Wiltshire was not in a state of intoxication, as the prosecutor would have you believe. Wiltshire was in there standing over by the billiard table, and he walked up to the counter. Giddings didn't see him at first, but Wiltshire walked up to the counter and said, "How are you, Dan?" Dan responded, "How are you, Ben?" and they drank together. Wiltshire said, "Dan, I've got something I want to talk to you about." Giddings said, "Ben, I want to talk to you, too." Wiltshire said, "All right; let us walk on the outside if you have got anything to say to me." Saying which he led the way out of the door as Mr. Adler will testify, and as Mr. Giddings will testify. When they got out on the pavement Wiltshire said, "I know of a saloon down here where if you have got anything to say to me, you can talk to me better than here." They walked down street. Whether they went straight from there down on Paint street and to Struble's saloon where they afterward were, I don't know, but when they got down on the cross street, which one I don't know, but running from Paint to Mulberry, they turned down that street and when they got to Struble's saloon, Wiltshire said, "Let us go and take a drink." They started in, and the testimony of Mr. Struble will be had as to occurrences in there. Wiltshire said to Giddings, "What will you take?" Giddings answered, "I will take blackberry wine." My recollection is that Wiltshire called for whisky. Having drank the whisky he stepped over to the end of the counter where a bit of Limburger cheese was left and got to smelling of it, and it turned his stomach and he vomited and Struble got very mad and ordered him out. He said, "You better get out." They walked out. When they got to the street below, where they could turn up and come up to Paint street again and come directly across, Giddings started to turn to come up that way, but Wiltshire said, "No let us go down here. I know a road where we can cut across the field to the bridge and there is a place down there under the shade trees on the bank of the creek where you can talk to me and say what you have to say." Now the prosecutor said to you that they went on down until they passed

that slaughter house, and that Joseph Seeburger, one of the witnesses, there saw Giddings in the lead. Joseph Seeburger will testify, if he testifies as he has done before, that Wiltshire was in the lead and Giddings following when they passed him ; that they went down the hillside, that they crossed this little run, called Honey Creek, and Seeburger will testify that when Wiltshire got to the logs and sat down, he was some fifteen or twenty feet a head of Giddings.

Mr. Pickens will testify that his recollection is that as they were crossing the cornfield, Giddings was in the lead. They had to pass this man Pickens who was plowing in the field. Both of the men knew the man and he knew both of them. They had to pass this man.

Now this man's wife, as I told you, had come home. She had made all these promises of reformation and of attending to her duty, of remaining there and taking charge of the children. Ben Wiltshire, when he saw Daniel Giddings come into Adler's saloon in the manner that he did, saying, "How do you do, Dan ?" gave no evidence of putting into execution the threats that he had theretofore made. Daniel Giddings, at that time, as we will show, thought, "Now I will prevail upon Ben Wiltshire not to interfere any more with my domestic relations. If I can do so, all well and good." Now mark how he had repressed the natural instinct to have executed justice himself upon that man before he had determined to do what he conceived to be a much higher duty as a man and father ; and his object in talking to him, or requesting to talk to him, was to ask him not to interfere further with his domestic relations. Now Ben Wiltshire went and sat down on one of the logs, my recollection is the rear one, but I have forgotten which, and he said as he threw his hat down, "Now, by God, what do you want to say ?" Giddings said to him, in substance, this—I can not give the exact words, and it is not necessary : "Ben, you know Mary has come back home now. She has been forgiven on account of the children and she has promised that she will fulfill her duty as wife and mother in the future ; that she will not go astray. You know you have great influence over her. Now I beg of you for my sake, for the sake of my family and my children to promise me that you will not come down and further interfere with my domestic relations." At that Ben Wiltshire jumped up and said, "By God, I have as much right to her as you have and I will take her from you, or kill you." Then putting, or endeavoring to put into execution at that moment what he had threatened to do before he left Washington Court House,

as he spoke he made a motion, throwing his hand back in this direction (counsel illustrating) as if in search of his weapon. At that moment Dan Giddings saw him. We say if there is truth in that and if he had made the threats, that that circumstance, coupled with his action in this instance, gave Daniel Giddings reason to apprehend loss of life, or severe bodily harm at the hands of Ben Wiltshire; and we say further, that at that moment or at that time this defendant knew nothing, but instinctively drew his revolver and shot. During this period of two or three weeks preceding the homicide, we will show that this man's mind was utterly crazed; that he slept none, lost his appetite, which we will show are among the most prominent causes producing emotional insanity. He would walk the floor all night nearly, wringing his hands and moaning, and when he would lie down for a moment he would be moaning, or crying so that he could be heard all over his house. We will show you by one of the night watchmen, or policemen of this town, that he saw him and had a conversation with him at a late hour of night, about 2 or 3 o'clock, and that he then thought him crazed. And we will show you that his father went absolutely crazy from trouble and anxiety and business cares; that his mind was utterly destroyed, and he suddenly lay down on his bed where he became and remained unconscious until the time of his death; and that that insanity was brought on wholly by reason of business troubles, cares and anxiety. We will show you, also, by proper testimony that this anxiety and this great loss of sleep tends to the utter overthrow and destruction of the intellectual faculties, and that it puts the mind in such a condition that any sudden shock to the emotions will utterly topple over, or put for a time in abeyance, the operation of the intellectual faculties, placing them in subordination to the emotions, so that they are incapable of appreciating or making choice between right and wrong, between good and evil, between propriety and impropriety, and that the man acts from an overpowering impulse that utterly destroys, for the time being, and obliterates the will so that he is not a responsible or accountable human being at the time of the commission of the act of violence. And all these circumstances show that he was hoping and expecting that his prayer to that man would be yielded to. He asked him in the interest of humanity and of his family, in consideration of his family and his children, and he was hoping and expecting that his prayer to this man would be regarded, and that he would promise not to interfere more with his domestic rela-

tions; that he would not persist in further attempts to destroy and blot out the peace and happiness which clustered around his fireside, and the sudden blasting of that hope by the action of Ben Wiltshire in jumping up and saying, "I will have her or take your life," coming in connection with the circumstance of the condition of his mind, his mind being all overwrought and worked upon by anxiety and sleeplessness and watching, with that hereditary predisposition, which rendered him more susceptible to sudden emotional shock, caused him to loose all control of his mental faculties and the power of choosing; and when this shock did come in that way it was like the match to the powder and utterly obliterated, for the time being, the power of will, that power which makes the choice, that power of will which determines whether or not the choice shall be executed.

Upon all of these facts, in the interest of the law of this land, in the interest of this community, in the interest of domestic peace and domestic purity and domestic happiness, in the interest of all that and in the name of right, of justice and of God, we shall demand at your hands, upon the testimony disclosed before you, and the charge which the Court will give you, that the defendant, Daniel Giddings, go hence acquit without day.

TESTIMONY FOR THE STATE.

THOMAS McD. PICKENS, called for the State, being duly sworn, testified as follows:

Direct examination by Mr. Bitzer.

Q. Where do you live, Mr. Pickens? A. I live in Concord Township now, and have been living there for about—a little over two weeks.

Q. Where were you living on the 5th day of August last? A. I lived over here at Mrs. Patton's—the Widow Patton's.

Q. What were you doing there? A. Working on the farm.

Q. Where were you working on the 5th day of August last? A. I was working just below Paint Creek bridge. The field there belongs to an old gentleman by the name of Kendrick.

Q. On which side of the Massieville pike was that field? A. It is on the left going down.

Q. That is, on the east side, is it? A. Yes, sir.

Q. What were you doing there? A. I was plowing.

Q. Plowing what? A. Corn.

Q. Well, you may state whether you saw any persons cross the field in the afternoon and who they were? Just tell what you saw there. A. I seen Benjamin Wiltshire and the gentleman by the name of Daniel Giddings come in the field there from Mulberry street, I suppose, I could not tell where they come from. I saw them come in from Honey Creek, the old millrace, and come in the field there, just as I got out to the lower end of where I was plowing.

Q. From the direction of Hunn's slaughter house? A. Yes, sir.

Q. What hour of the day was that? A. Well, it was, I think, between 2 and 3 o'clock. I could not state exactly what time. It might have been about 3, or somewhere near there. I could not tell.

Q. Are you acquainted with Daniel Giddings? A. No, sir; I have seen him a few times; I am not acquainted with him; I never spoke to the man in my life.

Q. How often had you seen him before the 5th day of August last? A. Well, I declare I could not tell. I suppose, may be, two or three times.

Q. Were you acquainted with Benjamin Wiltshire? A. Yes, sir.

Q. How long had you known him? A. Well, I had known him for ten or eleven years, I guess.

Q. And you say they came down across the old bed, there? A. Yes, sir; across the old millrace, there. They came into the field; the first I seen they came right in the field. There is willows and things grows up there. I didn't notice them until they got in the field. They come into the field just as I plowed out to the end.

Q. Well, which of the two was ahead? Well, I think Mr. Giddings was ahead, if I ain't mistaken.

Q. Daniel Giddings was ahead? A. Yes, sir.

Q. How was Daniel Giddings dressed that day? A. Well, that is something I could hardly answer. He had a sort of a dark coat; I can't tell, I think very likely it was a jeans coat. I did not notice his coat.

Q. By the Court.—As you plowed out to the end did they come into the field east or west of you? A. They was east of me.

Q. By Mr. Bitzer.—What kind of clothes did Benjamin Wiltshire have on? A. I think he had on a kind of a light suit—light coat. I did not notice their clothes particularly.

Q. He had on a kind of a light coat? A. Yes, sir; I think he had on a kind of a light coat, and, I think, a straw hat.

Q. How far ahead was one of the other? A. Oh, only a step or two; a step or so, walking along so that one would hardly notice the difference walking along together. One was a little ahead of the other.

Q. At what point in the field was you at the time they came across the bed there, when Daniel Giddings and Benjamin Wiltshire came out? A. I was at the east end.

Q. At the east end of the field? A. At the east end of where I was plowing. I was not at the east end of the field, because a thoroughfare runs across there. I was at the east end of the rows that I plowed, to the thoroughfare washed across there.

Q. Now, how far were you from those two persons at that time when you firt saw them? A. Well, I suppose when I first saw them I was about ten steps; I don't think over ten steps.

Q. How high was the corn at that place? A. Well, the corn was very small there. I think it was the third planting that was there.

Q. How was it all over the field, and between you and those two logs up there where the body was afterward found? A. Well, there was some of it ran from, I suppose, six inches high up to as high as my shoulders.

Q. As high as your shoulders? A. Yes, sir; may be not quite that high; I could not say for sure, but somewhere near that high, I suppose. There is a little strip there somewhere went as high as my shoulders.

Q. Just go on and state what else you saw. A. Well, I noticed the two men as they came in the field and seen them go past, and Wiltshire turned

around once, like he was going to speak, but didn't, and I come pretty near halloing at him and asking him what he was doing down there, but I didn't; and I noticed them, I suppose, until they got may be half way across the field to the log.

Q. You followed them with your eye? A. Noticed them, yes, sir, until they got near half way across the field; then I turned around and started back to the west end of the field, where I was plowing to.

Q. Now, at the time Benjamin Witshire turned around to look at you, when you thought he was going to speak, was he before or behind Daniel Giddings? A. He was a little bit behind.

Q. At that time he was behind? A. Yes, sir.

Q. When he turned around to look at you, how far had they got from the old bed? A. Well, only a few steps.

Q. Now, I will ask you whether or not there is a pathway leading across the field where you were plowing to the point that they were going to? A. No, sir.

Q. Is there a path leading from that point coming down from Hunn's slaughter house to any other point on the opposite side of the field? A. No, sir, none that I know of

Q. You say you followed them until the time they got about half way across the field? A. I watched them; I didn't follow them at all. I noticed them going across the field.

Q. Just state why you noticed them.

(Objected to by counsel for the defendant.)

The Court.—Well, he need not state why, but he may state anything that he observed about the parties, in their conduct and movements.

Q. By Mr. Bitzer.—You can state anything, now, Mr. Pickens, that you observed about those two men, their conduct, movements, and so forth. A. I seen nothing out of the way with the two men going acrosss the field there at all.

Q. Well you may state whether or not it was usual or unusual to see persons travel across the field there? A. Well, it was, for me, to see anybody pass across the cornfield the way they went. There was no road nor nothing there for people to pass. There was a kind of a thoroughfare washed out there, but I had never noticed anybody go across the field at all—across the way they came.

Q. Did either of the parties look around after the time that you mentioned that Wiltshire looked around? A. No, sir.

Q. Well, now, after they had got about the middle of the field—you say you watched them that far—did you see them after that at any time? A. No, sir, I didn't see either of them after that until I went over there.

Q. How? A. I didn't see either of them after that until I plowed over to the end and then went back to the other end after I heard those shots fired.

Q. What was the condition, if you can state, of the two parties as to being drunk or sober? A. Well, I didn't notice either one of them being drunk, as far as that goes. I would not take notice of either of them being tight if somebody had not told me they was tight.

Mr. Sloane.—You need not state what anybody told you. State what you saw yourself.

Q. By Mr. Bitzer.—Well, then, tell what you did. A. Well, after I noticed them half way across the field, I turned around and I plowed back to the west end of the field that I was plowing to—didn't go clear out to the pike—and just as I got out to the fence there I heard two shots fired.

Q. Out to the fence by the pike? A. It didn't run clear out to the pike. There is a fence that runs down that I was plowing to, a board fence that runs there, where a man by the name of Bill Rogers bought a lot there—runs kind of this way (witness indicating).

Q. You reached that fence before you reached the fence at the pike? A. Yes; I was plowing to that fence.

Q. Now, how far is it from where you started, where you had been observing them, to the other end of the row where you heard the two shots? You say as soon as you ceased to notice them you started to plowing? A. Yes, sir, I started through.

Q. And that when you got to the other end of the row you heard two shots fired? A. Yes, sir.

Q. What is the length of the rows? A. Well, I suppose may be two hundred yards, or one hundred and fifty or two hundred; I could not tell.

Q. What time had elapsed from the time you had begun to plow on that end of the row until you got to the other end? A. Well, I don't think it would take me over five minutes.

Q. How far is it from where you last saw Daniel Giddings and Benjamin Wiltshire to those two logs where Benjamin Wiltshire was found dead? A. Well it might be one hundred yards or one hundred and fifty yards; may be not that far; I could not say. From where I first noticed them to the logs?

Q. I mean from where you last saw them. A. Well, that is what I say; from where I last saw them to the logs may have been, I suppose, one hundred yards, or may have been one hundred and fifty yards; I could not say.

Q. Well probably you don't understand me. I mean, from where Daniel Giddings and Benjamin Wiltshire were, when you last saw them, to the logs? A. Well, that is what I say; I suppose may be it was one hundred or one hundred and fifty yards.

Q. How far is it from where you first saw them to where you last saw them? A. Well, I suppose it is two hundred yards, or, may be, a little over, I could not say; somewhere along there; that is from where I first saw them to the logs.

Q Well, you say when you got to the end of the row you heard two shots fired? A. Yes, sir.

Q. How close were those two shots together? A. Well, I suppose it was just about as quick as a man could shoot once and cock and shoot again.

Q. In what direction where you at the time you heard the shots, from where the body of Benjamin Wiltshire was found at those logs? What is the direction from the logs to where you were when you heard the shots? A. Well, it it is kind of southeast of me where I heard them.

Q. Well, you may state now what you did when you heard the shots, if anything? A. Well, after I heard the shots I jumped up on the fence and looked over in the direction I heard them, to see if I could see the parties that I had seen going across the field, but I could not. Then I jumped down off the fence and plowed back to the end where I first saw them, and got on the track of them and tracked them over in the direction that they went, and tracked them up to the bushes there, where I lost the tracks at the edge of the ground, and I looked up the rows and down the rows and I could not see a track, and I happened to look up and I seen Wiltshire's hat lying on a log, and I jumped up on the log—there was two logs there—and Wiltshire was lying between the logs. I kind of leaned over to look at Wiltshire to see if I could see any life about him, but I could not. Then I went back to my plow.

Q. Just tell how he was lying there. A. Well, he was lying with his head up the creek—west; and kind of on his right side, I think, as near as I could tell.

Q. His head was in what direction? A. His head was west.

Q. Lying on which side? A. Lying on his right side.

Q. What did you say you noticed about his being dead or alive? A. I looked down to see if I could see any life about him, but I could not.

Q. How long were you there? A. Well, I might have been there a minute; not over a minute, I don't think; I was there but a short time.

Q. Now, did you state who that person was? I didn't understand you. Did you state who that person was lying down there? A. Wiltshire.

Q. It was Benjamin Wiltshire, was it? A. Yes, sir.

Q. Was this on the 5th day of August, 1882? A. I think so.

Q. In Ross County, Ohio? A. Yes, sir.

Q. Now, when you last saw them there in the cornfield, which was ahead? A. Giddings was a little bit ahead; just a step or so; well, it was not over a step.

Q. Giddings was ahead the last time you saw them? A. Yes, sir.

Q. State whether or not they were in conversation as they were going across the field? A. I didn't notice either one of them have anything to say at all; I don't think that I heard—well, I know that I didn't hear either one of them speak a word going across the field; didn't speak to each other, that I noticed, while I was there.

Q. Now tell what you did after you saw the body there? A. Well, I went back to my plow, and come up to the depot and asked Mr. White to telephone up to Mr. Conley to come down, and he did so; and I went back to my plow until they came down; and I told Mr. White where to tell them to come to when they came down, and I seen them coming down and I went up to the gate there and told him what I thought was done; that there was a man shot down there—

Q. You need not state what you said. A. Well, they went down there, and I went down with them.

Q. Who was it that went down there? A. Well, Mr. Conley, I think, and, I didn't know the man at that time, but I think his name is Rigney, Chief of Police.

Q. Now, what time had elapsed since you saw the body until Conley and Rigney came there? A. Well, it might have been half an hour; I could not say.

Q. You may state whether or not you noticed any person in the field or around where the logs were while you were gone until Conley and Rigney came? A. No, sir, I did not.

Q. Did you go with Conley and Rigney to the logs? A. Yes, sir.

A. Well, what did you observe then when you went back? A. Well, I think Rigney got in between the logs and pulled him up, to see if he was dead, I suppose.

Q. Well, what was the condition of the body after you came back? Was it the same as when you left it, or different? A. The same.

Q. It was in the same position? A. Yes, sir.

Q. You say you think Rigney took hold of the body. Do you know what he did with it? A. He kind of pulled it up, if I ain't mistaken.

Q. Do you know what he did with it then, after he pulled it up? A. He left it lay down again, I think.

Q. That is all you noticed, is it? A. Yes, sir, that is all.

Q. Did you notice the wounds? A. I don't think I noticed the wounds until after he was carried up to the depot there.

Q. Had you seen any wounds, or any indication of wounds at the first time you went there? A. No, sir, I did not.

Q. Well, did you notice any weapon of any kind, any pistol lying around there? A. No, sir.

Q. Either the first or the second time? A. No, sir.

Q. Did you—

Mr. Sloane.—I submit that this examination is rather leading. Let him go on and tell what he saw.

Q. By Mr. Bitzer.—How long did you stay there then? A. When?

Q. When you came back with Conley and Rigney. A. I didn't stay there but a few minutes. Conley asked me to stay there until he went up after the Coroner, and I told him I wanted to finish plowing, and Rigney said he would stay.

Mr. Sloane.—You need not state the conversation there.

Q. By Mr. Bitzer.—No, you need not state what was said. You went back to plowing after awhile, did you? A. I went back to plowing.

CROSS EXAMINATION.

By Mr. Sloane.

Q. How much ground was in that field, Mr. Pickens? A. Well, I don't know; I could not tell. There may be sixteen or eighteen acres in the whole field.

Q. Is the east end of the field near that slaughter house, or does it run beyond it? A. The east end of the field—that is, the whole field?

Q. Exactly. A. That slaughter house is just about middle ways.

Q. Just about middle ways? A. Yes, sir.

Q. Then calling that stove the slaughter house, the field ran beyond it to the east? A. Yes, the field ran beyond.

Q. You were plowing at the time, I understand you to say, you saw those two men, from west to east? A. Yes, sir.

Q. Going from west to east? A. Yes, sir.

Q Well, had you passed the slaughter house at the time you saw these men? A. No, sir; I didn't pass the slaughter house at all; I didn't plow below the slaughter house. There was a thoroughfare washed out below there, and I just plowed to the thoroughfare.

Q. That thoroughfare; I want to get where it was. Was it right opposite the slaughter house, or beyond it? A. That end of it next to the slaughter house was just pretty near opposite the slaughter house; might not have been quite opposite the slaughter house, but pretty nearly.

Q. I mean the end that would end your plowing to the east, ending by the thoroughfare; that, you say, would be about opposite the slaughter house? A. Somewhere near; may not run down quite as far as the slaughter house.

Q. How far were you from the end of the row when you first saw those two men? A. I was right at the end, in the row; that is, where I plowed to.

Q. Had you turned around yet to start west? A. No. sir.

Q. And when you first saw them you saw them as if looking behind you? A. Sir?

Q. When you first saw them were they a little behind and to the left of you? A. They come up kind of in front of me. I was plowing east, and they come out kind of before me, as I come up to the end.

Q. But you say you were at the end when you first saw the men? A. I say I come out to the end just as they come into the field.

Q. Well, now, I want to know where they were with reference to you? behind, or to the left or in front of you? A. They come out in front of me, I say, as I come out to the end of the row.

Q. You need not get mad about it. A. I am not mad about it. I want you to understand it.

Q. That is what I want, to understand it, and to have the jury understand it. Now, they crossed what you call the race; old millrace? A. I didn't see them there as they crossed the race, at all; don't claim to have seen them cross the race.

Q. Well, when did you see them in the field? A. Come right into the edge of the cornfield as I went out to the end.

Q. Please tell us where they come in, with reference to the slaughter house? A. They come right in from the slaughter house.

Q. Right opposite the slaughter house? Yes, sir, I suppose, about.

Q. What is the character of the ground there, as you cross the fence from the street opposite the slaughter house? Do you know that, at that time, where you come off from Mulberry street into the field opposite the slaugh-

ter house? A. Well, there is willows grow up along the race there, on both sides, I think.

Q. There is brushwood grows up along the hillside, too, is there not? A. Yes, sir.

Q. There is a very steep declivity, coming from the top of the hill? A. Yes, sir; there is a kind of bank, I think, coming down into the race.

Q. They were on that bank when you saw them? A. No, sir; I didn't see them on the bank; I didn't see them until they came in the field where I was plowing.

Q. That was after they crossed the race? A. Yes, sir.

Q. By "the field" you mean just that portion that was cultivated, and not that which was within the fence? A. Yes, sir.

Q. How far had they gotten into the field from the race at the time you saw them? A. Well, they might have been five or six steps from the race when I first saw them. The willows there grow up, and I don't work clear out to the race.

Q. So you have said. When you say "they might have been," do you mean to say that is what you think was the distance, about five or six steps? A. Yes, five or six steps.

Q. Had they gotten into what you call the plowed ground when you first saw them; where the corn was? A. Yes, sir.

Q. About how far were they from you? A. Well, I suppose they was about ten steps from me when they first came in the field.

Q. About ten steps from you, and rather in front of you? Yes, sir.

Q. And you were plowing in corn. you say about how high? A. Well, the corn along there run up from a foot high up as high as my waist.

Q. It was not so high but what you could get a full view of them along there? A. Yes, sir.

Q. And you were about ten feet, or ten steps? A. About ten steps, I suppose.

Q. And they were to your left, were they, rather in front of you and to your left; were not directly in front of you? A. Well, they might have been been bearing a little to the left when they came into the field, when I first noticed.

Q. When they passed you, of course they would pass you directly in front of you, to the east of you? A. Yes, sir.

Q. What direction were they bearing; directly south, or southwest? A. Well, they was, I think, bearing directly south.

Q. Going right straight? Now, did your rows, when they run out there, run out right square, stop at that thoroughfare, or did it run in an angling direction? A. Oh, my rows stopped there.

Q. This thoroughfare at which you say your rows stopped, did that run in an angling direction or right straight across? A. Well, run angling across.

Q. Rather from northwest to southeast? A. Yes, sir.

Q. So that one row would be long, and the next row would be a little longer than the one you plowed before? A. Yes, sir.

Q. And when they passed directly in front of you, up directly at the east of where you were plowing, how far would they be right in front of you? A. Well, I supppose about ten steps.

Q. Can you point out the distance to any person in the court room? A. Sir?

Q. How much further were they than from here to the railing there? A. Well, it was not very much further than that; may be a little further, when they first came in.

Q. Well, pretty nearly that distance? A. Yes, sir; pretty nearly that distance.

Q. And they were not any further or any nearer when they passed directly in front of you, going south? A. No, not much, if any.

Q. From the time you first saw them until you lost sight of them, how far did they walk? A. How far had they passed?

Q. Yes, sir. A. Well, I suppose, may be, a hundred yards.

Q. What distance is it from that old millrace, as you call it, directly south to those logs? Did you ever measure it? A. No, sir.

Q. Ever step it? A. No, sir. I could not tell. May be two hundred yards, and it it may be two hundred and fifty yards; I could not tell; guessing at it.

Q. I want simply your opinion about it; I don't expect it exactly. A. Well, I suppose about that distance; may be two hundred or two hundred and fifty yards.

Q. You saw them go about a hundred yards? A. Yes, sir; I suppose about one hundred yards.

Q. And then you turned, after you watched them that distance, about one hundred yards, you turned your plow around and started back? A. Yes, sir.

Q. You were plowing corn? A. Yes, sir.

Q. By the Court.—You say they passed between you and the east end of the rows, or between you and the west end of the rows, as they passed? A. They was between me and the east end.

Q. I understand you now, you were plowing east, and they passed on? A. Yes, sir.

Q. Consequently, you would have to plow to the east end of the row and turn around before you could see them again after you had plowed beyond them? You plowed on to the east end of the row and then turned? A. I did, yes, sir.

Q. Then, if you were at the east end of the row, did they pass beyond the east end of the row? Were they beyond the east end of the row when you saw them? A. They was on the other side of the thoroughfare, and I plowed out to the thoroughfare, and they come in on the other side of the thoroughfare, about ten steps from me.

Q. By Mr. Sloane.—And you watched them until they walked across the field for a distance of about one hundred yards? A. Yes, sir.

Q. Then you turned your gaze away from them and turned the plow around and started to plow back? A. Yes, sir.

Q. You were plowing corn, as you have said, with a double shovel plow and a single horse? A. Yes, sir; I was plowing with a single horse and a single shovel plow.

Q. How long was that row that you plowed back in, from the point where you started, where you had seen these men, to the point where you quit? A. How long was the row?

Q. Yes, sir. I believe you stated about two hundred yards? A. Might be about two hundred yards; I could not say; might have been.

Q. Well, you plowed along there; you didn't turn and look back any further? A. No, sir.

Q. You came to the end of the row, did you? A. Yes, sir.

Q. What did you do when you got to the end of the row? A. I heard the two shots fired.

Q. You then heard the two shots fired, and you—— A. I jumped up on the fence.

Q. You jumped up on the fence and looked over, but could see nobody? A. Yes, sir.

Q. And the shots were fired (here counsel snapped his thumb and finger twice in quick succession) just that way; cocked as quick as he could, as you stated, as quick as a man could fire his pistol and cock and fire again? A. I suppose so; yes, sir.

Q. And you then went over to the place? A. Yes, sir; I plowed back to the end where I first saw them, and got on the track of them and tracked them.

Q. That ground there across the field is gravelly, a great portion of it, is it not? A. Yes; along in the way they went across there is a strip of gravel washed down in; appears to be a bed of gravel.

Q. You could find soft soil at places, and you could find their tracks in soft places? A. I had just plowed that field there a few days before, and it was all fresh ground.

Q. So there would be no trouble about ascertaining their tracks? A. No, sir.

Q. When you got to the logs—— I want to ask you something; you testified in the preliminary examination before Mayor Hirst? A. Yes, sir.

Q. There was a beaten place, as if beaten by treading of feet, right in front of those logs, was not there, at the time? A. There is a kind of path along the logs.

Q. No grass or verdure there at all; beaten, flat ground right in front of those logs? A. Yes, sir.

Q. In the front of those two logs were saplings growing up? A. Yes, saplings; a little elm there, but I don't know what the other is; I never noticed.

Q. And were in full leaf at that time? A. Yes, sir.

Q. There is a space between the two logs how great; the space in which Wiltshire's body lay? A. Well, I suppoee where Wiltshire was laying was, may be, two feet; I could not say what distance exactly; about two feet.

Q. Nearer three feet is it not? A. I could not say that; I never noticed that.

Q. Well, from two to three feet? A. from two to three feet where Wiltshire was lying.

Q. Those logs lie nearly parallel with the creek? A. They don't lie exactly parallel with the creek.

Q. Well their general direction as they lie is east and west? A. Yes, sir.

Q. And the general direction of the creek is east and west? A. Yes, sir.

Q. About how far from the bank of the creek were the logs? A. Right smart distance from the creek. I could not tell exactly; I never noticed. It may be thirty or forty yards to the creek.

Q. Well that is further than the length of the room here, is it? A. Yes, sir. I could not say about that.

Q. The hind log—I mean by that, the one nearer the creek—is higher up than the one in front of it? A. Yes, sir; I think it is; I think it is a larger log.

Q. Around it to the left, that is toward the bridge, and behind the little saplings and other log, there is a large amount of drift stuff? A. Between the logs and the creek is a big lot of drift wood.

Q. Runs along the creek; there is a whole big lot of it? A. Yes, sir.

Q. You say you have known Wiltshire for some ten or eleven years? A. Yes, sir; I think so.

Q. You had seen Giddings three or four times before? A. Yes, sir.

Q. You had known him here about town? A. Who?

Q. Wiltshire. A. Yes, sir; I had known him around here. He worked there for a man by the name of Patton, right on the adjoining farm to where I worked, and he worked there for a year or two years, I don't recollect which.

Q. That field belongs to a man named Kendrick, I believe you stated? A. Yes, sir; where I was plowing.

Q. And lies right adjoining Widow Patton's farm? A. No, sir; the creek lies between it and Cook's farm. It don't join Widow Patton's farm, at all.

Q. You say Wiltshire worked on a farm close to it? A. He worked on a farm there, and I worked on Widow Patton's farm.

Q. You say you had seen Giddings three or four times before. Where? A. Well, I had seen him pass along the pike. The first time I seen him I seen him with William Wiltshire.

Q. William Wiltshire, a brother of the deceased? A. Yes, sir.

Q. You saw him there? A. Yes, sir.

Q. Did you meet him and was introduced to him there? A. No, sir; I never was introduced at all. He was then there standing with me.

Q. Did you ever have any conversation with Mr. Giddings? A. No, sir.
Q. But you saw him there and learned who he was? Yes, sir.
Q. In speaking of the fact that one was ahead of the other, I believe you stated that it was not more than a step, you said? A. A step or so.
Q. Just as men would be walking along, and one showed a little bit ahead of the other? A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Bitzer.

Q. At the time you first saw Wiltshire and Giddings in the field, were you east or west from them? A. I was west from them.
Q. What is the direction from the point where you first saw them come into the field, to the bridge. A. Well, it would be kind of southwest.
Q. What kind of soil is it in front of those logs where Benjamin Wiltshire was found dead? A. Well, it is a kind of black soil; sandy; kind of a sandy soil.
Q. What was there south of those logs there, besides driftwood, if anything? A. Well, mostly what is in there is drift stuff—logs and rails, and may be cornstalks, and whole shocks of fodder in there, and brush, and one stuff and another.
Q. Brush, is there? A. Some brush; I think there is, likely.

JAMES CONLEY called.

Direct examination by Mr. Bitzer.

Q. Mr. Conley, where do you live? A. Chillicothe.
Q. What is your official position? A. City Marshal.
Q. What was your official position on the 5th of August, 1882? A. I was City Marshal at that time.
Q. You may state whether or not you were called on the 5th day of August to Paint Creek? A. Yes, sir; I got a telephone at the Mayor's office from Mr. White, the ticket agent of the Narrow Gauge, to come down, that he wanted an officer down there, and I went down with Mr. Rigney and asked what was wanted, and he said there was a man in the cornfield——
Q. You need not state that. A. Well, he said they would want me over in the cornfield. I went down and met Mr. Pickens in the cornfield.
Q. Where did you meet Pickens? A. Right in this end of the cornfield, next to the pike—the northwest end; and he told me that he believed a man was murdered, and I asked why——
Q. Well, you need not state the conversation. You went on through the field, did you? A. Yes, sir.
Q. Where did you go? A. I went across to where he said there was a couple of pistol shots fired, and when I reached the log, I saw a man lying down between the logs.
Q. Where was that? A. Next to the creek.
Q. How far from the creek? A. Well, I suppose about thirty or forty or fifty feet, may be.
Q. What is the character of the ground between the logs and the creek? A. Well, it is growed up with cottonwoods. and brush, and one stuff and another.
Q. Just state what you saw there. A. Rigney got hold of him by the collar and pulled him up. I got hold of his hand. He was lying with his hand up on his shoulder.
Q. Who got there to the logs first? A. Me, and Pickens and Rigney got there about the same time.

Q. What was the position of the body when you got there? A. Lying down this way, with his legs drawed up in that way (witness illustrating).

Q. On which side was he lying? A. Lying on his right side.

Q. With his head in which direction? A. Toward the creek bridge; west.

Q. Who was it? A. Benjamin Wiltshire.

Q. Well, was he dead or living when you got there? A. He was dead. Rigney pulled him up and turned him over and I got hold of his hand.

Q. Turned him over—how? A. Just pulled him right over on his back.

Q. Did he change the position of the body any? A. Yes, sir.

Q. After he moved him, what direction was his head? A. It was east, then.

Q. You may state, if you noticed any wounds on his person, where they were. A. One was in his ear and one in his breast, but I didn't notice the breast. The breast was full of blood. I didn't notice the bullet hole, but told Rigney I thought he was shot in the breast.

Q. Did you notice the size of the hole? A. No, sir; there was so much blood about it I could not tell—in his ear—but I didn't notice any hole in his breast at all, there was so much blood.

Q. After the body was changed, what then? A. Well, I went up to the Narrow Gauge Depot and telephoned up to the Coroner to come down.

Q. How long were you there? A. About five minutes.

Q. Did you leave Rigney with the body? A. I left Rigney and Pickens both with the body.

Q. Did you go back any more? A. I did not.

Q. Did you see the body any more then? A. No, sir.

Q. What time was it when you first went there? A. Well, I suppose it was about half past 2; along between 2 or 3 o'clock, sometime.

Q. What time was it when you first got the message? A. Well, it was just about 2 o'clock, I guess. We went down as soon as we got the message.

Q. What kind of clothes did Wiltshire have on then? A. Kind of butternut suit.

Q. Was there any search made of his person while you were there? A. No, sir.

Q. Was it dark or light butternut? A. Well, I think it was kind of a—— it was not very dark or very light, betwixt and between; a light brown suit, I think.

At this point, counsel for defendant asked that William Wiltshire, the prosecuting witness, be brought under the rule excluding witnesses from the court room. Motion overruled. To which counsel for defendant excepted.

Q. Have you named all the persons that were present there at those logs while you were there? A. Yes, sir.

CROSS EXAMINATION.

By Mr. Sloane.

Q. You say butternut brown was the color of his clothes; how does it compare with the color of your gloves there; like that? A. Yes, sir; I think so.

Q. Just let the jury see about the color of your glove. (Witness exhibits gloves to the jury.)

Q. By Col. Gilmour.—You will not be here and Mr. Sloane will. How does it compare with the color of Mr. Sloane's coat, for instance? A. I didn't stop to take much note. Looked something like Mr. Wiltshire's clothes there, I thought. (Witness referring to William Wiltshire, prosecuting witness.)

SOLOMON KEMMERY called.

Direct examination by Mr. Bitzer.

Q. Mr. Kemmery you live in Chillicothe? A. Yes, sir.

Q. Were you at Paint Creek on the afternoon of the 5th of August? A. Yes, sir.

Q. Near the Massieville pike? What were you there for? A. Well, I heard the news of this man being killed.

Q. What time in the day? A. About 2 o'clock.

Q. Of the 5th of August, 1882? A. Yes, sir.

Q. Well, then, what did you do? A. Well, I went—— I was out with the wagon, and I went out with Mr. Long, and when I got down there he told me about it. First I drove on down there, and Mr. Denig, the Coroner, was on the road. We overtook him and they told what was the matter. Then we got down there to the station and asked where he was, and they told us, and we then went over into the island there, and when we got there we met Mr. Rigney, I think.

Q. What do you mean by the island? A. On the left hand side of the pike, there by the bridge. We went over to the bridge and went down to the island.

Q. Close to Hunn's slaughter house, there? A. Well, it is off to the right from Hunn's slaughter house; and when I got there I found Tim. Wood, a colored man, standing up on the log, and then I got on to the small log and I found that the man was lying there. I asked Wood who it was and he said he did not know.

Mr. Sloane.—You need not state the conversation between you and him.

The Witness.—I then turned his face over a little and I seen who it was.

Mr. Bitzer.—Was anybody else besides Wood there when you got there? A. I don't think there was, at that time.

Q. What was the position of the body when you got there? A. Well, he lay with his head toward the east, a bit over on his side.

Q. Which side? A. On his left side.

Q. Did you notice the wounds at that time? A. Yes; I pulled him over a little and found that there was one wound in the left breast and one in the right ear.

Q. What was the size of the aperture? A. Well, I could not tell that in the ear.

Q. Well, what was the size of it in the breast? A. Well, you could not tell much about it. The shirt where the ball went in was burned considerably with powder; black.

Q. Well, did you notice anything else? A. Well, on the log where I suppose they had been sitting, and I examined his feet——

Mr. Bitzer.—Never mind what you supposed.

A. Well, I seen that Wiltshire had mud on his feet, and the same kind of mud was on the small log and right over where the mud was, right opposite on the big log, the drops of blood commenced; and it was just two feet from the big drop of blood to the small one. They kept getting smaller.

Q. Well, suppose he had been sitting on the log where you supposed he had, on which side of that person was the blood? A. On his right hand side.

Q. Which direction would that be? A. That would be east.

Q. How far east of the person did these drops of blood begin? A. From where this mud was, on the log?

Q. No; from where that person would be sitting—*supposed* to be sitting. A. Within two feet from the larger drop to the smaller drop.

Q. Was the big drop first? A. Yes, sir; tolerably large drop first, then they were smaller and smaller.

Q. Suppose the person to be sitting as you have described, how far from him was the big drop to his right? A. May be three or four inches.

Q. Now how far along did those drops of blood extend east? A. Two feet. I measured it. Two feet.

Q. And it got smaller until the other end, did it? A. Yes, sir; toward the east. The shot was right in this smaller part, right down here in the ear (witness indicating).

Q. What was the distance between the drops? A. Perhaps an inch or such a matter.

Q. In what direction on the log did it extend; exactly on top of the log? A. A little off to the north.

Q. That would be toward the slaughter house? A. The larger log lay just about in this direction (witness illustrating), and the smaller log was laying right in front of it not quite two feet, or two feet and a half from it.

Q. Was the big log south or north of the little log? A. It was south of the small log.

Q. Now, do I understand you to say then that these drops of blood extend a little in a northerly direction? A. Well, yes; in that direction.

Objected to by counsel as leading.

Q. Well, in what direction did they extend? A. Well, a little to the north. The log lay a little bit to the south.

Q. Would that be toward the small log or toward Paint Creek? A. Toward the small log; and he laid right between the large one and the small one, and over the wound right side of his head there was a splotch of blood about that large (witness indicating), where he apparently fell up agin the big log.

Q. Where was that? A. That was on the big log, about half way down.

Q. How near were those drops of blood you have described to that splotch? A. Nearly opposite to the big drop.

Q. That is; down inside? A. Yes, sir.

Q. Now just describe that spot there as near as you can? A. Well, it was just as if something had rubbed blood right down and smeared it on the log.

Q. What was the width of it? A. About the size of my hand.

Q. What was the length of it? A. Just about the size of my hand.

Q. How near to the big drop of blood? A. Well, the large drops of blood was right on top of the log; I think it was right down on the inside of the log.

Q. What was the distance? A. Well, the log is between three and four feet high, and then it was about half way down, just at the bulge of the log, right below the big drop.

Q. Now, how was the head of Benjamin Wiltshire in reference the spot on the log when you saw him? A. Well, the head was lying about three feet from the splotch.

Q. East or west? A. East.

Q. About three feet east? A. Yes, sir; right at his feet there was one of those little hackberries standing, and the limbs extended over the log, and the leaves had been pulled off; a good many of them had been pulled off and little switches had been laying down below.

Q. Where abouts? A. Right where the feet lay.

Q. At that time you saw him? A. Yes, sir.

Q. Do you know who pulled them off? A. No, sir, I don't know; but they was pulled off by some one right there fresh, right about where he sat.

Q. How long were you there? A. Well, I was there some little while. They was waiting for some other ones to come and help carry him away. The doctor wanted to have him carried up to the station.

Q. Who came while you were there? A. Well there was Pete Carmel and this man down here below the Narrow Guage Depot—young man there that keeps saloon, I forget his name now, Jack something, Jack Curtis.

Q. Those two men came while you were there; anybody else? A. Noah Clark, a colored man came there. He helped carry him away.

Q. When did the Coroner come? A. The Coroner clumb over the fence at the same time I did, and I helped him down the bank, and then we went

over from there and I went faster than he did, and he came directly after I did.

Q. Was there another colored boy came did you say? A. Noah Clark; he helped to carry him away. There was six of us.

Q. Was he dead or alive at that time? A. He was dead.

Q. Was there any search made of Benjamin Wiltshire's person while you were there? A. Well, we was going to carry him up, and the order was to carry him up, and I told him he better examine his pockets for fear there would be something in that might drop out.

Q. You need not state what was said, state what was done? A. Dr. Denig then searched his pockets and found some money.

Q. Searched his pockets right there? A. Yes, sir.

Q. Did he search all his pockets? A. I don't recollect whether he did or not.

Q. What did they find on his person? A. Found some money and found his watch.

Q. Where was Wiltshire taken? A. Taken to the Station at the Narrow Guage Depot.

Q. You went there did you? A. Yes, sir.

Q. Where was he taken from the station? A. He was taken to Finley's.

Q. Were you present? A. No, sir; I didn't help to carry him over, I helped to carry him to the station.

CROSS EXAMINATION.

By Mr. Sloane.

Q. How high from the ground was this front log? A. The largest log was lying on some drift wood and I suppose, was between three and four feet high.

Q. Was not that a larger log than the one in front? A. Yes, sir.

Q. May be I don't understand what you mean by the front log? A. Next the creek is the larger log; the one this way is the smaller.

Q. How large is the one north? A. Perhaps a foot and a half.

Q. And the other, you think, was between three and four feet? A. Between three and four. I don't think it is four.

Q. And the blood you have mentioned was upon the big log? A. Yes, sir.

Q. That log lies nearly east and west? A. The far end lies a little south.

Q. So that log was lying a little in that direction (counsel indicating)? A. Yes, sir.

Q. So what you call the big drops of blood, were on top of that log? A. Yes, sir.

Q. Then ran along, did they? A. Ran along northeast, as though the big drops commenced here and ran out this way (witness indicating).

Q. Just commenced on the further end of the big log? A. No, sir; about mid way and ran toward the end.

Q. Where did his head lie? A. His head lay, I should suppose, about two feet and a half, or three feet from that big splotch.

Q. In what direction, east, or west? A. His head lay east.

Q. When you found him did his head lie east? A. He laid about in that position (witness illustrating with a cane on the floor).

Q. Take the point of the bridge; did his head lay toward, or from it? A. His head lay east.

Q. When you first saw him his head lay east? A. Yes, sir.

Q. And he was rather on his left side? A. Yes, sir; a little further round.

Q. And his legs kind of drawn? A. Straight out.

Q. And you pulled him over? A. I simply pulled his body over to see who he was.

Q. And did the body go back into the condition in which you found it? A. Yes, sir; he was lying in a kind of smooth place.

Q. Now then, his head, if I recollect you, lying to the east was about two feet from where the small drops ceased; where the blood ceased on the log? A. I think about two feet, perhaps. The smaller drops stopped just about mid way of his body.

Q. That is to say the last small drops would be about to that point on his body? A. Just about.

Q. And his head would be the length of his body from that point. A. Just about.

Q. Whereabouts was this big splotch of blood? A. Almost opposite where those big drops commenced, and as though something had rubbed down there.

Q. Just about opposite where his head lay, and there was as though something had scraped down and rubbed the blood on the log? A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Bitzer.

Q. Mr. Kemmery, were you there before, or after Mr. Rigney came there? A. I was there afterward; Mr. Rigney was there and I met him coming away.

DENNIS RIGNEY called.

Direct examination by Mr. Bitzer.

Q. Mr. Rigney, what was your official position, if any, on the 5th of August last? A. I was Chief of Police on that day.

Q. Did you go to Paint Creek on the afternoon of the 5th of August? A. I went with Mr. Conley; yes, sir.

Q. Just state where you went and what you did after you got there, if anything. A. On that afternoon of the murder there was a telephone came up from the Narrow Gauge Depot.

Q. At what time? A. It was close on to 3 o'clock in the afternoon—calling for Mr. Conley, and I saw Mr. Conley, and he asked me if I would take a walk, and we both started down Paint street together, and went to the depot, and seen Al. White there and he directed us to this man that was plowing in the cornfield, and when we got there he took us down along there by the fence until we come close to the bridge and then we turned down toward the creek. I was in the lead and when I got to where this man was lying there, I was close to the logs. This man, I forget his name, that was plowing in the field, he says, "Here is the place."

Q. That was Mack Pickens? A. Yes, sir; that is the name. He says, "Here is the place," and we turned into the right, and then this man Wiltshire was lying between two logs there.

Q. How was he lying? A. He was lying on his right side with his head toward the bridge, and his face was toward the creek; and I reached for him and took him by the collar of the coat and turned him right over; that is, end for end, and turned him on his left side.

Q. His head was toward the bridge and you turned him from it? A. Yes, sir; I turned him so; I turned him this way (witness indicating), on his side; turned him right over on to his left side.

Q. You found him on what side? A. I found him lying on his right side and I turned him right over on to his left side; and then when I first saw him I could not see any marks, and just as I turned him over on to his left side I seen where he was shot in the right ear, by marks there.

Q. How large was the hole? A. I could not say. It seemed to me that it was right in the hole of the ear, but where the bullet went I could not say.

Q. Could you state the size of the hole? A. No, sir; I could not say. I didn't examine; and after turning him over, Mr. Conley came up and took him by the arm, this way (witness indicating), and felt his pulse and says, "I guess he is dead."

Q. What was his condition when you found him, was he alive or dead? A. He was dead, sir.

Q. Were there any other wounds beside those in the ear? A. There was a wound on the left side.

Q. How large was the hole? A. I didn't examine it; it was covered over with the shirt. I seen blood on the shirt there on the left side.

Q. Did you notice anything else? A. No, sir; I didn't notice anything else; and Mr. Conley says, "He is dead."

Q. Don't tell what was said. A. And he went up town and told me he would go up town and notify the Coroner, and I says, "All right, I will stop here until he comes."

Q. Did you stay there until the Coroner came back? A. Yes; I stayed there until he come.

Q. Who stayed until the Coroner came? A. There was quite a crowd there; who they were I could not tell; there was some of the crowd that I did know. I saw Mr. Kemmery and Mr. Long.

Q. Mr. Long came with the Coroner? A. Mr. Long? He was there before I left; I don't remember who came with him, but Mr. Long was there.

Q. Well, the Coroner came before Mr. Long did, did he not? A. I don't remember that.

Q. Well, it was Mr. Long, the Deputy Sheriff? A. Yes, sir.

Q. Did they come before or after you left? A. Yes; they came before I left.

Q. What colored clothes did Benjamin Wiltshire have on? A. It seems to me his clothes were light.

Q. How did it compare with the coat of this gentleman here? (Counsel referring to William Wiltshire.) A. Looked to me they were lighter than those. I didn't take very particular notice of his clothes, but I think his clothes were light.

Q. Who made the search of his clothing, if anybody? A. There didn't anybody search his clothes while I was there. After the Coroner came I left.

CROSS EXAMINATION.

By Mr. Sloane.

Q. You say as you first found him, Captain Rigney, he was lying on his right side with his head toward the bridge, and you were unable to see any wounds upon his body, at all? A. Yes, sir.

Q. And you were not able to see until you turned him over. His face was a little toward the creek and he was upon his right side? A. Yes, sir.

Q. And then you were able to see the wound in the ear? A. Yes, sir.

Q. And were able to see some blood upon his shirt? A. Yes, sir; I saw some blood upon his shirt.

JOHN WILLOTH called.

Direct examination by Mr. Bitzer.

Q. Mr. Willoth were you on the police force on the 5th of August, last? A. Yes, sir.

Q. Did you go to Paint Creek on the afternoon of that day? A. Yes, sir.

Q. Well, just state when you went? A. Well, I think it was about between 3 and 4 o'clock when that telephone despatch came up there to the city buildings, and I was out there on Paint street and the janitor of the city buildings came up to tell me to get a conveyance to take the Coroner down to the Narrow Gauge Depot, there was somebody killed there. And so I got a carriage and me and the coroner went down, and as we got down there to the bridge we took the field and went down there and looked and seen him.

Q. Where did you go? A. Went down to where the body laid, and I saw Rigney there and a few citizens whoever they were; I don't know who they were, and me and the Coroner searched him, kind of raised him up and searched him and—he was dead then—got a little money out of him and a pocket knife and a silver watch, and I think a half of a ticket to Washington Court House, I think it was; and that is all I recollect of.

Q. What kind of a pocket knife was it? A. A little one.

Q. Were you present when Rigney turned the body over? A. No, sir; I was not there.

Q. Were you present when the Coroner searched the body? A. Yes, sir; I held him and the coroner searched him.

Q. Did you notice what part of the clothing was searched; was it a thorough examination or was it a carless one?

Mr. Sloane. –Let him state without any leading, I object.

Mr. Bitzer.—Was it a careless examination? A. No; we searched all his coat, pants and vest pockets.

CROSS EXAMINATION.

By Mr. Sloane.

Q. What clothes had he on? A. Kind of lightish clothes.

Q. What clothes had he on; not what color? A. Well he had on summer clothes.

Q. He had a coat, had he? Yes, sir; and vest and pants.

Q. Are you certain he had a vest on? A. Yes, sir.

Q. Certain of that just as you are of anything else you have testified to? A. Yes, sir.

Q. And that you searched his coat, vest and pants pockets? A. Yes, sir.

Q. How many pockets in the vest did you search? A. Well, he had two on each side. I don't know whether any else, or not.

Q. He had two on each side, and you searched them all? A. Yes, sir.

Q. What pockets in the pants did you search? A. There were two side pockets.

Q. Certain of that? A. Yes, sir.

Q. Did the Coroner run his hands in the vest pockets? A. Yes, sir.

Q. Certain of that? A. Yes, sir.

Q. Searched the coat pockets, also? A. Yes, sir.

Q. What pockets in the coat? A. Well, I think there were four; I think he had a side pocket and an inside pocket, too. I think that is about four pockets in the coat.

Q. Didn't you swear on the direct examination that you didn't know how many pockets he had in the coat, nor how many were searched in the coat? A. Well, I think there were about three or four pockets in the coat.

Q. You saw him search every one of them? A. Yes, sir.

Q. Saw him run his hand in? A. Yes, sir.

Q. And pull out the contents? A. Yes, sir.

Q. And saw him search four pockets in the vest? A. Only three pockets in the vest.

Q. And saw him search two pockets in the pants? A. Yes, sir.
Q. You don't know anything about the hip pockets? A. No, sir.
Q. How far were the logs from the creek? A. That I could not tell exactly; I didn't notice the creek at all; didn't look for that. As soon as I got there I just took hold of the body.
Q. There was some money and a knife, and a return trip ticket to Washington Court House? A. Half of a ticket.
Q. Yes; it was a return ticket to Washington Court House on the Narrow Guage Railroad? A. Yes, sir.
Q. You don't know what distance the logs were from the creek? A. No; I could not tell that.
Q. When you and the coroner went down, you went down the stone steps and across that way? A. Yes, sir.
Q. Didn't go across the cornfield? A. No, sir.
Q. There was a worn, beaten path up there to where the logs were? A. No; it was fresh plowed.
Q. There was a path down the creek there? A. After you got away from the bridge there was a path, but close to the bridge there it was fresh plowed, I know; tore up.

DR. G. W. DENIG called.
Direct examination by Mr. Bitzer.
Q. Dr. Denig, what official position do you hold at the present time? A. Well, I hold several positions; Justice of the Peace and Coroner.
Q. Did you hold that position on the 5th of August last? A. Yes, sir.
Q. Were you called out to Paint Creek on the afternoon of that day. A. Yes, sir.
Q. Well, just state where you went and what you did. A. Well, I was called upon in my office and informed that some man had been killed down near Paint Creek, and I went right down in a carriage with two or three persons. I think Mr. Willoth was with me. I went down there to the bridge, and then we had to walk along down on Paint Creek until we came to where this place was, where he was supposed to be lying, and I found a crowd there, and pushed aside the crowd, and there was two logs lying side by side and about three feet apart. I looked over there and saw a man lying there. I got down to where he was lying and found he was dead.
Q. Did you know who it was? A. I recognized him as Ben. Wiltshire. I knew the man well. I saw blood on his shirt. I pulled his shirt aside and found a bullet hole—which I supposed to be a bullet hole, and I have seen them before—on the left breast. I immediately said, "That bullet——
Mr. Sloane.—You need not state what you said.
Mr. Bitzer.—Don't state what you said; just state what you saw, Doctor.
Q. What was the size of the wound? A. Well, it was a very small wound; a small ball; I could not tell you what kind of a ball it was, but it was a small one.
Q. Can yau state by what size ball it was made? A. No; I could not tell that.
Q. What kind of a wound was it? A. It was a bullet hole; gunshot wound, we call it; and then some one said, "He is shot in the head, too," and I turned his head over and found another bullet hole close to the auditory canal; it was no place at all to hold any examination there, so I had him carried over to the depot.
Q. What kind of a wound was that in the ear? A. A bullet hole. And I had him carried over there and looked at the wounds again, casually, and then there was no place there to hold any examination, so I had him carried to Scott Finley's.

Q. Did you make any examination of the clothes? A. Yes, sir; it was my business to go through his clothes, of course.

Q. Well, tell what you did then? A. I put my hands in his pockets and took out what money he had.

Q. What pockets? A. His pantaloons pockets and his vest pockets.

Q. Any other pockets? A. And his breast pocket

Q. Any other pockets? A. I ain't so certain about looking in his hip pockets. I don't know whether he had really any pistol pocket or anything like that, I didn't examine. He was lying in a kind of a way that I could not get my hand in there. I didn't think about that.

Q. Did he have a coat on? A. Yes, sir; he had a coat on.

Q. What was the color of the clothes that he had on? A. Well, light colored clothes.

Q. How did the color compare with the coat of this gentleman (referring to William Wiltshire)? A. Well, a good deal like his. I didn't pay much attention to the clothes. They were not dark clothes. But I knew Ben. Wiltshire and his clothes, too.

Q. Well, we are talking about the clothes that he had on that day. You say he had on light clothes? A. I say so; yes, sir.

Q. Well, then, after you took him to Scott Finley's—— A. We took him out there on a wagon and carried him into the house. I went with him from the depot in the same wagon, and when we got to Scott Finley's we took him out and laid him on a board on two chairs, and then, I had before that, telephoned Dr. Lash to come down and help me in the *post mortem* examination, and I waited there for him and just laid him out on the boards. I did nothing until Dr. Lash came, and when he came—I telephoned him to bring his dissecting instruments with him; I had made an arrangement with him before to assist me in all *post mortem* examinations—so he came there, and then we commenced. Anything more that you want?

Q. Yes, sir; we want the result of that examination. A. Well, the first thing we did was to examine the hole in the ear. I think that was the first thing; may be it was—yes; that was the first thing. I passed the probe in, or Dr. Lash passed the probe in and I was looking at him, and he said—— Did you want that?

Mr. Sloane.—I don't care; go on.

The Witness.—He said, "I can feel the ball in there, and it is pretty close on to the other side of the brain; the other side of the skull." I didn't take the probe in my hand at all, but he did. Well, that was all that we could do there. Then we turned him over a little.

Mr. Bitzer.—In what direction did the probe extend when inserted in the ear? A. Why, nearly a straight course. Dr. Lash can tell you more about it.

Q. In a straight course? A. I think it was. I didn't have the probe in my hand, but I looked at it, and he had. I think he will testify just as to the direction it took. Then I turned him over on one side like, and cut through the integuments and turned them all back—turned the flap back and found a perforation of the third rib.

Q. The third rib from the top? A. Yes, sir. It was cut about half through, and it was broken from the sternum.

Q. How far was the wound from the sternum; that is on the rib? A. If you will allow me to examine or look at my notes.

Mr. Bitzer.—You can refer, to refresh your memory, to any memorandum you made.

(Witness here examined memorandum.)

The Witness.—Can I read this here?

Mr. Sloane.—Was that a memorandum made at the time? A. Yes, sir; this is a memorandum made at the time. Can I read it?

The Court.—Well, the better way is to look it over, and then see whether you can testify with your memory refreshed. Refresh your memory and then testify.

The Witness.—Well it was upon the evening of the 5th of August——

Mr. Sloane.—I object to the witness reading from that.

Mr. Bitzer.—Look over that, Doctor, refresh your recollection and then fold it up.

The Witness.—Well, that perforation——

The Court.—There is this he can do; he may look right at the paper and ascertain the figures, or anything that way, as indicating distance, if he can not recollect that correctly, if he remembers that he put those figures down at the time.

The Witness.—I do recollect that distinctly.

A. About two inches above the nipple.

Mr. Sloane.—Is that a memorandum of measurements—probable distances—or what? I have no objection to it if that is just what it is; if it is the written statement of measurements made at the time.

The Witness.—Well, it was two inches above the nipple and about half an inch from the sternum.

The Court.—You may give the memorandum as to those measurements. They being made at the time are more reliable, probably, than your memory. Go on with the result of your *post mortem*. A. Well, after we got through with the *post mortem*, we found it necessary to go into the inside of the chest to find the course of the bullet, so we cut through one rib—the third rib was pretty much severed, just a few little ligaments attached it, and we cut through them, and then it was necessary to cut through the other rib next to the sternum, and one above it, and that was done. I took the ribs and bent them back and broke them back to get them out of the way, and traced the course of the ball through the pericardium, which we call the sack of the heart, and ripped that there and passed the probe in and found the ball had gone through the heart, and in order to see where it came out I had to turn the heart clean out on the surface. I have a heart in my pocket showing the course of that ball, if it is necessary to exhibit it.

The Court.—A what? A. A sheep's heart in my pocket.

The Court.—Oh, well that is not necessary.

The Witness.—It went into the left auricle. Its course was downward and backward, and it passed out at the lower back part of the left ventricle, took a course downward toward the right side, down to about here. (Witness indicating.)

Mr. Bitzer.—Well, from that point? A. I didn't think it necessary to hunt for the ball, because my business was to know what was the cause of the death, and that was cause enough.

Q. From that point did you trace the ball any further? A. No, sir. Could not, unless I cut open the whole body, and I didn't think it necessary to do that.

Q. What part of the third rib did it strike; the upper, or lower, or middle? A. Close to the sternum of the lower edge of the rib.

Q. How far from the lower edge of the rib did the ball strike? A. I told you it went right through about one third of the rib.

Q. It struck the lower third of the rib, did it? A. Yes, sir; and in doing that broke the connection between the sternum and the rib.

Q. Doctor, you say both those wounds were gunshot wounds? A. I do think them to be so.

Q. Was the wound on the right side of the head of Benjamin Wiltshire necessarily a fatal wound? A. Why, a man can live awhile with a gunshot wound there, when it takes a certain course.

Q. I mean that kind of a wound. Was *that* wound on the right side of the head of Benjamin Wiltshire necessarily a fatal one? A. That wound right through the brain? I can't see how it could help being a fatal one.

Q. What do you say as to the other wound in the left breast? A. That was necessarily fatal. A man can't live shot through the heart at all.

CROSS EXAMINATION.

By Mr. Sloane.

Q. Do you know whether the wound in the head went through the brain? A. Dr. Lash knows more about it.

Q. Do you know? A. I saw him put the probe in.

Q. Do you know that it did? A. It went through the temporal bone; I know that.

Q. That is not the question. You say that a wound of that kind, if it went through the brain would necessarily be fatal; do you know that it did go through the brain? A. No, I can not say, because I did not probe it.

Q. Now I want to go back a little, Doctor. I will go back to the very start. On hearing the news that there was a man killed down in that neighborhood, you started down there? A. Yes, sir.

Q. How did you go to the place where you afterward found the body? A. Well, sir, we drove up with a carriage to the bridge——

Q. You probably don't understhnd me. As I understood you in chief, you went down the stone steps at the bridge? A. Yes, sir.

Q. And followed the path along up the creek? A. I didn't know that there was any pathway, but I went along.

Q. I want you to state whether or not there was a pathway there worn by feet in walking along the bank of the creek? A. I could not recollect. There had been a great many people went down before I did, and every one took his own course; some went this way and some that way around the little obstruction.

Q. I didn't ask whether there were a great many people went down there before you did. I asked whether or not you didn't observe the fact that along the creek there was a path worn? A. No, nothing particular about that; there were footsteps but no particular path. I suppose it had been traveled a good deal around there at one time and another.

Q. What occurred a short time before you got to the place where the body was? A. I don't know what you allude to.

Q. Well, I am alluding—— I will ask you right here—my attention is called to it by Judge Cole—is not there a low place in the fence where persons are in the habit of getting over where they go down there right at the steps of the bridge? A. I don't remember.

Q. Doctor, didn't you testify on the preliminary examination that that was the case? A. Well.

Q. Don't you recollect testifying so on the preliminary examination; that that was the case that there was a low place in the fence worn there like, as if persons were in the habit of getting over? A. I went down at the stone steps and then there was a fence over which I climbed and followed the track——

Q. That is not the question. I ask you whether or not you recollect testifying in the preliminary examination that there was a low place in that fence, worn as if persons were in the habit of traveling over there? A. Yes, sir; it is my impression there was.

Q. Now, sir, just as you got over near there, I will ask you if you dldn't hear some one call out, "Leave that body alone until the Coroner comes?" A. Before I reached the body I heard somebody say that.

Q. When you got to the place, did you approach those two logs from the north or from the south? A. From the north.

Q. So that your face was in the direction of the creek? A. Yes, sir; that is my recollection.

Q. In what position was the body lying at that time? A. Well, I have tried to tax my memory every way I can. My impression is that his head was lying—— I first thought that his head was lying toward the bridge, but I think now, since I get my recollection on it, that I got into his pockets

while his head was lying to the east, because I got into his pockets from his head downward.

Q. What is the first thing you noticed when you got there? A. I looked over and saw it was Benjamin Wiltshire.

Q. Now, Doctor, you testified on the preliminary examination—— A. Well, I can not rely upon my recollection.

Q. I will endeavor to aid you and to refresh your memory. When you testified at the preliminary examination, it was very recently after the occurrence? A. Yes, sir; but I didn't take much notice which way his head was.

Q. I didn't ask you anything of that kind. Just wait until I ask you the question. A. Well, I told you just exactly what I know.

Q. Very well; you did testify on the preliminary examination? A. Yes, sir.

Q. At that time you testified that your recollection was that his head lay west, and he was lying on his right side with his face toward the creek, didn't you? A. I don't know what I did testify.

Q. Well, is not that your recollection that you then testified that was your recollection; your present recollection I am not finding fault with, but I am simply asking you about that? A. I have thought about the matter a good deal, and I think when I looked over this way toward the creek (indicating) I saw the man lying a little doubled up. I knew his clothes, and knew who he was when I looked at his face.

Q. Now, Doctor, I want an answer simply to the question I asked. A. I am not trying to avoid it.

Q. No, I dont think you are trying to avoid it, but you don't pay enough attention. I simply ask whether, on the preliminary examination, you didn't testify that when you first saw the body the head was lying west, toward the bridge, the body on the right side and the face toward the creek? A. That is what I thought at the time; yes, sir.

Q. Now, upon reflection and upon learning the fact that Mr. Rigney testified that he had been there before you, and he had turned the body—— A. Yes, sir; I was in a study about that, and I found that you wanted to know something more about it, so I was thinking it over, and I really don't know which way his head was lying, positively.

Q. But you state now, after hearing Mr. Rigney's testimony about it, and then putting your mind into operation, that your best recollection is that his head was that way? A. I think so, from the reason that I got into his pockets; as I stated, I asked Mr. Rigney if he knew anything about it, and he says, "Yes; I turned him over."

Q. Now, what was the first thing you noticed when you got there? A. Well, I saw there was blood on his shirt.

Q. And what next did you see? A. He was lying partly on his back and partly on his side, and in about this direction (witness indicating). And when we got there I just pulled open his shirt here (indicating), and saw that blood was on it. The jacket was open.

Q. Was he lying on his back or side? A. He was lying somewhat on his back. I pulled open his vest and found blood on the shirt and pulled that aside and found a bullet hole.

Q. You opened his vest did you? A. Yes, sir.

Q. Certain of that? A. Yes, sir; I think so.

Q. Are you certain about that, at all? A. I can not judge about those small matters.

Q. It is not for you to judge whether they are small or great. Did he have a vest on, at all, Doctor? A. I can not say; I think I pulled his vest aside.

Q. Now, I will ask you if you didn't state on the preliminary examination, that he had no vest on? A. No; I did not.

Q. You did not? A. No, sir.

Q. Do you swear now that he had? A. I don't remember stating anything

about the vest. I have been asked since about it, but I don't remember testifying about the vest.

Q. You say you have been asked since? By whom? A. My mind was not on the vest. My mind was on the injury to the man. I didn't expect to be inquired of about the vest.

Mr. Sloane.—If the Court please, I want my question answered.

Q. I will ask you to state, now, sir, whether your recollection is that he had a vest on; and that you opened that vest? A. I won't say positively anything about it.

Q. You won't say whether he had or not? A. No, sir.

Q. I ask you to say to this jury whether you examined any pockets in the vest? A. Yes, sir; I did.

Q. Then he must have had a vest on? A. In his vest, you mean?

Q. Yes. A. I won't say positively about that. I think I went through all his pockets.

Q. I have not asked you whether you went through all his pockets. I ask you the question plain and direct, whether you went through the pockets in the vest? A. I can not say; I went through all the pockets I could find.

Q. I ask you again if you went through any pockets in the vest? A. I can not answer that question.

Q. Had he a coat on? A. Yes, sir.

Q. How many pockets were in that coat? A. I don't know as I can tell you.

Q. Don't you know how many you examined in it? A. No, sir.

Q. What pockets in the pantaloons did you examine? A. Both pockets in the pantaloons.

Q. And if he had any hip pockets you didn't examine them? A. Oh, I think I got some money out of his vest pocket, but I won't be certain. I think I got some money out of one pocket and a knife and a key, and I took his watch out of his fob.

Q. That was the fob pocket in the pantaloons, was it, that you took the watch out of? A. No; I think that his watch was in his vest pocket.

Q. Then he had a vest on? A. Yes; I say I think he had, all the time, but I won't swear about that. But I took his watch out of one of his pockets, and he had it hitched to——

Q. So you swear positively, then, that you took his watch out of his vest pocket and not out of his fob pocket in his pataloons? A. I can not say positively what pocket I took it out of.

Q. You say you got something else out of his pants pocket? A. I got something in his pants pockets—that I recollect; and in searching the pockets I found some money and showed it to the bystanders and counted it over.

Q. I am not asking about that. A. Well, I want to try to state what I did.

Q. Are the two pockets you recollect of in the pantaloons the two front pockets? A. Yes, sir.

Q. Now, you say you think you got something else on him in another pantaloons pocket? A. Yes, sir; I think so.

Q. Now, was not the small fob watch pocket in the pantaloons? A. No; I don't know where I got the watch from.

Q. You found the watch and some money? A. Yes, sir; and a small knife and a return ticket to Washington Court House.

Q. Did you take the coat off there? A. No, sir.

Q. Did you take the coat off at all before the *post mortem* axamination? A. No, sir; not till we got to Scott Finley's.

Q. You left it still on him during the *post mortem* examination? A. Yes, sir; just bared his breast.

Q. Then you left the coat still on and you left the vest on, too, didn't you? A. I tell you I don't recollect about the vest. At any rate we left all the clothes on.

Q. Did you tear the shirt open at the ground there? A. What ground?

Q. I mean where you found the body. A. No; I just pulled it aside and saw the bullet hole; there was a crowd there, and I thought it was no place to make an examination, so I told those men to carry the body to the depot.

Q. Who was it said, "He's shot in the head, too?" A. Sol. Kemmery.

Q. He was kind of ahead of you? A. He was there when I came.

Q. There was a crowd there when you got there? A. Yes, sir.

Q. I will ask you if you didn't swear positively on the preliminary examination that he had no vest on? A. I don't remember what I testified to. I was too much bothered there. I only testified to what I thought at the time.

Q. Well, your recollection was fresher then than it is now. A. What is the testimony there?

Q. It would not be proper for me to state it, but you can look at it if you want, and I will ask you if you didn't testify there before the magistrate that he had no vest on? (Transcript of testimony on preliminary examination shown to witness.) A. No, sir; I don't remember a single thing about it. I didn't know then, and I don't know now.

Q. You didn't know then? Why did you swear so, then? A. I don't believe I did.

Q. Your recollection was fresher then than now? A. I don't know any thing except from some circumstances.

Q. I didn't ask you that. That examination was very shortly after the occurrence, was it not, when you testified there? A. Yes, sir; and I was confused; I didn't examine these small matters at all. I did not suppose it made any difference.

Q. After you got to the depot did you stay there with the body, or did you go awa ? A. Yes, sir; I was there all the time.

Q. Staid there until Dr. Lash came? A. Yes, sir.

Q. And then, after Dr. Lash came, the body was taken to Scott Finley's? A. No; I took the body and put it in an express wagon and got in with it, and left word at the depot to send Dr. Lash after us; and then we took the body out to Scott Finley's and laid it out on a board, and then I waited until Dr. Lash came. He came in a buggy.

Q. The body was surrounded by persons looking at it there at the depot? A. At the depot there were dozen's of persons there.

Q. There were certain persons out at Scott Finley's, also, on that day? A. Yes; but they didn't approach the body.

Q. You laid it on the board there for the purpose of dissection? A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Bitzer.

Q. Were you present with the body from the time you went there where the body was found dead until you made the *post mortem* examination? A. No, sir; I gave it into charge of six men.

Q. Where was it? A. Where I found the body. I ordered six men to take the body and carry it up through the cornfield to the depot.

Q. Were you present with the body from the time you went there until that time? A. After it reached the depot?

Q. Where you first found the body? A. I gave it in the charge of these six men.

Q. Had you the body of Benjamin Wiltshire in charge from the time you first went there, where you found him dead, until you gave him in charge of these six men? A. I don't know as I understand the question.

Q. You remember very well when you went there where you found the body, don't you? A. Yes, sir.

Q. And you first saw the dead body of Benjamin Wiltshire? A. Yes, sir.

Q. You remember when you gave the body in charge of those six men? A. Yes, sir.

Q. Had you had the body in charge up to that time? A. No, sir; not until it reached the depot.

Q. Was you present there all the time? A. I took another course.

Q. Well, we don't want anything about that. Were you present from the time you first went there until you gave the body in charge of these six men? A. Yes, sir; I was.

Q. Did you go with these six men, into whose charge you gave it, to the depot? A. No, sir.

Q. Who were the six men you gave it in charge of? A. I didn't know at the time. I found out since.

Q. Who were they? A. Well, therere was Sol. Kemmery—— I've got the names down on a memorandum.

Q. Have you got that memorandum with you? A. No, sir; I have not.

Q. Do you remember any other besides Sol. Kemmery? A. Well, I think Wheelock was one, but I didn't charge my mind with it, but I just put it down on a memorandum.

Q. Was Sol. Kemmery there at the Narrow Gauge Depot when you got there? A. I found him at the place of viewing, first.

Q. When you took the body to the Narrow Gauge Depot, did you find Sol. Kemmery there? A. Yes, sir.

Q. Was you present with the body all the time it was at the Narrow Gauge Depot? A. Yes, sir; I didn't go further than to the door.

Q. Were you with the body after it was taken from the Narrow Gauge Depot to Scott Finley's? A. Yes, sir; I put it into the express myself and got in with it.

Q. Where did you cross the fence down there into the cornfield—the exact point? A. If you have ever been down there, as far as I can recollect I know when you get to the bridge there is stone steps down.

Q. Did you cross right at the bridge? A. Yes, sir; I crossed right at the bridge.

Q. If Benjamin Witshire had a vest on, did you examine the pockets? A. I have been asked that a great many times. I told you I could not tell.

The Court.—I think the Doctor has been examined enough; and I think the jury has got what the Doctor knows about it.

RE-CROSS EXAMINATION.

By Mr. Sloane.

Q. Are Sol. Kemmery and Mr. Wheelock all the men you remember at present of the six men who took the body? A. That is all I remember at present, but I can find out.

Court took a recess until 2 o'clock P. M.

DR. J. W. LASH called.

Direct examination by Mr. Bitzer.

Q. What is your business, Doctor? A. Practitioner of medicine and surgery.

Q. How long have you been in the practice of medicine and surgery? A. It is not quite five years; between four and five years.

Q. Did you assist Dr. Denig in the *post mortem* examination of Benjamin Wiltshire? A. I did.

Q. Well, just state all about your examination? A. I was called at the house of Scott Finley, on the Huntington pike, a short distance from the

city, to assist in performing the *post mortem* examination upon a man said to me there to be Benjamin Wiltshire. I hadn't known the man before. When I arrived there they had him all ready for examination. And, upon inspection, I found, first, two holes in the body. Upon an after examination I found them to be gunshot wounds.

Q. Both gunshot wounds? A. Yes, sir; I first observed they were punctured wounds, and upon further examination they proved to be gunshot wounds. The first wound that was examined was the one that passed into the cranium. That injury was in the interior superior portion of the cartilaginous part of the ear, and passed directly through, passed through the right temporal bone and through the brain, and by probing, I found, by measuring with the probe, it had rested against the opposite plate, opposite temporal bone, it having entered the interior superior portion of the ear.

Q. Just show that, Doctor? A. Right here; passed directly through (witness indicating on his own person to the jury).

Q. How large was the wound, Doctor? A. The wound was, well, not as large as the end of my little finger, quite.

Q. Could you tell on examination and by the appearance of the wound what the size of the bullet was? A. Well, from the size of the wound I should judge it to be either a 30 or 32 caliber. It is my impression it was a 32.

Q. What direction did it take after entering? A. It went almost straight —nearly straight through, as near as it could possibly go.

Q. And you probed to what depth? A. I passed the probe through until it passed through to the opposite side, that is, by measurement I found that it had passed through to the opposite plate.

Q. Now, just show the jury there, Doctor, on the left side of your head, about where you discovered the ball to be, by the probe; as to where the ball rested? A. Well, it entered about here (indicating), and then, where it must have passed through, where it stopped, it was on that opposite side, not very far from about opposite the point on the right side.

Q. Horizontally, then? A. Yes, sir.

Q. Now, as to the wound in the breast? A. That was a punctured wound, round wound, and passed through the integument and struck the third rib, and from the third rib it went downward.

Q. Tell just at what point on the third rib? A. It was on the third rib and one-half to three-quarters of an inch from its intersection with the sternum. It fractured the rib, bruised the under surface and passed under.

Q. Did it strike above or below the middle part of the rib? A. It struck a little below the center part of the rib, and passed downward, and carried a little part of the rib with it, and entered then into the thoracic cavity. After passing through between the third and fourth ribs it passed through the pericardium, and from that it struck the left auricle of the heart, and then passed into the interior of the heart, through the mitral valve, carrying away a portion of it, and from that on through into the left ventricle of the heart, and out.

Q. Now, was that wound on the right side of the head necessarily a fatal one? A. Yes, sir; it was.

Q. And the wound on the left breast? A. It was. That is, passing through the heart as it did.

Q. Would the wound on the right side of the head instantly disable one? Would it cause instant disability? A. The shock would be almost instant, yes, sir; that is, after passing into the brain it passed through the brain and through important nerve centers, so that there is a shock in the outset to the brain, and that would be almost—not instant, but almost so.

Q. Do I understand you to say that it would cause instant death. A. No, sir; not instant death.

Q. Almost instant disability? A. Yes, sir; there will be shock with it, from which a man will be disabled by the shock.

Q. By Col. Gilmore.—That is, muscular inability. A. Yes, sir.

Q. Unable to do or to think? A. The only way that there would be any muscular action would be from reflex action.

Q. Involuntary action? A. From the nerve centers.

Q. By Mr. Bitzer.—What would you say, Doctor, in answer to the same question as to the second wound? A. That is, as to whether it would produce instantaneous disability?

Q. Yes, sir; muscular disability. A. No, sir; it would not.

Q. What part of the body, Doctor, in the back, would that ball have come out if it had gone straight through the body from the point where it struck the rib? A. That is, if it had not been deflected?

Q. Yes, sir; if it had not been deflected, what course would the ball have taken, and in what part of the body would it have come out, if it had not been deflected by striking the rib? A. Well, it would have passed into the body, and in going through it would have inclined a little bit more to the central portion of the body toward the back bone than what it was to the center part of the body in the front, and it would have passed out, if it had gone straight through without any deflection, a short distance, probably two inches or more, above the point of the scapula, or shoulder blade.

Q. And do you mean to say that it would be above or below the point at which it struck the rib? A. How is that?

Q. Would it be above or below a horizontal line? A. Well, it wonld be a little bit below a horizontal line.

Q. It would have come out a little bit below a horizontal line, and below the point of first contact? A. Yes, sir.

Q. Now, at what point of the body would the ball have come out if it had gone through the body in the direction that it was going after it was deflected.

Q. By Mr. Sloane.—That is, suppose the ball had gone out of the body? A. Well, without any deflection after passing out of the left ventricle it would have come out a little bit to the left side of the spinal column, somewhere near the tenth dorsal vertebra.

Q. By Mr. Bitzer.—A little bit to the left side of the spinal column, somewhere near the tenth dorsal vertebra? A. Somewhere near that.

Col. Gilmore.—I desire to ask the witness one or two questions here.

Mr. Sloane.—I would prefer, if the Court please, that the rule be followed, of one counsel examing the particular witness upon the stand.

Col. Gilmore.—That is not the rule in cases of this kind.

Mr. Sloane.—Well, it is a rule that is entirely within the discretion of the Court.

The Court.—Oh, it is permitted, if asked by counsel, to examine.

Q. By Mr. Bitzer.—Doctor, judging from the course the ball took after it penetrated the body here in the left breast, what was the position of the party who received the shot, at the time of the shooting; at the time the shot was fire? A. Well, sir; that would be a difficult question to answer. The persons could be standing directly in front of one another and still the weapon could be held in such a way—that of course, both parties might be standing erect, or a person might be slightly inclined forward, the person receiving the wound, and cause the deflection.

Q. Could the party wounded be lying on the ground, lying in a prostrate position? A. It would be very difficult for a person to be shot lying in a prostrate position.

Q. By the Court.—Well, was there anything in the character of the wound itself that necessarily required the party to be in any particular position? A. No, sir.

Q. It would not? A. No, sir.

The Court.—Well then, it is not a matter of science. You will have to determine from some other source.

CROSS EXAMINATION.

By Mr. Sloane.

Q. Doctor, I just want, for the purpose of getting it pretty clearly before the jury, to get the positions of those particular portions of the body through which the ball passed. The first wound you examined, if I understand you, was the one through the head? A. Yes, sir.

Q. The shot entered in here, I understand you, up there? (Counsel indicating upon his own person.) A. Yes, sir.

Q. So it is a mistake, I understand, if it is claimed that it entered in at that part? (Counsel indicating.) A. Yes, sir; entered above.

Q. It did not come out of the head, but remained in, striking the temporal bone on the opposite side of the head, about opposite where it entered? A. Yes, sir.

Q. That ball passed through the brain? A. Yes, sir.

Q. Which would have produced death in a very short time? A. Yes, sir.

Q. But not instant death? A. Not necessarily.

Q. Now, as to the next wound. The sternum is the breast bone? A. Yes, sir.

Q. And you count the ribs from the top? A. Yes, sir.

Q. One, two, three? A. Yes, sir.

Q. And it struck the third rib? A. Yes, sir.

Q. Where it entered the rib has not a perfectly flat surface, but the surface is rather oval, bulging like, to the middle, and sloping down? A. Yes, sir.

Q. Now, the ball not strike, as I understand you, the middle of the rib, but the lower part of the third rib, rather below what would be the center line of the rib? A. Yes, sir.

Q. That line is about how far from the edge of the sternum? A. To the left edge of the sternum, about an inch, or three-quarters.

Q. Put your finger on my person about as near as you can to where it would be? A. It was near there. (Witness indicating on Mr. Sloane's person.)

Q. Had it not touched the third rib, but entered a little below, it would have entered what would be called the third intercostal space? A. Yes, sir.

Q. If it had not touched that rib, but entered the third intercostal space, you say it would have gone out just to the right of the scapula, and between that and the spine? A. Yes, sir.

Q. And pretty nearly in a horizontal position from where it entered? A. Yes, sir.

Q. A ball striking any substance, it need not be cartilage or bone, when it enters any substance which immediately puts force against its force, the tendency is to deflect it downward, is it not, unless it should strike some bone which would deflect it in an opposite direction? A. Yes, sir.

Q. When it meets an object which is sufficiently hard to offer resistance, the natural deflection is downward, is it not? A. Yes, sir.

Q. Now, then, instead of getting a clear passage through, its striking of the rib, as I understand you, caused it to deflect downward and a little to the right, didn't it? A. Yes, sir.

Q. It took a little portion of the rib with it? A. A very small portion of it.

Q. Did it tear off a piece of the rib, or did it make a hole through the rib? A. No, sir; it tore off a piece of the rib.

Q. That caused it to deflect downward, and you think it would have taken it out near the tenth dorsal vertebra? A. Yes, sir.

Q. That is after it had gone through the pericardium. By that you mean the substance that surrounds the heart? A. The sac that surrounds the heart.

Q. Of what material is the pericardium? A. It is principally a serous membrane, slightly muscular, but not much.

Q. Now, will you please point on my back, Doctor, to the jury, about where that ball, supposing it met with no hard substance to deflect it after it left the left ventricle of the heart, would have come out. A. Near there. (Witness indicating on Mr. Sloane's back.)

Q. It would not have struck the spine? A. I think not.

Q. That would not have produced sudden muscular inability? A. Not necessarily; no, sir.

Q. Nor sudden death? A. No, sir.

Q. It would not have produced death as suddenly nor produced muscular inability, muscular powerlessness, as suddenly as the wound in the head? A. No, sir.

Q. This examination you made after cutting the ribs from the sternum and a large portion of the flesh and turning it back? A. Yes, sir.

Q. When you got there what was the condition of the body for the purposes of a *post mortem?* A. It was lying upon a plank that they had provided, in the center of the room, between two windows, with the upper portion of the body bared.

Q. Can you tell what clothing was still on him? A. I think most of his clothing was on him, but it was thrown backward, and the shirt was either turned down—yes, it was turned down and thrown back and doubled back under some of his clothing.

Q. But his clothing, his pantaloons and coat, were all on him. A. Yes, sir.

A. B. PRICER called.

Direct examination by Mr. Bitzer.

Q. Mr. Pricer where do you live? A. I live at Massieville, six miles south of this, on the Portsmouth pike.

Q. Were you present when the wounds of Benjamin Wiltshire were dressed? A. Not the first; not at the *post mortem* examination, I was not.

Q. When was the first that you saw Benjamin Wiltshire, after the *post mortem?* A. The next morning, down at his father's.

Q. Did you examine the wounds? A. I did the one in the side of his head. I didn't see the wound in his body. His underclothing was put on before I was called to help dress him.

Q. Did you notice anything in particular about the wound? A. Well, I noticed powder burn on the side of his face about the ear. There was quite a little space around it which was powder burned; blackened marks, like powder.

Q. You didn't see Mr. Wiltshire before his clothes were taken off? A. No, sir; I did not. I helped put on his coat and his pants, I think.

CROSS EXAMINATION.

By Mr. Sloane.

Q. Mr. Pricer, describe to the jury what you mean by "powder burn." A. Well, it is powder. I don't know hardly how to explain it..

Q. Do you mean that the skin was just black around that place? A. It looked to me as though the powder had penetrated the skin and imbedded itself in the skin—grains of powder.

Q. Was the skin all black around there? No, sir; not all. There was

some considerable spaces; I would say an inch around there that was pretty much all black.

JOHN HOWARD called.
Direct examination by Mr. Bitzer.
Q. Mr. Howord, where do you live? A. At Chillicothe.
Q. What is your business? A. I follow the undertaking business.
Q. Were you present at the time of the *post mortem* examination of Benjamin Wiltshire? A. No, sir.
Q. How soon afterward did you get there? A. I can not state just exactly; not long. It was the same evening; I got there after night.
Q. Did you make an examination of the wound on the right side of the head, or on the left breast? A. Yes, sir; I saw them. We washed and dressed him.
Q. Did you notice anything peculiar about either wound? A. No; I noticed this wound that he was shot in the right ear near the tip, and there was a good deal of powder marks. They were all of them on the right side of the face, but most of them up about the temple and upper part of the cheek.
Q. About what space did the powder marks there cover? A. Two or three inches. Some, I think, down as low as near the mouth, here along on the jaw, but most of them was up in the region of the wound, and in front of it that I noticed. I saw the wound in the breast.
Q. Did you see the shirt? A. Yes, sir; we took the clothing off, but I didn't examine it.
Q. You didn't see the place where the bullet penetrated? A. I don't think that I did; I don't recollect that I did.
Q. Do you know whether or not Benjamin Wiltshire had a vest on? A. I could not say whether he had or had not. His clothes were buttoned up when we went there.
Q. Did you notice any powder marks about the wound in the breast? A. I believe not.
Q. Or on the shirt? A. No, sir.
Q. Or on the coat? A. I didn't notice any on the coat that I recollect of.
Q. What time in the evening was it? A. I judge it was 9 o'clock when I went there, but we didn't get away from there tiil near midnight.
No cross examination.

WESLEY BRAGG called.
Direct examination by Mr. Bitzer.
Q. Mr. Bragg, were you present at the dressing of the wounds of Benjamin Wiltshire on the evening of the 5th of August last? A. Yes, sir.
Q. Did you help dress the wounds? A. No, sir; I was there when Mr. Howard was dressing them.
Q. Did you see the wound on the right side of the head? A. Yes, sir.
Q. And the one on the left breast? A. Yes, sir.
Q. Did you notice anything peculiar about either wound? A. I noticed powder burn on the back part of the ear and on the temple and down on his cheek a little. I didn't notice any on his breast or shirt.
Q. Were you present when they took off his clothing? A. They were tearing his shirt off when I got there.
Q. Did you notice any powder marks on the coat? A. No, sir.

Q. Vest? A. No, sir.

Q. Did you notice whether he had a vest on or not? A. He had a vest on; yes, sir.

Q. When did you see him that he had a vest on? A. When they were first taking him out there, before Mr. Howard came out.

Q. Were you present when they first brought the body out there? A. No, sir; I went out there shortly after he had been taken out.

Q. Who was present at the time you went there? A. The Coroner was there when I got there.

CROSS EXAMINATION.

By Mr. Sloane.

Q. How did you come to go there? A. Well, I heard of it as I went out of town.

Q. Where do you live? A. I live right close to Massieville—close to where Mr. Wiltshire lived.

Q. What connection are you of the family? A. He is a cousin of my wife.

ALBERT WHITE called.

Direct examination by Mr. Bitzer.

Q. Where do you live, Mr. White? A. Chillicothe.

Q. What is your business? A. Freight and Ticket Agent for the Toledo, Cincinnati & St. Louis Narrow Gauge.

Q. Were you acquainted with Benjamin Wiltshire while he was living? A. I knew him when I saw him, that was all.

Q. State whether or not you saw him on the 5th of August last. A. Well, I saw him one day, I can't say whether it was the 5th of August or not.

Q. Well, do you remember whether it was the day that he was killed? A. Yes, sir.

Q. It was the day that he was killed? A. Yes, sir.

Q. What time of day? A. Well, it was nearly 1 o'clock. It might have been a little before or a little after.

Q. Where was he then? A. On the east end of the platform at the Narrow Gauge Depot.

Q. At the south end of Paint street? A. At the south end of Paint street.

Q. In what direction was he going? A. He was going toward the east end of the platform.

Q. Did you see him at any time after that? A. No, sir.

Q. What was his condition as to being drunk or sober? A. I could not say as to that, because I saw only his back. I didn't see him in the face.

Q. Well, was there anything peculiar about his manner at the time you saw him? A. I think there was something peculiar about it.

Q. State what that was. A. Well, I thought at the time he was slightly under the influence of liquor, though I could not say.

Q. How did he act? A. He walked with his shoulders up a little; I had seen him before, and that was the way I come to notice it.

Q. Do you mean to say you saw him under the influence of liquor or not? A. Yes, sir.

Q. Now, was there anything else besides that, that you noticed? A. No, sir; I didn't.

Q. Did you notice whether he staggered or not? A. No, sir; I didn't.

Mr. Sloane.—I object to this leading of the witness.

The Court.—Well, the objection has reference a good deal to the character of the witness.

Mr. Bitzer.—I believe you stated that he did not stagger. A. I didn't notice him.

Q. And then there was nothing else you noticed about him except that? A. No, sir; nothing at all.

Q. Have you seen Benjamin Wiltshire when he was sober? A. Oh, yes; I suppose I have seen him when he was sober, but paid no attention to him at the time, particularly.

Q. Did you notice that same action, that same peculiarity, about him when he was sober?

Objected to by counsel for defendant.

Question withdrawn.

CROSS EXAMINATION.

By Mr. Sloane.

Q. At what time was this that day that you saw him? A. Well, it was near 1 o'clock.

Q. Had there any train come in just before that time? A. Yes, sir.

Q. The train from Washington Court House? A. Yes, sir.

Q. When had you seen Witshire at any time shortly before this? A. Well, I suppose it was about, probably two weeks before. I could not say positively.

Q. Where did you see him then? A. In the depot; same depot.

Q. Was he getting off, or going away? A. He was going away.

Q. Do you know where to? A. To Washington Court House. I supposed so, at least, by him buying a ticket to there.

Q. Any one with him? A. Yes, sir.

Q. Who?

Col. Gilmore.—We object to the introduction of the testimony that is now sought, if your Honor please, supposing that we understand properly the drift of the question.

Mr. Sloane.—And the fact, in the same connection, that he bought tickets for both?

Col. Gilmore.—Yes, sir. There can scarcely be any doubt as to the drift and tendency of the examination that was to follow the preliminary question. I think it was intended to here introduce evidence tending to show adultery between Mrs. Giddings, the wife of the defendant, and Wiltshire, the deceased.

The Court.—Not passing upon its admissibility at the proper time, I think it is improper now. The rule in Drake's case, properly applied, is a good one. That is, that a party, in cross examination, has a right to enter into everything, and touch upon everything, whether it was touched upon in chief or not, provided it is a matter that relates to what the State itself could have gone into, and might have gone into, for the purpose of making out it's case. It is not necessary that the State should go into that in any case.

Mr. Sloane.—I was going to suggest, to stop argument, that I doubt very much the propriety of it at this time. I think that the objection as to the time is well taken, because I think it is a matter of proof for us in chief.

The Court.—Yes; I can't say but what it might be.

Col. Gilmore.—My objection is not simply to the order of time in which it is sought to be introduced, but my objection is that proof of adulterous relations existing two weeks before is not evidence at all, in this case.

The Court.—Well, we will pass upon that when we come to it.

Col. Gilmore.—Very well.

Q. By Mr. Sloane.—The last you saw of him he was still on the platform? A. Yes, sir.

Q. You don't know what direction he took from there? A. No, sir.

ANDREW ADLER called.

Direct examination by Mr. Bitzer.

Q. Mr. Adler, where do you live? A. On Paint street.

Q. What part of Paint street? A. South Paint street, on the left hand side.

Q. That is the east side? A. Yes, sir; on the east side.

Q. Between what two streets, running east and west, is your saloon? A. Franklin and Douglass streets.

Q. Which street is north of your saloon, Douglass or Franklin street? A. Douglass.

Q. Douglass is north and Franklin is south? A. Yes, sir.

Q. What street is it that comes next to Franklin street? A. Hydraulic street, I believe.

Q. What street is it which comes after Hydraulic street, south of it? A. It is Mulberry street, ain't it?

Q. Well, I mean that runs east and west; going south from Hydraulic street, what street comes next, running east and west? A. I don't know.

Q. There about the Narrow Gauge Depot? A. I don't know what street; I don't know the name.

The Court.—I would like to have the name.

Mr. Bitzer.—The name is New street.

Q. That is New street that runs past Armstrong's tannery? A. Yes, sir.

Q. What is your business? A. Well, I got a saloon down there; my business is cigar making.

Q. Cigar making, and you keep a saloon? A. Yes, sir.

Q. Do you know Daniel Giddings? A. Yes, sir.

Q. Did you know Benjamin Wiltshire? A. Well, I knowed him; yes, sir.

Q. Did you see Benjamin Wiltshire with Daniel Giddings on the 5th day of August last; on the day that Benjamin Wiltshire was killed? A. Yes, sir.

Q. Where was he? A. I seen Wiltshire in my saloon, and Giddings, too, in my saloon.

Q. Who was in there first? A. Wiltshire.

Q. What time of day on the 5th of August was he there—that is the day he was killed? A. I don't know exactly what time. It was about 2 o'clock; a little before or little after, I don't know which.

Q. You may state whether or not Benjamin Wiltshire had ever been in your saloon before? A. Yes, sir; he was in there before.

Q. Had Benjamin Wiltshire been to your saloon there very often before that day? A. No.

Q. About how many times had he ever been there before that day—the man that was killed? A. He was in once before.

Q. Now you may state whether or not Daniel Giddings had ever been in your saloon before that day; I mean either by himself or with anybody else? A. Yes, sir; I seen him in there once.

Q. Who? Daniel Giddings? A. Yes, sir.

Q. Who? This man? (Counsel pointing to defendant.) A. Yes, sir.

Q. When was he there? A. I can not tell you that; what time.

Q. You could not tell? A. No; I can not tell the time when he was in.

Q. Who came in your saloon first that day? A. Wiltshire.

Q. What was he doing while he was in the saloon? A. He was standing there, up in front of the counter.

Q. What was he doing? A. He didn't do nothing then.

Q. Who else was in the saloon there besides Benjamin Wiltshire? A. I could not tell you. About half a dozen, or there may be a little more.

Q. What were they doing? A. Some was playing and some was looking on.

Q. What was Benjamin Wiltshire doing? A. He was looking at them playing.

Q. When did Daniel Glddings come in—this man here? A. He come in about five minutes afterward.

Q. About five minutes after Benjamin Wiltshire came in? A. Yes, sir.

Q. What did Daniel Giddings do when he came in? A. He stepped up and talked together there.

Q. Whom did Daniel Giddings—this man, the defendant here—talk to? A. He talked to Wiltshire.

Q. How long did he talk to him? A. He didn't talk very long to him.

Q. About how long, as near as you can tell? A. As soon as he come in, Wiltshire, he went there from the counter.

Q. Wiltshire went where from the counter? A. Both walked up to the other end of the counter and took a drink and went out together. About that time they was talking; I didn't pay no more attention.

Q. Just about how long did Mr. Giddings talk to Wiltshire there when he first came in; one minute, two minutes or three minutes? A. Just about, may be—I don't know what he was saying—just as much as "How'd you do?" or something like that, you know, and walked up and took a drink and talking there between them, and I handed out the drinks.

Q. Who called for the drinks? A. Mr. Giddings.

Q. Who paid for them? A. Mr. Giddings.

Q. What did Giddings drink that day? A. He took a glass of beer.

Q. What did Wiltshire drink? A. He took whisky.

Q. Now, what was done after the drinks were paid for, by these two men, Giddings and Wiltshire; what did they do? A. They walked out together.

Q. Which one went first? A. Well, Wiltshsre; he was closer to the door; he went out first and then the two went together; I don't know which went out first to the door; I seen both of them start away from the counter and Wiltshire, he was ahead of Giddings; he was closer to the door.

Q. That is, Wiltshire was closer to the door when he was standing there drinking? A. Yes, sir.

Q. Who went out of the door first, Giddings or Mr. Wiltshire? A. I could not say who went out first; I could not say that, to the door.

Q. Did you hear either one of the parties say anything to the other. A. Yes; I heard them saying something; I didn't pay no attention.

Q. What was it you heard? A. I say I didn't pay no attention about what it was.

Q. Didn't you hear one of the parties call to the other to come on?

Objected to by counsel for defendant, as to form.

Q. Well, was anything said by either party to the other when they left the saloon? A. Well, they was talking together, but I did not understand what they was talking about.

Q. Now, did you notice who went through the door first, Giddings or Wiltshire? A. Wiltshire was ahead of Giddings when he started from the counter, but who went out of the door first I could not tell you.

Mr. Bitzer.—Now, your Honor, I want to ask this question to refresh his recollection.

Q. I want to ask you whether you did not state at the preliminary examination before Mayor Hurst, and before the grand jury, that Mr. Giddings went out first; that is, this gentleman here?

Objected to by counsel for defendant.

The Court.—The only one purpose to which that can be put may be to impeach the witness, unless it is put for the purpose of refreshing his recollection. If it is, it should be put in a different form. Now, for any purpose, the party calling a witness can not impeach him. I don't see any necessity for it. The question, if it is for the purpose of impeaching the witness, is not proper. If it is for the purpose of refreshing his recollection then the court will have a discretion.

Mr. Bitzer.—I stated that before asking the question.

The Court.—This witness does not seem disposed to be led, and I see no

reason why the question may not not be asked directly and then if he does not remember anything about it, that is the end of it.

Mr. Sloane.—How does your honor mean directly?

The Court.—I say if the question is for the purpose of refreshing his recollection, inasmuch as he is not a witness disposed to be led, he may be asked directly whether either party said so and so, or whether either party said anything, not asking what he testified to formerly.

Mr. Sloane.—That is what I am objecting to.

The Court.—Ask directly whether such and such a thing occurred, or not.

Q. By Mr. Bitzer.—I will ask you then, whether or not, after the drinks were paid for, Mr. Giddings did not start out of the saloon first and call to Mr. Wiltshire to come on; whether this gentleman here, the defendant, didn't start out of the saloon first and call to Wiltshire to come on? A. I don't know; I don't believe I did say that.

The Court.—No, no. Do you remember anything of that kind, now, as having occurred? A. No; I don't; I don't.

Q. By Mr. Bitzer.—Well, now Mr. Adler, what was the manner of Mr. Wiltshire and Mr. Giddings toward each other; was it friendly, or otherwise? A. Yes; it seemed to me they was friendly together at that time when they was talking together.

Q. Did you notice which way they went after they went out of the saloon? A. No, sir; I did not.

CROSS EXAMINATION.

By Mr. Sloane.

Q. You were just there attending to your ordinary business and duties? A. Yes, sir.

Q. Paying very little attention to them? A. No; I didn't pay any attention to the persons after they left my place.

Q. Wiltshire had been in there some time, standing looking at the players? A. Yes, sir.

Q. Do you mean by that some persons who were playing billiards there? A. Yes, sir.

Q. By Col. Gilmore.—Billiards, or dice? A. Billiards.

Q. By Mr. Sloane.—Your room runs lengthwise as this room, does it? A. Yes, sir.

Q. Is your bar along side of the room? A. On the right hand side as you go into the door, about four feet from the front.

Q. Just as soon as you turn into the door you turn to the right and you are right in front of the counter? A. Yes, sir; just as soon as you get into the door, turn to the right and here is the bar.

Q. Your billiard table is in back? A. No; it is on the left hand side, about five feet, I guess, between the counter and the table, where we walk right back to the stove to sit down.

Q. So the billiard table is pretty near in front of the bar? A. Yes, sir.

Q. With space between that and the bar for persons to pass through? A. Yes, sir.

Q. And the stove is up near the further end of the bar? A. Yes, sir.

Q. And it is up near that Mr. Wiltshire was standing when Giddings came in? A. No; Wiltshire was standing on the upper end of the counter.

Q. The end next to the door? A. The end next to the door, yes sir; where Wiltshire was standing as Giddings came in.

Q. Where were you at the time Giddings came? A. I was right behind the bar.

Q. You say you noticed nothing unusual between the two men? A. No, sir.

Q. Was Wiltshire sober, or drunk? A. He was sober when I seen him. I didn't see nothing drunk with him.

Q. What character of drink did he take at that time? A. He did take kind of gentleman drink, you know.

Q. A small drink, you mean? A. Small drink.

Q. Mr. Giddings took beer? A. Mr. Giddings took beer.

FRANK STRUBLE called.

Direct Examination by Mr. Bitzer.

Q. Where do you live? A. I live in the city, on Mulberry street, between Hydraulic and New street.

Q. Which side of Mulberry, east or west side? A. West side.

Q. What is your business? A. I keep a saloon there.

Q. Were you keeping saloon on the 5th of August last? A. Yes, sir.

Q. Do you know Daniel Giddings, the defendant, here? A. Yes, sir.

Q. Did you know Benjamin Wiltshire, the man that was killed on the 5th of August? A. No; I didn't know him before. I know him since that time he came to my house.

Q. Did you see Daniel Giddings or Benjamin Wiltshire on the 5th of last August? A. Yes, sir.

Q. Where did you see them? A. Seen them coming into my house; into my saloon.

Q. It was on the day of the killing of Benjamin Wiltshire, was it? A. Yes, sir.

Q. Was there anybody in there with him? A. Yes, sir.

Q. Who? A. A man; his name is ——

Q. I mean was there anybody with Daniel Giddings? A. Well, Wiltshire, you know.

Q. Benjamin Wiltshire was with him? A. Yes, sir.

Q. What time in the day did they come in there? A. Half past two in the afternoon.

Q. Half past two o'clock? A. Yes, sir.

Q. How long were they in the saloon? A. May be about five minutes.

Q. Who came in the saloon first? A. Wiltshire.

Q. Do you mean the man that was killed, or the defendant here. A. No; Wiltshire came in first; that other man that was shot.

Q. The man that was shot came in first? A. Yes, sir.

Q. Did Daniel Giddings come in at the same time? A. Yes, sir; he came right after.

Q. Now state what was done in there? A. Well, they walked to the counter and I had some lunch, Limburger cheese and bread on the counter. I had a customer who wanted a little lunch and I set a little lunch on the counter—Robert Cable, is his name; and he eat some and these two men came in.

Q. Giddings and Wiltshire? A. Yes, sir; Wiltshire come in there and stepped right up to the Limburger cheese and commenced smelling of the cheese and smelled about two or three seconds—could not get enough—and I shoved his head back and said, "That is enough now; that is enough smell. If you want to take the lunch eat some. When you won't, let it go; keep your hands off."

Q. That was Wiltshire? A. That was Wiltshire; yes, sir. Well, he says, "That is all right; I don't want any of this stuff." I said, "Well, that is all right; just let it go." Well, he say, "Give us something to drink." I say, "What do you want?" He say, "I will take a little whisky." And he asked Mr. Giddings what he wanted, and he say, "I take a little blackberry wine." And I handed up to them and he put just a little whisky in the glass, and I

put Mr. Giddings some wine in the glass, you know, and when I had the glass half full, he said, "That will do; that's enough;" and then commenced, "Here's luck," and drink together.

Q. Who said, "Here's luck?" A. Wiltshire and Mr. Giddings. Then they drunk friendly and so soon as Wiltshire got his drink swallowed he commenced vomiting; throwing up.

Q. Wiltshire vomited? A. Yes, sir; throwed up, you know. And I say, "Now that is enough; better you move now; better leave here." Well, he paid his bill and went.

Q. Who paid his bill? A. Wiltshire.

Q. Well, who went out first? A. Mr. Giddings went out first.

Q. Was there anything said by either of the parties as they went out? A. Well, Mr. Giddings said, "Come on let's go now."

Q. Mr. Giddings said, "Come on let's go now?" A. Yes, sir.

Q. They were in there altogether about five minutes? A. May be five minutes; may be longer; a short time.

Q. How much whisky did Wiltshire drink there? A. Oh, there not was but a little bit; about a fourth of a glass; a little small glass.

Q. What was Wiltshire's condition—the man that was killed—as to being drunk or sober? A. Oh, he was not any drunk, at all. I didn't see any drunks on him.

Q. You didn't see any? A. No.

Q. Which direction did they go when they went out? A. Well, they went south right over the railroad, over the Narrow Gauge.

Q. Did they turn down that street at the railroad, New street, or did they cross it? A. I see them cross the railroad; that's all I saw; I didn't take any notice.

Q. Which was ahead when they were crossing the railroad? A. Well, they walked side and side.

Q. Did Wiltshire and Giddings go out of your saloon together, or did they go out at different times? A. No; just one behind the other.

CROSS EXAMINATION.

By Mr. Sloane.

Q. It was after you sad to Wiltshire, "Now that's enough of that; you better go," or "move," that Giddings said to him, "Come on?" A. Yes, sir.

Q. New street that you speak of—the railroad is between New street and your house? A. Yes, sir.

JOSEPH SEEBURGER called.

Direct Examination by Mr. Bitzer.

Q. Mr. Seeburger where do you live? A. I live on Mulberry street at the south end.

Q. Which side of Mulberry street? A. East.

Q. What is your business? A. Butcher.

Q. Where were you working on the 5th of August last; that is the day that Benjamin Wiltshire was shot? A. Well, I was working down there at Hunn's slaughter house at the time.

Q. Do you know Daniel Giddings, the defendant in this case? A. No, sir.

Q. Have you ever seen him before to-day? A. No, sir.

Q. You have never seen him? A. No, sir.

Q. Did you see any persons pass Hunn's slaughter house that day—the day Benjamin Wiltshire was killed? A. Well, there was two fellows passed there that day.

Q. About what time that afternoon? A. Well, I could not say that exactly.

Q. Just as near as you can? A. About 3 or 4 o'clock; around that way; may be not that; I don't know.

Q. How were the two men dressed? A. Well, the first fellow had a light suit on, and the other a dark suit.

Q. In which direction were they going? A. They were going south.

Q. Do you know Thomas Pickens? Yes, sir.

Q. Did you see him plowing in the field there that day right down from the slaughter house? A. Yes, sir.

Q. How were those two persons walking along there; was one ahead of the other, or were they both together? A. The fellow with a light suit was ahead.

Q. When you first saw them? A. Yes, sir.

Q. Where did you first see them? A. Well, they was coming down toward the slaughter house.

Q. Well, I mean, where were they when you first saw them? A. They was right in the street.

Q. What part of the street? How near were they? North or south of New street, there where the railroad is? A. Well, they was close to that frame house coming down.

Q. Where is the frame house, north or south of the Narrow Gauge Railroad? A. Well, it is on this side (witness indicating), the frame house is.

Q. Oh, yes; If you were standing at the slaughter house they would be between you and the railroad, would they, when you first saw them? A. Yes, sir.

Q. Well now, what direction did they go from where you first saw them near that frame house? A. Walked right in the street, right down to me, that is, past me.

Q. Which was ahead when they got to you? A. The fellow with the light suit was ahead.

Q. Where did they go when they came to the slaughter house opposite you? A. Went down across Honey creek there.

Q. Right below the slaughter house? A. Right from the street down.

Q. Did you see them all the time when they were crossing Honey creek? A. Yes, sir.

Q. You may state whether or not you noticed which way they went after they crossed Honey creek? A. No; I could not tell that—which way they went?

Q. Yes, sir; which way they went. A. When they crossed Honey creek—they come to Honey creek, and the fellow with the dark suit throwed the rail, and then they crossed, and from there—that is, when they passed me I went into the slaughter house; when they passed me down into the creek I went into the slaughter house; or, I looked at them, and the fellow with the dark suit throwed the rail across it, and then I went into the slanghter house; that is, then I went in further; I went in farther, and I went in the back way and I saw them in the field.

Q. You saw them in the cornfield? A. Yes, sir.

Q. At what point in the cornfield did you see them? A. Well, about in the center.

Q. Who was ahead at the time? A. At that time the fellow with the dark suit was ahead.

Q. Was ahead at that time? A. Yes, sir.

Q. How far ahead of the man with the light suit was the man with dark suit? A. Well, I could not say that.

Q. How far ahead, as near as you can tell? A. Well, that is pretty big

distance. Of course, the fellow with the dark suit was ahead, but if you look so far a distance you can't tell.

Q. Well, as near as you can tell. Judging from what you saw was it as far as from you to the stove? A. Well, about that way, more or less; I could not tell.

Q. How high was the corn there at that place? A. Well, some was—— I don,t know.

Q. How high did it come up to them when you saw them? A. When I saw them about, I should think about——

Q. How high to them measuring on your person? A. This way (witness indicating on his person); some lower and some higher.

Q. Some lower and some higher than up to the waist? A. Yes, sir.

Q. I will ask you whether or not there is a path across the cornfield at that place in the direction they were going? A. No, sir.

Q. Where were you when you saw them in the cornfield; where were you standing? A. I was standing in the back of the slaughter house.

Q. And how long did you watch them after you saw them in the cornfield there? A. Well, I watched them until the fellow with the light suit sat down on that log.

Q. Did you see him go and sit down on the log? A. Yes, sir.

Q. Do you know which log it was, whether the big one or the little one? A. It was the little log.

Q. He sat down on the little log? A. Yes, sir.

Q. At the time that man sat down on the little log where was the man with the dark suit? A. Well, he was following him.

Q. Well, after he had sat down on the log, though, I mean; after Wiltshire had sat down on the log, where was the other man at that time. Did the man in the dark clothes sit down on the log, or did he go in any other direction, or did he continue across the field, or where did he go?

Objected to by counsel for defendant as leading.

Q. By the Court.—At that point you may go on and state what occurred. Proceed now and state what you observed occur from that right on, between those parties? A. The fellow with the dark suit, he was ahead, and he walked straight out, and the fellow with the light suit made a kind of a turn like.

Q. Well, go on. A. And then when he made a kind of a turn he made a few steps and set on the log under the tree, and the other fellow, of course, when he seen him turn off, that is, when they were out of the cornfield, this fellow followed, and when he followed I went away; and just as I got in the center of the slaughter house, why, the two shots fired, and I ran right back again and looked at that place where the man was setting, and I didn't see the man no more; nothing but smoke, that is, raised up; and just as I was looking at the smoke I seen the fellow with the dark suit running away from the tree; run right toward the creek, and turned toward the creek bridge, and that is the last that I seen.

Q. Do you know which direction the bridge is from those logs? Is it east or west? A. It is west.

Q. Now I want to ask you where the defendant here, Giddings, was when Wiltshire sat down on the log; whether he was east or west or north of those logs? A. Well, when they went across the cornfield of course they went south.

Q. No. You remember the exact time when Wiltshire sat down on the log, don't you? A. Yes, sir.

Q. Now, I want to know, just at that time, whether Giddings was east or west of him, or north or south; which one was it? Where was Giddings? A. Why, Giddings, I could tell you; Giddings, as you call him, I don't know him, this man with the dark suit walked straight up—say that is the cornfield, the end of it (witness illustrating on the floor).

Q. Wait. Just say that is the log there, that he sat down on. A. Yes.

Q. Well, then, here is the slaughter house? A. Yes.

Mr. Sloane.—Let him testify.

The Witness.—This fellow, he come along here (witness indicating on the floor).

Q. Which one? A. The fellow with the dark suit come along here (witness indicating), and this fellow with the light suit turned off this way, and this fellow walked out straight until he come to the end of the cornfield.

Q. Who came down here to the log? A. The fellow with the light suit, he sat on the log (the log is kind of that direction), and when he sat on the log, this fellow started toward him, and I went away.

Q. Then at that point in the field here, now, did Wiltshire start toward the log and Giddings start in this direction? A. No; that is a straight road; just the same as that way (witness illustrating).

Q. It is about straight, is it? A. Yes, sir; say this is the cornfield, this is, and the fellow with the light suit, as far as I could tell from the distance, he kind of turned that way, to this end of the cornfield, and this fellow walked straight.

Q. This fellow walked straight? A. He walked straight out, and this one sat on the log, and when he sat on the log this fellow started toward him, and just as he started toward him I went away.

Q. Now, about how far was it from the logs when they separated, when Wiltshire went toward the logs and Giddings went straight ahead? A. Well, I don't know that. That is too far to tell.

Q. About how far, as near as you can tell? Was it as far as from where you are sitting there to the court room door? A. No; it was not that far.

Q. Was it half that far? A. About half; may be more and may be less; I could not say.

Q. And as I understand you, when Giddings started toward the man sitting on that log you went back? A. Yes, sir.

Q. Then where did you go? A. From the place I was looking I went into the slaughter house again, back.

Q. How far did you go? A. I believe about the distance; a little further than from here to that railing there; not quite as far as that.

Q. As far as this gentleman sitting here? A. A little further than that, may be; a little further.

Q. Then you walked back into the slaughter house about that distance? A. Yes, sir; might be a little further; I could not say.

Q. Then what? A. Well, just as I was in the middle of the slaughter house the two shots fired so sudden I run right back and looked at that place again and saw smoke raise and looked there but I could not see that man sitting no more, and just as I looked there I seen the man with a dark suit run out from the tree; kind of run that way (witness indicating), toward the creek, and turned toward the creek bridge.

Q. Suppose this is the log there; did this man in the dark suit run around this end of the log, or the other end (counsel illustrating)? A. Well, when I saw him—that is the tree——

Q. Yes. A. And when I saw him I saw him run right toward the creek, and then toward the creek bridge.

Q. At this end of the logs? A. Yes, sir.

Q. How long did you watch him there? A. Who?

Q. The man with dark suit. After you heard the shots and saw the smoke, how long did you watch this man in the dark clothes, run along the creek? A. I looked about a minute or two and I could not see him no more and I went back again.

Q. Why could you not see him again? A. In the place where I was standing I could not see him.

Q. By a Juror.—What kind of an opening was it in the south end of the slaughter house; a window, or what? A. Well, it was a board broken out from the door.

Q. By Mr. Bitzer.—Was there any glass in the door? A. There was a board broken out from the door.

Q. How wide was the board? A. Well, about this way (witness indicating about eight inches).

Q. Was there anything between you, where you were standing, and the logs, when you were looking out of the hole in the door—was there anything between your eyes and the logs? A. Nothing between me but the cornfield.

Q. Was there anything between you and Benjamin Wiltshire, sitting on the log to hide them from you; was the view perfectly clear and plain to you, or was there anything between? A. No.

Q. There was not anything? A. No, sir.

Q. How near the bridge was he when you last saw him? A. Well, I could not say.

Q. Was it as far as from where you are sitting to the street? A. No; I don't know how far it is.

Q. Was it about that far, or was it more, or less? A. When I saw him when he run from the tree, right side of them logs is a little drift; and there is the last I saw him. How far it is from the bridge, I don't know.

Q. Well, how far from the logs was it? A. Well, it was right close up; it was right by it.

Q. He was there when you last saw him? A. Just like here's the log, well about—I don't know; I could not say; about from here to you it is a little drift up pretty close to the bridge, and that is where I saw him last.

Q. He ran, as you say toward the creek? A. And then he turned toward the creek bridge.

Q. Now, how far had he run toward the creek bridge? A. I don't know how far he had run, the last time I seen him.

Q. This is the last time you saw him. After he turned toward the creek bridge, how far did he run? A. I could not tell you; I don't know how far it was.

Q. Now you say you were standing at the door where the board was broken off and looking though when you saw them in the cornfield, when you turned and walked into the slaughter house. Now, how fast did you walk until where you stopped, when you heard the shots? A. Walked slow; never thought nothing.

Q. Did you do anything by the way, or did you walk straight to where you heard the reports? A. I walked out slanting like.

Q. Now, you say you heard two reports of a pistol. How close together were they? A. Well, they was pretty close; I could not tell exactly how close. It was sudden, two shots.

Q. Well, when you walked back you say you saw smoke. Where did you see the smoke raise? A. Smoke on the left hand side.

Q. Left hand side of what? A. Where the man was sitting. Like this; that is the way he was sitting about, as near as I can tell you (witness illustrating). And the smoke raised out of about there (indicating).

Q. The smoke rose right up? A. Yes, sir.

Q. How high was the smoke when you ran back to the place where you had seen the man; how high had the smok· raised when you got back there? A. About that high (witness indicating abou five or six feet high).

Q. You may state whether not Benjamin Wiltshire, the man with light clothes on, had the appearance of being intoxicated? A. Well, he was drunk.

Q. He was drunk? A. Yes, sir; he staggered a little; he staggered; he was not sober, sure.

CROSS EXAMINATION.

By Mr. Sloane.

Q. You live down there with Mr. Hunn, do you? A. Yes, sir.

Q. How long have you lived there? A. Well, about—I could not tell you exactly; about six or seven months, or around that way.

Q. Had you been living there, do you mean six or seven months at that time, or up to this time? A. Before the killing.

Q. You had been living six or seven months there at that time? A. Yes, sir.

Q. Where were you standing at the time you first saw the men? A. I was standing on the sidewalk, that is out in the street.

Q. Well, in front of the slaughter house? A. No, sir.

Q. Where with reference to it? A. I was between the slaughter house and the dwelling house.

Q. The dwelling house is just directly north of the slaughter house, and on the same side of the street? A. Yes, sir.

Q. How far from the slaughter house door, where you would enter it from the street, is it to the dwelling house? A. Well, I was closer to the slaughter house than I was to the dwelling house.

Q. That isn't what I asked you. I asked you tell the jury how far it was from the door where you would enter into the slaughter house to the dwelling house? A. I don't know how far it would be.

Q. Havn't you any idea of the distance at all? A. It would be about—I can't understand you. How far, do you mean, from where I was standing?

Q. No, sir. I will repeat the question. If you do not understand it continue to ask me until I see if I can make you understand it. There is a door from the street into the slaughter house, is there not? A. Yes, sir.

Q. Well, now, how far from the door of the slaughter house to the dwelling house. A. Would be about—from the door to the dwelling house —about eighty-five feet.

Q. Can't you tell by pointing to any object in the room? Was it as far as from you to the end of the room? A. Yes, sir; about that far.

Q. And you were standing about half way? A. Yes, sir.

Q. How far was it from the door of the slaughter house to this point where you say you watched the men in the field? A. When they crossed Honey Creek.

Q. No, no; when they crossed Honey Creek you were standing out on the pavement, as I understand you, were you not? A. No, sir.

Q. Didn't you just swear, in chief, that you were standing out on the pavement when they crossed Honey Creek? A. I was standing on the sidewalk when they passed me in the center of the street, and when they crossed Honey Creek I was in the slaughter house.

Q. I am much mistaken if you didn't testify, a moment ago, that you were standing there and saw then cross Honey Creek, and that you saw the man in black throw a rail over the creek. A. That is what they did.

Q. Didn't you testify that you saw them cross the coeek, and that you then went into the slaughter house? A. I don't know. Well, that is the way I saw it.

Q. Well, which way did you see it? A. When the two men passed me, I was on the sidewalk in the street——

Mr. Sloane.—I propose to have the question asked, answered one way or the other.

Col. Gilmore.—I ask fairness to the witness, who is slow of speech. When he was endeaving to answer, the gentleman breaks in upon his answer and thus confuses the witness and prevents him answering intelligently.

The Court.—He has the right in cross examination, but should not be unfair. There is nothing unfair in it. The trouble is that he has a little difficulty in making himself intelligible, but the counsel has a perfect right

to the mode of cross examination which he has adopted, and should not be interrupted.

Col. Gilmore.—The point was simply this: I only ask the court to rule that a question being asked, even on cross examination, and the witness in the process of answering that question, that he should be allowed to say what he did want to say in answer before he is broken in upon and prevented from answering.

Mr. Sloane.—It is for the court to determine whether his answer was responsive.

The Court.—I was paying close attention to this. Counsel on cross examination, or any other way, has the right to have a question answered. And it is not allowable for the witness to answer some other question not asked. Now, I noticed particularly the question asked, and the witness, probably not intentionally, was going on to answer some other question.

Col. Gilmore.—I think not.

The Court.—Well, I think so; and will exercise my judgment in the matter.

Q. By Mr. Sloane.—Mr. Seeburger, I asked you a simple question, but you didn't understand the question and I will repeat it. I asked you if you didn't testify here in chief that you saw those two men; that one threw a rail across Honey Creek; that you saw them cross the creek, and that then you went into the slaughter house. Didn't you testify that in answer to the Prosecuting Attorney, Mr. Bitzer? A. I was in the slaughter house when he threw the rail.

Q. Answer the question I put to you. Didn't you swear in chief, in answer to Mr. Bitzer, here—you remember when Mr. Bitzer was examining you before I commenced examining you? A. Yes, sir.

Q. And when you started to state to him the occurrence you witnessed that day—you remember that don't you? Now, I will ask you this question: If, when testifying about what you saw in answer to Mr. Bitzer's question, you didn't testify, plainly, that you stood out on the pavement when the men passed you; saw them go down the hill; saw one of them—the man in dark clothes—throw the rail over Honey Creek, and saw them go over Honey Creek, and that that is the last you saw of them until you went into the slaughter house. I ask you if you didn't swear that in chief and right here? A. I don't know. But that is the way I saw them.

Q. I asked you but one simple question: Did you swear that in answer to Mr. Bitzer? But you say you don't know whether you did or not. A. That is the way I saw them; just the way I said now; when they passed me out there in the street——

Q. Hold on till I ask you the question. Where were you standing when they passed you? A. First?

Q. They didn't pass you but once, did they? A. Oh, yes; when they passed me I was on the sidewalk, of course.

Q. At the place you have indicated, about half way between the dwelling house and the slaughter house door? A. Yes, sir.

Q. How far were they from you as they passed you? A. I don't know; I could not state that exactly, how far.

Q. I am not asking for an exact measurement. Give us your opinion of the distance. A. About from here to the coal box; may be further; I could not say.

Q. There is no pavement upon the other side of the street from where you were? A. No, sir.

Q. Were they walking next to the fence, or in the middle of the road—in the wagon way? A. Middle of the road; in the wagon way; yes, sir.

Q. There is a little house right at the end of the road there, is there not, in what would be the road if it went on? A. Yes, sir.

Q. What is that house; what is it used for? or was it at that time? A. Which; over the fence?

Q. No; I mean that house that is in what would be the center of the

road, if the road went on there? A. Where the two men went down, do you mean? That is the coal house, there.

Q. If that street should be extended on, it would run through some building there at the end? A. There is the coal house and right behind that there is a hog pen.

Q. That is what I asked. There is a coal house and right behind that there is a hog pen? A. Yes, sir.

Q. Now, then, how near to the coal house was it where they crossed down into the cornfield from the road? A. That is, over the fence?

Q. Yes, sir; wherever they crossed over the fence to go down into the cornfield—the place where they crossed, how near was that to this coal house, as you call it; this house that is at the end of the street there? A. Well, you can call it—the fence there—you can say the fence; well, would be about—I can not say exactly; probably as far as from here to that partition there; may be not as far; I could not say particularly.

Q. What partition do you mean? That away back there? A. Yes, sir.

Q. Do you mean that that house at the end of the street—the place where they crossed and went out of the road—I mean the point where they crossed the fence to go down to Honey Creek—how far was it from that house? Say this is the house there at the end of the street (counsel illustrating). They crossed this side of it; and that is the fence. Now, I want to know at the point they crossed the fence to go down into the field; how far was it from there? A. Well, it would be about that far; may be not.

Q. Well, that is your idea of the distance there; that it is about that far? A. Yes, sir; I could not say exactly.

Q. Where were they, at the point of crossing the fence, with reference to the slaughter house door? A. How far from the slaughter house door?

Q. Where were they with reference to it; were they nearly opposite the slaughter house door? A. How do you mean; away from it?

Q. Why, the slaughter house is on one side of the street, is it not? A. Yes, sir.

Q. And the fence they would have to cross to go down into that field, to cross Honey Creek, is on the other side of the street, is it not? What direction from the slaughter house door is that fence where these men crossed over? How did they get over into the field to go down into Honey Creek? A. Well, sir, it was there. (Witness illustrating.) Now, at that time there was nothing but what you would say, a gap.

Q. That is a gap or low place in the fence. Now that is what I want to know; what direction was that gap, or place, that they went over, from the slaughter house door; was it north, south, east or west from it? A. I don't know as I can tell. I can tell—say that is the slaughter house——

Q. Do you know the points of the compass? A. Say that is the slaughter house door——

Q. Do you know how this court room stands? A. They crossed—from the slaughter house door they crossed in about that direction (witness indicating).

Q. Southeast from it. Do you know which is north, south, east and west in this court room? A. I guess so.

Q. Well which is north in this court room? A. This is north (witness pointing).

Q. Exactly. And that street runs north and south that you live on? A. Yes, sir.

Q. And the slaughter house is on the east side of that street? A. Yes, sir.

Q. And the door of the slaughter house opens on to the street, does it not? A. Yes, sir.

Q. And you say you were standing on the pavement, about half way between there and the house? A. Yes, sir.

Q. Now, what I want to know is this; at this gap in that fence to go down into the field, where these men passed through or over—to go down over

Honey Creek—what direction was that from the slaughter house door? Was it across the street from it? A. When they crossed Honey Creek, do you mean?

Q. No; I mean when they crossed to go down into that field. They had to get into the field before they crossed Honey Creek, didn't they; and had to go down the hill and through some brushwood and small trees? A. Yes, sir.

Q. Now, they had to cross the fence, or go through the gap, to get there? A. Yes, sir.

Q. Now, at this place where they had to go through the gap, I want to know what directton that was from the slaughter house door? A. From the slaughter house door? it is west.

Q. Exactly. Nearly across the street from it, is it not? A. Yes, sir.

Q. How far from the place where they crossed that fence was it to this place where they would cross Honey Creek, and in what direction from the place where they crossed the fence? A. You mean where they crossed the fence; you mean where they went down?

Q. I asked you how far from the place where they crossed Honey Creek, it was to the place where they crossed the fence, or rather went through the gap, as you would call it? A. About to that partition; about that far.

Q. You think the distance from where they crossed the fence into the field and where they crossed Honey Creek is about as far as from you to that partition? A. Yes, sir; I guess it is.

Q. Now, how far is this place where they went through the fence from that coal house? A. Why, it was right side of it.

Q. Then you didn't mean that that was the distance of from here to there (counsel illustrating), a while ago? You were speaking of the distance from the fence to Honey Creek? A. Yes, sir.

Q. You saw them cross Honey Creek? A. Yes, sir.

Q. Saw a man throw a rail there? A. Yes, sir.

Q. What was the character of the day; what kind of a day was it? A. I don't know what kind of a day it was.

Q. Raining? A. No; I believe not.

Q. What? A. I guess not.

Q. Well, do you know whether it was or not; have you any recollection about it? A. It didn't rain that day, I believe.

Q. Well, what kind of a day was it then? A. I could not tell that, what kind of a day.

Q. Cold or warm? A. Oh, it was warm.

Q. How do you know? A. Well, it was a warm day.

Q. Do you know what month it was in? A. In August.

Q. In August, and it was warm weather, was it not? A. Yes, sir; it was a warm day.

Q. Now, then, you saw one of them—the man in dark—throw a rail across there and they both crossed the creek? A. Yes, sir.

Q. You saw them both cross the creek? A. Yes, sir.

Q. And then you went into the slaughter house? A. Yes, sir.

Q. When you got into the slaughter house, what did you do? A. Let's see——

Q. Eh? A. When I got into the slaughter house—— Do you mean when they throwed the rail?

Q. When you went into the slaughter house, what did you do? A. Why, I went on through to tend to my business.

Q. What business did you attend to, is just what I want to know. A. Do you mean in the slaughter house, what business I attended to?

Q. I asked you this qestion: When you got into the slaughter house, what did you do? A. Why, I walked to the back end.

Q. Did you attend to any business in there—any of your work? A. Yes, sir; I had work in there.

Q. What work did you do? A. I was tending to the kettles.

Q. What had you to do with the kettles? A. Why, I was rendering tallow.

Q. What work had you to attend to with reference to the rendering of the tallow? What was your work to do—to keep up the fire, or stir it, or what? A. Why, of course, my work is to tend to the fire and stir it.

Q. When you went into the slaughter house, did you do any work with reference to your rendering of the tallow--I mean when you first went into the slaughter house, off of the street? A. No; not then at that time.

Q. You went, then, as I understand you, to a point near the back part of the slaughter house? A. Yes, sir.

Q. And how far is it from the door of the slaughter house to the back part of the slaughter house, where you went? A. From the slaughter house door to the back part, it would be about twenty-five or thirty feet.

Q. Can you give me the distance of any object here—was it as far as from you back to that stove? (Counsel referring to stove in the front part of room.) A. No, sir.

Q. Well, anywhere near it? Pretty nearly that distance? A. Pretty near it; yes, sir.

Q. There you say there was a board about that wide, off. (Counsel indicating width.) A. It was wider than that; it was about that wide. (Witness indicating.)

Q. A board about that wide off? A. Yes, sir.

Q. Of the door? A. Of the door.

Q. What was it; a panel out of the door? A. It was a board.

Q. That is what you looked through? A. That is what I looked through.

Q. Now, when you looked through there, you say you saw these two men again? A. Yes, sir.

Q. Where were they, with reference to the place where they crossed Honey Creek to the logs; were they quarter way, half way, or two-thirds of the way, or what, of the distance between the place where they crossed Honey creek and the logs? A. They were about the center of the field.

Q. The center of the field: about half way. Was it half way or quarter of the way? I want to know what proportion of the distance they had gone from where they had crossed Honey Creek. Were they half of the distance, or the whole distance, or two-thirds of the distance? A. Well, they was half way across, as near as I can say.

Q. That is, they were just about as near to the logs as they were to Honey Creek at the time you first saw them? A. Yes, sir; at the time I first noticed them.

Q. At that time, you say, you think the man in the dark clothes was ahead? A. He was ahead at that time I saw them.

Q. Did you testify at the preliminary examination? A. I don't understand that.

Q. Well, did you testify before Mayor Hurst when the case was on trial before him? Do you know who Mayor Hurst is? A. Yes, sir.

Q. Well, do you remember of ever testifying in the case before him about these transactions? Do you understand the question? A. No, sir.

Q. Well, do you understand what testifying is? A. No, sir.

Q. Well, did you act as a witness, as you are doing now? A. Yes, sir.

Q. Before Mayor Hurst on that trial? A. Yes, sir.

Q. Now, I will ask you if you didn't, in that case, testify that Wiltshire was ahead all the time—that the man in the light clothes was ahead all the time? A. No, sir; I guess not.

Q. What do you know about it? Do you know that you did so testify? A. No, sir; that fellow with the dark suit was ahead.

Q. I am not asking what you testified to here. Do you say you didn't so testify before Mayor Hurst? Have you talked with anybody about your testimony since you testified in that case—since you were a witness there, have you talked about it to anybody? A. Yes, sir; with several.

Q. Well, whom have you talked to? A. I don't know the men.

Q. Have you talked with anybody connected with the case—that have anything to do with the case? A. Some witness in the case?

Q. Counsel, witnesses, or the parties—William Wiltshire, the complaining witness, or either of the counsel in the case about your testimony? A. Yes, of course, I talked about and spoke about it.

Q. You have talked with counsel in the case about it—the lawyers in the case, haven't you? A. I can not recollect.

Q. You know Mr. Bitzer when you see him, don't you? A. Yes, sir; sometimes, and sometimes I don't.

Q. Sometimes you don't? A. No.

Q. You know Col. Gilmore when you see him, don't you?

Q. By Col. Gilmore.—Me; do you know me? A. I don't know.

Q. By Mr. Sloane.—You don't know whether you know him or not? Do you know whether you would know him again, if you saw him? A. Might and might not.

Q. Did you talk with either of these gentlemen since you testified before Mayor Hurst? A. Before?

Q. Since the time you were examined before. You remember of my cross examining you before when were on the stand, don't you? A. Yes, sir; I can recollect.

Q. Well, since that time is what I want to know? A. I guess not.

Q. You guess not? A. No, sir.

Q. Don't you know whether you have or not? A. Yes, sir; once, I think.

Q. Now, I want you to state, then, in answer to this question, yes or no, if you can: that you didn't testify before Mayor Hurst, while you were a witness at that preliminary examination, that Wiltshire, or the man with the light clothes—for you have stated now that you didn't know either by name—that the man in the light clothes was ahead when they passed you on the street and was ahead in the field, leading the way? A. He was ahead in the street when they passed me, but in the field the dark suit fellow was ahead.

Q. Wiltshire was ahead when they passed you in the street, but in the field the other was ahead? What did you mean by saying a while ago, in answer to Mr. Bitzer, that Wiltshire went and sat down on the log—the man in the light clothes went and sat down on the log and the man in the dark clothes followed him there. They had then changed places afterward in the field? A. Yes, sir; after he turned off.

Q. That is, they changed places again in the field, so that the man with the light clothes was ahead and the man with the dark clothing behind? A. Yes, sir.

Q. So that the man with the light clothes first reached the log and sat down? A. Yes, sir.

Q. And the other man followed? A. Yes, sir.

Q. Now, then, to do so, he turned out of the direct line they followed in the field; that is, instead of going right straight ahead, he turned aside? A. Kind of turned aside.

Q. But, as you stated before, the man in the light clothing turned aside and this man turned and followed him up there? A. Yes, sir; he turned and followed him.

Q. Were there any trees about those logs? A. One tree; an elm tree.

Q. Was there only one tree at those logs? A. There was several trees, but right at that place, where the man was shot, there was only one tree.

Q. At each end of those logs there are trees entirely interlaced? A. There is brush.

Q. You mean by brush, saplings; they were green and full of leaf at the time, were they not? A. Yes, sir.

Q. And they overlapped—they met—over the logs, didn't they? A. I think; I didn't look exactly to them that way, how the trees met.

Q. I didn't ask you how they met; I asked you if they didn't meet. A. I don't know; I can not say that.

Q. I will ask you now to state, at the time you saw the man in light

clothes sit down on the log—which you say was the front log, as I understand you—at the time you saw him sit down on the log, did you also see the man in the dark clothes? A. Yes, sir; I saw him.

Q. Now, how far from the logs was the man in the dark clothes at the time you saw the man in the light clothes sit down on the logs? Tell me if the distance was as far as from here to the railing that goes along there (counsel pointing). I am speaking of the time Wiltshire, or the man in light clothes, sat down on the log. A. At the time when the fellow with the light suit sat on the log?

Q. Yes, that is it; when he sat down on the log, how far from him—you say you saw Giddings, the man with the dark clothes, at the time that the man with the light clothes sat down on the log. Now, how far was the man with the dark clothes from him, just at that point of time—for you say he was following up to where the man sat down—now how far was he from him? About as far as to where that gentleman, in the dark suit, is sitting? (Counsel pointing.) A. Well, about that far; may be further; I could not state exactly.

Col. Gilmore.—Which gentleman in the black suit are you pointing at?

Mr. Sloane.—I mean the one sitting by the railing, Mr. Seeburger. A. Yes, sir.

Q. You say about that far and may be farther? A. I could not tell, exactly.

Q. I don't ask you to state exactly, but you think it was just about that distance and may be a little further? A. Or may be a little closer; I could not say.

Q. Was there any water in what you call Honey Creek? That is a sort of a slough, that runs from some mill there, is it not? A. Comes from the paper mill and tannery.

Q. Is it a sort of a race that carries off the water? A. Honey Creek comes right there.

Q. It is Honey Creek and a race, both? Q. Yes, sir.

Q. When you first saw these men, they were about thirty or forty yards from the slaughter house? A. I don't know how far they was. They was between the slaughter house and the frame house, where you can see between the railroad and the slaughter house.

Q. Now when you speak of hearing the shots, "fired sudden," you mean they were fired one after the other, very quickly, do you? A. Yes, sir; they was fired sudden.

Q. You mean by the word "sudden," one right after the other? A. One right after the other.

Q. Now after you saw this man sit down, and this man in dark clothes come up to where he was, or in that direction where he was, you then came back into the slaughter house, this distance, as you have already stated? A. Yes, sir.

Q. Did you do anything with reference to your tallow, then? A. No, sir; as quick as I got in about the center of the slaughter house——

Q. The distance you have spoken of before? A. Yes, sir; I heard the two shots.

Q. And you then ran back? A. Yes, sir; I then ran back.

Q. And you say you saw the smoke rising from what would have been to the left of the man sitting down on the log, about this high up (counsel indicating)? A. Yes, sir; the man was sitting about this way (witness indicating). Of course I can not exactly state, but the smoke rose right straight up this way (indicating).

Q. As you saw him sit down, his face was toward the north, was it not? He didn't sit with his face toward the creek? A. Not quite exactly toward the north.

Q. Well, a little toward the northeast, it would be? A. Yes, sir.

Q. His face was not toward the creek? A. No, sir; just about that direction and about this way, looking at him (indicating).

Q. And when you saw this smoke rise, that was about to the left hand of him. A. To the left hand; yes, sir.

Q. And at that time the man you had seen sit down there, in the light clothes, you didn't see; he was gone from your sight when you got back? A. He was gone.

Q. And this other man you caught sight of, beyond the logs or rather to the right of him, as you looked north and to the left as you looked south? A. Which man do you mean?

Q. The man with the dark clothes. A. The man in the dark clothes, he ran, you see that is the tree (indicating), and just as I looked over I seen this way; say that was the tree, the man ran right toward the creek, and turned toward the creek bridge.

Q. The creek runs in a general east and west direction, just as the logs lie in a general east and west direction, don't they? The logs don't lie this way, but they laid that way, didn't they; sort of in that direction (counsel illustratimg)? A. Yes, sir.

Q. Now the creek ran in pretty nearly the same general direction as the logs? A. Yes, sir.

Q. He was rather to that side of the logs, and rather to this end when you saw him running (counsel illustrating)? A. Yes, sir; to say that is the tree—

Q. What you call the tree, is a large sapling? A. Yes, sir.

Q. You take those two pencils and place them as the two logs as you understand it. A. Well, about as close as I can state to you, it is that way (witness illustrating with the pencils).

Q. Now you call that west, do you, and this east (counsel indicating)? A. Yes, sir.

Q. And this north? A. Yes, sir; when I saw that man in looking over there, as I looked here over this way, he was sitting right here and the smoke raised and I saw this man run toward the creek.

Q. And the next you saw him was upon this drift wood, back of the big log? A. The next I saw him was—— Right here is a lot of drift.

Q. Just as you go over the big log there is a lot of drift? A. Yes, sir.

Q. The top of that drift is pretty near as high—when you get out on what would be the center of it, it is pretty near as high as the log, is it not! A. I don't know.

Q. Did you say that tree stood out this way, from the end of those logs or was it in right here by the end of that lower log and right close to the front log; I mean the one that was nearest the cornfield? A. As near as I can say, it was that way (indicating).

Q. You say the tree was about that way? A. Well, about that way.

Q. Well, how far; as far as this little space across here? A. Well, the tree was pretty close to the log.

Q. How close? A foot? About as close to the log as my foot is to that (indicating)? A. Well, I could not say; it was pretty close.

RE-DIRECT EXAMINATION.

By Mr. Bitzer.

Q. Mr. Seeburger, how near the edge of the cornfield was the man in dark clothes when he walked toward the man on the log?

Mr. Sloane.—Is this re-examination proper, now?

Mr. Bitzer.—If the Court please, I think that the witness was made to answer a question that he did not understand.

The Court.—Put the question.

Mr. Bitzer.—That is why I want to ask it.

A. Well, he was pretty near, as close as I can tell, it would be about from here to the banister; may be more, or less; I could not say.

Q. Now when they separarated there and the man in the light clothes started toward the log, he was ahead?

Objected to by counsel for defendant, as having been gone into in chief and then gone over in cross-examination.

The Court.—(After argument by counsel). If he thinks that the witness misunderstood the question and answered it wrong he can put the question. But put the question directly; whether either passed the other in the cornfield.

Q. By Mr. Bitzer. –I will ask you, if at any time in the cornfield, the man in the light clothes got ahead of the man in the dark clothes?

Mr. Sloane.—That is put in a leading form.

The Court.—Put it in the other way; whether either passed the other in the cornfield.

Q. By Mr. Bitzer.—Did either of the men pass the other in the cornfield? A. Well, sir; the fellow with the dark suit, as I stated, he was ahead, and the other fellow with the light suit, just as I said to you, he turned off.

Q. Well, now where was he before the point when he turned off? A. He was behind—the light suit.

The Court.—Now he has explained that.

Mr. Bitzer.—I don't understand that.

The Court.—Well, if the jury understand it, that is sufficient.

Mr. Sloane.—I am content to leave it where it is now.

Mr. Bitzer.—I have another question, which I think tends to allow witness to explain himself; that is this:

Q. In what direction did the man in the dark clothes go, when he went toward the man sitting on the log?

The Court.—Well put the question.

Q. By Mr. Bitzer.—In what direction, east, west, north or south? A. When the man sat on the log what way he went? He went west.

Q. West? A. Yes, sir; he went west toward him; he went to him.

Q. Which one of the attorneys here, Mr. Gilmore or myself, did you talk with about this case, if either one of us, Mr. Seeburger? Did you ever talk to Mr. Gilmore here about the case? A. Col. Gilmore; or anything else in the world?

Q. By Mr. Bitzer.—Yes did you ever talk to him about the case, except at the Mayor's office, on the stand? A. At the Mayor's office, do you mean?

Q. Or at any time; did you talk to him about this case at any time, except when you was down there as a witness on the stand, or did you ever talk to me about this case, or I to you? A. There in the grand jury, I think.

Q. Well, did you ever talk to me at any other place besides on the grand jury? A. No, sir.

Q. Did you ever talk to Mr. Gilmore at any other place? A. No, sir.

Q. Well, then, either of the other gentlemen here, Mr. Sloane or Mr. Cole? A. No, sir.

Q. When you talked to me was it in the grand jury room there where there were a great many men, or was it outside? A. It was in the grand jury room.

Q. Did you ever talk to me at any other place? A. No, sir.

RE-CROSS EXAMINATION.

By Mr. Sloane.

Q. Who was the lawyer you told me you talked to? A. Who do you mean? Any other?

Q. I don't care. I say when you were a witness before Mayor Hurst didn't you tell me you talked to one of the lawyers in the case? There is nothing wrong in your having talked to them. A. No; I aint talked to any lawyer, excepting there.

Q. So what you meant a while ago about talking to some lawyer, was what occurred in the grand jury? A. What occurred in the grand jury room; yes, sir.

CHRISTINA LA BEAU called.
Direct examination by Mr. Bitzer.

Q. Mrs. La Beau, where do you reside? A. Across the Paint bridge second house, right hand.

Q. On the Massieville pike? A. Yes, sir.

Q. How far from the Paint Creek bridge do you live? A. About forty or fifty steps.

Q. How near to the Massieville pike do you live? A. My house is right next to the pike.

Q. Do you remember when Benjamin Wiltshire was killed? A. I remember the day; I can't tell exactly which day of the month it was.

Q. State whether you saw Daniel Giddings on that day or not? A. Yes, sir; I saw him.

Q. What time in the day did you see him? A. It was in the afternoon; I don't know exactly what time, but it might be 3 or 4 o'clock.

Q. Where was he when you saw him? A. He passed our house.

Q. Which way was he going when he passed your house? A. Toward Massieville.

Q. Was he on the pike? A. Yes, sir.

Q. Where were you? A. I was outside paying Mr. Frick for flour.

Q. Out next to the pike? A. Yes, sir.

CROSS EXAMINATION.

By Mr. Sloane.

Q. You know Mr. Giddings quite well when you see him? A. Yes, sir.

Q. How was he passing along the road; afoot? A. Yes, sir.

Q. Well, in what manner; walking slowly? A. Yes, sir.

Q. When had you seen him before that? A. The day before.

Q. What time the day before did you see him? A. It was in the morning; we was in bed yet when he knocked to the door, and I got up first and went out, and he asked me whether he could leave his horse there in the shed; he wanted to go up, he says, to Washington Court House, and it was too late for him to get his horse up to town.

Q. He then went toward the depot when he left your house? A. Yes, sir.

Q. Then did you see him about the time when the train came in that Friday night? A. Yes, sir; he was there after his horse?

Q. Who was with him? A. His wife.

Q. After they got their horse do you know whether or not they went back to the depot? A. Yes, sir.

Q. Went back to the depot for something? A. Yes, sir.

Q. When you saw him he was just a short distance from you was he, at the time he passed your house? A. Yes, sir.

Q. About as far as from you to the table there? A. About from that next table there.

Q. You were standing in front of your yard? A. Yes, sir.

ROBERT CALDWELL called.

Direct examination by Mr. Bitzer.

Q. Where do you live? A. A mile above Massieville—west.

Q. Do you live along the public highway? A. Yes, sir.

Q. In what direction does that road run from your house to Massieville? A. Right east.

Q. What part of Massieville does it come out on? A. Comes out right up there at the foot bridge.

Q. Where is the bridge? A. Right across the creek up there.

Q. At what part of Massieville; east or west end? A. It is the east end from where I live; up in that direction.

Q. In what direction does Massieville run; what is the direction of the town? A. Well, it runs about south and east from there.

Q. What direction does the pike run through Massieville? A. Oh, it runs right south.

Q. Runs north and south does it? A. Yes, sir.

Q. And Massieville is built right along the pike? A. Yes, sir; right along the pike.

Q. At which end of Massieville does the road you live on strike the Massieville pike? A. Don't strike it at either end.

Q. At what point in the pike then does it strike it? A. It strikes it about the middle of Massieville.

Q. Well, I had a wrong impression of it, I understood it was at the north end. Now, in what direction does Daniel Giddings live from Massieville, that is, in what direction *did* he live on the 5th of August? A. Well, I was never at his house; I don't know exactly where the house was. He lived about Massieville there, somewhere.

Q. In what direction? A. Well, sir, it was right on the upper end of Massieville—well it lies right on the south end of Massieville, from where I come out.

Q. The south end? A. Yes, sir; I don't know his house; I never was at his house; don't know where it is.

The Court.—Was it east or west of Massieville? A. It is south from where I come out on the pike to where I live, I suppose.

Q. By Mr. Bitzer.—At the south end of Massieville? A. Yes, sir; I don't know exactly where Mr. Giddings lives for I never was at his house.

Q. Were you acquainted with the premises that he lived on? A. No, sir; I was not.

Q. Do you know Daniel Giddings? A. Yes; I knowed him, just as much as any man, when I seen him.

Q. The defendant here? A. Yes, sir.

Q. Did you see him on the 5th day of August last? A. Yes, sir; I did.

Q. What time in the day? A. Well, sir; it was between 4 and 5 o'clock as near as I can come at it.

Q. In what direction was he going? A. He was going toward Massieville.

Q. Going toward Massieville from your house? A. Yes, sir.

Q. Where does that road lead to in an opposite direction from your honse from where Daniel Giddings was coming? A. The other way?

Q. Yes, sir. A. Well, it will come around into the Huntington pike, branches off each way, and that road, the other road comes around to it.

Q. The main road runs around to the Huntington pike? A. Yes, sir.

Q. Where did you first see Giddings on that evening? A. Right in the road in front of my house, I was sitting in the yard in front of my house, and I saw him go by on the road.

Q. Where was he when you last saw him? A. I didn't watch him, just saw him go by, that is all.

Q. Going toward Massieville? A. Yes, sir.
Q. Now did you speak to Mr. Giddings? A. No, sir; I did not.
Q. Did he look either way? A. No, sir.

CROSS EXAMINATION.

By Mr. Sloane.
Q. How far do you live from Massieville? A. One mile.
Q. West? A. Yes, sir.
Q. Does that road run directly west? A. Yes, sir.
Q. That is, it is at right angles with the Waverly pike, is it? A. Yes, sir; it runs out to the Waverly pike.
Q. So if it is at right angles it runs directly east and west; runs west from the Massieville pike? A. Yes, sir.
Q. And you live out about a mile on it? A. Yes, sir.
Q When was it that you saw Mr. Giddings there? A. Between 4 and 5 o'clock.
Q. When? A. On the 5th day of August.
Q. How do you fix the time? A. It was on Saturday?
Q. Any other means by which you fix it? A. No, sir.

RE-DIRECT EXAMINATION.

By Col. Gilmore.
Q. How far is your house from Chillicothe? A. Seven miles from here.
Q. By Mr. Sloane.—How far is Massieville from Chillicothe? A. About six miles from here.
Q. By Mr. Gilmore.—Massieville is pretty long is it not, from north to south? A. It is pretty long I tell you; strung from one end to the other.

Samuel Trego called.
Direct examination by Mr. Bitzer.
Q. Mr. Trego, where do you reside? A. I live about a quarter of a mile from Massieville.
Q. In what direction? A. West.
Q. How near to that road do you live that strikes the Massieville pike? A. I live within about three rods, I suppose.
Q. Do you know Daniel Giddings? A. Yes, sir.
Q. Do you remember of seeing him on the day Benjamin Wiltshire was shot? A. Yes, sir.
Q. What time in the day? A. Well, it was between 4 and 5 o'clock.
Q. Where was he when you saw him? A. He was on that road going toward Massieville.
Q. Where did you first see him? A. I seen him right on that road there about a mile and a half from Massieville.
Q. Is that east or west of where Robert Caldwell lives? A. West of where he lives?
Q. Where was he when you saw him? A. He was right on the road.
Q. Where were you? A. I was standing about two rods from the center of the road.
Q. About how far did he walk on the pike while you saw him? A. Well, I suppose a hundred yards, that he was in my sight.
Q. Now describe if you can his manner while walking along there? A.

Well, he was walking along, just a common gait, just as a common man would walk.

Q. Do you know where Daniel Giddings lived on the 5th day of August? A. Yes, sir.

Q. What direction is that from Massieville? A. Well, it is south from Massieville.

Q. Did he live east or west of the Massieville pike? A. He lived east of the pike?

Q. How far east of the pike? A. Well, about a quarter of a mile, I suppose.

Q. How far from the south end of Massieville did he live? A. Well, I suppose he lived three-quarters of a mile.

Q. How far from the south end of Massieville is the point where you turn off the Massieville pike to go to Giddings' house? A. I suppose it is about a half a mile.

Q. Then it is a quarter of a mile from there to the house? A. Yes, sir.

Q. Is it directly east from the pike to the house. A Well, it is about east.

CROSS EXAMINATION.

By Mr. Sloane.

Q. How far do you live from Caldwell's? A. I lived a quarter of a mile.

Q. Was it at your house or near your house that you saw Giddings? A. No, sir; it was about a quarter of a mile west of where I live.

Q. Are you related to the Wiltshire's in any way? A. No, sir.

Q. Isn't there some intermarriage between your family and the Wiltshire's? A. Well, I believe there is.

Q. Tell us what it is? A. Well, William Wiltshire married an aunt of mine.

Q. You have talked with William Wiltshire about this case? A. Yes, sir.

Q. You say you have known Daniel Giddings for some time? A. I had known him a short time, that is knew him when I seen him.

Q. Did you speak to him that day? A. No, sir.

Q. He to you? A. No, sir.

Q. Passed close by you? A. Yes, sir.

Q. Are you any relation to Caldwell? A. Yes, sir; he is my uncle.

Q. He is related to the Wiltshires too, ain't he? A. No, sir.

Q. By marriage? A. No, sir.

Q. Isn't he intermarried with them in some way? A. No, sir.

Q. Did you talk with Caldwell about this matter? A. Yes, sir.

Q. When was it you saw Daniel Giddings? A. On the 5th day of August.

Q. How do you know it was the 5th day of August? A. Well, it was the day Benjamin Wiltshire was killed.

Q. Do you know what day of the week it was? A. Yes.

Q. Who told you so, anybody? A. No, sir.

SAMUEL CALDWELL called.

Direct examination by Mr. Bitzer.

Q. Mr. Caldwell, are you a brother of Robert Caldwell? A. Yes, sir.

Q. Where do you live? A. One mile west of Massieville, on the North Branch of Indian Creek.

Q. Do you live with Robert Caldwell? A. Yes, sir.
Q. Do you know Daniel Giddings? A. Yes, sir.
Q. Did you see Giddings on the 5th day of last August? A. Yes, sir.
Q. Where did you see him! A. Passed by where I lived.
Q. How near was he when you saw him? A. Well, he was about twenty-five yards.
Q. What direction was he going? A. He was going down the road toward Massieville.

CROSS EXAMINATION.

By Mr. Sloane.
Q. You are a brother, I believe, of Robert Caldwell? A. Yes, sir.
Q. Are you connected in any way with the Wiltshire family? A. No, sir.
Q. Not by marriage? A. No, sir.
Q. Are you related to the Tregos who are intermarried with the Wiltshires? A. James Trego married my sister, that is all.
Q. James Trego, the father of Samuel Trego? A. Yes, sir.
Q. And he married your sister? A. Yes, sir.
Q. And the Tregos are related to the Wiltshires? A. I believe Mr. William Wiltshire married a Trego.
Q. Have you talked with William Wiltshire about this matter? A. No, sir; I have not.
Q. How did you come to be subpœnaed? A. Well, a Constable gave me a subpœna.
Q. And how did anybody know what you knew about it? A. I suppose I may have spoken about it with somebody else.
Q. He never talked with you at all? A. No, sir.
Q. Did he talk with your brother in your presence? A. Yes, sir.
Q. Wanted to know what he knew about the matter; talked over what he would testify to about it? A. Talked with him; but I did not pay much attention to it.
Q. But that was the subject of their conversation, was it not? A. Yes, sir; I believe it was.
Q. And you were referred to as knowing the same thing, were you not? A. How is that question?
Q. You were referred to in the course of that conversation as knowing the same thing as Robert? A. Yes, sir.
Q. How far is your brother's house from the road? A. It is about twenty-five yards?
Q. About seventy-five feet out to the road is it? A. Yes, sir; to the center of the road—about.
Q. Where were you at the time Giddings passed? A. I was sitting at the well.
Q. How far is the well from the road? A. About twenty-five yards.
Q. About the same distance? A. Yes, sir.
Q. It is at the side of the house is it? A. Yes, sir; it is straight in front of the house.
Q. The well is? A. Yes, sir.
Q. Is the road in front of the house? A. It runs sideways.
Q. Runs along the side of the house? A. Yes, sir.
Q. Where was your brother? A. He was standing close by where I was.
Q. What were you doing? A. I was talking there to a neighbor of mine.
Q. Do you know what time of day it was? A. It was between 4 and 5 o'clock, as near as I could get at it.
Q. How did you come to find out? A. I looked a short time afterward.
Q. You went to examine the clock a short time afterward? A. I always look to see, pretty often, to see what time it is.
Q. You always look pretty often? A. Yes, sir.

Q. Well, what time was it when you looked? A. It was just about five minutes after 5 when I looked.

Q. How long after Giddings passed did you look? A. I suppose it was about twenty minutes.

Q. How do you get at that? A. I just stated that as near as I can.

Q. What made you look at the clock then? A. Why does anybody look at it?

Q. Why would you look at it; for what reason? A. To see what time it was.

Q. Why did you want to know what was the particular time just at that juncture? A. I don't know as it makes any difference.

Q. Do you know what your reason was for examining the clock just at that time? A. It was pretty near supper time.

Q. It was the condition of your stomach, was it, that caused you to look at the clock? A. Yes, sir.

Q. Well, do you always look at the clock when it is near supper time every Saturday? A. Pretty often.

Q. Pretty often every Saturday? Do you do that every day? A. Not every day.

Q. Only on Saturdays? A. Not only on Saturdays; some on other days.

Q. But generally on Saturdays you do? A. We generally have a pretty early supper on Saturdays, so I look to see what time it is.

Q. So you went into the house to look after supper and found it was five minutes after 5? A. Yes, sir.

Q. What time do you generally have supper on Saturdays? A. Most any time I can get it.

Q. What time did you have this supper? A. Well, about 5 o'clock; it was a little late that evening.

Q. How soon after you looked at the clock and found it was five minutes after, that you sat down to supper? A. About ten minutes.

Q. So you took supper then, you think, at a quarter after 5? A. Yes, sir.

Q. Did you speak to Daniel Giddings? A. No, sir.

Q. Did your brother? A. No, sir.

Q. Did he to either of you? A. No, sir.

Q. You both knew him? A. Yes, sir.

Q. And he knew you? A. I suppose he knows me; I know him, anyhow.

Mrs. Charity Blair called.

Direct examination by Mr. Bitzer.

Q. Where do you live? A. Close to Massieville.

Q. In what direction from Massieville? A. I believe it is east.

Q. How far do you live from where Daniel Giddings lived on the 5th of August last? A I suppose about a quarter of a mile; I don't know exactly.

Q. You may state whether or not you saw Daniel Giddings on the evening of the day that Benjamin Wiltshire was shot? A. Yes, sir.

Q. Where did you see him? A. In the evening?

Q. Yes, ma'am. A. I saw him at our house.

Q. At what time? A. Well, it was between sundown and dark, I think.

Q. From what direction did he come when he came to your house? A. I didn't see him when he come; when I saw him he was standing out talking to Lyman.

Q. Who is Lyman? A. He is my son.

Q. How old is Lyman Blair? A. He was twenty-five on the 4th day of October last.

Q. How long did he talk to Lyman? A. I suppose ten minutes, may be.
Q. Where did Daniel Giddings go after he got through with the conversation? A. He said he was going home; I heard him tell Lyman he must go home.
Q. Where did he go then? A. I don't know where.
Q. In what direction did he go? A. I don't know that; I was in the house cooking supper, and I didn't look out when he started.
Q. You were not there when he started away? A. I was in the house; I didn't look; I heard him start away; he said, "I must go home, it is getting late."
Q. How soon afterward did he go, then? A. He started right away.
Q. Did you hear any other part of the conversation? A. No; I don't know as I did.
Q. How long were you standing at the door? A. It was at the window; it was just a few minutes; I was then at my work, afterward getting supper.
Q. Was the window up or down? A. It was down. I spoke through the window.
Q. Was there an opening in the window? I mean was the window up or down? A. It was down in the evening. I seen him and just spoke to him.
Q. What do you mean by speaking to him? A. Just bidding him the time of the day.
Q. Did you nod your head or talk to him? A. Just nodded my head and spoke to him, and said "Good evening."
Q. That was through the window? A. Yes, sir.
Q. Was he standing there when you heard him say he must go home? A. Yes, sir.
Q. You heard him through the window? A. Yes, sir.
Q. How far from the window? A. It was close to the window; he was cutting off some wedges with his knife and was talking to Lyman.
Q. And Giddings had a knife and was talking to Lyman? A. That is all I saw him have; just a small pen knife.
Q. Did you see him have anything else while he was talking to Lyman? A. No; I did not.
Q. Do you know whether your son kept a weapon of any kind about the house, or carried with him?
Objected to by counsel for defendant as irrelevant.
The Court.—Well, I don't know yet. It may be or may not. You may ask that question and then we will see.
Q. What kind of a weapon was it, Mrs. Blair? A. It was a revolver; I don't know what he had else.
Q. Well, when did you see Daniel Giddings before this Saturday evening the last time? A. In the morning.
Q. In the morning of what day? A. Saturday morning, or Saturday forenoon.
Q. What was he doing up there at your house? A. In the forenoon?
Q. Yes, ma'am. A. He was not at our house.
Q. When and where did you see Daniel Giddings? A. I saw him in Mr. Lockwood's store in the forenoon.
Q. Did you have any conversation with Mr. Giddings there? A. Yes, sir; talked some to him.
Q. Where did you see Daniel Giddings before that, the last time? A. The day his wife came home.
Q. What day was that, Mrs. Blair? A. Wednesday.
Q. That was on the Wednesday before the 5th, was it? A. Yes, sir; I ain't certain; I saw him in his own house.
Q. Was it the Wednesday before Benjamin Wiltshire was shot? A. I don't know what Wednesday; it was the Wednesday she came back home.
Q. Well, whatever Wednesday that was, it was the Wednesday she came back home? A. Yes, sir.

Q. Where did you see Daniel Giddings? A. At his own house.
Q. Was Lyman there that da ? A. No, sir.
Q. Did you see Daniel Giddings after that at your house at any time? A. I didn't see him anymore until that evening at our house.
Q. Was he at your house before that? A. Before his wife came back?
Q. Yes, ma'am. A. Yes; he was there Tuesday morning, I believe.
Q. Where was Lyman? A. He was there.
Q. Where were they? A. They were in the house.
Q. Were you there in the house? A. I was gathering some berries, I think, when he come. He come after me to bake him some bread. He stayed there until we come down, and me and Lyman both went home with him.
Q. Did he make any request of you that morning? A. He wanted Lyman to come down and eat his dinner there.
Q. Anything else? A. Not that I heard.
Q. Was there or was there not anything said about a pistol? A. Not anything that I know of.
Q. Was there ever anything in your presence? A. No, sir; not anything that ever I heard.
Q. Well, I will simply ask you to refresh your recollection; do you know whether Lyman ever loaned Daniel Giddings any pistol? A. No; I do not.
Q. Well, do you remember of ever saying that to any person? A. I never said it to anybody.

CROSS EXAMINATION.

By Mr. Sloane.
Q. You say you were down at the house the day Mrs. Giddings came home? A. Yes, sir.
Q. Where did she come from? A. Why, the time she was away with Mr. Wiltshire, I suppose.
Q. You mean from Washington Court House? A. Yes, sir.
Q. Were you there at the time she came home? A. Yes, sir; I saw her when she came home.
Q. You went down there, as I understand, at the request of Mr. Giddings, to bake some bread for him? A. Yes, sir.
Q. And while there was in the kitchen baking some bread for him and the children? A. Yes; sir.
Q. The children were at home that day? A. Yes.
Court adjourned until to-morrow (December 7) at 9 o'clock A. M.

MORNING SESSION.

THURSDAY, December 7, 1882.

SCOTT FINLEY called.
Direct examination by Mr. Bitzer.
Q. Mr. Finley, where do you live? A. I live in Scioto township, southeast part, and southeast from Chillicothe, about a mile, on the Huntington turnpike.
Q. You are the brother-in-law of the deceased, Benjamin Wiltshire? A. Yes, sir.

Q. The body was brought to your house on the evening of the 5th of August, I believe, was it? A. Yes, sir.

Q. What time in the day? A. Sometime in the afternoon ; I could not tell you just what time. I was not there when they brought the body.

Q. Who was there when you came? A. I saw Dr. Denig and Dr. Lash and several others.

Q. Were you present when the wound was dressed? A. I was not in the house where the body was laid at all.

Q. When did you see the body first? A. I saw the body through the door. I went in the hall when I went home and I just saw the body lying in the other room.

Q. Is that the only time you ever saw it? A. I saw it the day he was buried; saw his face.

Q. Did you see the wound at his right ear? A. No, sir; I did not examine the wound. The left side of the face was toward me when I looked at it, but I didn't examine his face at all.

Q. Did you notice anything peculiar about his face? A. No, sir.

Q. Did you notice any marks on his face, of any kind? A. I don't know as I did then. I seen he was shaved clean at the right temple and around his cheeks here; that is all I noticed. I did not see the left cheek at all. I was on the right side of him.

No cross examination.

GIBSON RECOBS called.

Direct examination by Mr. Bitzer.

Q. Were you present at the time the wounds of Benjamin Wiltshire were dressed? A. I was present when Mr. Howard, the undertaker, was there.

Q. Did you see the wound on the right side of his head? A. Yes, sir.

Q. Did you notice anything peculiar? A. I noticed powder marks on the side of his cheek round on the cheek bone, like, and around here; blue splotches of powder on his cheek bone.

Q. How far back did it extend? A. I didn't notice any back of the ear; just from the front of the ear this way down on his cheek bone. They extended right close up to the ear.

CROSS EXAMINATION.

By Mr. Sloane.

Q. Where was that wound in the ear? A. It was right in that little tit of the ear, right through here. There is a little tit comes up here in the ear (witness indicating), and it was right in there.

Q. What relation are you of Wiltshire? A. I am a brother-in-law.

ALOIS EICHENLAUB called.

Direct examination by Mr. Bitzer.

Q. Mr. Eichenlaub, where do you live? A. Chillicothe.

Q. In what part? A. Right opposite the city building on Paint street.

Q. Were you acquainted with Benjamin Wiltshire? A. Yes, sir.

Q. Are you acquainted with Daniel Giddings, the defendant, here? A. Not particularly; no, sir.

Q. Do you know him when you see him? A. Yes, sir.

Q. What is your business? A. I keep a saloon and restaurant.

Q. State what Mr. Wiltshire's habit was as to coming to your saloon in Chillicothe.

Objected to by counsel for defendant as irrelevant.

The Court—It may be or may not. It may be introductory to something that is——

Mr. Bitzer.—Yes, sir; it is.

Mr. Sloane.—If you say you will connect it with something——

The Court.—Ask the question.

To which counsel for defendant excepts.

A. Well, I don't know as it is any different from anybody else; just the same as anybody else.

Q. Well, not in reference as to anybody else, but as to the frequency of his coming to your saloon? A. Very often called there when he come to town.

Q. How often was that? A. I could not say, sometimes once, sometimes two or three times a week and sometimes not so often.

Q. Well, how was it the last year previous to the 5th of August last, did he come to your saloon as frequently during that year as before? A. Well, I don't remember anything about it so far back; I could not say.

Q. Well, did he come to your saloon any oftener the last year, previous to the 5th of August? A. No; he may have, but I don't remember, I could not say.

Q. Well, as you remember did he come as frequently the last year as before? A. No, I think not; I don't think he did not toward the last; I think he was away or somewhere, I could not say.

Q. What was Daniel Giddings' habit as to coming to your saloon? A. He very seldom came in there, I don't recollect ever seeing him in there but once.

Q. When was that? A. That was about two weeks before the killing of Mr. Wiltshire.

Q. What time in the day? A. It was in the evening, I think if I remember right.

Q. What time in the evening? A. About between 7 or 8 o'clock, I think.

Counsel for defendant objected to this line of testimony as irrelevant unless counsel for the State would state professionally that it was simply introductory to something connected with the case, which counsel for the State agreed to do and the testimony was admitted.

Q. State what occurred while Daniel Giddings was in your saloon? A. Well, he came in and sat in the room back of the partition, the bar room is divided off by a partition, and I have a card table back of the partition; he was in there and there was nobody in the room but me and Giddings. I didn't know him then; but what I know of him hearing of this case is the way I come to know Mr. Giddings. And somebody rapped at the back door, the door that leads from the alley to the bar room, and I went to go to the door to see who it was, and Mr. Giddings began to follow me like toward the door. I stopped and turned around and looked, and he kind of excused himself. I think he said he thought it was Wiltshire. But Byron Duncan was at the door. He stuck his head in the door, and that is when Giddings excused himself for following me up.

Q. After Byron Duncan had stuck his head in the door? A. Yes, sir.

Q. Now, you may state whether or not Mr. Giddings remained in the room there all the time from the time he first came in until Byron Duncan appeared at the door? A. I could not say how long he stayed; I don't remember.

Q. I mean did he stay in the room or in your saloon there all the time from the time he came in to the time Byron Duncan appeared at the door? A. Yes, sir; he did. Yes, he was sitting in there. I don't suppose it was ten or fifteen minutes that he was in.

Q. Did he have any apparent business with you? A. No, sir.

Q. Did he buy anything while he was in there? A. No, sir.

Q. How long did he stay after Byron Duncan withdrew? A. Well, I could not say; I don't think he stayed very long; a very few minutes.

Q. How far was it from where he was sitting to the door? A. Well, it is about as far as from here to that window there.

Q. Now far did he walk when he got up from the chair and followed you? A. About as far as from here to the Judge. (The Judge being at the time standing at the stove.)

Q. About that far? A. Yes, sir.

Q. What was his manner while he was in there? A. Very quiet; had nothing to say.

Q. Did he converse with any person? A. There was nobody in the saloon but me and him.

Q. Did he converse any with you? A. No, sir.

Q. I want to ask you a question, Mr. Eichenlaub, just to refresh your recollection; that is whether Mr. Giddings did not get up and go out and come back again once or twice before Duncan came to the door? A. He may, but I don't remember; I could not say for sure.

Q. I believe that you answered that he never was in your saloon before that time. A. No; I could not swear to that. He may have been in often before that. It may be just this occurrence may have kind of remembered me of his being in there at that time. He may have been in often before; I could not swear how often, but I don't remember of seeing him in there before.

Q. Have you seen him in there since? A. No, sir.

CROSS EXAMINATION.

By Mr. Sloane.

Q. Do you remember what month or what day of the month this was? A. No; I could not say.

Q. Do you remember what day of the week? A. No; I could not say.

Q. How do you fix it as being two weeks before the homicide? A. Well, after my hearing of the shooting, that kind of remembered me.

Q. That brought back to your mind the occurrence of his being there? A. Yes, sir.

Q. But are you quite certain it was two weeks? A. Well, may be three weeks; I could not say; it may have been four weeks; I could not swear just how long it was.

Q. It may have been longer than that may it not? You are not certain at all as to the time? A. I could not swear to the exact time or the date.

Q. And you could not approximate it very nearly? A. No, sir; that is about as near as I can come to it, two or three weeks.

E. K. Mick called.

Direct examination by Mr. Bitzer.

Q. Mr. Mick what was your official position on the 5th of August last or prior to the 5th of August for a year prior? A. I was acting as Justice of the Peace of this township.

Q. Do you know Daniel Giddings? A. I have seen him once or twice, I think.

Q. Once or twice? A. I saw him probably two or three weeks before this occurrence.

Q. Where did you see him? A. At my office, on Main street. I never saw him before that time that I recollect of.

Q. Now, I want to ask you whether he, at that time, made any threats against Benjamin Wiltshire, and if so what the threats were? If he made any threats I want to know what they were, nothing else. A. I don't think he made any threats against him; he said something about his——

Q. The question is if he made any threats against him.

Mr. Sloane.—Well, if your Honor please——

The Court.—Let him state what he said.

Mr. Bitzer.—Well, go on. A. He came into the office and stated that he wanted a warrant, and some conversation ensued between he and I, and he said that his wife had gone away and had taken his bed clothing and some of the children's clothing—I think it was the children's clothing that he wanted to recover. I told him that I didn't think that a warrant would lie; that possibly a replevin might lie, and if he wanted a replevin he would have to go to Washington where he stated they had, as he supposed, gone to. In the conversation he said that he had come up here one day to shoot this man Wiltshire, but he thought better of it on account of his children, and didn't do it. Mr. Smart was at the end of my table, at the time, hearing the conversation, and I was busily engaged in writing at my desk, but I don't recollect, really what was said further. I could not give any conversation further. That is about all that I know about it.

Q. Did he mention the date that he came up to Chillicothe? A. No, sir; he did not.

Q. Did he indicate it in any way to you? A. Not that I recollect of.

Q. I don't know as I understood you, Squire. He applied for a warrant for what purpose? A. For stealing those goods. Children's clothing, that he wanted to recover, as well as his own.

Q. Whom did he want the warrant for? A. His wife. I so understood it.

Mr. Gilmore.—That is, for the arrest of his wife? A. Yes, sir.

CROSS EXAMINATION.

By Mr. Sloane.

Q. About what time do you think this was? A. I think it was about two or three weeks before this occurrence.

Q. Not certain which, whether two or three? A. To my best recollection.

Q. Well, he told you, as I understand you, his wife had gone off to Washington Court House with this man Wiltshire?

Objected to by counsel for State as not having been stated by witness.

The Court.—You can prove anything that was said in that conversation. They would have a right to the whole of the conversation that occurred there —that was gone into between them.

The Witness.—I don't recollect anything about the conversation as between—— That he mentioned Mr. Wiltshire's name. I didn't think that he did at the time, but afterward he did.

Mr. Sloane.—You stated this a while ago as I understood you; that you told him he would have to go to Washington Court House, where he said they had gone together. Now, what do you mean when you use the word "they?" A. Well, it was Wiltshire.

Q. Then you did get from him in that conversation that Wiltshire and his wife had gone to Washington Court House? A. Yes, sir.

Q. Now, when he told you that he had come here at one time intending to kill Wiltshire, but on account of his children he had thought better of it, and determined not to do so, did he tell you for what reason he had intended

to shoot Wiltshire? A. Well, he didn't tell me; but I think Mr. Smart engaged him then, and I heard the conversation going on, and I think he said that Wiltshire had run off with his wife; I think that is what he said.

Q. I will ask you if he didn't state also to this effect in this conversation —that Wiltshire had ruined his wife, or words substantially meaning that? A. Well, I would not be certain about that.

Q. Well, you gathered that from his conversation, did you not? A. A person would naturally think that. I don't think I heard anything about it.

Mr. Bitzer.—You don't think you heard anything about it? A. I don't think I did.

Counsel for defendant objected to the interruption.

The Court.—Of course they will not interfere with the examination.

Mr. Sloane.—That is all I am objecting to.

Q. You informed him that a warrant would not lie under the circumstances? A. I think so.

Q. And that the proper step would be to replevin the goods? A. Yes, sir.

Q. And that he would have to go to Washington Court House to do so? A. Yes, sir.

Q. That you would not have jurisdiction here? A. Yes, sir.

Q. You don't know about the time, but the time of the conversation must have been after they had gone to Washington Court House? A. Yes, sir.

GEORGE SMART called.

Direct examination by Mr. Bitzer.

Q. Mr. Smart, where were you living on the 5th day of August last, and for several weeks prior to that? A. Living in Chillicothe.

Q. Do you know Daniel Giddings, the defendant here? A. I saw him two or three times about that time; talked with him two or three times.

Q. How many times did you have a conversation with him? A. Well, I talked with him twice before the occurrence, and one day in the jail after, I believe.

Q. When did you talk to him the first time? A. The first time was along about the 20th of last July. I am not sure about the date—I think it was either the 20th or a few days after that.

Q. Where was it that you talked to him at that time? A. It was in Squire Mick's office.

Q. That was the first time? A. Yes, sir.

Q. You may state whether or not he made any threats against Benjamin Wiltshire? A. That first conversation I can't say, certainly, that he did.

Q. Now, where did you have the second conversation with him? A. The second conversation that I had was on the street in front of Kauffman's.

Q. When was that? A. That was on the same day; I suppose about an hour after the first conversation.

Q. You may state whether or not he made any threats against Benjamin Wiltshire at that time? A. He said—he made no threats—he said that he had come to Chillicothe two or three times with the intention of killing Wiltshire but had not done it; when he thought of his family he concluded not to do it.

Q. Well, did h state to you at that time when he had come to Chillicothe for that purpose? A. I don't know that he stated definitely, but during the trouble that he had had with Wiltshire and Mrs. Giddings—during that time.

Q. Did he say anything about his wife in that conversation?

Mr. Sloane.—If the Court please, I suggest that if this conversation is to be called for the witness should be called upon to relate that conversation.

The Court.—Well, after having given it, it is competent to call his attention to particular matters. Did he say anything about his wife? If so, what?

Mr. Bitzer.—State the whole of the conversation, George; and commence there, the first time you met him at Squire Mick's office.

The Court.—It is not necessary that the testimony should be repeated.

Mr. Bitzer.—He has not testified as to the conversation before Squire Mick yet; but this conversation that he stated was in front of Kauffman's store.

The Court.—Call his attention to the particular matter that seems to be omitted and that you think of importance.

Q. By Mr. Bitzer.—I will ask you then, whether, in that conversation he said anything about his wife, anything about his——? A. Well, when he first came in at Squire Micks, he came in and said that a man had entered his house and had had intercourse with his wife, and that they had run off together and taken some of his goods with them, and he wanted to know what could be done to get them back; and the Squire told him that the only thing he could do was to get out a writ of replevin; and he said that he didn't care about getting his wife back that all he wanted was the goods. And then in the conversation between us in front of Kauffman's he went on to speak of his wife more; spoke of their married life and the circumstances of——

Q. Well, just state what he said? A. He told where she came from, the Northern part of the State, he said they were married ten years ago, and that he loved her at the time, and said they had lived together all the time, and lived down here at Massieville about four years; and he said during that time they had had some little difficulty; that she was urpleasant at times and told him that she didn't like him, and so on.

Q. That she told him? A. She told him.

Q. Well, go on. A. He said that she told him she didn't like him, and wished that he would go away. And he said that he never used any violence toward her and he never suspected that she was guilty of anything immoral until about three months before the time that he was speaking. And he said that he began to suspect that she was having relations with Wiltshire. He said that there was a child of Wiltshire's that was taken sick during the winter and that Mrs. Giddings went to nurse him, and that during that time he thought that the intimacy grew up between Wiltshire and his wife, and that after that she went back to Wiltshire's father's house frequently and was gone away from home and didn't take the proper care of her children; said that when she would come back home she didn't act as a mother should. When she would go away she would not say "good by" to them scarcely, very cool, and that finally he told her that if she wanted to go away she could take her goods and leave, and he said that she might take what belonged to her. And one day he said that she went to work and packed up a quantity of goods that he supposed were hers, and that in two or three days he hauled them to town after he said she could go away; that he brought them to Chillicothe, and two or three days afterward he found that she had gone off with things that did not belong to her, and then he found that she had come to Chillicothe and had gone off with Wiltshire, and he came that day to see what he could do about it.

Q. What did he say at that time, if anything, about his affection for his wife at that time? A. He said that he didn't care to get her back; that if he got his goods back he didn't care about having her again.

Q. Now you may state whether or not he said anything about her.

Counsel for defendant objected to counsel for the State inquiring in regard to particular points until witness had stated the whole conversation as he recollected it, and then if he says that he has done so, counsel for the State can call his attention to anything he omitted.

The Court.—I don't know as there is any such rule on the subject. In

regard to leading questions, that is a question that relates a good deal to the character of the witness.

Q. By Mr. Bitzer.—Mr. Smart, have you stated all this coversation now that you remember? A. I think I have.

Q. I will ask you now whether or not he stated anything about his having ascertained his wife having relations with other men besides Wiltshire. A. Yes, sir; he referred to that, I remember now that when this affair happened he had heard things that made him believe that she had had improper relations with other men; something of that kind. He didn't say much about that.

Q. Did he mention how many others? A. No; I don't think he did.

Q. Did he mention the names of any parties? A. No, sir.

Q. Now I will ask you whether or not he said anything at that time about her going away and the length of the time she could stay away. A. No; he didn't. He said she could go away if she wanted to. He didn't say anything about how long she could stay.

Q. Well, did he say anything about his wife saying anything about him going away and staying away?

Objected to by counsel for defendant as leading.

The Court.—That is not leading if it were answered that he did; and if not the other question comes at once. That is not material. The question is, what was it, and brings the mind of the witness to particular matters that are inquired of.

Mr. Sloane.—The whole course strikes me as leading.

The Court.—To be a leading question it must suggest the answer that is wanted in substance.

A. The only reference to that was in regard to when they had those little quarrels. During his married life she would just tell him sometimes she would not care if he would go away.

Q. Is that all she would say? A. I think that is all that he told me.

Q. Say anything about his going away and staying away and never coming back? A. I don't remember that he said anything about that.

Mr. Sloane.—Is not that leading?

The Court.—Well, that would be, but all leading questions are not objectionable. It is possible in the case of the fairest witness for him to overlook something. The object in the case is to get out of the witness all he knows about the case by fair methods. The great question is, whether such a question is a fair one.

CROSS EXAMINATION.

By Mr. Sloane.

Q. How you came to talk with Mr. Giddings is the fact that you were on one of the county papers here, acting as reporter? A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Bitzer.

Q. There is one question I wanted to ask Mr. Smart, and that is during either of those conversations with Daniel Giddings, I want to know whether or not he said anything to you about the comparative guilt of the two parties, that is Benjamin Wiltshire and his wife? A. I think he did, but I can't remember what he said. I don't remember anything definite that he said in regard to them.

Q. Well, I don't want the exact words, but the substance, if you can give

it. A. All I could give would be my impression from all that he said. My impression I formed is——

Mr. Sloane.—Do you mean by that, Mr. Smart, an inference drawn? A. Yes, sir.

Counsel for defendant objected to answer as to inference.

Mr. Bitzer. —Well, from the substance of what he said. A. From all the things that he said?

The Court.—The witness has not convinced the court that it would be competent as to mere matter of inference from what was said. He can give the substance.

(To the Witness.—You are not required to give the exact words, but the substance of the words that were used.)

The Witness.—His manner of speaking and the way he seemed to feel. That was all.

The Court.—Well, then, if your inference is from that, why it would not be competent as testimony. You can describe the manner, and all that, and leave the jury to draw the inference. You may have drawn an improper one.

HENRY LONG called.

Direct examination by Mr. Bitzer.

Q. Mr. Long, what is your official position? A. I have been acting as Deputy Sheriff of Ross County.

Q. State whether or not a warrant was ever placed in your hands for the arrest of Daniel Giddings. A. I think not.

Q. You may state whether or not you ever attempted to make the arrest of Daniel Giddings, charged with the murder of Benjamin Wiltshire. A. Yes, sir.

Q. Well, just state what you did. A. Well, on the evening of the murder about 4 o'clock I reckon, may be betwixt 3 and 4 o'clock, I saw Mayor Hurst, and he told me——

Mr. Sloane.—You need not state the coversation.

The Court.—State what was done.

The Witness.—Well, I heard that a murder was done down at the depot, and Mr. Kemmery came along by the room, and I asked him if he would not drive down. He said he would, and I jumped in his buggy and we drove down right behind the Coroner as he went. When we got down to the depot Mr. White told me to go on down; to follow that buggy and it was going down to the bridge, where the man was killed; and we followed on down there and got down there at the time they had, and I was a little suppler than the Coroner or Mr. Kemmery, and I got out and ran right down the bank, and when I got down there I found Mr. Pickens there—I did not know him at that time—and he showed me where the man lay, and I went to look at him, and I asked him who it was.

Mr. Sloane.—You need not state what the conversation was.

The Court.—I don't see that there is any need of your stating the conversation. State what you have done in regard to the arrest.

The Witness.—Well, I looked for him down there, and inquired if they had any of them seen him, and they had not, and I come back to town that evening.

Mr. Bitzer.—Is that the only time you ever attempted to make any arrest? A. No, sir; I think I went down four if not five times.

Q. Just tell when you went the second time. A. The second time I went down to his house—the next morning; I think that next day.

Q. To whose house? A. To Mr. Giddings' house; and inquired there for

Mr. Giddings, and he was not at home, and I looked around, and not finding out anything, and inquiring all I could down there if they had seen him or anything, and they had not since the day before.

Q. When was that that you say was the second time? A. The day after.

Q. Was that Sunday? A. I won't be positive.

Q. That was the day after the murder was it, or the killing? A. Yes, sir; the day after the murder. And I come back home. In the morning Sheriff Tulley said he wished I would go down——

Mr. Sloane.—You need not state that.

The Witness.—Well, I went down again. Then I went all around down there, went to Mr. Giddings', then and went through around the neighborhood, but I could not find or see nothing about him and I come back home again.

Mr. Bitzer.—Well now the third time.

A. The third time I got up about 2 o'clock in the morning, I rather think that was on Tuesday morning that I got up about 2 o'clock, went down there and there was some parties down in Massieville waiting, and we went to Giddings' house.

Q. Who went with you? A. Mr. Conley and Mr. Downs and another gentleman, I can't just think of his name; used to be a policeman here. We went to his house just before daylight.

Q. To whose house? A. Mr. Giddings'. I knocked at the door and there was a lady in the house asked who was there and I told her, and these other men were stationed around the house, and she told me——

Mr. Sloane.—You need not state the conversation with her.

The Witness.—Well, she got up and opened the door, and I went in and while I was there these other men come in then and all set down, and I asked the privilege of searching the house. She gave it to me. I went up stairs and could not find nothing of him; and I think I got in my buggy, Mr. Conley and me, and went away down below Massieville, and went to where we had heard he had stayed and found the place where he had got his dinner I think the day before, or that is what I heard.

Q. Where was that place? A. Well, it was below Massieville; I don't recollect the old gentleman's name now.

Q. Well, then, what did you do? A. We looked around all that we thought we conld do and could not do anything, and we come back home.

Q. Well, is that the last time that you went down there? A. I don't recollect whether I was there any more after that or not. I don't believe I was. I think that was the fourth time may be. I may have been down the fifth time, but I know it was the fourth time, and I inquired around several other places where I had heard he had been, but could not find any trace of him.

CROSS EXAMINATION.

By Mr. Sloane.

Q. Were you present when he came and delivered himself up, Mr. Long? A. Yes, sir.

Q. When was that? A. Well, I don't know; it might have been Wednesday or Thursday or might have been later.

Q. Wednesday or Thursday after the killing? A. Yes, sir; some time after the killing.

RE-DIRECT EXAMINATION.

By Mr. Bitzer.

Q. Who was with him when he came? A. Well, there was several men around; I don't know who.

Q. How did he come? A. Well, I understood——

Mr. Sloane.—You need not tell what you understood.

Q. By Mr. Bitzer.—You didn't see him come? A. I saw him come up on the steps, the first time I ever saw him.

Q. What steps? A. The court house steps, and go to the jail, the Sheriff's office.

Q. Who was with him at that time? A. I could not tell. There was quite a number of persons around there; quite a crowd; something going on.

Q. I wil ask you whether A. B. Cole was with him at that time? A. Well, it strikes me that Mr. Cole was with him.

Q. That was the first time you ever saw him? A. That was the first time I ever saw Mr. Giddings to know him.

NOAH CLARK called.

Direct examination by Mr. Bitzer.

Q. Mr. Clark where do you live? A. Down at Caldwell street at the south end of Paint.

Q. Do you know Daniel Giddings? A. I knew him when I saw him. I have not seen him but once.

Q. Well, did you see the defendant, Daniel Giddings, on the 5th day of last August? A. Yes, sir.

Q. Where did you see him? A. Seen him in Frank Strubel's saloon.

Q. What time in the day was it when you saw him there. A. Well, I think it was a little after 12 o'clock. I don't know exactly what time it was, I think it was near about that time.

Q. Who was with Mr. Giddings, if anybody, there? A. Mr. Benjamin Wiltshire.

Q. Who else was in the saloon if you remember? A. No one but myself and Frank Strubel and Edwin Floyd.

Q. Who came in the saloon first? A. Well, I could not tell you exactly, but I think that Mr. Wiltshire came in ahead of Mr. Giddings.

Q. State what was done in there. A. Well, they came in and either one of them called for some drinks; I would not say which one it was. They drank and I was at the bar and I stepped back.

Q. What did Mr. Wiltshire drink? A. Mr. Wiltshire? I could not say positive what he drank whether beer or whisky.

Q. You could not say positively? A. No, sir; I didn't pay much attention to neither one.

Q. Then what? A. Well, then I think they went out, one of them says, "lets go" and they went out. I am not sure though whether they went out first or whether I went out.

Q. Well, was anything done by either of them after they drank? A. Well, Mr. Wiltshire, he seemed to get a little sick from drinking his beer or whisky and he throwed up.

Q. What did he do before he vomited, if anything? A. Well, he went to the counter and put his head down on some cheese that Mr. Strubel had on the bar and I suppose it was that made him sick and he vomited.

Q. What was the condition of Wiltshire as to being drunk or sober when he was in the saloon? A. Well, he didn't seem to be as much drunk as Mr. Wiltshire was—Giddings.

Q. I mean Wiltshire? A. Well, he seemed to be under the influence of liquor right smart.

Q. Was Mr. Giddings intoxicated? A. Well, he didn't seem very much to me. I didn't pay much attention, but he didn't seem very much so.

CROSS EXAMINATION.

By Mr. Sloane.

Q. You thought he was though, didn't you? A. No, sir; I didn't think he was, because he didn't have the appearance of being drunk.

Q. You thought he was under the influence of liquor some, though, didn't you? A. Yes; I thought he was, some.

LYMAN BLAIR called.

Direct examination by Mr. Bitzer.

Q. Mr. Blair where do you live? A. Close to Massieville.

Q. Where were you living on the 5th of August last? A. Same place I believe that I said.

Q. East or west of Massieville pike? A. East.

Q. How far did you live from Daniel Giddings' on the 5th of August? A. I suppose three hundred yards.

Q. In what direction did you live from Daniel Giddings' residence at that time? A. East, as well as I could tell you.

Q. About that time and for several months prior thereto were you the owner of any weapon? A. Yes, sir; I kept a gun and a revolver.

(Revolver handed to witness for examination.)

Q. I will ask you, Mr. Blair, if that is the revolver that you owned? A. It looks very much like it.

Q. What caliber is that revolver? A. 32 is what they call it, I guess.

Q. You may state whether or not you loaned that revolver to anyone previous to the 5th of August, within a few days prior thereto? A. Not that I recollect.

Q. Within a few weeks before the 5th day of August? A. I believe not.

Q. How? A. I don't recollect.

Q. I will ask yon whether or not you ever loaned that revolver to Daniel Giddings? A. Yes, sir; I did.

Q. When did you loan him that revolver? A. On Thursday; I forget what time of the month; it was Thursday in the afternoon.

Q. What do you mean by that "Thursday in the afternoon;" what Thursday in the afternoon? A. I don't recollect what Thursday, I don't recollect nothing about the day of the month.

Q. Well, was it or was it not the Thursday before Benjamin Wiltshire was shot? A. Yes, sir; it was before.

Q. Was it *the* Thursday before he was killed? A. Yes, sir.

Q. Now, where were you when you loaned that revolver to Daniel Giddings? A. It was down at Massieville.

Q. At what place in Massieville? A. In Rendt's store.

Q. Now just state what conversation occurred between you and Daniel Giddings when he got your revolver from you. A. As well as I can recollect, he said he wanted it to protect himself; he was going on some trip, something like that, and I think he said——

Q. Said he was going on some trip and he wanted it to protect himself? A. Yes, sir.

Q. Well, just state the conversation from first to last, all that occurred there between you? A. I can't recollect rightly much about it.

Q. Is that all you recollect? A. Yes, sir.

Q. Were you in the store when he first spoke to you about it? A. I was just going into the store I believe; and so was he.

Q. What store was that? A. Christopher Rendt's.

Q. There is where he asked you for the revolver, as you were going in? A Yes, sir.

Q. Where were you when you gave him the revolver? A. It was in the store I believe.

Q. What part of the store? A. There is only one room that I know of I believe in the store.

Q. What part of the store? A. Well, as you go in the side I believe, the west door.

Q. As you first went in? A. Yes, sir.

Q. I will ask you, simply to refresh your recollection, whether after he asked you, you didn't go out of the store on to the street, and gave him the revolver on the street? A. I think not; it was in the store.

Q. You think it was in the store? A. Yes, sir.

Q. Who was in the store at the time you gave him the revolver? A. It seems to me Mr. Rendt was.

Q. Do you know where Mr. Rendt was at that time? A. He was in the store, I believe.

Q. Do you know in what part of the store Mr. Rendt was? You say you were in the front part when you gave him the revolver as you went in; where was Mr. Rendt? A. I believe it was close to where he was standing.

Q. Did he see you give him the revolver? A. I could not say about that.

Q. Was there anybody else in the store besides you? A. I didn't notice anybody else.

Q. What time on Thursday evening was that? A. I could not say certain. It was toward evening.

Q. I will ask you if you saw Daniel Giddings on the 5th day of August, on the Saturday after that Thursday? A. Yes, sir; I did.

Q. I will ask you if the pistol was charged at the time you let him have it? A. There was three cartridges in it, and I gave him two with it.

Q. Why did you give him two with it? Were you requested? A. No; oh, no.

Q. You gave him the two loose cartridges as there was three in it? A. Yes, sir.

Q. Where did you see Daniel Giddings then the next Saturday? A. He come up to where I lived.

Q. What time in the day? A. Must have been close to sundown, I think, in the evening.

Q. Where were you that evening when you first saw Gidddings? A. I was chopping wood close to the house.

Q. Well, now state what conversation, if any, took place between you and Daniel Giddings when he came to you there at the woodpile. A. Well, one thing; he being going to help me saw my timber I know with the crosscut saw, and he mentioned something about that. Something about—was going to trade for some land and wanted to sell out and didn't think he could help me next week.

Q. Well, had he promised to help you the next week? A. Yes; he had been going to help me that same week and didn't.

Q. Just state what he said about helping you the next week? A. He mentioned he had occasion to look at some land I believe, something like that.

Q. Did he mention where he was going to look at some land? A. I really most forget the place.

Q. What did he say about the next week? A. That was the time that he meant I suppose; Monday, he said.

Q. He meant the next Monday? A. Yes, sir.

Q. Is that all that was said? A. All that I can recollect of; yes, sir.

Q. Did he do anything while he was there; did he give you anything? A. He brought the revolver home; yes, sir.

Q. The same revolver that you gave him? A. The same one.

Q. How did you come to have two loose cartridges there in your pocket at Mr. Rendt's store when you gave it to him? A. I had got them with the intention of loading it; putting them in it.

Q. When did you get them? A. I believe the same day.

Q. Where did you get them? A. I got them of a man named Phin. Curry.

Q. Well, where does he live? A. Close to this place there; Massieville.

Q. Which direction from Massieville? A. East, I believe.

Q. How near to you? A. About a mile.

Q. How many did you get from Phin. Curry that day? A. I had only got two. He owed me some and I knowed he had them and I got them from him.

Q. Had you been requested by Mr. Giddings to give him that revolver before that day? A. No, sir.

Q. What time of day did you get those two from Phin. Curry? A. It must have been about noon, I guess; probably, as near as I can tell.

Q. Where was your revolver? A. I had it with me.

Q. Did Daniel Giddings come to your house at any time in the morning before you had got out of bed to borrow the revolver? A. Once, I believe; yes.

Q. When was that? A. That must have been, probably, a month, or sometime, before that.

Q. What did he say at that time when he came after it? A. I can't recollect more than that he wanted to borrow it.

Q. Did he say for what purpose? A. No.

Q. Did you let him have it? A. I did.

Q. When did he return it, then, after that time? A. About, I suppose, three days afterward.

Q. Did he ever come to you at any other time besides the times you have mentioned now? A. No, sir.

Q. No other time? A. No, sir.

Q. I will ask you if Daniel Giddings did not say to you when he borrowed that revolver——

Counsel for defendant objected to the form of the question.

The Court.—In this case the Court will permit leading questions to be put to this witness.

To which counsel for defendant excepted.

Mr. Bitzer.—Mr. Blair, I will ask you if Daniel Giddings didn't tell you; when you asked him what he wanted with the revolver, that you would see what he wanted with it in a few days; that you would see what he was going to do with it in a few days? A. No, sir.

Q. Did he say anything like that in substance? A. No, sir.

Q. That is, at either time, the day he came to you before day, or at Rendt's store? A. No, sir.

Q. How long have you known Daniel Giddings? A. I knowed him about four years; something of that kind, four or five.

Q. How long have you lived that close together? A. About four years, something like that.

Q. I will ask you whether you are not an intimate friend of Daniel Giddings?

Objected to by counsel for defendant.

Objection overruled.

A. I knowed him well, that is all.

Q. That is not the question. I will ask you if you are not an intimate friend of Daniel Giddings? A. Not more than any other person I know.

Q. Are you a friend of Daniel Giddings? A. Well, I am a friend of any one, so long as they treat me right.

Q. Are you a friend of Daniel Giddings? A. Enough of a friend, I suppose, for neighbors.

Q. You are together a good deal, are you not? A. I seen him pretty often.

Q. You have worked together, sometimes, have you not? A. Some few times; yes, sir.

CROSS EXAMINATION.

By Mr. Sloane.

Q. Neighbored together there, doing friendly office to each other? A. Yes, sir.

A. W. WEST called.

Direct examination by Mr. Bitzer.

Q. You are a gunsmith, I believe? A. Yes, sir.

Q. I only want to ask you one question in regard to that revolver; that is, what kind of a revolver that is? (Revolver shown to witness.) A. Well, it is a 32-caliber; what we call a 32 revolver.

Q. I will ask you if it shoots long or short cartridges? A. Shoots both long and short.

Q. I will ask you which shoots the hardest, long or short cartridges? A. The long shoots the hardest, I think.

No cross examination.

At this point the State rested.

TESTIMONY FOR THE DEFENDANT.

AFTERNOON SESSION.

THURSDAY, December 7, 1882.

DAVID E. MCCOY called for the defendant.

Direct examination by Mr. Sloane.

Q. Where do you live? A. I life in Highland county, Fairfield township.

Q. How long have lived there? A. I have lived there since 1850.

Q. Do you know the defendant, Daniel Giddings? A. Yes, sir.

Q. How long have you known him? A. I have known him ever since 1850.

Q. Did you follow any particular occupation in the neighborhood where Daniel lived? A. Yes, sir.

Q. Please state to the jury what it was. A. In 1850 I went there and commenced teaching school in the district that his grandfather lived in, on the 2d day of October. I taught school without much intermission in that district for over three years, and boarded at his grandfather's during that time.

Q. Grandfather who? A. Grandfather Hixson.

Q. His maternal grandfather? A. Yes, sir. I boarded there, altogether, about four years and six months. And after that I also taught school at New Lexington, where Daniel Giddings' father resided, and Daniel Giddings was one of the pupils and went to that school.

Q. Well, you knew him pretty well up to the time that he went to the war? A. Yes, sir.

Q. That was in 1863? A. Yes, sir; I believe that was in 1862 or 1863. He went in Col. Collins' regiment or battalion in the volunteer service.

Q. Well, now, please state what was his character as boy up to the time that you speak of as being of a peaceable, quiet, gentle disposition? A. Well, sir, I became more particularly acquainted with him when he first went to school to me at the village of New Lexington than I was at the time previous to that, when I boarded at his grandfather's, because, many times during the time that I boarded there, he would be away in the day time when I was out of school; but when I taught school in New Lexington there, I became more familiarly acquainted with Daniel Giddings.

Q. You say you do know what his character was as to being of a peaceable, quiet, gentle disposition. You may state to the jury what was that character. A. Well, sir, I would say this: that he was one of those boys at school that never gave me any trouble. That was his character. And in his play and associations on the playground he was a little peculiar in his turn. He was not very apt to engage in a game of ball unless some of the other boys went and rather insisted upon it. He was inclined to be off and by himself. But if anything happened a boy; if he got hurt, or anything of that kind, Daniel Giddings was one of the first to render some assistance. He always treated his schoolmates, as far as I observed, very kindly; never had any difficulty with them.

Q. And you say he was of a kindly, gentle disposition? A. Yes, sir.

Q. Did you know his father? A. Yes, sir; I knew his father w ll; was personally acquainted with him. I was engaged in business some five or six years with him and Mr. Hixson and McPherson, when they were in the mill business at Vienna; I was there and worked some for them.

Q. Do you know anything of his father's experiencing, sometime before his death, severe business troubles? A. Yes, sir.

Q. I will ask you to state if you noticed or know anything about any change that took place in his mental condition, after his experiencing those? A. There was a visible change in the man that had taken place, and it was frequently spoken of in the neighborhood by those that were personally acquainted with Mr. Giddings, Daniel Giddings' father.

Q. You may state to the jury whether or not he lost his mind—became insane, from that trouble? A. Well, it was considered that his mind was considerably broken up.

Q. Were you at the house after he took down? A. Yes, sir; I was there once.

Q. State whether or not you found him at that time in a conscious or wholly unconscious condition? A. I could not say as to that; whether he was in a wholly unconscious condition or not, but there was, apparently, to my mind, a good deal of trouble there.

Q. Well, he died after this trouble and after this aberration of mind that you noticed? A. Yes, sir; he never survived it.

Q. Do you know who was his attending physician at that time? A. Old

Dr. Judkins, I think; but I don't recollect, now, whether any counsel was called or not.

Q. You may state to the jury whether or not Dr. Judkins is still living? A. No, sir.

Q. How long has he been dead? A. I think it was——

Q. Well, it was some years ago—he died before the 5th of August last? A. Oh, yes, sir.

Q. Did you know or see anything of Dan at the time he lived over near Hillsboro, or were you acquainted in that neighborhood, at all? A. No, sir; I was not acquainted in that neighborhood; I might have seen him when he had been out there where his granfather lived, among the relations. I think I did meet him there once, but that was just a few minutes. I never spent any time with Daniel Giddings when he lived out there in the neighborhood near Hillsboro, to associate with him.

Q. You never saw anything of him after he returned from the army? A. Yes, sir; I think he was there in his grandfather's neighborhood some after he came home from the army.

Q. I will ask you to state to the jury what his character was for a peaceable, quiet and gentle disposition, during that time? A. I never heard of anybody who associated with him, or came in contact with him, say that they had ever had any trouble with him; but that he was a quiet, peaceable and inoffensive man.

Q. Now, sir, I have asked you as to his character. I desire to ask you as to his reputation; meaning by that what was generally said of him, or the estimate placed on him in the community, as to being a peaceable, quiet and inoffensive man and a law abiding citizen, simply say whether it was good or bad.

Objected to by counsel for the State.

A. Daniel Giddings' reputation, among the best class of our citizens, I would say that his citizenship there was good and his character there was in good standing, and I never heard it impeached.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Well, sir, you, Mr. McCoy, I believe are not a physician, and never were? A. No, sir.

Q. Never pretended to be an expert in matters of that sort? A. No; I dont claim to make any profession in medical science.

Q. Up to what latest year did you know Daniel Giddings, the defendant, well, and saw him frequently? A. Well, on up to about 1866 or 1867.

Q. Twenty years ago, nearly? You have had little or no acquaintance with him since then, have you, personally? A. I met him frequently.

Q. I mean you have had no intimate association or had the means of knowing what his character for peaceableness has been since then? A. No.

Q. Now, sir, did you ever know him, at all, since his marriage; that is, I mean to be in a position to know what his character had become for peaceableness and all that? A. No, sir; I could not say that I was so situated as to be personally acquainted with him since his marriage.

Q. At any time? A. No, sir.

Q. Did you ever see the defendant, on any occasion, in which he labored under strong excitement? the excitement of anger, say? A. No, sir; I don't know that I did.

Q. Did, you ever see him, at any time, when the circumstances, and the momentary experience of Daniel Giddings were such as were calculated to elicit anger and passion, and the expression of passion by words or conduct in your life? A. No, sir; there was nothing of that kind that took place that I ever knew of; I never saw Daniel Giddings out of humor to amount to anything.

Q. You say that his father had fallen into pecuniary distress—made some unlucky business ventures? A. Yes, sir.

Q. And that he became depressed? A. Yes, sir; in my opinion.

Q. How long, after the misfortune that you say befel him, before his death? A. Well, it was not a great while.

Q. About how long? A. I would suppose the thing was noticed, may be, for——

Q. No; I mean how long after his pecuniary difficulties, that you say were the cause of his depression and subsequent results that you have testified to; how long after that did he live; how long before his death did the pecuniary disaster occur? A. The pecuniary disaster was hanging on him when he died.

Q. I suppose you don't understand me. For how long a time had it been hanging over him, say, if you know, before his death? A. Well, from observation, I should judge it had been from two to three months.

Q. Only two or three months? Did he have any special disease at the time he died? A. Not that I know of, no further than his breaking down.

Q. What was his age at that time? A. I could not say as to his age; I don't believe I ever knew Mr. Giddings' age.

Q. Was he an old man, in middle life, or what? A. I would consider him a man in middle life.

Q. About what age? A. Well, from thirty-five to forty years of age; may be forty-five; I don't think he was much over that. I didn't know his age exactly—never did.

Q. Did you see him during his last days? A. I was at the house once while he was lying sick.

Q. Did you have any conversation with his attending physicians in regard to the case? A. No, sir; I did not.

Q. You don't know then, nor pretend to know, what was the cause of his father's death, do you? A. Well, no; I could not say with regard to the disease. The general opinion was, that it was just a breaking down of the whole man; that was my opinion.

Q. That was your opinion? A. Yes, sir.

Q. Was that based upon any medical knowledge, or opinion from professional men? A. No, sir; based upon higher authority: the law of observation and common sense.

Q. You think, then, that that is a higher source of information than the evidence of medical experts in attendance upon a patient, do you? A. Yes, sir; I would say——

Q. Then you think your own information, formed from the amount of opportunity that you told us you had, would be more reliable than the opinion of Dr. Judkins and his attending physicians who were treating the case? A. Founded upon the same grounds: my opinion was based upon the same grounds as the doctors'; or theirs was based on their theory and practice, and that is founded on observation.

Q. How do you know that your opinion was founded upon the same observations and knowledge that the doctors' was? A. Because I have conversed with men enough and read medical writings enough to know that is the base.

Q. Didn't you say, a moment ago, that you didn't talk with the physicians in attendance upon him about his particular case? A. I had no conversation with them.

Q. Now, then, come back again to the question I asked you a moment ago; you think, then, do you not, that your own observation was more reliable, with the opportunities you have told us you had, than were the observations of his attending physicians? A. No, sir; I didn't say that.

Q. Didn't you say a moment ago, Mr. McCoy, that your knowledge was derived from a higher source than the physicians in attendance, and that higher source was your own observation? A. No, sir; I didn't say that either.

Q. Now, please tell us what you said? A. I know what you are driving at.

Q. No; I don't believe you do. A. I said my observation was formed on the same grounds as the physicians' was.

Q. That is what you said, was it? A. Yes, sir. Theirs is theory and practice derived from observation, and mine was the same derived from observation.

Q. That is what you said, was it? A. Yes, sir.

Q. Very well, we will leave it there. You say you don't know whether he had any chronic disease at the time of his death or not? A. I suppose it was disease brought upon him by mental difficulties.

Q. Well, I am speaking of organic disease. Do you know whether he had or not? A. I don't know what name you would call it by, and I don't know what name it was called by at that time.

Q. Do you know whether or not he had fever of any description? A. There is not many sick men but what have fever.

Q. Well, I mean a specific fever? A. Well, I don't know whether bilious fever, intermittent or typhoid fever, or what.

Q. You don't know anything about that? A. No, sir.

Q. Do you know whether he had any disease of the vital organs—the lungs, or heart, or anything of that sort, or the brain? A. No, sir; I don't.

Q. Do you know whether he had any disease of the stomach, the digestive apparatus, the bowels, or anything of that sort. A. I suppose there was something of that kind, but I don't know by what name it would be known or classified by the physicians, because I never inquired into it.

Q. Then, in fact you don't know anything about the cause of his death, so far as physical causes existed, do you? A. Well, the names by which those diseases were called, I don't know that I do.

Q. Were you acquainted with Dr. Judkins? A. Yes, sir.

Q. Did you meet him frequently? A. Yes, sir.

Q. Did you talk with him about Mr. Giddings' case—that is the father? A. No, sir; I don't know that any conversation ever passed between me and Dr. Judkins with regard to the disease—the last sickness of Mr. Giddings. I think not.

Q. How many times did you see him during his last sickness? A. I only saw him once.

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. I forget whether you were very well acquainted with Mr. Giddings? A. Yes, sir.

Q. Did you see him frequently in his daily life? A. Yes, sir.

Q. Had business transactions with him? A. Yes, sir.

Q. Did you notice a radical change take place in the man? A. Yes, sir.

Col. Gilmore.—There generally is, is there not, a radical change between a sick and a well man?

Q. By the Court.—Do you mean to say that you regarded him as a crazy man? A. If I give it just in simple language, yes, sir; that there was a mental derangement there. You may call it craziness, or what you please.

Q. By Col. Gilmore.—Now be kind enough to state all the evidences there were of that mental derangement.

The Court.—Well, now, wait; what I want to get at is whether he was regarded as an insane man.

Col. Gilmore.—By whom? The Witness, or whom?

Q. By the Court.—Well, was his father regarded as an insane man by any one? A. I don't know that he was brought down to that classification.

Q. Was he spoken of by those that were familiar with him, from his acquaintance, as an insane man? A. He was spoken of by good citizens there as if they thought he was losing his mind. I suppose that brings about insanity—I suppose you comprehend that.

Q. We are not trying to be smart, one way or the other, but this is a matter in which we want to get at simply the facts. What I want to understand is, whether the judgment of the community went further than that he was losing his mind. Was he looked upon, or treated, or regarded by the people who knew him as an insane man? A. No, sir; I could not say that he was.

Q. He was regarded, then, as a man who from trouble, or other cause, was affected in his mind and lost his energy? A. There was some incident that occurred in the community that caused conversation. He went around and tried to borrow money from almost every individual that he met; he manifested such a disposition in that respect that people began to think that he was not right some way or other.

Q. How long did he live after that? A. Well, about—— I could not say positively, but I suppose, perhaps, from two to three months.

Q. During that time was he melancholy, or had he his usual spirits otherwise? A. Well, he appeared to be melancholy at times.

Q. By Col. Gilmore.—Did he ever manifest any delusions that you know of? A. No, sir; I don't know that he ever did.

ARTHUR J. GIDDINGS called.
Direct examination by Mr. Sloane.

Q. Mr. Giddings, you are a brother of the defendant, I believe A. Yes, sir.

Q. Where do you live? A. I live in Cleveland, Ohio.

Q. About how old were you when your father died? A. About eight years old.

Q. You have very little recollection of him? A. No, sir.

Q. Do you know your brothers handwriting? A. Yes, sir.

Q. Examine that envelope and letter and tell me whether that is his, and also whether you received it in the regular course of mail from Chillicothe? (Counsel handing letter and envelope to witness for examination.) A. Yes, sir; I did.

Q. And in about due course of time from the date it bears? A. Yes, sir.

Q. You recognize that as his handwriting and signature? A. Yes, sir.

(Letter referred to being postmarked at Waller postoffice, July 24, the date of the letter being also July 24, 1882.)

CROSS EXAMINATION.

By Col. Gilmore.

Q. Is that the only letter received by you from your brother during that time prior to the homicide? A. I think so; yes, sir.

CASSIUS WRIGHT called.
Direct examination by Mr. Sloane.

Q. Mr. Wright, where do you live? A. Lexington, Ohio.

Q. Do you know the defendant, Daniel Giddings? A. Yes, sir.

Q. You and he were raised boys together, I believe? A. Yes, sir.

Q. How long have you known him? A. I have known him ever since I have known any one. I went to school with him and was raised with him.

Q. He is a year or two older than you? A. Yes, sir; he is older than I am.

Q. What was his character as to being a gentle, peaceable, inoffensive boy and youth? You grew up with him pretty nearly to manhood, didn't you? A. Yes, sir. I never saw a better boy than he was; gentle and good in every way; no better character in any boy.

Q. What were his habits as a boy at school and out of school with his playmates? If there were peculiarities of disposition that you noticed please state them to the jury. A. Well, he was a boy that I could not say associated with the boys very much; seemed to be a boy that was lonely; wanted to be by himself,

Q. Lonely? A. Kind of lonely disposition; liked to be off by himself.

Q. Do you know any instances as to particular persons, and that occurred during his school life or boy life, evidencing kindness on his part? A. No; I can not relate any. He was always good, and gentle, and kind to every one.

Q. You know all the people in that neighborhood, do you? A. Yes, sir; I think I do.

Q. And have the means of knowing, and do know, what his character was from the time of his earliest childhood up to the time that he went into the army, where he remained for some years, and then after he returned from the army and lived with his grandfather? A. Yes, sir; I do.

Q. State, during those two periods of time, what you know of his reputation in the community as to being peaceable and inoffensive; that is, what the community said of him and how they estimated him? A. They always considered him, not only a gentleman all the time, but I never heard any kind of hard word against him at any time.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Are you related to Daniel Giddings? A. No, sir.

Q. When did your special intimate acquaintance, that you have spoken of, with Daniel Giddings, cease? When were you separated, in other words? A. We have never been separated, that is until he moved away.

Q. I mean how long have you been separated; that is, by his living in one place or in another? A. I left this country in 1871. Iwas away in the regular army ten years and returned in 1881, and I have not seen him but once since that time.

Q. Now, sir, during that period of time that you were absent in the regular army, and since you returned from the regular army, does that cover any period of Daniel Giddings' married life? A. I can not say that.

Q. Well, you have never known him and have never seen him but once since he was a married man, to your knowledge have you? A. Once is all I believe.

Q. I will ask you, Mr. Wright, if you ever saw Daniel Giddings under circumstances of provocation and excitement by anger, that you can remember of? A. No; I don't think I ever saw him under any great anger.

WM. C. EDWARDS called.

Direct examination by Mr. Sloane.

Q. Mr. Edwards, where do you reside? A. I live in Fairfield township, Highland county, Ohio.

Q. What is your occupation? A. Farmer.

Q. Do you know the defendant, Daniel Giddings? A. Yes, sir; I am acquainted with him.

Q. How long have you known him? A. I was raised on the joining farm with him, or there was just one farm between us—near neighbors. We went to school together.

Q. You have known him pretty nearly all his life? A. Well, I knowed him up until the time the war broke out. I went into the army, and he did, too, and I have not had much acquaintance with him since.

Q. After coming back from the war he lived some time at his grandfather's, did he? A. Yes, sir.

Q. Did you know him at that time? A. Yes, sir.

Q. Then after he went up to Erie county and married, you didn't know much of him? A. No, sir.

Q. I will ask you whether you were well acquainted there with all the people in that neighborhood, where you and he lived and grew up? A. Yes, sir.

Q. State what was Dan's reputation as boy, youth and man, in that community; what people generally estimated him, as to being a gentle, peaceable, inoffensive and law abiding citizen? A. He was a very inoffensive, quiet boy; a fellow that always went about his own business and never would seek to make anybody's acquaintance, or anything of that kind, but was rather an exception of a boy in that respect; always went off to himself rather than to solicit a companion or any one to go with him, and he never done any harm that I know of. Never heard anything against his character.

Q. And nothing reputed against him, of any kind, that you know of? A. No, sir; he never was charged to have done anything that I know of.

Q. What is your age? A. Well, I will be forty-three years old the 10th day of this month.

Q. You are a few years older than he? A. Yes, sir.

CROSS EXAMINATION.

By Col. Gilmore.

Q. You, too, have not known Daniel Giddings personally; that is, have not been intimate enough to associate with him personally, since his marriage, have you? A. No, sir.

Q. You say that Daniel Giddings was exceptionally quiet, excluding himself from other boys; was not apt to make acquaintances; "kept himself to himself," to use that expression? A. Well, yes, sir; he was not a boy that would push himself in and put himself forward like some boys would. He would always stand back and would rather have to be invited to come in and take a part in anything. If they would go out to play ball or anything, and wanted him to come in and take a hand, unless you kind of insisted on him coming, he would not come along.

Q. Exceptional in that respect? A. Yes, sir.

Q. Is it true that you have ever seen Daniel Giddings, at any time in your life, that you can now remember, and especially since he has been a boy of some age—say fifteen or along there, under strong provocation to anger; if so, when and where? A. No; I don't know that I ever did.

ALBERT JOHNSON called.

Direct examination by Mr. Sloane.

Q. Mr. Johnson, where do you reside now? A. In Hillsboro, Highland county, Ohio.

Q. Before you moved to Hillsboro, in what part of Highland county did you live? A. I lived about a mile northwest of Samantha.

Q. In Penn township? A. Yes, sir.

Q. You know the defendant, Daniel Giddings, do you not? A. Yes, sir.

Q. Have known him how long? A. I knew him casually for two or three years previous to 1863.

Q. Did you know the neighborhood in which he lived, prior to 1863? A. Oh, yes, sir.

Q. You knew most everybody there in that neighborhood? A. Yes, sir; I was acquainted with everybody in that neighborhood.

Q. Had relatives living around there? A. Yes, sir.

Q. Had been born in that neighborhood yourself? A. Yes, sir.

Q. What was the general reputation of Daniel Giddings among the people of that neighborhood; what did they generally say of him; what was their general estimate of him as a peaceable, quiet, inoffensive, law abiding young man? A. I never heard a word said against him.

Q. You were in the army with him? A. I was; yes, sir.

Q. For how long a period? A. Three years.

Q. Where you intimate in your associations with him during that period? A. I was; I bunked with him.

Q State to the jury what was his character in this regard that I have spoken of to you, as you noticed it, during that time? A. His character was such that I would never have believed that Dan Giddings would ever have——

Col. Gilmore.—Never mind that; that is not the proper way, to give an opinion.

Mr. Sloane.—I didn't know what he was going to say.

Q. State what was his character as recognized among all his associates, and as you understood it yourself, and witnessed, as to being a kind, peaceable, gentle, inoffensive man and citizen and soldier? A. He was one of the most inoffensive boys in our company. I think we were about of an age; we were about nineteen years of age when we enlisted. Of course, going from the same neighborhood, we were very intimate, and the greater part of the time we bunked together, and I never saw Daniel Giddings have a quarrel, or any diffiiculty with any of the boys. I don't recollect that I ever saw him take a drink of whisky.

Col. Gilmore.—Never mind that part.

Q. By Mr. Sloane.—We don't call for that. What was his character and as to his disposition, I am inquiring? A. Well, his disposition was as good as you could ask of any one. You could not ask for a better disposition in any man than Daniel Giddings had during his term of service.

Q. Was his character such that the friendship for him was general in the company or not? A. Yes, sir; it was. I don't think there was a boy in the company that had aught against him.

Q. When he came back from the army, did you see him often afterward, before he went to Erie county? A. I met him two or three times after he came back.

Q. Do you know a great many people out in the neighborhood where he lived, near Hillsboro, too? A. Yes, sir.

Q. I will ask you to state whether or not, you heard anything at all against this reputation you have already testified of, during that period, and from anybody in that neighborhood? A. No, sir; I never did.

Q. You have been separated from him to a great extent, I believe, since he went to Erie county? A. Yes, sir.

CROSS EXAMINATION.

By Col. Gilmore.

Q. That separation covers the entire period of his married live, does it not? You have not had any personal intimacy with him since he was mar-

ried, have you? A. No, sir; I have not. I have met him two, perhaps three, perhaps four times.

Q. Casual meetings; mere temporary meetings? A. Yes, sir; asked after each other's welfare and the families' welfare, etc.

Q. Just momentary meetings; you have not gone to stay with one another for any period of time? A. No, sir.

Q. During the time that you have known Giddings, both in the army and out of the army, since he has been, say fifteen or sixteen years of age, have you ever seen him under strong provocations to anger? A. I never did in my life. I can hardly say I ever saw him out of humor.

Q. By Mr. Sloane.—You have seen him under occasions of excitement though, in the midst of battle, haven't you? A. Well, I don't recollect now. Every fellow took care of himself there.

JOSEPH FEW called.

Direct examination by Mr. Sloane.

Q. Mr. Few, you reside in Highland county? A. Yes, sir.

Q. What is your occupation? A. I am a blacksmith by trade.

Q. Are you acquainted with the defendant, Daniel Giddings? A. Yes, sir.

Q. During what period of his life were you acquainted with him? A. I became acquainted with him in about 1864, I think.

Q. It was during his army life, was it? A. Yes, sir.

Q. Were you in the same company with him? A. Yes, sir.

Q. Saw him almost every day? A. Yes, sir; was with him every day, I believe.

Q. State to the jury what was his character as you saw it evidenced there during that time, as to being a peaceable, quiet, inoffensive gentleman? A. Very peaceable, quiet man.

Q. Did you, during that time, know or hear of anything indicating, on Dan's part, anything other than that of a quiet, gentle, kindly disposition? A. No, sir.

Q. He was so looked upon by all his comrades? A. I believe so; yes, sir.

CROSS EXAMINATION.

By Col. Gilmore.

Q. You have had no personal relations or acquaintance with him since the war, have you? A. I believe I saw him once since the war.

Q. That is the extent of it? A. I think so; yes, sir.

Q. And that is all since the war? A. Yes, sir.

Q. Did you ever see him under strong provocation to be angry, such as would make any person else very angry? A. I think if it had been me I would have been; yes, sir.

Q. Well, what kind of provocation was it? A. Well, I have seen the boys play considerable tricks on him.

Q. Well, such as were common in the army; good-natured tricks? Or ill-natured tricks? A. I would not like to have had them played upon me.

Q. Well, were they good-natured on the part of his comrades, or ill-natured? Q. I suppose they thought it was good-natured, but I would not.

Q. You would have got mad, you mean, but Dan did not? A. Dan did not; no, sir.

SQUIRE BROOKSBANK called.

Q. Mr. Brooksbank, were do you live? A. I live in Highland county, at Hillsboro.

Q. What is your occupation? A. Stone cutter and mason by trade.

Q. You are at present engaged in Fayette county, are you? A. Yes, sir.

Q. Building the foundation of their new court house? A. Yes, sir.

Q. Are you acquainted with Daniel Giddings? A. Yes, sir.

Q. How long have you known him? A. About eighteen or nineteen years, I guess.

Q. Were you with him in the army? A. Yes, sir.

Q. How intimate were your relations with him there? A. Well, pretty intimate. We bunked together.

Q. Bunked together and messed together? A. Yes, sir; in the same company, and slept together.

Q. Saw him almost every day did you? A. Pretty much so; yes, sir.

Q. What do you say as to Dan's being a man of peaceable, quiet, law abiding, humane disposition; kind? A. Well, he was always very quiet and peaceable; I never knew him to have any trouble with any of the men, at all; was not quarrelsome with anybody.

Q. Was that also, his reputation among the rest of his comrades in the regiment? A. Yes, sir; as far as I know.

Q. Did he ever give any indications to you himself, or did you ever hear of any indications given by him, of his possessing any such characteristics as cruelty or inhumanity? A. No, sir.

Q. What were his habits as to being solitary or alone or mixing up with the rest of the boys, in their occupations and sports, save that in the performance of duty? A. Well, he was one of those kind of fellows that was very kind. He didn't appear to be very frolicsome; we used to generally call him "Old Dan."

Q. You have known him since he returned from the army? A. Yes, sir; I have known him, but I have not known him much the last four or five years.

Q. You were separated, too, while he was living out in Erie county? A. Yes, sir.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Have you had any personal, intimate relations with him since he was married, at all? A. No; only that I met him in Hillsboro, once or twice.

Q. Casually met him, once or twice, that is all? A. Yes, sir.

Q. And that is all you have known him since he was married? A. Yes, sir; personally.

Q. You were in the same company? A. Yes, sir.

Q. And you say you bunked with him? A. yes, sir.

Q. Were you his especial bunkmate? slept under the same blankets, and so on? A. Well, a great deal of the time I was. I was away from the company five months.

Q. The company was stationed at West Point a long time, was it not? A. Yes, sir.

Q. In the same camp for a long time? A. Yes, sir; in the same camp, at different points.

Q. It was not usual for more than two to bunk together, was it? A. That's all.

Q. You say he did not mix with the rest of the men much? A. Well, he mixed, but he was not frolicsome. There was a great many that used to be a little lively.

Q. Yes; I know something about that; but he was a quiet, reticent, exclusive sort of a man, was he not? A. Yes, sir.

Q. Did not seem to be much in sympathy with the other men, did he? A. Well, I don't know about that.

Q. Did not share in their fun, you say, much? A. Not so much, no, sir.

Q. Went off to himself a good deal? A. A good deal; yes, sir.

Q. More so than any man in the company, didn't he? A. Well, I don't know; I could not say with regard to that.

Q. So much as to attract attention any how; you remember it now? A. I remember he was a very quiet, civil, kind fellow, all the time.

Q. Didn't talk much with you? A. No; not a great deal. Not so much as some other men did.

Q. Not so much as the average of the men there did, did he? A. No, sir.

Q. You never saw him angry, did you? A. No, sir; I can't remember that I ever did.

Q. You don't know what he might have done if he had got very thoroughly aroused, do you? A. No, I don't.

The following named witnesses also testified to the good reputation of the defendant as boy, youth, man and soldier, substantially as above; and also as to his peculiarities of disposition, to-wit: Samuel McClure, John Bennett, Henry Brown, C. R. Edwards, James McMullen, John F. Moberly, James Robbins, John Nelson, Col. T. L. Mackey.

MRS. ADA LANG called.

Direct examination by Mr. Sloane.

Q. Mrs. Lang, you live at Wilmington? A. Yes, sir.

Q. You are related to the defendant, I believe, in some way; what is the relationship? A. Cousin.

Q. Your mother and his mother were sisters, I believe? A. Yes, sir.

Q. When Dan was a young boy, living at his grandfather's, were you there with him a good deal? A. Yes, sir; I was at one time.

Q. For about how long a time? A. I lived in the same house with him from 1861, I think, until about July, 1863.

Q. Something in the neighborhood of two years or more? A. Yes, sir.

Q. You became well acquainted with him? A. Yes, sir.

Q. Saw him every day? A. Yes, sir.

Q. What was Dan's character, as to whether or not he was of a peaceable, quiet, gentle, inoffensive disposition, or the reverse? A. It was that he was peaceable and quiet; that was his character—more so than children usually are.

Q. Well, he was then advancing into young manhood? A. Yes, sir.

Q. Nearly seventeen years of age? A. Yes, sir.

Q. During that time you were pretty well acquainted with all the people in the neighborhood there? A. Yes, sir.

Q. What was his general reputation; that is, what estimate did people place upon him, or express of him, as to being a kind, gentle, peaceable, quiet young man? A. I think everybody had the same opinion of him.

Q. In other words, you never heard any contrary opinion expressed? A. No, sir.

Q. I will ask you if he was like boys in general, or did you notice any peculiarities about him that you can recollect? You were then quite young yourself, were you not? A. Yes, sir. Well, we always thought him peculiar. That is, at least, he was not like the rest of us. There were quite a number of us in the house together--children: he never seemed to take the same interest in the same things that we did.

Q. In your plays and your occupations? A. Yes, sir.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Mrs. Lang, I didn't know you could give so favorable an answer. I want to ask what was your age in 1863? A. I was thirteen years old.

Q. Then your observations extended over a period of your own age of from about eleven to thirteen? A. Yes, sir.

LeRoy T. Kelley called.

Direct examination by Mr. Sloane.

Q. Mr. Kelley, where do you live? A. At Lexington, Fairfield township, Highland county.

Q. What is your occupation? A. Farmer.

Q. Are you holding any official position in that township? A. Yes, sir; Justice of the Peace.

Q. You know the defendant, Daniel Giddings? A. Yes, sir.

Q. How long have you known him? A. Well, pretty much all his life.

Q. You knew the people in the community where he lived? A. Yes, sir.

Q. I will ask you to state what was Dan's reputation in that community and neighborhood as to being a peaceable, quiet, humane, gentle man? A. I never heard anything to the contrary.

Q. What was your own estimate of his character? You knew him well enough to judge of it for yourself as to whether he was of that disposition? A. I would not think there was anything cruel about him. He was just like ordinary schoolboys.

Q. Would you pronounce him a quiet, gentle, inoffensive man? A. Yes, sir.

Q. Do you know anything of his father's condition—as to his dying crazy? A. Yes, sir; I heard the report through the neighborhood.

Q. You knew nothing of it personally? A. No, sir.

CROSS EXAMINATION.

By Col. Gilmore.

Q. When did your personal and immediate acquaintance with Daniel Giddings cease; how long ago? A. Well, about the commencement of the war, I suppose; something about that time.

Q. You have not known him since? A. I have seen him once or twice.

Q. Only casually? A. Yes, sir; that is all.

Q. Not to remain with him hours or days at a time? A. No, sir.

GILBERT RHOADS called.

Direct examination by Mr. Sloane.

Q. Where do you live? A. About a mile and a quarter from Berlin Heights, Erie county, Ohio.

Q. Are you acquainted with the defendant, Daniel Giddings? A. Yes, sir.

Q. You were acquainted with him when he lived up there? A. Yes, sir; he used to live neighbor to me.

Q. How close to you? A. Well, he lived at one time when I first got acquainted with him, about, perhaps, eighty or a hundred rods—something of that kind from us; he was my nearest neighbor.

Q. He was married while up there? A. Yes, sir.

Q. You knew his wife? A. Yes, sir; I knew her after she was married.

Q. At the time he was living near you and you were neighbors when he married her? A. Yes, sir.

Q. You knew the people very well in that neighborhood? A. Yes, sir; I was born and raised in Berlin. Of course I had been away from there some, but come back there to live.

Q. Your occupation was what? A. Mason.

Q. His occupation was what? A. When I first got acquainted with him he was working on the farm.

Q. What was his general reputation in that neighborhood; in what estimation was he generally held by his neighbors, I mean, as to his being a peaceable, quiet, gentle, humane, law abiding citizen? A. It was very good.

Q. Did you ever hear anything to the contrary? A. I don't think I ever did.

Q. Were you familiar enough with him to have an estimate of your own of his character? A. I think I was.

Q. What would you say as to his being a gentle, humane, law abiding man? A. I always called him so from my acquaintance with him.

Q. Did he ever give any indication to you, or did you ever hear of any indication given by him, of any cruel or any inhuman disposition at all? A. No; I believe not.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Mr. Rhoads, did you know him as long as he continued to live in Erie county? A. I think I did.

Q. Did he continue to live after his marriage, and for three or four years that he was there, as near to you as you have described? A. Well, within eighty or a hundred rods; and he moved then from there to perhaps a mile and a quarter from us to Berlin Heights and lived something over a year there.

Q. It was about a year, then, of his married life? A. Yes, sir; I never knew him until he was married. He moved into the neighborhood just about the same time, or just after, I came back from Indiana. I bought my place and moved down there and he moved right neighbor to me.

Q. He was just newly married when you first knew him? A. Yes, sir.

Q. How long? A. I can not tell exactly.

Q. Just approximate it. A. I think he was married about the time I came down there.

Q Well, then he was just nearly newly married when you first knew him? A. Yes, sir; something about that time.

Q. Well, did you notice any change in his disposition as married life wore on? A. No; I can not say that I did.

Q. Did you see Daniel during those three or four years when he was excited—angry? A. Never, sir.

Q. You never did see him when he was excited and angry? A. No, sir.

Q. Under the influence of any strong passion of any kind? A. I don't think I ever did.

Q. You don't know how he would manifest himself, then, if in a passion—if strongly excited? A. No; I could not state because I never knew him to get mad at anything. He was a very good natured, peaceable fellow—seemed to be in our society.

Q. You say you never saw him in that condition, therefore you could not tell what would be the effect of any excitement upon him? A. No.

Q. He lived there about how long? A. I could not tell you exactly, but he lived there in our immediate neighborhood, I should judge, four or five years; something along there; might be a little longer or a little shorter; I could not tell.

Q. Did you know about the time he left there and came back to the southern part of Ohio? A. I think I did.

Q. Do you know of any special reason for his breaking up housekeeping there and coming back to the southern part of the State? A. No; I don't know as I do. Well, I understood he was coming down on account of his mother going to buy him a little place, or help him at that time, and he was going away for that purpose; that his mother was going to help him to a little home. Some more poor fellows of us would do that if we got a chance.

Q. Well, I was just asking for information; that is all. A. Yes, sir.

Q. It was how long ago that he left there? A. Well, I could not tell the exact date.

Q. No; not exactly. A. Perhaps four or five years ago.

Q. Since that time you have not known him? A. I have not seen him at all; no, sir.

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. All this time, as I understand you that you knew him, was during his married life? A. Yes, sir.

Q. You knew his wife as you did him? A. Yes, sir; just about the same. We used to go there vislting when she was at home, and they came to our house the same way; most always visited together.

MRS. ANN RHOADS called.

Direct examination by Mr. Sloane.

Q. I believe you are the wife of the gentleman just on the stand, Mr. Gilbert Rhoads? A. Yes, sir.

Q. Where do you live? A. In Erie county.

Q. Are you acquainted with the defendant, Mr. Daniel Giddings? A. Yes, sir.

Q. You knew him when he lived up in Erie county, did you? A. Yes, sir.

Q. And were acquainted with him and his wife and his family for about how many years? A. Oh, it has been about ten years, I should think.

Q. Yes; it has been about ten years since you knew them first? A. Yes, sir.

Q. How long time did they live up there and you and they were neighbors? A. A little over a year I think.

Q. That is, a little over a year that he lived within about eighty rods of you? A. Yes, sir.

Q. How long did you know them when they lived up in Erie county before coming down here? A. I don't know as I can tell. About seven years, I should think, or six.

Q. You knew them well during that time? A. Yes, sir.

Q. Now, I will ask you if you knew the people in that neighborhood where they lived? A. Yes, sir.

Q. Both when they lived there when you lived near together, and when they lived over in Berlin Heights, about a mile and a quarter from you, afterward? A. Yes, sir.

Q. I will ask you what, in that neighborhood, was the general reputation of Daniel Giddings, if you know, as to his being a good man; a quiet, gentle, law abiding citizen? A. It was good.

Q. You may state whether you ever heard anything against his character in that particular? A. No, sir.

Q. You knew him well yourself? A. Yes, sir.

Q. What was your judgment as to his character, as to being a quiet, peaceable, humane man? A. It was good.

No cross examination.

THOMAS ANDREWS called.

Direct examination by Mr. Sloane.

Q. Mr. Andrews, where do you live? A. I live in Berlin, Erie county, Ohio.

Q. What is your occupation? A. I am kind of a stone mason and brick mason.

Q. Are you acquainted with the defendant, Daniel Giddings? A. I am; yes, sir.

Q. You knew him when he lived up in the neighbornood of Berlin? A. I did.

Q. Did you know him during the four or five years that he lived in that county? A. Yes, sir; I lived there three or four or five years.

Q. He was married at that time? A. Yes, sir; he was married.

Q. You knew his wife also? A. Yes, sir.

Q. Did you know the people well in the community wherein Mr. Giddings lived, both at the time he lived right in Berlin, and also when he lived a mile and a quater out? A. Why, yes, sir; well acquainted with them all in that neighborhood.

Q. I will ask you to state what was the general reputation of Daniel Giddings in that neighborhood, as to being a gentle, peaceable, quiet, humane, law abiding citizen? A. It was good.

Q. I will ask you to state to the jury whether or not you ever heard at any time any statement made by any one to the contrary? A. I never did.

Q. You knew him well enough to form an estimate and judgment of his character yourself, didn't you? A. Why, I was some acquainted with him.

Q. I will ask you to state to the jury, in your judgment of him, whether or not he was a quiet, peaceable, inoffensive, humane, law abiding citizen? A. Well, he was, from anything I could hear from him. He lived right near neighbor to me.

Q. Did he ever give any indications to yourself, or did you ever hear of his giving any indications while he lived up there, and you krew him, of any traits of character showing violence or cruelty? A. He never did.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Did you ever hear of his threatening anybody? A. No, sir.

Q. Did you ever know of his having any trouble at all with anybody? A. I never did.

Q. You never saw him excited, then, or angry? A. I never did; no, sir.

Q. Do you know any special occasion that he had for leaving that county and coming down to southern Ohio?

Objected to by counsel for defendant as incompetent.

Objection sustained unless counsel for State can connect it with the case.

MRS. ALICE ANDREWS called.

Direct examination by Mr. Sloane.

Q. Mrs Andrews, you are the wife of the gentlemen just on the stand? A. I think so; I didn't see him.

Q. Thomas Andrews? A. Yes, sir.

Q. Where do you live? A. Berlin, Erie county.

Q. Do you know the defendant, Daniel Giddings? A. Yes, sir.

Q. Did you know him at the time he lived in Erie county? A. I did.

Q. For how many years did you know him? A. I should think it was some six years, as far as I know, that I was acquainted with him.

Q. You know that he was a married man during that time? A. Yes, sir; he moved near us soon after he was married.

Q. You knew his wife as well as you did him? A. Yes, sir.

Q. You knew the people in the neighborhood in which he lived while in Erie county? A. Yes, sir.

Q. He lived right in Berlin Heights, near you at one time? A. Yes, sir; some eighty rods away, I think.

Q. Afterward he moved about a mile and a quarter away from there? A. Yes, sir.

Q. And you still neighbored backward and forward and knew him very well? A. Yes, sir.

Q. You knew the people in that neighborhood well, then, did you? A. Yes, sir.

Q. I will ask you to state what was Daniel Giddings' reputation in that neighborhood, as being a quiet, peaceable, inoffensive, humane man and a good citizen? A. It was good.

Q. Did you ever hear anything to the contrary? A. Never.

Q. You knew him quite well, yourself? A. Yes, sir.

Q. So as to be able to form your own estimate of his character? A. Yes, sir.

Q. I will ask you what you say as to his character, as to being a quiet, inoffensive, peaceable, law abiding, humane citizen? A. Why he was as good as any one I am acquainted with.

Q. Did he ever give evidence or indications to you or did you ever hear any one say anything of his giving evidence or indication of traits of character which would be called cruel or inhuman? A. I did not.

Q. But the very reverse? A. Yes, sir; the very reverse.

CROSS EXAMINATION.

By Col. Gilmore.

Q. You were asked by Mr. Sloane to state, I believe, that you neighbored with them. What do you mean by that expression, Mrs. Andrews? A. I

mean I lived close to them; I was in their house and they was in mine; I was called on in sickness to their house, and his mother visited him, and we were backward and forward, and she rode to church with me, and called in my house and took dinner, and I called in their house and took dinner.

Q. That is the mother? A. The mother; in their house, and with them.

Q. I simply asked to know what degree of intimacy and knowledge you had. A. We are in the country you know, and we don't put on airs as they do in town. We were backward and forward.

Q. You are not testifying that we do put on airs in town? A. No, nor do we; we are very plain folks there.

JOEL FOX called.

Direct examination by Mr. Sloane.

Q. Mr. Fox where do you reside? A. I live in Berlin township, Erie county, State of Ohio.

Q. Your wife was supœnaed with you I believe, too? A. Yes, sir; she was not able to come. I've got a certificate in my pocket stating that she was not able to come.

Q. Do you know the defendant, Daniel Giddings? A. I know him when I see him; I am not personally acquainted with him.

Q. Were you acquainted with him at one time? A. No, I never was acquainted with him.

Q. Were you acquainted in that neighborhood where he lived? A. Yes, sir.

Q. Knew most everybody in that neighborhood? A. Well, I don't know whether I did or not; I knew most of the folks, yes, sir; in the neighborhood.

Q. I will ask you if you knew, also, the fact that Mr. Giddings lived up there four or five years? A. I could not say how long he lived there. He didn't live in our neighborhood that long. He moved over to Berlin Heights.

Q. Did he live close to you? A. Yes, sir.

Q. I will ask you to state what was his reputation during that time in that community, as to being a peaceable, quiet, inoffensive, humane man? A. I never heard anything against him.

Q. When he moved over to the other community, did you know the people in that community? A. Yes, sir.

Q. I will ask you to state what was his reputation there for being a peaceable, quiet, inoffensive, humane and law abiding citizen? A. I never heard anything against him.

Q. You didn't know him well enough yourself to form any estimate of his character? A. No, sir.

No cross examination.

SILAS HORSTMAN called.

Direct examination by Mr. Sloane.

Q. You reside in Fairfield township, Highland county, I believe? A. Yes, sir.

Q. What is your occupation? A. I keep a grocery and hardware store.

Q. And you, also, are ticket and freight agent of the Cincinnati & Marietta railway there? A. Yes, sir.

Q. Are you acquainted with the defendant, Daniel Giddings? A. Yes, sir.

Q. How long have you known Dan? A. About thirty years, I think.

Q. You knew him, then, from his boyhood? A. Yes, sir.

Q. Were you well acquainted with the people in the community in which Dan was raised? A. Yes, sir; very well acquainted.

Q. What was Dan's reputation during all this time, that you knew him when he lived there, as to being a quiet, humane, inoffensive, law abiding citizen? A. It was very good, as far as I know.

Q. Did you ever hear anything to the contrary? A. No, sir.

Q. Did you know him well enough to form an estimate of his character, yourself? A. Yes, sir.

Q. What is your estimate of those traits of character of which I have spoken? A. Well, he was a very quiet, peaceable kind of a boy, I always thought. I knew him when he was quite young and up to the time that he was twenty or twenty-one.

Q. Did he ever manifest to you or did you ever hear of any manifestation of the existence in him of any such traits of character as cruel violence or inhumanity? A. No, sir.

Q. Did you know his father? A. Yes, sir.

Q. Do you recollect having any business relations with him or seeing him in the transaction of business with others, or seeing much of him at all for two or three months before he took down in his final sickness? A. Yes, sir; before he was taken down; I didn't much after.

Q. Did you notice any change in his mental characteristics shortly before this time when he was taken down? A. I don't know that I—— I heard others say about it; I didn't know much about him for some years before he died.

CROSS EXAMINATION.

By Col. Gilmore.

Q. The last twelve or fifteen years you have had no personal contact or acquaintance with Giddings? A. No, sir; I saw him occasionally.

Q. Did you ever see him when strongly provoked and angry? A. No; I don't know that I ever did.

C. T. Pope called.

Direct examination by Mr. Sloane.

Q. You live in Highland county? A. Yes, sir.

Q. You are an uncle by marriage of the defendant, I believe? A. Yes, sir; my wife was a sister of his mother.

Q. She is now dead, I believe? A. Yes, sir.

Q. Were you acquainted with Dan, the defendant? A. Yes, sir.

Q. How long have you known him? A. Well, I have known him since he was quite a small lad; well, since he was twelve to fifteen years old, I reckon.

Q. Up to the time that he went to the army? A. Yes, sir.

Q. Did you know him after he returned from the army? A. Yes, sir; I had an opportunity then of seeing him and being with him a part of the time for six months or a year; he lived near Hillsboro.

Q. That was when you were elected sheriff? A. No, sir; I was living in Hillsboro serving as sheriff when he was living out west of Hillsboro.

Q. Oh, yes; when he was living out in the Purlee neighborhood? A. Yes, sir.

Q. Out in the Parker neighborhood? A. Yes, sir.

Q. Well, I was endeavoring to get at how long a time during the period of time after his return from the army, when he lived out at his grandfather's, from 1866 up to about 1870? A. I knew him all the time after he returned from the army, until he went up north into Erie county, or somewhere north.

Q. At the time he came back and was living out with his grandfather, between that time and the time when he went to Erie county, you were living out on your farm; it was before you was elected sheriff? A. Yes, sir.

Q. And your farm was not far from Daniel Hixson's? A. About two miles.

Q. He went up to Erie county and married up there, and he was married at the time you say he lived two miles west of Hillsboro? A. Yes, sir.

Q. Out on the Purlee place? A. Yes, sir.

Q. On the Cincinnati pike? A. Yes, sir.

Q. During all that time, I will ask you to state, what was Dan's character for being a quiet, peaceable, humane, inffonsive man and a good citizen? A. I never heard a word against him in my life.

Q. You knew all the people in the several communities in Highland county in which he was born and raised? A. Yes, sir.

Q. You knew all the people living out in the community on the Cincinnati pike? A. Yes, sir.

Q. I will ask you to state, if during all that time you know what was his reputation in those several communities as to being a quiet, inoffensive citizen? A. Well, in my estimation, it was very good.

Q. Well, did you ever hear anybody say anything to the contrary? A. No, sir; never, not a word.

Q. Did he ever give evidence, to your knowledge or did anybody ever tell you of any manifestations of his, showing the existence in him of such traits of character, as cruelty or inhumanity? A. No, sir; not in the least.

Q. Did you know his father? A. Not personally.

No cross examination.

H. B. Hixson called.

Direct examination by Mr. Sloane.

Q. Mr. Hixson, you are the uncle of the defendant? A. Yes, sir.

Q. A brother of his mother? A. Yes, sir.

Q. You were engaged in business with his father? A. I was.

Q. You knew his father about the time he began to suffer from business losses? A. I did.

Q. Knew him well, he being your brother-in-law? A. Yes, sir; I did.

Q. I will ask you to state if you noticed at all some time before his death any change in his mental condition? A. I think I did, although some time before his death I was not with him very much; I was engaged in railroading then, but I saw him occasionally. During his sickness I was on the M. & C. road here.

Q. I am speaking of the first failing of his powers, before you went on the road? A. I noticed in some degree that he was not as he used to be.

Q. In what way did it indicate itself; in what operations of the mind did it indicate itself that caused you to notice it? A. Well, in absence of mind; he was very absent minded towards the last. When we first went into business his mind was active and he was—I don't know what you might call it, and towards the last he was—

Q. Did he exhibit loss of memory? A. Yes, sir; that was it.

Q. I will ask you to state what evidences his mind gave, if any, of incoherency, or inability to keep it upon any particular subject, for a time?

(Objected to by Counsel for State as leading.)

Q. Well, I will put the question again. Do not answer it until the Court passes upon it. What indications, if any, did you notice of incoherency of mind—by which I mean that the mind would fly from one subject to another suddenly, and without seeming cause. If you saw any such state what they were.

The Court.—There is no objection to such a question as that only in this way: it brings the mind of the witness to what is required of, and to some little extent indicates to him the answer desired. That is the only objection.

Col. Gilmore.—Those are objections enough it seems to me.

The Court.—Well, he may answer that question. (To the witness): Go on and state the particular instances from your own knowledge in answer to the question that was put a few moments ago, if you noticed any. A. I want to understand the question.

Q. By Mr. Sloane.—State what indications, if any, you ever noticed of incoherency of mind, that is, of its inability to remain fixed long on any particular subject, or of its flying from one to another. If you didn't notice any, say so, and that ends it. A. I don't know that I ever noticed that.

Q. Of course you have known Dan in his boyhood? A. I nursed him many times.

Q. He grew up, was raised under your own eye, until the time he went to the army? A. Yes, sir.

Q. State what was his character as to being quiet and inoffensive, and whether he gave any indications of violence, or cruelty? A. I never knew anything of the kind; he was always kind of a reserved boy. He didn't, like some boys, push himself into places, or anything. He would rather sit back and wait for somebody to ask him to take hold of anything of the kind. He was always very quiet.

Q. What was his reputation in the community, there? A. I never heard anything against him at all; never knew anything against him.

Q. When he came back from the army he staid at his grandfather's some time? A. Yes. sir.

Q. He was tolerably young when his father died? A. Yes, sir.

Q. He was the oldest boy? A. Yes, sir.

Q. His mother was left a widow and his early life, as soon as he was able to work, was spent in assisting her to support the family? A. Yes, sir.

Q. During the time of his stay with his grandfather, after he returned from the army, you saw him and knew him? A. Yes, sir.

Q. Did you notice any change of character indicating different characteristics than those you had before noticed, in his boyhood and youth? A. No I don't think I noticed anything different.

Q. I will ask you whether he still bore the same character he bore before? A. The same character; yes, sir.

Q. State whether you knew him, also, when he came back from Erie county, and lived on the Cincinnati pike, near Hillsboro? A. Yes, sir; I visited him, I think, once or twice while he was over there at his house.

Q. You may state whether there was any change then? A. I could not see any change.

Q. You visited there at his house and knew what was the condition of his domestic relations then, and knew his wife? A. Yes, sir.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Mr. Hixson, I will ask you first upon the subject you have been examined upon by Mr. Sloane, as to his father's condition in his later days.

You say you noticed a change in his mental condition? A. Yes, sir; I think so.

Q. Have you given all the symptoms of that change that you now remember? A. Well, then, as we were connected in business you know, I could observe when we were talking about one thing that he would fly off and talk about another thing; something of that kind, you know.

Q. Was that before or after the alleged financial crash or crisis? A. I think it was afterwards.

Q. It was afterwards? A. Yes, sir.

Q. Up to the time of the financial difficulty that has been alluded to, upon the other side, he was a man of entirely natural mental faculties and health and all? A. Yes, sir; as far as I knew.

Q. Then whatever change took place was the direct result of his financial difficulties, was it? A. I thought so from observation of him.

Q. Now I want the jury to get an understanding of the change. Have you given it all, that he was simply absent minded and would pass rapidly from one subject to another in talking; is that about all? A. That is about all, as I said to Mr. Sloane. After we got through with business there, I then went on to the railroad. I was agent of the railroad at Vienna, in Clinton county.

Q. You were not in the same county then with Mr. Giddings at that time? A. No, sir.

Q. How often did you see him after this financial distress came upon him? A. I saw him very often. It was not far. He lived about four miles away, as he was engaged in business in Vienna, he visited our place, you know. He was a farmer and lived near Lexington, and took an interest in the business.

Q. He still continued to do business during the time you are talking about? A. No, we had wound up; I mean I saw him before a few years. I don't recollect seeing him very much, only occasionally after I was agent on the road. They gave me a position as conductor on the road, and I was running on the road then.

Q. He was in debt, was he, at the time? A. Yes, sir.

Q. To any considerable amount? A. Yes, sir; to a considerable amount.

Q. Was he the owner of any considerable amount of property at the time this distress came upon him? A. I don't know the number of acres; I think something over a hundred acres of land he owned and the house.

Q. Very good house upon it, and so on? A. Yes, sir; a pretty good farm.

Q. And a business outside of that, also? A. No, sir; that was about all.

Q. Well, this financial trouble came on him suddenly? A. Yes, sir; you might say suddenly; it was rather unexpected to all of us.

Q. By way of endorsement? A. No, sir.

Q. Or speculation? A. It was not speculation. He was engaged in the milling business and buying wheat.

Q. He met with a sudden loss which overwhelmed him? A. Yes, sir.

Q. Did he in fact lose his farm and his house and so on? A. Yes, sir.

Q. He in fact lost them before his death? A. Yes, sir; that is my recollection now; my mind has has not been called to it and I have not thought of the matter for the last twenty-five or thirty years.

Q. Were his manifestations other than, or different from what would be natural to almost anybody under the same circumstances, suddenly losing their possessions; their home, with a family on their hands and the distress occasioned by being indebted and desirous to pay, but unable to pay; was there anything more in his case which would distinguish it from what would be the general effect of the same disaster coming upon ordinary men? A. Well, it is my opinion that there was, sir.

Q. Well, now, what was the difference? You say there was some; point out that difference to us. A. I think one difference was, as I said, that it caused absent mindedness.

Q. Well, that is a symptom of it, you say? A. Yes, sir; I think so. That was my notion about it, by observation of it, you know.

Q. Didn't he make great effort to obtain means to pay his debts? A. Yes, sir.

Q. Was he not constantly canvassing the ability of acquaintances of his to loan him money? A. Yes, sir; he was.

Q. His mind was more upon that subject than it was upon his business right in hand at the time, was it not? A. I don't know that I understand you exactly.

Q. Perhaps I was mistaken myself. He was not in business at that time? A. No; he was not in any business.

Q. It was during conversation, then, upon what subjects that his mind would take those directions you have spoken about? A. I noticed in talking about borrowing money, for instance; I noticed, upon that matter, that he was kind of—— That he would talk about borrowing money; I know his mind appeared to be running in that direction all the time.

Q. Was it not natural that his mind should run in that direction under the circumstances that then existed? A. Well, I suppose, of course, as an honest man it would run in that direction.

Q. Well, we take it for granted that he was. A. Yes, sir; that would be natural.

Q. Did he have any delusions that you know of, or that you ever heard of about that time; about great expectations of suddenly acquiring means to pay his debts? A. No, sir; I think not.

Q. Did he form any extravagant or unreasonable ideas as to borrowing money? A. I can not say as to that.

Q. Do you know of his attempting to borrow money, for instance, in considerable sums from persons that were notoriously poor? A. I know the fact that he did try to borrow money from a great many persons.

Q. And were they not persons, generally, who had money that they could loan him if they would? A. Yes, sir; in some cases. I don't know that I could give any particular cases, but I know of his borrowing money around.

A. He did borrow? A. Yes, sir; he did. That was before this time, I know; before this present time.

Q. But I was confining the discussion to the time of his embarrassment? A. Oh, no; before this.

Q. Did he ever talk extravagantly about the means to secure loans; talk unreasonably and untruly about his means to secure loans? A. No, sir.

Q. Nothing of that kind? A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. Mr. Hixson, didn't I understand you this decay you spoke of was just beginning to come on him at the time you dissolved? A. Yes, sir.

Q. You were caught in the same wreck he was? A. Yes, sir; I was.

Q. And suffered a great deal? A. Yes, sir; lost all I had.

Q. And then you took this position you got on the railroad? A. Yes, sir.

Q. And the subsequent increase of such condition, if there was such increase, you didn't witness, because you were not there to witness it? A. No, sir; not while I was on the road. I visited him once after that while he was at his home; maybe twice.

Q. That was after he was taken down? A. Yes, sir; after he was taken down.

Q. I will ask you to state, now, whether he knew anybody at that time? A. I don't think he did; I don't think he knew anybody; I don't think he knew me at all.

RE-CROSS EXAMINATION.

By Col. Gilmore.

Q. What disease was he suffering with, if any at that time? A. I don't know that I am able to state any disease. It appeared to be that he was just sinking down; I don't know of anything else. It is my impression though, now, that there was some trouble about his digestive organs; I think, probably, there was some trouble there.

Q. Was there any paralysis? A. I don't think there was; it is not my impression that there was, although I am not satisfied as to that, as I only staid but a thort time; I could not leave my business.

Q. Did you talk with the physicians in attendance on him at that time? A. I might have done so; I was well acquainted with the physician and probably did, but I don't remember anything about it.

Q. Now, you say you were acquainted with the physician; that was Dr. Judkins? A. That was Dr. Judkins; yes, sir.

Q. At that visit, with your connection with Mr. Giddings by marriage, did the doctor intimate to you, at any time, that it was a case of insanity? A. I don't know that he did; I don't know whether he did. I, not being present, know but very little of it.

Court adjourned until to-morrow morning at 9 o'clock.

MORNING SESSION.

FRIDAY, December 8, 1882.

JOSEPH SWEARINGEN called.

Direct examination by Mr. Sloane.

Q. Mr. Swearingen, where do you live? A. I live in Lexington, Fairfield township, Highland county.

Q. What is your occupation? A. Saddler.

Q. Are you acquainted with the defendant, Daniel Giddings? A. Yes, sir; from his infancy.

Q. Were you well acquainted with all the people in the neighborhood where he was born and raised? A. Yes, sir.

Q. I will ask you to state, then, from your knowledge of that neighborhood and of Dan, what his general reputation was in that neighborhood, among all his neighbors, as a man possessing a character for peace, quiet and humanity? A. Well, sir, I have never known much of him since the war.

Q. I am speaking of the time that you knew him, from his boyhood? A. During that time I never knew but what he was as good a boy as all ordinary boys. I have known his father and mother before they were married.

Q. You knew his father well? A. Yes, sir.

Q. Were you acquainted with, and did you see his father frequently before he was taken with his final sickness? A. His father lived on a farm between a quarter and a half mile from my town. I saw him every few days.

Q. You knew him well enough to know if any change should take place in him? A. Yes, sir; the first indication I had of it I didn't think anything of it at the time. I took a note of Mr. Giddings for $95.

Q. Before telling the particulars, I will ask you to answer this general question: whether, or not, you did notice, before he took down and finally was confined to his bed at his house, any change in his mental habits, or character? A. I did, but I didn't think anything of it at the time, but I did afterwards refer to it. I had sold him a buggy for $95 and he gave me his note for that amount, and he just paid it as he pleased, along; he gave me $5 or $10 when he pleased, and I gave him credit for it afterwards; and finally in the latter part of the summer, or early fall, he met me at the depot one day and he said he was going to Elliott Miller's, and he would give me some money when he returned, and when he returned he gave me $35; handed it to me at the door and I gave him credit for it.

Q. By Col. Gilmore.—This was in what month that he gave you that? A I don't remember just the month, but I gave him credit for it on the note. It was in the latter part of the summer or early fall, along about that time. And he paid along occasionally until he had it about paid up. In February he came in one evening—there was a protracted meeting going on at Lexington, and I well remember Mrs. Giddings was at the meeting– and he came in and settled up with me. He had a little pass book; we had accounts, each of us, and we settled and he lifted the note. I called over the credits, and when I came to the $35 he denied it; he insisted that I had given him credit for some other man's money and wanted to pay it again, and said that I would some day find out when it was too late. At that time we finally settled up and he pulled out half a dollar and shoved it to me on the table, and says I: "Gid, what is that for?" said he: "Put that in your pocket and say nothing about it." Says I, "I don't want it," and pushed it back to him. He throwed it back again to me and said, "Put it in your pocket and say nothing about it." Well I had nothing to do but to just put it in my pocket. I didn't know what it was for, unless it was for interest or something. Well, I did not think so much about the $35 until when he took down and it developed itself that his mind was not right.

Q. By Mr. Sloane.—Well, you went to see him when he was down too? A. I did.

Q. During that time state whether or not he was unconscious most of the time? A. Well he was at times, I think when I went to see him; his mind was not right; I would not have thought him capable of doing any business.

Q. How long was he confined to bed? A. I believe he died in harvest; I think when wheat was yet in shock.

Q. Well, how many weeks was he confined to his bed? He was confined to his house some time before he took down to his bed? A. I think he was confined to his house in March or April; I would not be positive which.

Q. You don't know how long he remained in bed altogether? A. No, sir, I don't.

Q. Who was the attending physician? A. Robert Judkins.

Q. The elder Judkins? A. Yes, sir, the father of the present Dr. Judkins there.

Q. You may state whether or not his mind was gone or largely impaired during this time to your observation? Well, that was my understanding from the doctor. The doctor and I lived just opposite each other.

Q. You knew that he had suffered from some financial embarrassment? A. Yes, sir; he was not out of debt yet on his farm, and his two brother-in-laws had been running a mill at Vienna, five miles distant, and they held out to him that they were making money, and perhaps, no doubt, they were, and told him if he would go in with them he could make money faster than he could out of his farm.

Q. And they failed in that? A. Yes, sir; and he talked to me about it afterward, that that was held out to him, that idea, and he went into it and finally it involved him more.

Q. And finally his home was lost as a result? A. Yes, sir; and he then gave—during his sickness, or perhaps before—his father-in-law, Daniel Hix-

son, a mortgage on his personal effects; the farm and a young horse was included, a three-year old that spring coming. And this mortgage was given ——

Q. Perhaps that is not proper for you to relate. This financial embarrassment was one of the occasions of this trouble? A. It was.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Any other reason? A. It was that, I thought.

Q. It was that and nothing else that affected Mr. Gidding's mind? A. That was my understanding, sir.

Q. You say he died in harvest; what year, about? A. 1857.

Q. And he was taken down, that is, confined to the house from April, did you say? A. In March, or April; I know it was very cool weather. I visited him some.

Q. This mortgage was given to Mr. Hixson in the year 1857? A. 1857?

Q. What part of the year; how long before his death? A. It was that spring. Perhaps it might have been in March; I would not just say, positively.

Q. Might it not have been later than March? A. It might have been; I don't just remember.

Q. It might have been in March or April, about the time he was taken down sick? A. Yes, sir.

Q. Nobody thought at that time that his mind was impaired so he could not do business, and make a mortgage then, did they? A. I believe the doctor did.

Q. Did the doctor tell you so? A. Yes, sir.

Q. At that time, or about that time? A. Well, the doctor several times spoke of his mind being impaired

Q. Now you tell the jury that the doctor told you, at or about the time this mortgage was taken, that his mind was affected? A. That his mind was impaired.

Q. Did the doctor tell you before, or at the time, that his mind was affected? A. I would not be positive about that; but he spoke of it several times, that Giddings' mind was not right.

Q. I understand that. You have told that to Mr. Sloane. Now confine yourself please to answering my questions and we will get along. What disease, if any, did Mr. Giddings, Sr., have that was the cause of his death? A. Just a final prostration; trouble; died broken-hearted. That was my understanding and what I thought of it, if a man ever died broken-hearted, trouble killed him; that killed Mr. Giddings.

Q. This trouble was the financial affair? A. Yes, sir.

Q. And was there no physical disease? A. I don't know; he didn't appear to be a diseased man; he had always been before ——

Q. I was not asking before that, but at the time of his last sickness, did he have a sickness? A. He was confined to his room some time, but I don't know that I can tell you, and I visited him, too.

Q. Now didn't the doctor treat him for a disease of some kind. A. I don't know, sir.

Q. Didn't you hear at the time? A. I didn't hear at the time. The doctor, I think, gave him medicine. I know the doctor visited him.

Q. You didn't hear then at the time from the doctor, nor didn't understand at the time that Mr. Giddings had any disease of the lungs, or any form of fever, or any disease of the stomach, or bowels, or any of the vital organs; you don't recollect that he had anything of that kind, do you? A. Yes, sir; I know that he could not control his bowels.

Q. Was there any paralysis? A. Not that I know of, no sir.

Q. You know that he could not control his bowels? A. Well it was thought, sir, ——

Q. Thought by whom? A. By the doctor.

Q. Now I don't want what the gossip of the neighborhood was. You say the doctor said what? A. That the man's mind was not right.

Q. Did the doctor say that he had inflammation of the brain or any distinct disease of the brain? A. I don't remember that, but he was found out in the yard some times; I have no doubt the family remembers that, too.

Q. Well, now, you didn't find him out in the yard? A. No, sir; I did not.

Q. I told you a while ago not to tell the gossip of the neighborhood, but to answer me directly as I asked you the questions about your knowledge of it. A. Very well.

Q. I ask you whether the doctor said he had any disease of the brain, such as inflammation, softening of the brain, lesion of the brain, or anything of that kind? A. I don't know that he did; I cannot say anything about that.

Q. Now, up to the time that he was confined to the house by his final sickness, whatever it was, up to that time, didn't he transact his own business? A. Yes, sir; he always transacted his own business.

Q. Up to the last moment he could get around? A. I believe he did sir.

Q. Didn't the people there up to the last day that he could get around, deal with him in business transactions? A. As far as I know they did.

Q. Received money when he paid it, receipted for it and everything of that kind; took his receipts and everything of that sort? A. I don't know that he was transacting any business after he was taken to the house.

Q. He had debts to pay, at any rate, up to the last? A. He had debts to pay if he had anything to pay with.

Q. Well, as long as he could get money to pay with, he did pay and transact that kind of business? A. Well, in March, or April, or along about that time, I think, he gave his father-in-law, Daniel Hixson, a mortgage on his personal effects and on the farm.

Q. Did he get money on that mortgage? A. He had borrowed money before and it was my understanding that he owed Mr. Hixson and gave him this mortgage to secure that debt. He had a young horse that was three years old that spring; that I remember well that Dr. Judkins told me he bought that horse.

Q. Dr. Judkins bought it? A. He told me himseif that he bought that horse.

Q. Well, I don't care about his buying the horse, except, when did he buy it? A. He bought the horse after Gid and I settled in February.

Q. The doctor then had business transactions with him at that time. A. The doctor had; yes, sir.

Q. Well, go on. A. The doctor bought that horse ——

The Court.—I don't see the necessity of going minutely into these business transactions. Go on with your cross examination.

Q. By Col. Gilmore.—You are not a physician yourself? A. No sir.

Q. Nor you don't pretend to be an expert in such matters? A. No sir.

Mr. Sloane.—Now, if the Court please, the question that I want to call out about the colt, that Dr. Judkins had purchased the colt of him a short time before the loss of his mental powers, and that he mortgaged this colt.

The Court.—Probably you might have gone into that in the examination in chief.

JAMES RILEY called.

Direct examination by Mr. Sloane.

Q. Mr. Riley, where do you live? A. I live at Massieville.

Q. How long have you lived there? A. It is about twenty-eight years.

Q. What is your occupation? A. Farmer.

Q. Do you know the defendant, Daniel Giddings? A. Yes, sir.

Q. Were you right well acquainted with him when he lived down there and during the time he lived there? A. Well, I would consider that I was pretty well acquainted with him.

Q. You knew the people well in that neighborhood there? A. Yes, sir.

Q. I will ask you to state then what the defendant's reputation was in that neighborhood as to being a peaceable, quiet, law-abiding citizen?

Col. Gilmore.—Now, Mr. Riley, I want to ask the Court to instruct you that this question refers to the period before the homicide; not the manufactured opinion since, if there be any.

The Witness.—Well, I understand that.

Col. Gilmore.—Well, I simply wanted you to understand it.

Q. By Mr. Sloane.—What was his reputation as to being a man of peace and quiet and a law-abiding citizen; whether it was good or bad? A. Well, the understanding that I had of Giddings' character was very good. That is, he was a good civil citizen; not a word as I ever recollect of hearing anybody say to the contrary up to that time.

Q. Now, from your own acquaintance with him, I will ask you to speak as to your knowledge of his character; do you say that he was a kind, inoffensive, humane man? A. That is about the character of him, so far as I know.

Q. Prior to this difficulty, I will ask you, whether he ever evidenced to you, or if you heard that he ever evidenced, at any time, any characteristics indicative of cruelty or inhumanity? A. I think not.

Q. You never heard of anything of that kind? A. No, I don't recollect of it.

CROSS EXAMINATION.

Q. By Col. Gilmore.—You never saw him angry, did you? A. No.

Richard Carter called.

Direct examination by Mr. Sloane.

Q. Mr. Carter, where do you live? A. In the neighborhood of Massieville.

Q. How long have you lived there? A. Well, I don't think it is quite three years; something near three years.

Q. How near did you live to Daniel Giddings? A. Well, I lived but a short distance.

Q. You knew him well, did you? A. Yes, sir.

Q. You knew the people in that neighborhood well during this time that you lived there? A. Yes, sir; pretty well acquainted with them.

Q. Now, I will ask you what was the general reputation of Daniel Giddings in that neighborhood—and you will confine that of course to the time prior to this difficulty—as to being a man of peaceful, quiet, inoffensive disposition and a law-abiding citizen? A. Well, he was a man that everybody thought very well of, and he minded his own business and attended to nobody else's, and everybody thought well of him as far as I know.

Q. And as you heard? A. As I heard.

Q. You worked with him occasionally, did you? A. Yes, sir; I worked with him very often.

Q. He was there living on a little farm that he had? A. Yes, sir.

Q. You remember about the time that his wife left? A. Yes, sir.

Q. You lived within about 40[illegible]rds of him, I believe? A. Something like that I believe.

Q. Did you see him after the time his wife left and came here first to Chillicothe and then went to Washington, did you see him quite frequently? A. Yes, sir; I saw him several times afterwards.

Q. I will ask you what condition he appeared to you to be in? A. Well, it seemed as though you could not hardly tell how he was. He would first be one place and then another, and appeared as though he was not satisfied any way. He was completely interrupted in some shape, you could not tell how; seemed very much out of fix.

Q. Able to work as usual? A. Well, he worked some and he boarded at my house part of the time. He didn't more than half eat. He is generally a pretty good eater, but he eat as though he could not eat, and could not half work nor nothing.

Q. In other words he was troubled in mind? A. Troubled; appeared to be troubled; very much so.

Q. Were you acquainted with Benjamin Wiltshire; A. Yes, sir.

Q. He lived in that neighborhood, did he? A. Yes, sir.

Q. You have already stated that you knew the most of the people in that neighborhood. I will ask yon what was the reputation of Benjamin Wiltshire as to being a man of quarrelsome, violent disposition?

(Objected to by Counsel for the State.)

Mr. Sloane.--I intend to prove previous threats and to prove the general reputation for violence is one of the means by which you show a probability that he made such threats, and is also admissible as proving the degree of offense, if any, committed. I will enquire directly as to the character and modes of violence.

The Court.—Counsel undertake to say that they expect to show it.

Mr. Sloane.—As I say to the Court, we will endeavor to bring it within the rule as we understand it.

Q. I will ask you to state then what in that neighborhood—and by that I mean what people said with reference to it—was his character as to being a quarrelsome and violent man? A. Well, he was a man that drank a great deal ——

Col. Gilmore.—That is not the question.

The Witness.—Well, he was right smart quarrelsome when he was that way. When he was not in liquor I guess he was not so bad.

Q. By Mr. Sloane.—You are speaking now of his reputation as to being a violent and quarrelsome man particularly when in liquor? A. Yes, sir.

Q. By the Court.—Was he to your knowledge a quarrelsome or violent, vicious man, prone to do injury to his fellows?

A. Well, he was a man that was—he was counted kind of an outrageous man.

Q. In that respect? A. Yes, sir.

Q. Was that his reputation in the community? A. Well, as far as ever I heard it was.

Q. Well, that is whether people so talked of him? A. Yes, sir.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Now, Mr. Carter, tell us who, before this homicide, going back, not repeating anything you have heard since Wiltshire was killed, but before this homicide, you heard say Ben Wiltshire bore that character? A. Yes, sir.

Q. Now tell us who you ever heard say so? A. Well, I heard it talked of.

Q. Well, by whom? Give us some names? A. I don't know that I could just tell who, but I heard it talked of.

Q. Can you give the name of one single person you have ever heard say so before this homicide? A. I don't know as I just could name a certain person.

Q. Did you ever see Ben Wiltshire before this affair here, have a fuss, or a quarrel, or a fight? A. No, I don't know as I ever seen him have a fight.

Q. Can you state any instance that ever came to your knowledge of his having any such difficulties before this one with Giddings? A. Well, I heard talk of it.

Q. Well, where was it; with whom did he have any difficulty? A. Well, at one time he come to my house. It was before day; I don't know what time; it was the first time that ever I seen the man to know him. Directly after I moved in the house he came and he wanted in. It was something about like 3 o'clock in the morning.

Q. Was it cold? A. Pretty cold morning. But I don't know, but I think he had been in liquor; and he come in and he asked me if he could warm, and I told him yes. There was not much fire, so I stirred up the fire and he stood there a little bit and he says, "Well, I am in here and I would like to see any damned man get me out of here." It kind of riled me right smart, but I didn't say nothing at all; didn't say a word to him and he chawed that over several times.

Q. You say he had been drinking, then? A. I think he was drinking; I am not certain. It was the first time I ever seen him to know him, and I would not have known him then ——

Q. You never liked Ben Wiltshire after that? A. No, I always thought pretty well of Ben Wiltshire, and that is the only time he ever misused me, but I thought he misused me that time.

Q. You have told the extent of the misusing you and told all that occurred; that he said that and chawed it over? That is all there was of it? A. Yes, he just said that and kept chawing it over.

Q. After he got warm he went away, didn't he? No he staid until daylight, and staid until after breakfast; I gave him his breakfast.

Q. And then he went away? A. Yes.

Q. You had no trouble with him, except his talking that way when he first came in? A. Yes, sir.

Q. Now, that is the only instance you know of, or have heard of, of his showing a quarrelsome disposition, or a bad disposition, is it not? A. Well, it is the only time I could say with any certainty. I heard things of course. I heard right smart of talk at different times.

Q. Now, who from? A. I could not say from whom.

Q. Can't you tell one single person? A. I don't know as I could now.

RE-DIRECT EXAMINATION.

By Mr. Sloane.

You were asked if you heard of his having any fights or difficulties. For the purpose of refreshing your recollection, I will ask you if you heard of his having a fight in Charlie Hansel's saloon there when Charlie Hansel hit him in the mouth with a weight?

(Objected to by Counsel for the State, witness answering at the same time, I don't know as I ever heard that.)

The Court.—I don't think that is competent.

Mr. Sloane.—I would not have called it in chief. I don't think it would have been proper in chief, but the question was asked by Counsel for State in cross examination.

Col. Gilmore.—My objection, if the Court please, was particularly to the form of the question.

Mr. Sloane.—Well, I will change the form.

Col. Gilmore.—I object to it not only now, but this for the rest to come, that he undertook to state to the witness not only when and where, bringing his mind and attention to it, but he added where he was struck, in the mouth with a weight, or something of that sort.

Mr. Sloane.—I think the question was entirely too suggestive.

Q. I will ask you then if you know of your own knowledge, or have heard of any difficulty, fight, or quarrel he has had in that community or elsewhere? A. Well, I might have heard of it, but I could not say where nor when, nor nothing about it. Appears to me I have heard such different times, but I could not point out.

RE-CROSS EXAMINATION.

By Col. Gilmore.

Q. It just appears to you, does it; you don't know? A. I could not say for certain.

Mrs. Richard Carter called.

Direct examination by Mr. Sloane.

Q. Mrs. Carter, you are the wife of Mr. Richard Carter, who has just left the stand? A. Yes, sir.

Q. Where do you live? A. Near Massieville.

Q. You know the defendant, Daniel Giddings? A. Yes, sir.

Q. Did you live close to him during the time that you lived there? A. Yes, sir.

Q. Were you well acquainted with Daniel then? A. Yes, sir; we were.

Q. And were you quite well acquainted with all the people living in that neighborhood, or most of them? A. Well, them that is handy to us we were.

Q. I will ask you to state now, before this difficulty, confining your mind to the time before this difficulty that occurred, what was the general reputation amongst the neighbors there in that neighborhood of Daniel Giddings as being a man of peaceful, quiet disposition and a law-abiding citizen? A. I never heard anybody speak a harmful word of him.

Q. You knew him quite well, yourself? A. Yes, sir; he was a good neighbor.

Q. You may state whether or not from your own knowledge of his character as you saw him, he was peaceable and quiet? A. Yes, sir; he was.

Q. I will ask you to state whether or not he ever indicated to your mind, at all, the possession of any such characteristic as cruelty, or inhumanity? A. No, sir; he did not.

Q. Did you know Benjamin Wiltshire? A. Well, I knowed him by sight.

Q. Before we pass to that I will ask you another thing. You remember the time Mrs. Giddings went away from home? A. Yes, sir.

Q. You saw Mr. Giddings almost daily after that? A. Yes, sir; I did.

Q. I will ask you to state to the jury now, in your own way, what was the condition of Daniel Giddings' mind and habits and manners and just anything that took place in him after that time. A. Well, he was like just as though he was not satisfied no place; he was very—it seemed as though his mind was all out of fix and he kept all the time uneasy and was going from place to place, and he had no rest; it seemed as though he was always annoyed and could not find any rest no place, and he would come in and he would say: "Well, I can't have no peace and I can't sleep, nor I can't eat, and I don't know what to do; I am just ruined." Well, maybe it would not be two hours until he would be back, and he would say: "Well, there is no use of talking; I've just got to give up; I am just ruined, anyhow."

Q. State whether or not you saw him at any time break down and shed tears? A. Well, I can not say for that, I know that he has—a great many times he was so melted that he didn't know hardly what he was about. I know that, but didn't never see him shed tears to my knowledge.

Q. He took meals with you some during this time? A. Yes, sir, through harvest I cooked for him, but it was a very little that he eat.

Q. Seemed to have lost all appetite? A. Yes, sir; he did.

Q. You knew Benjamin Wiltshire? A. I knew him by sight.

Q. Well you knew the neighborhood there in which he lived? A. Yes, sir.

Q. I will ask you if you, by knowing that neighborhood, knew what was his general reputation as being a quarrelsome, violent man? A. Well, I never heard any particular good of the man.

Q. That question applies simply, Mrs. Carter, to whether or not he was quarrelsome, fighting, violent, vicious? A. Well, I don't know anything about that.

Q. Did you hear anyting about it? A. No, sir.

Q. Not what you know yourself, but what you heard? A. Yes, sir; I have heard of his being in a great many rackets.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Now let us have some of those rackets that he was in; tell us about them. A. Well, different places where he would be.

Q. Now, who did you hear say that he was in a racket before this affair? A. Well, I can't just tell you where these little rackets was but I heard.

Q. Who told you of them? A. Well, I can not tell.

Q. Can't you tell one? A. I can't tell you; why it come from our own family; I heard the talk.

Q. It came from your own family? A. Yes, sir; it did.

Q. You can't state a single one can you? A. Well, I don't know whether I could or not.

Q. By Mr. Sloane.—Think, and if you can, tell.

Q. By Col. Gilmore.—Yes if you can, tell. Who did he ever have a fight with down there, that you ever heard about? A. I don't know as he ever had a fight with any person as I ever knew of. I heard of him and one of the Brower boys having a racket.

Q. What do you mean by a "racket"? A. Well, I reckon a fuss as far as I know; quarrelsome.

Q. Did they get drunk together? A. I don't know whether they were drunk or not; I was not there.

Q. Well, what kind of a fuss? A. I don't know anything about that; I was not there.

Q. What do you mean by a racket? A. Well, I don't know anything about it only just as far as that is concerned.

Q. You don't know anything about it, and you can not tell a single fight that you ever heard of his being in? A. Well, I just heard of it, but such things as that I didn't have to know. I never bothered with it as far as that was concerned.

Q. How long have you known Ben Wiltshire? A. I have not known him very well. It has only been about three years since we moved in that neighborhood.

Q. You have heard of him ever since he has been in that neighborhood? A. I have heard of him more or less.

Q. You said you heard of his having a great many rackets, that was your expression? A. Well, I heard of him having a great many fusses and disturbances.

Q. Well, with whom were they? A. Well, I don't visit the saloons and I don't go round much. I didn't see him whether he had or not.

Q. You say you heard them? A. No; I didn't hear them; I heard of them.

Q. Well, I mean heard of them. Can you state one place? A. Well, one place was Ticeler's; and I heard of a fuss at Mr. John Trego's, that he was in.

Q. Now then that is all you know about these fusses, is it? A. Yes, sir; I was not there.

Q. Who was in the right or who was in the wrong, you don't know anything about? A. No, sir; I don't know anything about that; and what I don't know I won't tell.

Q. Mrs. Carter you were, you say, living close to Giddings' when Mrs. Giddings went away somewhere? A. Yes, sir; I was.

Q. And you say that Giddings boarded with you after she went away or at least partly? A. Yes, sir; he partly boarded with us.

Q. Were you there when she was packing up to go away, at Giddings' house? A. No, sir; I was not there when she packed up to go away from Giddings' house.

Q. Do you know who brought her things up to town when she went away? A. Yes, sir.

Q. Who? Mr. Giddings? A. Mr. Giddings himself brought her things up to town.

Q. Now how soon after that was it that Giddings came to your house to eat? A. Why it was before that occurred.

Q. Oh, it was before that occurred? A. Yes, sir; just before she moved her things.

Q. This trouble that you have told about; that he said he was not satisfied, an d that his mind seemed out of fix, and he was always annoyed, and said he was just ruined, and just had to give all up; that was all before she went away? A. That was all before she moved her things away.

Q. And went away to Washington Court House, as you understand? A. Yes, sir; her goods was at our house.

Q. How long before she went away? A. Well, I don't just remember whether it was a week or two weeks.

Q. Well, it don't make much difference. Then a week or two weeks before she went away to Washington Court House, Giddings was eating at your house occasionally, and it was with reference to that time, and before she went away, that you have testified that he was so disturbed and out of fix and all that sort of thing? A. Well, she was away you remember; she was not at home a good while before she took her goods away.

Q. She was not at home? A. No, sir; she was not.

Q. Well, where was she then? A. That is more than I can tell you where she was.

Q. I wish you would fix the time that you are now referring to. A. I can not tell.

Q. Can't you tell what month it was in? A. It was in July; in wheat harvest.

Q. The early part of July? A. Yes, sir; it was in the early part of July.

Q. You say Mrs. Giddings was not at home at that time? A. No, sir; she was not.

Q. She did come home, did she? A. She come back and took her goods away.

Q. Do you know how long she was at home after she came back that first time? A. Why she didn't stay at home at all; not at night after she went away first. That was two weeks, I think, if I aint wrong; I won't be positive now in that, but I think two weeks that she done the work during the day and lodged at our house at night.

Q. Lodged at our house? A. Yes, sir.

Q. That is Mrs. Giddings? A. Yes, sir; she did.

Q. Where was Giddings? A. He was at home; he staid at home with the children at night, and she staid at our house.

Q. There was about two weeks of that condition of things? A. Yes, sir.

Q. Your house was how far from his house? A. I could not just tell you the number of yards; just across the road.

Q. And it was during that time that she was sleeping at your house she was away in the day time— A. Yes, sir.

Q. That you have testified that Giddings' mind was torn up and he would not eat? A. Not just at that present time. Well, of course he was not in a very peaceable mind at that time the way she was doing, but then it was after she quit there and then went away pretending that she was trying to get work in Chillicothe; she was in Chillicothe at the present time then.

Q. She had not yet left the country; hadn't yet gone to Washington Court House? No, sir.

Q. And this occurred before she went to Washington Court House? A. Yes, sir.

Q. Well, when you say that his mind was out of fix, what do you mean? A. Well, I suppose it was the trouble that Giddings had; any person that is annoyed with trouble, of course their mind is out of fix.

Q. Oh, yes that is your idea of it; that anybody who is annoyed and troubled, their mind is out of fix? A. Yes, sir; as he was.

Q. You mean in other words that he was somewhat excited? A. Well, I don't know.

Q. Excited and angry; was not that it? A. I reckon he was excited and angry and worked up every way.

Q. Worked up in temper and mind and so on? A. Yes, sir.

Q. He came to his meals regularly when he did come, didn't he? A. Well, of course, he would come.

Q. But would not eat much when he did come? A. No, sir; he didn't.

Q. Would eat some? A. Yes, but he didn't enjoy his victuals.

Q. Well, he would go to work at times, too, would not he? A. Well, of course he tried to work.

Q. I say he would go to his work? Well, he would go to his work but would not stay very long at a time.

Q. Would not stay very long; did he work very hard? A. No, sir; he would not.

Q. Well, his mind was on something else, was it not? A. Yes, I reckon it was.

Q. You say he was not satisfied with the situation, he being at home and his wife away? A. I reckon so; I took it that way, anyhow.

Q. When he said he was just ruined, what do you mean by that? A. Why I reckon that he thought he was ruined; his family was ruined and broken up.

Q. That his family relations were broken up; it was in that sense? A. Yes, sir.

Q. He was not referring to his own physical condition of mind, or anything of that kind; he was just broken up, as in the sense that a man who has lost his money or anything, is broken up? A. That is the way I took it.

Q. You say you never saw him shed tears in the matter? A. I never did as I recollect of.

Q. Did you hear him make threats? A. Well, I heard him say this much, that ——

Mr. Sloane.—Now hold on a minute. That is not proper at this time. That is a matter in chief, in direct, not in cross examination.

Col. Gilmore.—Well, in one sense; but we hold that in one sense that is proper here. The gentlemen on the other side have attempted to prove the mental condition.

Mr. Sloane.—I suppose that that is right; that at this time you have the right. I think it is proper.

Q. By Col. Gilmore.—Well? A. Well, I heard him say this far, that if he ever knew, found out, any man come between him and his wife, what he would do.

Q. Well, what was it he would do? A. That he would give him a mark that would leave a little red ring around it. That is what I heard him say.

Q. Now, that was before his wife went away, was it, to Washington Court House? A. Yes, sir; before she left.

Q. You heard him say that if any man ever came between him and his wife he would give him a mark with a little red ring around it? A. Yes, sir.

Q. What did you understand; what did he mean by that?

Mr. Sloane. –You need not give that.

The Witness.—Well, I don't want to say anything but what I heard.

Q. By Col. Gilmore.—Well, did he explain himself as to what he meant by a little mark with a red ring around it? A. No, sir; he did not.

Q. Well, did he appear cool when he said that, or talked about it? A. Well, he was not in great anxiety that I see.

Q. He was not in any great anxiety at that time when he said that? A. No, sir.

Q. Is that all that he said about that? A. It is all that I just remember.

Q. Was there a good deal more in the same direction, or any more in the same direction that you don't remember distinctly? A. Well, I cannot ——

Q. Well, you know whether he talked a good deal more of the same talk? A. Not to me, he didn't.

Q. Or in your hearing? A. Not alluding to anything of that kind.

Q. Not alluding to hurting anybody? A. No, sir; I never heard him say anything about hurting anybody no further than that.

Q. That declaration was made at the time while his wife was away in the day time and sleeping at your house at night? A. That was when she was here in Chillicothe pretending to get a place to work.

Q. You use the word "pretending." How do you know she was pretending? A. Yes, sir, and it proved so. I heard ——

Q. You have a right to your opinion, of course. Your family, you and Mr. Carter and Daniel Giddings were excellent good friends, were you not? A. Yes, sir; we was.

Q. Excellent good friends? A. Yes, sir; we was.

Q. All right; and you had a right to be? A. Yes, sir; we had a right to be.

Q. Certainly. I only wanted the fact. Did you see Giddings right after Wiltshire was killed? A. Well, I seen him in the evening before the report come.

Q. Was it at your house? A. No, sir; he was not; he was drawing his express into the buggy shed when I seen him.

Q. After the report came did not you see him? A. I seen him in the yard and seen him start to Massieville, and that is the last I seen of him.

Q. That same night? A. Yes, sir; in the evening.

Q. You saw him no more from that time until he gave himself up? A. I never seen him any more until I seen him here.

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. You may please answer the question now that you were asked by Col. Gilmore, that you were not permitted to answer—how you knew that she was pretending to get work.

Col. Gilmore.—I didn't ask that question ; how she was pretending to get work. I simply repeated her answer.

The Court.—If he asked a question that you didn't consider competent, I don't see how it is competent for you to require her to answer.

Mr. Sloane.—I don't claim that it is not competent. When he asks a question and she has something coming that he does not want he has no right to stop the witness.

The Court.—Simply because the Colonel asked a question that was not answered does not give you the right to ask it.

Q. By Mr. Sloane.—The question was, how do you know she pretended, and you were stopped in answering that question, that something you heard? A. Well, I know it was all right and that was the way I got my information.

Q. On the evening after the killing, you say you saw the man before the report came; did you see him go to mill? A. He sent his boy and my little boy down to Lockwood's to get some flour and some groceries.

Q. You didn't notice his going to the mill himself? A. No. And then they didn't get it, and when they came back he went himself; that is all I know.

Q. How long was Mrs. Giddings here in Chillicothe before she went to Washington Court House? A. I can't tell how long.

Q. Well, I mean pretty near; about a week? A. As I said before, I don't know whether it was a week or two weeks.

Q. You say they came together? A. Yes, sir ; they did.

Q. And he brought the goods along? A. Yes, sir ; he did.

Q. In their spring wagon? A. Yes, sir.

Q. You think she was here about a week? A. I can't tell you just exactly how long, such things as that.

Q. Do you know about the date she left for Washington Court House? About the 19th of July, was it? A. I can't tell you.

Q. Well, you can tell with reference to whether it was near the middle of the month or not, or after the middle of the month? A. I cannot just remember anything about that; I didn't pay no attention to it.

GEORGE BENDUR called.

Direct examination by Mr. Sloane.

Q. Where do you live? A. I live out the other side of Massieville.

Q. How long have you lived there? A. About twenty-four years.

Q. Are you well acquainted with all the people in that neighborhood there? A. Well, most of them , some of them I am not.

Q. Do you know the defendant, Daniel Giddings? A. I had seen him a few times before this happened.

Q. How far did you live from him? A. Well, it is about a mile and a half around the road. To go across it is not.

Q. You were well acquainted with the people that lived in his neighborhood, were you? A. Yes, sir.

Q. What is his general reputation there as being a peaceable, quiet, inoffensive, law-abiding citizen? A. I never heard a word against him ; they used to all speak well of him.

Q. Did you know Ben Wiltshire? A. Yes, sir.

Q. He lived in that same neighborhood; the same set of people were around him? A. Yes, sir ; betwixt where I live and where Mr. Giddings lived.

Q. What was the general reputation of Benjamin Wiltshire as to being a quarrelsome, violent man? A. Well, he was pretty rough.

CROSS EXAMINATION.

By Col. Gilmore.

Q. You say pretty rough? A. Yes, sir; that is drinking and quarrelsome. When he was sober he was a civil man enough.

Q. Was not the worst that could be said of Ben Wiltshire during his lifetime, that he was giving to drinking a little too much? A. No, sir.

Q. Now I am drawing your attention to the time before this homicide. We want no impressions as to what has been heard of since this homicide at all.

Mr. Sloane.—I don't know about what has been heard since, if the conversation was had about what happened before, I think it is competent to be proved.

The Court.—This would be the rule in regard to that particular feature; that it relates to his character previous to the occurrence; and, therefore, the witness must testify as to what he knew of the character previous, otherwise it would not be relevant to the inquiry. He may show what his reputation was previous to the occurrence. And then, too, it is not his general reputation for being a drinking man, or anything that way, but it relates to the question of what his character was as a man of violence, quarrelsome, and the influence it may have caused on the mind of the defendant.

Q. By Col. Gilmore.—Mr. Bendur, did you ever know Ben Wiltshire to hurt anybody? A. I did not know of him to hurt them. I heard of his fighting once in a while.

Q. I want to ask you if you ever knew of his using a weapon on anybody? A. No, sir.

Q. Never heard any instance of that kind? A. No, sir.

Q. What you have heard that made you say that he was kind of rough, as you call it, was that he would get to drinking and get involved in quarrels? A. Yes, sir.

Q. Those quarrels, never in any instance that you have heard of, or knew of, did they, went to the extent of inflicting any considerable injury upon anybody? A. No, sir.

Q. For the purpose of finding out what you know about the case, can you recollect and tell who you heard attribute that character to Ben Wiltshire? A. Oh, I heard the whole neighborhood.

Q. Now, if you heard the whole neighborhood, you can certainly tell some, can't you? A. Yes, sir; I can tell some.

Q. Well, who were they? A. There is Hansell and Ticeler—in fact there is none hardly but what does of those who knew him.

Q. Now you have given the names of Joe Ticeler and Charlie Hansell, those are the persons you refer to? A. Yes, sir.

Q. They kept a saloon down there, didn't they? A. Yes, sir.

Q. And didn't both refer to the same fact that he had gotten into a difficulty there with three fellows on one occasion; was not that what it all grew out of? A. Oh, no, no; at different times.

Q. Now name the times. A. I heard at different times but I paid no attention to keep the times at all.

Q. You mean the reports came to you at different times? A. The reports came to me at different times.

Q. And didn't these reports, although they came at different times, all refer to the same fuss? A. No, sir.

Q. You are sure of that? A. I am satisfied of that.

Q. You have talked with Ticeler, hav'nt you, about it since? A. Nothing since.

Q. Since when do you mean? A. Since the trial.

Q. Since the trial? Yes, sir; heard a good many talking about it before the trial.

Q. What trial do you mean? A. This trial, and before there was any fuss along there a year or two back.

Q. Was it before this homicide occurred? A. Yes, sir.

Q. Well, you did talk with Ticeler at that time, did you, about it? A. Oh, I was in the shop there; in the grocery and they were talking about it.

Q. Joe was mad, was he not, at Wiltshire? A. No, sir; he didn't talk like he was; he was laughing and said he was pretty quarrelsome.

Q. And Charlie Hansell, you talked with him, didn't you, about it? A. Yes; talked with them and heard them talking there in their grocery.

Q. Well, when there is a little fuss, or scrap, I believe the professionals call it, don't they, in a place down there like Massieville, it would be apt to be talked about over the whole neighborhood, would it not? A. Oh, it is talked of all round.

Q. Did you ever hear of his having a fuss anywhere else except there at that saloon? A. I don't recollect; I heard so many times and paid so little attention to it that I cannot recollect the time.

Q. Well, if you paid so little attention to it, how can you remember that it was so many times? A. Well, I know at different times, that it was at different times, that is the time of year or month, I can't recollect.

Q. You don't know of your own knowledge, or hav'nt any well defined opinion from what you have heard whether Ben Wiltshire was in the right or wrong down there in that fuss? A. No, I don't know.

Q. I believe you said you never knew of his carrying weapons? A. I don't know that I ever did.

Q. Never heard of his using weapons of any kind? A. No, sir.

COLUMBUS LINDSEY called.

Direct examination by Mr. Sloane.

Q. Mr. Lindsey, where do you live? A. Massieville, sir.

Q. How near do you live to Mr. Giddings, the defendant? Well, about a mile, perhaps; something near about a mile.

Q. You know him well? A. I do; yes, sir.

Q. Pass his house frequently? A. Yes, sir.

Q. Well acquainted with the people in that neighborhood? A. I am, sir.

Q. What was Dan's reputation as being a peaceable, quiet, inoffensive man and a law-abiding citizen? A. Well, he was as good a citizen as we have there.

Q. Ever hear anything against him, at all? A. No, I never did, sir, until this difficulty.

Q. Did you know Benjamin Wiltshire? A. I did, sir.

Q. He lived in the same neighborhood? A. Yes, sir.

Q. He was known by and known to the same people that you have spoken of being acquainted with? A. Yes, sir.

Q. Did you know him, yourself? A. I knew him for the last sixteen or seventeen years, I think.

Q. What was his character as to being a violent, vicious, quarrelsome man? A. Oh, well, when Ben was sober, he was considered a quiet, civil fellow, but when he was drinking, why he was kind of quarrelsome, like most of men are, and got into scrapes occasionally.

Q. What was his reputation—now I mean by that what people generally said of him—there in the neighborhood as being a quarrelsome, violent, vicious man? A. Well, his reputation was that.

The Court.—Counsel inquires of you as to his having a reputation for being a man of violence and viciousness?

The Witness.—When he was intoxicated, as I said before, when he was drinking ——

Q. By Mr. Sloane.—I am not asking you as to what your knowledge of his character was, but what was his reputation in that respect; good, or bad? A. Oh, well, there was very little said about him. As I said before, only he got into scrapes, drinking.

Q. Well, what was his reputation as to being a violent man? Well, he was counted as being a man that would fight and quarrel when he was drinking.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Now, Mr. Lindsey, I believe you and Ben Wiltshire had a little fuss, once, didn't you; a little difficulty? A. Let us see; I believe we had a little difficulty about thirteen years ago; had a little fuss.

Q. I know it was a good while ago, but you have never liked Ben very well since that; have not been on friendly terms? A. Yes, sir.

Q. Have been on friendly terms? A. Yes, sir.

Q. I thought that ever since your fuss you and he had been cool towards each other? A. I have been as much ——

Q. I only asked you whether your grudge existed yet or not? A. No, sir.

Q. Now, Mr. Lindsey, I want to understand exactly what you mean in regard to what you have testified both of the reputation of Mr. Giddings and of Mr. Wiltshire. You testified, also, of your personal knowledge of Giddings, that his reputation was good and he was a good citizen, and that you thought him to be a good, peaceable, quiet man. That is what you stated, was it? A. Yes, sir.

Q. Did you ever see him angry, or excited. A. Never saw him excited in my life until after this difficulty.

Q. Until this affair? A. No, sir; never.

Q. You never saw him under the influence of passion? A. Never in my life, sir.

Q. That will do as to Giddings. Now as to Wiltshire. Did you ever personally know, or ever hear of Wiltshire using arms or weapons in any difficulty that he ever had? A. I have heard of his drawing knives.

Q. Did he use it or attempt to use it? A. Well, I don't know whether he attempted to use it or not; I seen him have it out once.

Q. Well, I will come directly to that. Where was that at? A. That was out at Mr. Renick's.

Q. Was he drinking then? A. Yes, sir.

Q. Was he drunk or only a little drunk? A. Well, I would consider him pretty near drunk.

Q. You say that on that particular occasion he was drunk? A. I think so.

Q. At Renick's? A. Yes, sir.

Q. How many persons was he involved in a quarrel with at that time? A. Well, with Bije Cheney and a fellow by the name of Hi. I believe it commenced with Cheney, and I think this fellow Hi came there and they had quite a row.

Q. Then there was two of them on one side and Wiltshire on the other? A. Yes, sir.

Q. Were there any blows struck on that occasion? A. No, sir, they didn't. Well, Ben tried to get out to get into the fuss and get to those fellows outside.

Q. So they were kept separate? A. Yes, sir.

Q. Did you ever know him to use a weapon or anything of the kind, I mean to strike with it? A. Not me; no sir.

Q. Did you ever hear of his doing so? A. No, sir.

Q. Is that the only occasion, the one you have told about, that you know of his taking out a knife? A. That was the only occasion that ever I saw.

Q. Well, did you ever hear of any other? A. Oh, well, I heard of others, but then to know whether it is a fact or not I don't know anything about it.

Q. By Mr. Sloane.– State what you heard.

Q. By Col. Gilmore. Yes, you can state what you heard of his using a knife, or drawing a knife, or any other weapon that you can remember distinctly. I don't want mere vague impressions, but if you remember distinctly of anybody's telling you of other occasions, state it. A. Well, it seems to me that I have heard, but I cannot say positively about it; I think I have heard it.

Q. You have no distinct recollection then of any other case? A. No, sir.

Q. You spoke of seeing Giddings excited about this case; when was that? A. Well, that was before his wife went away with Wiltshire.

Q. Well, all right, go ahead. I didn't propose that you should tell who she went away with at this time, but all right. It was before she went away with Wiltshire? A. Yes, sir.

Q. How long before? A. Well, I suppose it might have been a week or may be a little longer; I think it was probably a week.

Q. You say he was angry at that time? A. I didn't say he was angry; I said he appeared to be excited and nervous.

Q. Did he use any threats at that time?

(Objected to by Counsel for defendant as incompetent at this stage of the case.)

The Court.—You can make the inquiry with reference to a peaceable and quiet disposition. I suppose it is admissible on that; but the weight, the value of it is for the jury.

(To which action of the Court Counsel for defendant excepted.)

Q. By Col. Gilmore.—Well, answer the question, if he made any threats at that time when excited. A. He didn't make any threats to me.

Q. Well, if you didn't hear them then I don't want you to repeat what anybody else told you. A. But it was only that he stated to me what he said.

Q. I don't ask you what you were told he said, but only what you heard him say? A. I say I was going to state what he said he had said to other parties.

Q. Oh, well, that is proper enough. A. Well, he come along, I guess, about two hours of sun, coming towards town on horseback ——

Q. When? A. You just let me ——

Q. Well, I want you to fix the time. A. I don't know what date it was.

Q. Before the killing? A. Yes, sir; perhaps about a week, or may be two weeks.

Q. That is close enough. Go ahead. A. And in a little while he came back again walking; appeared to be walking very fast, and wanted to know of me if I had seen his wife. I told him I hadn't, and I says: "You come in and take a seat." He said he didn't have much time, that he was worried pretty near to death. Well, the man looked like he was; and he come in and sat down, and says he. "You have seen nothing of her?" I says, "No, sir." "Well," he says, "I'm afeared that she's drowned herself." Says he, "I believe that the woman's crazy." "Why," says I, "Mr. Giddings, may be there may be some trouble that is causing all this." Says he: "I don't think any such thing; I have been told by parties that Wiltshire was intimate with my wife, but I don't believe it." Says he: "I met Ben on the road the other day and said to him, 'Ben, you have been to my house time and again?' 'Yes.' 'And I have treated you as a brother?' 'Yes.' 'And I've always respected you, and Ben I've been told that you was intimate with my wife, but I don't believe it; but Ben, if I would find it to be so I would just shoot you down.'"

Q. That he told you on this occasion that you speak of? Mr. Giddings told me that; yes, sir.

Q. Well, is that the only instance of his showing that disposition and making use of threats? A. That is the only time that I saw the man this way.

Q. Up to the time I mean, of this homicide? A. Yes, sir.

Q. Now did you see him on the day that this homicide occurred? A. Yes, sir; I did.

Q. Where? A. I was in a buggy with Mr. Edwards, who carries the mail and drove down to Mr. Lockwood's.

Q. That is in Massieville? A. That is in Massieville.

(Objected to by Counsel for defendant as not being proper cross examination. Objection sustained.)

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. In this conversation you have related, Columbus, where he said he met Wiltshire on the road, and what he said to him with reference to this charge, that he had been intimate with his his wife; did he say that Wiltshire denied it? A. He said that Wiltshire said that it was not true.

MRS. MARY ANN BENDUR called.

Direct examination by Mr. Sloane.

Q. You live down in the neighborhood of Massieville, I believe? A. Yes, sir.

Q. Are you acquainted with the defendant, Daniel Giddings. A. No, sir; I don't know anything of him.

Q. Were you acquainted with Benjamin Wiltshire? A. Yes, sir; twenty-four years.

Q. Did you know the community in which he lived there, the people of it? A. Yes, sir; I did.

Q. I will ask you to state if you please, if you know, what was the character of Wiltshire as to being a quarrelsome, violent, vicious man? A. He bore that name.

Q. I will ask you to state whether that was his general reputation there in that community; what people generally said of him? A. Well, they all said that he was a very quarrelsome, ugly man from a little boy.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Mrs. Bendur, you mean that he had the reputation of being always quarrelsome and so on? A. Yes, sir.

Q. Or was it only when he was drunk? A. Yes, sir; and when he was not drunk too; he bore a bad name about being quarrelsome.

Q. Did you ever hear of his using weapons on anybody? A. No; I don't know that he done that.

Q. You never heard of anything of that kind? A. No, sir.

Q. All you ever heard is that he was given to being quarrelsome? A. Yes, sir.

Q. Passionate? A. Yes, sir.
Q. He would fight sometimes? A. Yes, sir.
Q. That is the worst you ever heard, is it? A. Yes, sir.
Q. What is your age? A. Seventy-three.
Q. You don't go around much now, out there, do you? A. Not very much now, no, sir.

GEORGE RILEY called.
Direct examination by Mr. Sloane.
Q. Mr. Riley, where do you live? A. I live in Huntington township, out on the Portsmouth pike.
Q. How near Massieville? A. Three miles, just; well, you might say it is near the suburbs. I live three miles beyond, just, pretty nearly.
Q. Do you know the defendant, Daniel Giddings? A. Yes, sir; for the last two or three years I have seen him passing along the road.
Q. Were you acquainted with Benjamin Wiltshire? A. Yes, sir.
Q. Knew him quite well? A. Yes, sir.
Q. Where did you know him? A. Oh, well, I have knowed Benjamin Wiltshire for the last twenty years, I suppose or more.
Q. Do you know the people pretty well in the neighborhood where he lived? A. Oh, I guess so.
Q. Were you acquainted with the people in the community where Mr. Giddings lived? A. Yes, sir; generally.
Q. How far did you live from Mr. Giddings? A. Well, I live within about three miles of Mr. Giddings, as near as I can tell.
Q. And you say you are well acquainted with the people of his neighborhood? A. Oh, yes, sir; all of them general. Just speaking generally, I know pretty near all of them.
Q. I will ask you to state what was Mr. Giddings' general reputation in that community, prior to this difficulty, as being a peaceable, quiet, inoffensive, law abiding citizen? A. Well, as far as I know, it was pretty good.
Q. You never heard anything to the contrary? A. No, sir.

CROSS EXAMINATION.

By Col. Gilmore.
Q. This affair with Ben Wiltshire, is the only time you have ever known of Giddings getting excited and angry, is it not?
(Objected to by Counsel for defendant as assuming that Giddings was angry and excited then, there being no proof of it.)
Q. Well, this affair with Wiltshire was the only fuss you ever knew Giddings to have? A. I think so as far as I know; I don't remember any other.
Q. You never saw him angry then, did you? A. No, sir; I never did.
Q. Don't know how he would act, when he was angry, right mad? A. I don't know anything about it at all, no, sir; never saw anything of that kind.

C. C. RENDT called.
Direct examination by Mr. Sloane.
Q. Mr. Rendt, where do you reside? A. At Massieville.

Q. Are you acquainted with Mr. Giddings, the defendant? A. Yes, sir; I know him.

Q. What business are you engaged in there? A. In the store business; keeping store there.

Q. And are you acquainted with most of the people living out in his neighborhood? A. Yes, sir; with most of them.

Q. They come in and deal at your store, and do business there? A. Yes, sir.

Q. Now, then I will ask you to state, having this means of knowing the people in his neighborhood there, what, before this difficulty, was Daniel Giddings' reputation as being a peaceable, quiet, inoffensive, humane man? A. Yes, sir; that is what I always heard of him and thought of him since I have known him.

Q. You never heard anything to the contrary? A. No, sir.

Q. Did he ever evidence to you, or did you ever hear any one speak of his giving any manifestations which indicated any cruelty of character? A. No, sir.

Q. But the reverse? A. Yes, sir.

No cross examination.

GEORGE EDWARDS called.

Direct examination by Mr. Sloane.

Q. Mr. Edwards, where do you live? A. I live near Massieville.

Q. Are you acquainted with the defendant, Daniel Giddings? A. Yes, sir.

Q. How long have you known him, Mr. Edwards? A. Well, I have known the gentleman, I think, about, between four and five years.

Q. Ever since he has lived down there? A. Pretty much ever since he has lived down there.

Q. What business are you engaged in there? A. Well, I am now carrying mail. I was in the fruit business.

Q. You are well acquainted with the people in his neighborhood, are you? A. Yes, sir; generally.

Q. What was Dan's general reputation as being a peaceable, quiet, inoffensive, humane man? A. I can say that I never heard aught against him.

Q. Never? A. No; he was an industrious man; attended to his own business as far as I know.

Q. Did you know Benjamin Wiltshire? A. Yes, sir.

Q. You have known him quite well, have you? A. Well, yes, sir; I have known him quite well.

Q. You have known the community in which he lived? A. Yes, sir.

Q. Now what was his general reputation in that community—and by that I mean what the people generally said of him—as being quarrelsome, violent, vicious man? A. I have heard men talking, but I don't know it to be the case that he was a little quarrelsome when he was a little—drinking.

CROSS EXAMINATION.

By Col. Gilmore.

Q. It was only when he was drinking that he was quarrelsome? A. Well, I have never heard anything else of him. He was generally a peaceable man; always used me well, anyhow.

Q. Well, that is not the inquiry. The inquiry is what the public down there has said about it? A. Oh, well it is——

Q. Mr. Edwards,——(Counsel for defendant objecting to the witness being interrupted before completing his answer.)

Q. I will ask you if you ever heard people say that Ben Wiltshire was vicious, at all, in his disposition? A. No, sir; I don't think I ever did.

Q. Dangerous; I will put it that way? A. I don't think I ever did sir.

Q. Did you ever hear of his using deadly weapons of any kind in any difficulty that he ever had? A. No, sir.

Q. Did you ever hear of his carrying deadly weapons? A. No, sir.

Q. Never heard anything of the sort? A. No, sir.

Q. What you mean then, if I understand you, now, in your answer to Mr. Sloane, is simply, that when drinking he was quarrelsome and unpleasant? A. That is what I mean; that is, that is what they say.

THEODORE LOCKWOOD called.

Direct examination by Mr. Sloane.

Q. Mr. Lockwood where do you reside? A. At Massieville.

Q. Are you acquainted with the defendant? A. Yes, sir.

Q. How long have you known him? A. Well, I expect about four years; ever since he came here. I took him down there.

Q. You are acquainted with the people in his neighborhood? A. Yes, sir; most all of them.

Q. Well, what has been Dan's reputation before this difficulty, as to being a peaceable, quiet, law abiding citizen? A. Well, I never heard of anything against him in any way.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Did you ever see him excited or angry? A. Well, I saw him a little excited, once I think; may be that is all the time. He didn't appear to be much, but I thought he was a little excited.

Q. When and where was it? A. It was on the road between his house and mine.

Q. What was the occasion of it? A. Well, he was coming up to Chillicothe, or told me he was, to see if he could find Mr. Wiltshire.

Q. Well, I don't want to go into that then. I thought it was some other occasion. I will ask you whether you havn't had difficulty with him? A. I did; several years ago; a little difficulty.

Q. Well, did he get angry then? A. That is Mr. Giddings?

Q. Yes, sir. A. No, sir; we never had any difficulty.

Q. Oh, it was Wiltshire you were speaking of. I was talking about Mr. Giddings. Did you and Mr. Giddings have trouble? A. No, sir.

Q. I will ask you the direct question, Mr. Lockwood, if you ever heard Daniel Giddings, himself, say anything of this kind—I don't know as I can render it accurately, but substantially—of this kind; that while he could keep cool enough, that it would not do to excite him. A. No, sir; never said anything of that kind.

Q. To you? A. No, sir.

Q. Or in your hearing? A. No, sir.

Q. Now what were the statements he made that you have just at this instant referred to?

(Objected to by Counsel for defendant. Objection overruled to which Counsel for defendant excepted.)

Q. I will ask you if you ever heard Daniel Giddings make a statement in regard to his own dangerous character or temperament or anything of that sort? I can not give words, nor even accurately, the thought, but I know that you know what I refer to because you just spoke of it; if so, state it. A. Well, the time that he told me, when I saw him a little excited you might consider it such a statement made at that time.

Q. And had reference to Wiltshire as I understood you a moment ago? A. Well, he told me that he was going to hunt Wiltshire to see if he could find him.

Q. When was that? A. That was on, I think, the 13th day of July.

Q. Well, now I will ask you to state what he said; any threats or exhibition of violence or intending an attempt to commit violence.

Mr. Sloane.—The Court understands we except here.

The Court.—I understand. You may state now what the defendant said.

The Witness.—Well, I was going to his house, when I met him on business, and when I met him I mentioned my business and he said he was in somewhat of a hurry and asked me if I had seen anything of his rival?

Q. By Mr. Gilmore.—Of whom? A. His rival. I told him I hadn't. He said he heard he was in town and he was going up to see whether he could see him; and he said that he heard that he was in town about noon, and that was just after noon a little and he says, "If I catch him with the woman it will make me one of the worst blood-thirsty persons you ever heard of, I am afraid."

Q. That was the full declaration was it? A. Well, that is, I think, all.

Mr. Sloane.—Now to save this question properly, I move the exclusion of this from the jury as incompetent in the cross examination of this witness.

The Court.—I think not. It is a matter reflecting upon his quiet and peaceable disposition.

(To which action of the Court Counsel for defendant excepted.)

The Witness.—You know what caused him to express himself in that way to me.

Col. Gilmore.—Oh, I don't care anything about that.

Mr. Sloane.—Yes, sir; you may give the whole of it. We wan't the whole of it.

The Witness.—Well, you have the whole of it now.

Hamer DeWitt called.

Direct examination by Mr. Sloane.

Q. Mr. DeWitt, where do you live? A. Fayette county, Washington, Court House.

Q. You are a farmer by occupation? A. Yes, sir.

Q. Did you know the deceased, Benjamin Wiltshire, in his lifetime? A. I knowed him for about two years.

Q. Where did you see him shortly before his death? A. He left my house that morning.

Q. Had he been living on your place before that time? A. Yes, sir.

Q. Did he come alone or with some one? A. He had a lady with him.

Q. Who was it? A. He called her his wife.

Q. Well, did you afterwards learn who the woman he came there with and claimed to be his wife, was? A. Yes, sir.

Q. How long were they on your place; about two weeks? A. Came on the 19th of July, and she left on the 2d of August.

(Counsel for the State here objected to Counsel for defendant attempting by this witness and at this time to offering testimony tending to prove adulterous relations between Mrs. Giddings and the deceased, Benjamin Wilt-

shire, as not under the rules of law, being admissible testimony. Objection overruled.)

Q. Now Mr. DeWitt, you found out afterwards, who this woman there with him, was? A. Yes, sir.

Q. Who was it? A. Mrs. Giddings.

Q. I believe you stated that they remained on your place about two weeks? A. Yes, sir.

Q. You may state in what manner they lived? A. They both occupied one room.

Q. You remember the time Mrs. Giddings went off? A. Yes, sir.

Q. Do you remember the morning that Wiltshire started away? A. Yes, sir.

Q. Did you have any conversation with him? A. He told me he was going down home. I asked him if he wanted all his money and he said he did.

Q. Well, what did he say, if anything, with reference to Mrs. Giddings or Mr. Giddings? A. Well, he then up and said that if he come in contact with Giddings, very likely he would have it up and down.

Q. Did he say anything with reference to Mrs. Giddings? A. Not to me.

CROSS EXAMINATION.

By Col. Gilmore.

Q. You say that Mrs. Giddings came to your house on the 19th day of July? A. Yes, sir.

Q. Where do you live? A. Washington Court House, four miles east of Washington.

Q. And have a boarding house? A. No, sir; a farm house.

Q. I will ask you how Wiltshire was introduced at that time, and by whom? A. Well, my father brought him and her out there together.

Q. You are a married man, are you not? A. Yes, sir.

Q. Were any introductions made at that time to your wife, of those parties? A. No; I believe not.

Q. You didn't hear any? A. No, sir.

Q. I will ask you directly, whether Mrs. Giddings didn't introduce herself and Wiltshire to your wife? A. Yes, sir; as man and wife.

Q. She introduced herself and Wiltshire? A. Yes, sir.

Q. To your wife as being man and wife? A. Yes, sir.

Q. Were you present when Mr. Giddings came back to your house with his wife for the goods? A. Yes, sir.

Q. I will ask you, if introduced at all, how Mrs. Giddings introduced Daniel Giddings, her husband, at that time? A. Introduced him to me as her brother.

Q. Introduced her husband to you as her brother? A. Yes, sir.

Court took a recess until 2 o'clock p. m.

AFTERNOON SESSION.

CHARLES HANSEL called.

Direct examination by Mr. Sloane.

Q. Where do you live, Mr. Hansel? A. I live on the corner of Washington and Mulberry.

Q. Did you ever live in the neighborhood of Massieville? A. I used to live eight years down there.

Q. Until within two years ago? A. No, sir; I moved there in 1870.

Q. And then came here in 1878, or —? A. Came here to Chillicothe in the spring.

Q. Did you know Benjamin Wiltshire? A. Yes, sir; I knowed him quite well; knew him for the eight years I lived there.

Q. I will ask you to state, if you can, what was the character of Benjamin Wiltshire, as to his being a violent, desperate, quarrelsome man? A. Well, gentlemen, I can't say nothing much good, because he had trouble some several times.

Q. Well, what was it as to being a quarrelsome, violent desperate man; what was his character in that respect?

(Counsel for the State objected to witness giving any instances.)

The Court.—Speak in reference, not to his personal character, but as to what people said about him. A. Well, it was rough.

Q. By Mr. Sloane.—Do you know his character, and if so, state what it was with reference to his being a violent, desperate, quarrelsome man. Your own knowledge of it is what I am asking for now? A. Well, to my own knowledge, he was a rough, imposing fellow—he was—

Q. What was his reputation in the community there as to being a quarrelsome, desperate, violent man? A. Well, his reputation was that way all round because everybody said so.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Charley, you and he had some little trouble of your own, didn't you? A. No, it was not exactly me.

Q. You kept a saloon there, didn't you? A. Yes, sir.

Q. Sold whisky, beer and everything of that kind? A. Yes, sir.

Q. And he got tipsy there sometimes, didn't he? A. Yes, sir; he did.

Q. And it was when he was tipsy that this trouble occurred, was it not? A. No, sir. One night he was not tipsy and there was a big trouble there. Well, who brought on that trouble? A. Himself.

Q. Who was it with? A. It was a man, I cannot tell; it was in 1871, or 1872, I don't know the year any more.

Q. Ten or eleven years ago? A. Yes, sir. I came from town—it was on Saturday; the room was full of people when I came back home. This one man in particular I know yet was there; his name is Ike Crakoff; I know particularly he was there, and another young fellow and his brother, named Cal. Heisey, came in and I was just home, and one of them called for something to eat, and I gave them some gingerbread and I guess a glass of beer. After they had eaten they paid me. I had a dollar bill in my hand and I went to go to the drawer. They went to go out and Ben Wiltshire stood

right behind the stove with a slung shot and he gave him two licks on the back part of the head and he fell. That was Cal Heisey, and he hobbled himself up again and I jumped around to the end of the counter to catch him, but before I could get around the counter by him, he hit him three licks.

Q. Do you know what made the trouble? A. I don't know. There had been trouble before.

Q. There were two or three on one side and Wiltshire on the other? A. Only Cal Heisey and his brother.

Q. You didn't like Ben Wiltshire yourself, very well, did you? A. Well, I had nothing against him.

Q. You had nothing against him? A. No, he had no fuss particularly with me.

Q. Well, you with him, I mean? A. No, sir.

Q. You say he was not drinking that day frequently? A. He was sober as I seen him as that happened; he was sober to my knowledge.

Q. Well, you mean by that expression, "to your knowledge," so far as you know? A. So far as I know, he was sober.

Q. You hadn't seen him drinking? A. No.

Q. You had just got in the saloon there from town? A. Just got home.

Q. You hadn't been there; you didn't know whether he was drinking or not? A. No, I was not there, but he looked to me that way.

Q. Now you say he hit him with a slung shot; how do you know it was? A. Well, I seen that very plain. I know he always was carrying it, too.

Q. You know he always was carrying a sling shot? A. In 1870, in the spring of the year I know he was, and he came and redeemed it. I know he lost it at the time and he came and redeemed it of me.

Q. I will ask you, Charley, in regard to that time that you are now testifying about, if you didn't hear at the time of the transaction, that the three men that were there in your establishment had just before that jumped upon Wiltshire and beaten him at a dance. A. That is more than I know.

Q. Didn't you hear of it at the time? A. No, sir.

Q. And that was not given right then and there as the reason for the quarrel? A. Well, I don't know anything of it.

Q. Did you hear of it afterwards? A. No, sir.

Q. Never did hear it? A. I don't know anything about that.

Q. Well, you don't know anything about it, but I ask you if you didn't hear that that was the trouble; the occasion of that fight that night? A. No, I have not heard anything of it, and I don't know it.

Q. That was how long ago, you say? A. In eighteen and seventy—either two or three; I don't know and could not swear to the year, it is so long ago.

Q. Ten or eleven years ago? A. Yes, sir, about that time.

Q. Is that the last time that you have ever heard of any fuss that he had? A. Well, from that time on I have not seen no such any more.

Q. That is for the last ten or eleven years you have never seen nor heard anything about it again? A. No, sir.

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. I could not catch from your expression, Mr. Hansel, the boy's name that was beaten; what was his name? A. Heisley.

Q. After finishing their lunch, as I understand, they started out the door, didn't they?

(Objected to by Counsel for the State as not being proper cross examination.)

Mr. Sloane.—I am simply endeavoring to understand what the witness said. I didn't understand or catch it. He spoke in a rather fast tone as to what the man was doing that struck when he struck.

The Court.—We don't want to try here the merits of that matter. Ask him what he was doing when he was struck.

Q. By Mr. Sloane. –This man Heisley, that was struck, what was he doing when he was struck? A. He wanted to get out; wanted to go home.

Q. Do you mean by that he was right at the door? A. He had the door knob in his hand when he struck him.

ANDERSON DEWITT called.

Direct examination by Mr. Sloane.

Q. Mr. DeWitt, you live in Washington Court House, I believe? A. Yes, sir.

Q. You are the father of Mr. Hamer DeWitt, who was on the stand this forenoon? A. Yes, sir.

Q. What is your occupation? Well, I am a farmer, and raise cattle, horses, hogs and sheep.

Q. Did you ever see Benjamin Wiltshire? A. I did, sir.

Q. When did you first see him, and where? A. Well, to the best of my knowledge, it was on the 19th day of July, I saw him in the town of Washington.

Q. Was any one with him at the time you saw him? A. There was a lady with him.

Q. Did you afterwards learn who the lady was? A. Well, I heard that she was this man Giddings' wife.

Q. Did you know anything about them, after that date; did you see them? A. Well, I went to the farm pretty near every day and I saw him in the field and I saw her at the house. I don't think I ever spoke to him on the farm and I don't think I spoke to her but once.

Q. By Mr. Sloane.—Do you know when Benjamin Wiltshire, if at any time he did, came back to Chillicothe? A. Well, I think on the morning, on the Saturday morning of the 5th of August he came to me—I hired the hands and sent them out to the farm, and they boarded with the boys on the place—he came to me with his check, you know, for his pay. I said to him, "Will you be back?" and he went on to tell me what he was going to do.

(Objected to by Counsel for the State.)

Q. By Col. Gilmore.—This was on the morning of the 5th of August, 1882? A. Yes, sir; to the best of my knowledge.

Q. The day that the homicide occurred? A. Yes, sir.

(Counsel for State stated their objection to the Court. Objection overruled.)

Q. By Mr. Sloane.—Now you may state, then, Mr. DeWitt, what it was he said to you on that morning? A. Well, he said he wanted some money, and I promised him if he would stay through the harvest I would give him an extra fee. Said I: "I must retain these two dollars; I will give that to you according to my promise. There was two dollars more of his wages coming to him. He said: "Give it to me, I will be back Monday." I whispered to him and, said I: "You are going for trouble." Said he: "I have got to have that woman," he said, "and I will have her here Monday; I will be at your house," said he. "If I don't, I will get away with that man, whether I fetch her or not." Said he: "He can't have her." I advised him to stop right there and go somewhere else. He said: "Just let me alone and give me the money;" and I then walked up to the office and got some money and paid him.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Was Wiltshire drinking or intoxicated at that time? A. After I paid him he asked me if I would go across the street and take something to drink, and I told him I didn't want anything. Well, afterward—the train was behind—

Q. What was his manner after that? A. He was perfectly sober. The train came in at eight. He came to see me and got his pay, and when he left me he was as sober as he was when he left the farm.

Q. What time in the day was it when he left you? Well, he came a few minutes after eight in the morning.

Q. When did the train leave? A. It was a little behind and didn't leave there, I think, from what I could learn, until after ten. It leaves after nine.

Q. The running time from there to here is what? A. I am not positive. Get in sometimes about twelve and sometimes afterwards.

Q. What is the running time between there and here? A. I don't know that.

Q. Your impression is he was sober? A. He was sober when I paid him off.

Q. Well, when he made this declaration, he was sober at that time? A. Yes, sir; he was sober all the time.

Q. When he came there, July 19th, he spoke to you and engaged board, etc.? A. Well, I spoke to several men there in town that if they saw anybody come in, I wanted to hire four or five hands, and I spoke to Mr. Smith, and I saw him go into Smith's Hotel, and they sent for me to come up, and I asked him if he was the gentleman who wanted work, and he said, yes, sir; and I said you can consider yourself hired and I will take you right out to the farm.

Q. Then the bargain was made between you and Wiltshire himself? A. Yes, sir.

Q. That was the first time you had seen Mrs. Giddings? A. I hadn't seen her at all, yet. She was in the house. And he said his lady was in the house, and if he could get a place for her he would go right away.

Q. I didn't ask you that. I asked you if that was the first time you ever saw Mrs. Giddings? A. That was the first time I ever knew anything of her, or either one of them. And he said if he would—

Q. Never mind what you and he said. I asked you simply the fact if that day was the first time you ever saw either of them? A. I never saw either of them before to know them.

D. V. SMITH called.

Direct examination by Mr. Sloane.

Q. Mr. Smith, where do you reside? A. Washington Court House.

Q. Did you ever see Benjamin Wiltshire? A. Yes, sir.

Q. Where did you first see him? A. At my house.

Q. About what time? A. It was on about the 19th of July.

Q. You keep a boarding house and hotel there? A. Yes, sir.

Q. Was any one with him? A. Yes, sir.

Q. Who was it, a man or woman? A woman. He told me it was his wife.

Q. Did you learn afterwards who she was? A. Yes, sir; about a week afterwards our sheriff came down and asked me—

Col. Gilmore.—Never mind what the sheriff said.

Mr. Sloane.—Yes, it is proper, because we expect to prove all that.

The Court.—Well, not if you can prove it by the sheriff.

Mr. Sloane.—Well I have got to identify her as the same woman so as to be able to prove by the sheriff his coming there and asking for Mrs. Giddings and serving the petition for divorce; and that is where this man learned it, not from Wiltshire.

Col. Gilmore.—That is understood.

Q. By Mr. Sloane.—That is when you learned that? A. Yes, sir.

Q. When did he leave your house? A. That morning; come with her, just come and took a late breakfast and Mr. DeWitt then hired them.

Q. And they went to Mr. DeWitt's farm? A. Yes, sir; he hired a buggy from Mr. Bell, the livery man.

Q. On the morning of the 5th of August, the day on which Wiltshire was killed, did you see Wiltshire and have a talk with him? A. Yes, sir.

Q. Please state what it was? A. He came up about, between 8 and 9 o'clock; I won't say positive; well it was from 7 to 9, and I expect it was between 8 and 9; I don't know exactly about that, but about that time, and took breakfast again. He says: "Mr. Smith, I suppose you knew I lied about that woman being my wife?" I said, "Yes, I found that out." "Well," he says, "Now I am going back after her again." He says: "I allow to whip him anyhow. He don't treat her well," or "don't provide for her well;" either one; I won't say the exact language. I told him it was none of his business; it was for his and her folks; he had better keep away; he would get shot, or might get killed fooling around that way. Says he, "My hide will hold as many bullets as anybody's hide will, and I am prepared to put them in."

CROSS EXAMINATION.

By Col. Gilmore.

Q. The expression was that his (Wiltshire's) hide would hold as many bullets? A. Yes, sir.

Q. And that he was prepared to have them put in, or, to put them in? A. No, that he was prepared to put them in; that was just the exact language.

Q. Did you have any talk with Mrs. Giddings at the time that she came there? A. No, sir.

Q. Do you know how she represented Mr. Wiltshire; what relation he bore to her? A. No, sir; I don't know nothing about her. They was not there over—well, I don't think they was there over an hour all told.

Q. And during that hour, you didn't hear her say anything? A. No, sir.

Mrs. Charity Blair called.

Direct examination by Mr. Sloane.

Q. Mrs. Blair, you have already been on the stand, and stated where you lived? A. Yes, sir.

Q. And that you lived right near to Mr. Giddings? A. Yes, sir.

Q. After his wife went away, did you see Mr. Giddings quite frequently? A. After she went away for good, you mean.

Q. Yes ma'am. A. Then I saw him about every day, I think.

Q. I will ask you if you went down on one or two occasions to assist about the house? A. Yes, sir.

Q. You made some bread; I believe you stated that fact in the former examination; A. Yes, sir; and cleaned his house up.

Q. You say you saw him almost every day? A. Yes, sir.

Q. Where did you see him? A. Why in his house.

Q. Now, I will ask you to state to the jury, and describe to them as nearly as you can what his condition of mind was during that time? A. Well, as far as I could see, he was in a manner crazy, is what I thought about it.

Q. Well, describe what manifestations he gave; what would he do? A. Well, he would come in and take hold of the fiddle and start a tune and lay it down and speak a word or two about something and get up and walk through the house, go out of doors and come in again, and speak a word or two about her and the tears ran down his face, and speak about the children and shed tears every time he spoke about them. That is about the way he was.

Q. And those evidences you stated you saw frequently? A. Yes, sir; every day and sometimes as high as three times a day.

Q. Were you there on the day Mrs. Giddings returned? A. Yes, sir; I was there.

Q. Now, just state what you saw, what you were doing and what you saw and heard of them? A. Well, I went down in the morning and cleaned the house up and got his dinner and was washing the dishes when she came.

Q. Well, go on and tell all that you heard or saw on that day.

(Objected to by Counsel tor the State as incompetent and question allowed as reflecting upon the condition of the defendant's mind.)

A. Well, I was washing the dishes as she came. I didn't see her when she came in from the street, and he said: "There is another lady coming to see him," and he got up and went through the kitchen and heard him speak. He said, "Come on here." I didn't pay any more attention and he went out that way; and went out and I hear him talking to somebody there, and I went through the middle room and could see a woman standing there between him and the gate. I didn't know her. She had a parasol; she was crying; and one of the little boys was standing there and I asked him if that was his mother and he said it was, and both children started toward her, and she was crying then and all the children were doing the same; and I didn't stop to listen to what they said, he and she; I went in the kitchen and she came where I was. All the children were crying and making a fuss and I told them I would go home; that I would be in the way, and they said I would not, but I went home.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Now Mrs. Blair, your first expression was that Giddings was crazy? A. That is what I thought, in a manner crazy; as near crazy as could be.

Q. He was not quite crazy yet, but was nigh crazy, in your opinion, is that it? A. That is what I thought.

Q. Hadn't got there, but was nigh there? A. Well, he was in a fair way to go crazy.

Q. You don't pretend that he had got there yet? A. I could not say. I am no doctor.

Q. Now give us all of the actions, declarations and everything else, of Giddings, that led you to think he was any crazy, so that the jury will have a chance to see how nigh crazy he had got? A. Well, talking about her and crying.

Q. Havn't you seen people cry that were not crazy? A. No, not about such things as that; never saw anybody in such distress as he seemed to be.

Q. That distress you say was manifested by his starting to fiddle a tune and then getting up? A. Yes, sir; could not content himself.

Q. Did he play pretty gay tunes when fiddling? A. Didn't play no tunes at all.

Q. Didn't play any tunes at all? A. No, sir; he couldn't.

Q. How did he fiddle; would he start a tune and then lay the fiddle down? A. I didn't say that, sir.

Q. Start a tune and then fizzle out? A. No, sir.

Q. Well, he would start tunes, would not he, on the fiddle? A. I told you so.

Q. Well, how far would he play then before he would quit? A. I didn't take notice.

Q. Play two or three minutes at a time, or five minutes? A. No, sir.

Q. How long would he play before he would quit? A. I didn't keep account; didn't look at the clock.

Q. You have no idea now whether it was half a minute or half an hour? A. No, nor half a day.

Q. Then you say he would get up and go and stay out a little while and come back and sit down; is that it? A. Sometimes he would and sometimes he wouldn't sit down.

Q. Talk, would not he? A. Once in a while, speak to you and answer when you spoke to him.

Q. Well, you didn't see anything crazy in the answers, did you? A. Sometimes I did.

Q. Well, what were they now; tell the jury so they can judge how crazy they were. A. Well, he didn't just answer the way I wanted him.

Q. Didn't just answer the way you wanted him? A. No, not just as I thought he ought to.

Q. Well, in what respect did he differ from what you thought he ought to? A. Why he would say something else in place of answering me.

Q. Talk about something else in place of answering you? A. Yes, sir.

Q. Give us an example of that if you can remember one? A. Well, I don't know as I can.

Q. Can't give any example? A. No, I don't know just what he talked about.

Q. Now did you talk about almost everything and anything any person would talk about when they came together? A. No, he didn't; it was generally about his wife and children.

Q. Talk about anything else? A. Nothing much.

Q. Nothing much; did some then, hey? A. Well, I expect he did; I don't just remember.

Q. Did he talk about the farm, for instance, or his stock? A. No, sir; he did not.

Q. You don't remember anything of that kind? A. No.

Q. Talk about the neighbors? A. No, he did not.

Q. Did not talk about anything else then, than his wife and children, you say? A. That's about all.

Q. Well, a while ago you said he didn't talk about anything much but them? A. Well, I don't remember as he did; I don't remember his saying anything more, only as I asked him something else.

Q. Whenever you asked him anything he would answer? A. Sometimes he did, and sometimes did not.

Q. Well, in short, about the simple trouble, about the conduct of his wife? A. Well, I suppose it was all about her.

Q. Now did he act in any way other and different from what most men would act under exactly the same circumstances? A. I don't know; I never saw any man under the same circumstances.

Q. You never saw any man under the same circumstances, and don't know how he would act? A. No, sir.

Q. Well, were not his actions natural under the circumstances, in your opinion, at the time? A. No, sir; I thought he went on a little worse than he ought to.

Q. He took it to heart more than you thought he ought to? A. Yes, sir.

Q. You didn't think then that the provocation that he had was sufficient to justify his taking on that way about it; was that it? A. Yes, sir; something that way.

Q. Well, you have given us all the evidence you have in your mind, or your memory, that led you to the opinion that he was nigh on to crazy. Have you now given them all? A. Yes, sir.

Q. Now I will ask you if you ever thought of such a thing as his being nigh on to crazy, or within the limits of being crazy? A. Yes, sir; I thought of it many times and spoke to him several times, and told him he would be crazy if he didn't stop saying so much about her.

Q. Then you thought, and at that time, warned him, that he would go crazy? A. Yes, sir; I thought he would, and was in a fair way to go to the lunatic asylum if he went on; and I think he would have went there if she hadn't come back.

Q. You do? A. Yes, sir.

Q. I will ask you if it was the first time Mrs. Giddings had left her husband and gone off? A. Why it is the first time as far as I know. I never heard of her going before.

Q. Never heard of her going to Berlin before, two years ago? A. I heard somebody say she had, but she never did as I know of.

(Objected to by Counsel for defendant as incompetent.)

The Court—We don't want any hearsay.

The Witness.—She told me that she had went home to see her mother, but I was not in this part of the country at the time.

Q. By the Court.—Did Mr. Giddings ever tell you about her having gone away before? A. It seems to me he said something about her going away; I ain't certain.

Q. Try to refresh your mind and see if you can recall that as other things. A. Well, yes, sir; last year, I mind of it.

Q. By Col. Gilmore.—I will ask you if she said anything about the baby, or where the baby was when she went away before and how old the baby was? A. I don't know whether she said she had a baby or not.

Q. Try and think now, if you don't. A. I don't remember anything about that, or that there was anything said about it, either. He didn't tell me so, I am certain.

Q. Mrs. Blair, I wish you would, if possible, recall what it was Mr. Giddings told you about his wife going away, leaving him at any time and leaving the children that way? A. I don't think he ever told me anything about it.

JAMES F. COOK called.

Direct examination by Mr. Sloane.

Q. You are sheriff of Fayette county? A. Yes, sir.

Q. Sometime in the month of July did you receive, as issued from the clerk of this court, a summons and copy of petition in divorce to be served? A. I did, sometime in July or August, I don't remember the date.

Q. In the case of Giddings against Giddings? A. Yes, sir.

Q. Did you serve that summons and petition? A. I did.

Q. Upon whom did you serve it? A. Upon Mrs. Giddings.

Q. Where did you find her? I found her at Hamer DeWitt's farm, Fayette county; on the farm of Anderson DeWitt, at his son Hamer's.

Q. Did you deliver her at the time anything else? A. Yes, sir; I delivered a letter.

Q. You can look at that and just simply identify it, if that is the character of the envelope; is it? A. Yes, sir; I think that is the envelope; it was something like that.

Q. You didn't read the copy of the petition that you got? A. No, sir; I don't think that I did; I may have read it.

Q. You know it was the case of Giddings against Giddings, however, and issued from this court? A. Yes, sir.

No cross examination.

JUDGE A. B. COLE called.

Direct examination by Mr. Sloane.

Q. I will ask you to examine the envelope and letter there. I will ask you in the first place, if you were employed by Mr. Giddings to institute his suit for divorce? A. Yes, sir.

Q. And the petition bears date July 20th? Yes, sir.

Col. Gilmore—It was filed on July 20th.

Q. By Mr. Sloane.—It was filed after what event, if you know, in his own life? A. Well, it was filed after Mrs. Giddings, as he said, and Mr. Wiltshire had gone to Washington Court House; a day or two after they had gone; I don't know; he claimed that she had gone off, and he came and asked for me, and 'Squire Denig brought him up to my office and introduced him to me, and he filed his petition for divorce there that day, or the next day, perhaps, on the ground of her going off with Wiltshire.

Q. On the ground of adultery? A. Yes, sir; charged with adultery in the petition.

Q. Now did you ever examine that letter? (Letter shown witness.) A. Yes, sir.

Q. That letter was left in your office by whom? A. Well, that letter was left in my office a few days afterwards by Mr. Giddings, as I understood. I don't think that was in the office perhaps at the moment it was left there.

Q. Well, there was a note, or some indication left as to what you were to do with the letter? A. Yes, sir; directing me to take it up to Washington Court House, and I told Mr. Giddings when he came to file the petition, or perhaps the next week—he was not sure that they had gone to Washington Court House, or that they had started for Fayette county, but he ascertained they had gone up, and so I told him I expected the next week, perhaps, to go up to Washington Court House myself; that I was agent for a large tract of land over there in that—

Q. Well, never mind that. You were going there simply? A. I was going there at any rate, and I thought when I went up I would see the sheriff of that county and give him as full a description as I could of Mr. Wiltshire, so that if he was in that county I would be able to ascertain where he was.

Q. Well, at any rate you found he was gone, and he left this letter? A. Yes, sir; he left this letter for me to take up there for the sheriff to give to her.

Q. That is the letter? A. Yes, sir; that is the letter; I recognize it.

Q. I will ask you to state whether or not you took the letter out of its envelope and read it before? A. Yes, sir. It was directed to Mrs. Giddings, to my recollection, and I didn't care to take the letter up to Mrs. Giddings, or to the sheriff to carry the letter from him to her, and I tore the envelope off and read the letter, and when I got up to Washington Court House, I was over at this hotel, the Arlington, I believe it was, and I enclosed this letter in this envelope and directed it to her myself, and gave it

to the sheriff. This is not the envelope that the letter was originally in, that is, when I obtained it. I would not deliver the letter to the sheriff without knowing what was in it, for fear there might be something I didn't want to communicate at all.

CROSS EXAMINATION.

By Col. Gilmore.

Q. He came and consulted you about a divorce? A. Yes, sir.

Q. And desired that you should draw a petition for divorce from his wife? A. Yes, sir.

Q. And pray the court for a final separation; a divorce between them, and you did so? A. Yes, sir.

Q. And filed it with his full consent? A. Yes, sir.

H. B. LINDLEY called.

Direct examination as follows:

Q. Mr. Lindley, you reside here, I believe? A. Yes, sir.

Q. And are engaged in what business here? A. Real estate.

Q. Do you know the defendant, Daniel Giddings? A. Yes, sir.

Q. On the morning of Saturday, the 5th of August, on the afternoon of which Benjamin Wiltshire is said to have been killed, did you see Daniel Giddings? A. I saw him either before dinner or after dinner, I am not certain which; it was near the middle of the day, but I don't know whether it was the 5th of August; it was the Saturday that this trouble occurred.

Q. Where did you see him? A. He came to me at my office.

Q. For what purpose did he come? A. He came to see in regard to disposing of his farm.

Q. Wanted you in your capacity as real estate agent to sell his farm for him? A. Yes, sir.

Q. You can state if you noticed anything with reference to him that day? A. In what way; anything unusual?

Q. Yes, as to his being—? A. I did not.

Q. I am speaking as to his anxiety about the sale of his farm, if any such he exhibited? A. Well, he had been in once or twice before to see me and expressed an anxiety to get out of the neighborhood and get away, but didn't tell me why. He was in again to see me in regard to it and wanted to know if I had a place for him, and I told him I had.

Q. As soon as you could sell this place? A. No, sir; I told him I could exchange it, and was going out with him to look at a place down on the Marietta road. He told me he was a stone mason by trade and would rather go down there where he could get work.

CROSS EXAMINATION.

By Col. Gilmore.

Q. He said he was a stone mason and wanted to go where he could get work? A. Yes, sir; he spoke about trading for a little property.

Q. Where at? A. Well, either at Pleasant Plain, or Monroe, out on the Marietta road, where he was acquainted.

Q. On the 5th day of August, 1882, then to recapitulate a little, Giddings came to you and wanted you to sell his farm for him, and he told you at that

time that he wanted to get out of this neighborhood? A. He had told me that previous to that once or twice.

Q. And the proposition was to go where? A. Well, he spoke about—he asked me when he first came to me to sell it; he wanted to sell it for money, and I told him it was a pretty difficult matter to sell a little place like that in the hills for money, but I could get him a little property; that one or two had spoken to me down on the road, and among the rest was a man that wanted to get near the Catholic Church and had a little property at Pleasant Plain.

Q. Where is Pleasant Plain? A. Pleasant Plain is thirty-four miles this side of Cincinnati.

Q. On the Marietta road? A. Yes, sir.

Q. Where was the other place? A. Cozaddale, three miles further down; about thirty-one miles this side of Cincinnati.

Q. Well, Giddings told you that he was acquainted down in that country, did he? A. He rather, in the first place, spoke about East Monroe; that he would like a property there.

Q. Where is East Monroe? A. About six miles beyond Greenfield.

Q. On the Marietta road? A. Yes, sir.

Q. Why did he speak about preferring there? A. Well, he seemed to be acquainted out there.

Q. Was he content with this place, as far as locality went? A. Well, he seemed to think that would suit him, and he was going out with me to look at it.

Q. Now, then, I want to ask you what his manner was on the 5th of August; was there anything unusual about it? A. Nothing that I noticed, at all.

Q. Did he attract your attention for any cause, and if so, what cause? A. Not any. When I heard of the tragedy I didn't even recall him to me until about Monday, when I come to read the paper; then seeing the name there, it occurred to me it might be the same man.

Q. What time in the day was it, as near as you can recollect on August 5th? A. I am not certain whether it was just before or just after dinner.

Q. It was either just before or just after? A. About that time; yes, sir.

Q. Now, then at that time was there any excitement about him? A. I didn't notice anything out of the way, at all, with him.

Q. He talked to you as other persons coming on similar errands would talk? A. Yes, sir.

Q. And with the same composure and thoughtfulness? A. Yes, sir.

THOMAS H. LONG called.

Direct examination by Mr. Sloane.

Q. Mr. Long, you reside in Highland county? A. Yes, sir.

Q. You are the sheriff of Highland county? A. Yes, sir.

Q. Are you acquainted with the defendant, Daniel Giddings? A. Yes, sir.

Q. How long have you known him? A. Well, about twenty-five to thirty years.

Q. Well, since he was a boy? A. Since 1853.

Q. During the time he was a boy and up to the time he went to the army, you knew him? A. Yes, sir.

Q. You knew the people of his neighborhood very well? A. Yes, sir.

Q. What reputation did Daniel bear as being a quiet, inoffensive and humane boy and youth? A. Very good, very good.

Q. Did you know him after he came back from the army? A. Yes, sir

Q. You lived over in Fairfield township there near Lexington? A. I lived near his father, near his folks there, from 1853 to 1857 or 1858. After the war he came back and I didn't see much of him until, he lived below Hillsboro a piece, I met him several times.

Q. You were acquainted with the people in that neighborhood too? A. Yes, sir.

Q. What was his reputation there, good or bad? A. It was very good.

Q. Did you know his father? A. Yes, sir.

Q. Do you remember seeing his father some months before his death? A. Yes, sir; I saw him frequently before.

Q. You were then working at your trade, were you not? A. Well, I worked in Lexington and he lived just about half a mile from town, perhaps.

Q. You were, not a money loaner? A. No, sir.

Q. Now, I will ask you whether or not you noticed on the part of Mr. Giddings, shortly before he took down, any aberration or estrangement of the mind, at all? A. Well, I noticed that he was different for perhaps—oh, I could not tell just how long before—than he had been, say two or three months. He was going pretty near day and night. Well, he came to me once to borrow money.

Q. At what time of night? A. Well, I judge it was 10 or 11 o'clock he called me out.

Q. Called you out of bed? A. Yes, sir; and I thought strange of that because I was not a money lender; I was working at my trade then.

Q. Had no money to loan? A. No, sir.

Q. Were in very moderate circumstances yourself at that time? A. Yes, sir; and thenI saw him on until, in fact, when he died, and I was there during the sickness.

Q. You mean that was after he got into bed? A. Yes, sir; after he was taken down.

Q. State to the jury whether or not, he was consciuos or unconscious at that time. A. He was unconscious; he didn't know anything at all, that is, he had no control of himself at all. I know I was there twelve nights with him when he was quite sick.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Had no control over himself, whatever, had he? A. I think not.

Q. Could he move his hands or feet? A. I think not at all.

Q. Didn't have any use of them? A. Well, he just lay there; I remember his laying in bed; of course he might move his limbs, but——

Q. He might, but do you know that he did? A. I could not say.

Q. Was it not a case of paralysis? A. No, sir; I know this that we were boiling pennyroyal and such things in the room because he had no contro of his bowels, or anything of that kind. But so far as moving his hands I could not say; but he knew no one.

Q. Knew no one? No, sir; didn't know any one.

Q. Did you know whether he had a disease, or not; I mean an acute disease? A. I don't think he had.

Q. Well, there has been a good deal said about Mr. Giddings, senior, having some peculiar troubles about that time? Yes, sir; financial; I hink he had some.

Q. You attributed this trouble to that didn't you? A. I think so. I think that it perhaps brought on this trouble. I don't know that that was the case.

Q. Now at the time that he came to you to borrow money he was in debt, was not he? A. Yes, sir; he was in debt.

Q. And in distress? A. Yes sir.

Q. Now, I will ask you if at the time, and when he came there, it excited any surprise on your part, that he should make application to you? A. Well, the only thing was, that I had never been a money lender and had no money.

A. Well, you had been friendly with him, however? A. Yes, sir.

Q. And had a good trade and was working at it. Did he know your resources? A. I think he did; yes, sir.

Q. To the extent of knowing that yon were not in the habit of loaning money, perhaps, and all that, but how much did he want to borrow to start with? A. Now, I think it was $300; but I am not certain, but I think it was $300.

Q. Was not his application in this form: "Have you got $300 that you could lend?" A. Oh, I could not tell you the exact words.

Q. You cannot tell about that? A. No, sir.

Q. Now at that time could not you have readily raised $300 if there had been any pressing necessity for it? A. I could not; no, sir; I don't suppose I could have raised fifty. I was at work by the week then, at my trade, so much a week.

Q. Were you a young man at that time? A. I was about 22 or 23, I suppose, or 24 may be.

Q. You havn't known Daniel Giddings since he was a married man, at all, have you? A. Yes, sir.

Q. Well, to what extent? A. I have not personally; I have met him several times.

Q. You just met him casually? Yes, sir.

Q. But spent no time with him? A. No, sir.

Q. Had no opportunity to study his character or reputation at that time? A. No, only when he lived up there by Hillsboro; I knew him well then.

LEONARD BERG called.

Direct examination by Mr. Sloane.

Q. Mr. Berg, you live here in Chillicothe, I believe? Yes, sir.

Q. What is your occupation? A. I am deputy marshal and private watchman.

Q. Do you know the defendant, Daniel Giddings? A. Yes, sir; I know him now.

Q. Did you see him at any particular time, that you know of? A. Well, I cannot just give you the date, or time.

Q. It was previous to the killing? A. Previous to this killing, yes, sir. I met him here on Paint street, and he was around looking for an officer, and Mr. Otte, I believe, recommended him to me, and I was just coming up Paint street and passed him right there by the Warner House, and Mr. Otte told him that I was an officer, and he had a talk with me, and I asked him what he wanted, and he said that his wife was up here, and a man by the name of Wiltshire—

(Objected to by Counsel for State.)

Mr. Gilmore.—Upon what theory is this admissible testimony, a conversation between Mr. Berg and the defendant here, before the homicide?

Mr. Sloane.—The object will be to show by this testimony that the conversation arose about his troubles, and it was of such a character as to attract Mr. Berg's attention, and he will so state, and reflects upon the condition of the man's mind.

Col. Gilmore.—If that is it, I waive the objection.

Q. By Mr. Sloane.—I will ask you first, if you noticed anything before you begin the conversation. I don't care for that particularly, if you noticed his condition of mind? A. Well, the man seemed to be a little troubled about something or other, I could not tell what, until after I had the conversation with him.

Q. You saw that before he commenced talking to you that he was troubled? A. Yes, sir. He had passed me three or four times before, but I didn't know who he was. I had seen him walking back and forth, up and down the street, but I didn't know what was the trouble with him.

Q. Had your attention been attracted to him? A. Yes, sir; he had passed me several times.

Q. What time of night was this? A. I expect it was about 2 or 3 o'clock in the morning.

Q. You had noticed and passed him on the streets? A. Yes, I had passed him several times.

Q. Then you learned what was weighing on his mind, what was troubling him? A. Yes, sir; after he said he wanted an officer I went up and talked with him, and asked him what he wanted with an officer. I didn't know but it was a case of wanting somebody arrested for burglary, or something, I didn't know what, but he went on and stated what was the matter, and wanted me to go with him and try and find his wife. He said this man Wiltshire had brought his wife here to town, and said they had gone off to some house to stay and he didn't know where. I asked him, "Do you think they have gone to a hotel?" He said, "No, he didn't think they had, because they hadn't got much money, and he thought they had gone to some private house.

Q. By Col. Gilmore.—Are those the words he used? A. Yes, sir; to that effect.

Q. We want it in his very words. A. Well, that is as near as I can tell you; he said they hadn't gone to any hotel. I said if they had gone to a hotel we could look over the register and find out. He said they hadn't much money, and he said they had gone to some private house, and he mentioned some name, but I don't remember it; but I didn't know where the house was.

Q. By Mr. Sloane.—During the whole of this conversation, you can state what was his manner, whether wild, or quiet, or what?

(Objected to by Counsel for the State.)

A. Well, he was a man that seemed to be worked up considerably. He told me—he said, "This man has come up here and he has just broke my family up." He says: "The man has ruined me. I go home every day and the children are crying after their mother, and I don't know what I will do. Sometimes I don't know whether I am standing on my head or on my feet." He says: "I cannot eat and I cannot sleep, and I cannot rest in any way;" and he said: "I cannot tell what I better do," and he asked what advice I would give him. I says, "I cannot give you any advice at all. You are a man as old as I am, and probably my advice would not be of any good to you, and you better settle the case yourself."

Q. He spoke of his children? A. Yes, sir; he spoke of his children; said, "Every time I go in the house they are crying for their mother," and said he was all broke up, just ruined.

CROSS EXAMINATION.

By Col. Gilmore.

Q. You have given in fact all that took place between you and him, have you? A. Well, yes sir; pretty near.

Q. Was there anything that struck your mind, or attention, or thought, in your conversation with Giddings, at that time, other than that he was excited

in feeling about his wife? A. Well, yes, sir; he seemed to be worked up considerably.

Q. Well, worked up considerably in passion, you mean? A. No, he seemed to be worried; just walked along the street looking this way. (Witness indicating.) Looking down and scratching his head; seemed to be like a man in a good deal of trouble.

Q. Like a man in trouble? A. Yes, sir.

Q. Like a man excited, too? A. Well, I don't know so much about being excited, but I knew the man had something on his mind.

Q. You knew the man had something on his mind and was in trouble? A. Yes, sir.

Q. You are a watchman? A. Yes, sir.

Q. Had you the remotest idea, at that time, of arresting him, or taking charge of him as a crazy man? A. No, sir; I had not.

Q. Had not the slightest idea that he was an insane man? A. My business is not arresting insane men. If any person would come to me and tell me to arrest an insane man, I would do it, but I would not unless they did.

Q. You would not? A. No, sir; I hadn't any authority.

Q. Well, did the thought impress itself on your mind, at that time, that he was an insane man? A. I could not say just that he was insane; I only say that the man seemed to be worked up; his mind seemed to be troubled, and he said that he would like to go there and get his wife and get her to go home; and he said, "I have not got anything at all against this man Wiltshire; don't intend to lay anything in his road. He says, "All I ask of him is to leave my wife alone." Then he went on and stated to me about how he had come home a number of times and he found this man Wiltshire there at his house, and he notified him not to come; and he says, "If you do have to come here, I would like for you to come when I am at home. He says, "I am not keeping any boarding house here," just in that way.

Q. All that was rational enough; all that struck you as being reasonable, rational, sensible enough? A. Yes, sir.

Q. He could make himself understood and make you understand what his trouble was, fully, could not he? A. Well, pretty much so.

Q. Your attention, you say, had been attracted to him, before he spoke to you at all? A. I say that I had passed him several times, but didn't know him.

Q. Your attention had been attracted to him, you said, didn't you? A. Not particularly. I said I had passed him several times. I told Frank Otte; I says, "I have seen him several times; seems he is in a—

Q. Never mind what you told Frank Otte. I understood you to say, in answer to Mr. Sloane's question, that you had noticed and your attention had been attracted to him that evening before; you had noticed and you had seen him passing backward and forward, as though he was troubled and excited. Didn't you say something like that? A. I said I had passed him several times; yes, sir.

Q. He was walking backward and forward? A. Yes, sir.

Q. Now, didn't it simply attract your attention, seeing a strange man walking backward and forward, at that time of night; was not that what attracted your attention? A. I have frequently saw men at that time of nights here; at all hours of the night.

Q. And if they are strangers it attracts your attention? A. Yes, sir; that is the reason I come to notice this man. I keep watch of persons in that way.

Q. That was the case with Giddings? A. I just looked at him and he didn't look to me like a suspicious character, a man that was going to burglarize any place.

Q. You wondered what he could be walking backward and forward at

that time of night for? A. I supposed he was stopping at the Warner House.

Q. Now you understand me. I asked you if you didn't at the time, simply wonder what could be the reason that a stranger, as he was a stranger to you, was walking backward and forward at that hour of the night. Was not that what attracted your attention? A. No, sir; no wonder, at all, because I meet people frequently, especially in front of the Warner House.

Q. Was that where you met him? A. Yes, sir; I met him there, and then I met him on the opposite side of the street.

Q. And that didn't attract your attention? A. I met him on the opposite side of the street earlier in the evening, walking down, but when I met him in front of the Warner House he was just pacing—

Y. And it didn't attract your attention at all because it was an unreasonable time of the night? A. No, sir.

Q. By Mr. Sloane.—Did you mean pacing the pavement. A. I meant on that little pavement.

ALBERT B. WHITE recalled.

Direct examination by Mr. Sloane.

Q. Mr. White, you have already been on the stand? A. Yes, sir.

Q. And have stated that you are the ticket agent at the Toledo and Delphos depot, and were on the afternoon of this killing? A. Yes, sir.

Q. About two weeks before the day of the killing you had stated that—and we went no further with the examination—you had seen Mr. Wiltshire come there and buy tickets for Washington Court House? A. Yes, sir.

Q. Who was with him? A. A lady.

Q. Did you afterwards ascertain who it was? A. I afterwards saw the lady with a man that was said to be her husband.

Q. With Mr. Giddings, this man sitting here? A. Yes, sir; with Mr. Giddings.

Q. Well, did they take the same train together, Mr. Wiltshire and this woman? A. Yes, sir.

Q. Who purchased tickets for both? A. Wiltshire.

Q. For what place were they purchased? A. Washington Court House.

Q. Do you recollect of seeing her coming back, at any time? A. No, sir.

Q. When you saw this woman afterward, and her husband, that was when; on the day before the killing? A. Well, I would not be positive as to that.

Q. Well, they went up to Washington together and came back the same day? A. Yes sir; the same lady that was with Mr. Wiltshire went up with Mr. Giddings.

Q. And came back the same day? A. Yes, sir.

No cross examination.

ARTHUR GIDDINGS called.

Q. By Mr. Sloane—How old are you, Arthur? A. I will be eleven in July; next July.

Mr. Sloane.—Your Honor may inquire of him as to capacity.

Q. By the Court.—You were sworn, were you? A. Yes, sir.

Q. What is your name? A. Arthur J. Giddings.
Q. Who swore you? A. Your clerk.
Q. Well, you understood what that meant, did you? A. Yes, sir.
Q. What did he swear you to do? A. To tell the truth and nothing but the truth, and the whole truth.
Q. And do you know what will be the consequence if you don't tell the truth? A. Yes, sir.
Q. What will that be? A. I will have a part in that lake that burns with fire and brimstone for ever and ever.
The Court.—Well, that is the old Methodistic and Calvanistic idea about it, but that is not sufficient, I think. I will inform him further what the consequences will be if he does not tell the truth. (To the witness.) It is a crime not to do so, and you might be indicted and sent to the penitentiary for not doing so, as the result of not telling the truth.
Q. By Col. Gilmore.—Arthur, who did you talk to about being examined as a witness? A. Mr. Cole and Mr. Sloane.
Q. When? A. Well, I talked with Mr. Cole about a month ago, I guess it was, and Mr. Sloane last night.
Q. Did they tell you what questions would be asked you? A. Mr. Sloane, he asked me something.
Q. I say did they tell you what questions would be put to you?
The Court.—I think that is a subject of cross examination; but the question is now upon his general intelligence.
Mr. Sloane.—I am perfectly willing that he may go on with the examination now.
Col. Gilmore.--It seems to me that this examination is as to his general intelligence.
The Court.—I am satisfied that is sufficient examination for him to be sworn and examined as a witness.
Col. Gilmore.—Well, if that is the case, of course there is no use—
The Court.—That is a matter in the discrimination of the court. I have seen a great many examined here who didn't have any more intelligence, if as much.
Direct examination by Mr. Sloane.
Q. Arthur, where were you the day your mamma came back? A. I was there in the house.
Q. Now, you saw her when she came, did you? A. I didn't see her first. Pa, he seen her first, and told me and told all of us boys.
Q. You mean by "all of us boys," your two brothers and yourself? A. Yes, sir.
Q. You are the oldest boy, are you? A. Yes, sir.
Q. Now tell the jury, will you, as near as you can, what you saw and recollect of that matter, of what occurred then? A. Well, when ma came home, all three of us boys ran out to meet her, and we kissed and then she kissed us, and she cried and we cried; I think pa come out, and he kissed her and cried, and then she went into the house and told pa that Ben Wiltshire said he was going to—
Col. Gilmore.—Well, is that competent testimony?
Mr. Sloane.—It clearly is.
After extended argument by counsel on both sides the Court said:
The Court.—Well, in the first place the competency of this child must not be confused with the case to which I have been cited, even though the person who heard the conversation was competent otherwise. I have no doubt as to the competency of the boy who is upon the stand now, to testify. According to this case (the Sickles' case) the declarations made by the wife etc., would not be competent to prove adultery; but I understand from this case that it would be competent to prove any fact that it would be competent to prove, as reflecting upon the conduct of the defendant, and that I understand is the purpose and object of this testimony, not to prove

adultry between the deceased and defendant's wife, but to prove that she gave some information to him that may have influenced his subsequent conduct. Now, if that be so, I think it is competent. But where it is reported by some one other than the wife, if the rule remains as it does in common law, that whatever communication be made by the wife, the only way that could be made by them would be by calling some third person as to what those communications were. Otherwise it would be a violation of the law. Hence the husband could not be called in favor of the wife, nor the wife in favor of the husband; but if anything transpired before that, which thing is material to the case being tried in courts of justice, the fact that one is a party to the suit will not govern, provided you can prove what transpired between them by a third person. Now then, here is this witness upon the stand who was going to state what occurred between the husband and wife at the moment the witness was stopped; but as I have already stated, if it will disclose a fact which may have influenced the defendants' subsequent conduct, then I think it is competent. And enough has been disclosed to show me that probably it will be competent as showing a fact which may have influenced his subsequent conduct. I want to say right here, that—though it it is hardly necessary, that you can not prove by anything which the wife communicated to the husband, at that time, the fact of adultery.

Mr. Sloane.—No, sir; nor do I claim that it is proof of the fact that he did make the threat that she communicated.

Q. You had stated about what occurred in the yard, and that they had gone in the house. Now what, if anything, did you hear your mother say to him, that you were starting to tell, there? A. I heard ma tell pa that Ben Wiltshire said he was going to shoot pa; and that is all I heard.

Q. There was a good deal of talk there, though, was there? A. Yes, sir.

Q. You didn't listen? A. I was not there listening when I heard that; I just happened to hear that.

Q. You and your brothers then went about your occupation or play, whatever it was? A. Yes, sir.

Q. Can you tell anything about your pa's condition, at any time, while your ma was gone? Do you understand what I mean by your pa's condition? A. Yes, sir.

Q. I mean whether or not, he was in his usual mood and humor, or whether he was worried or in trouble and anxiety? A. Well, he was worried and in trouble, both.

CROSS EXAMINATION.

By Col. Gilmore.

Q. What were you playing at that time? A. I don't remember now.

Q. Marbles or something? No, sir.

Q. What were you playing; see if you can tell? A. We was playing out there in the kitchen; I don't remember what we was doing.

Q. That was before your mother came, that you were playing? A. Yes, sir.

Q. How long before you went to playing again? A. Not very long.

Q. You left your father and mother talking when you went to play again? A. Yes, sir.

Q. And how long did they talk there? A. Well, they talked a good while.

Q. They talked a good while? A. Yes, sir.

Q. But you only staid a minute, did you? A. Well, I don't know whether it was a minute or more.

Q. Can you tell anything else your father said to your mother or your mother said to your father, save what you have stated? A. No, sir.

Q. The only single thing that you heard, was that your mother told your father that Ben Wiltshire was going to shoot him? A. Yes, sir.

Q. Who have you talked to about that, since? A. Mr. Cole and Mr. Sloane. I just told them about what I knew about it; that is all.

Q. Did you ever talk with your mother or father about it? A. I told mother about it once, what I knowed about it, told her that I heard that.

Q. Told her that you heard that? A. I told her about——

Q. She told you to remember that too, didn't she? A. Yes, sir.

Q. Told you to remember that and testify to it. Did your father tell you the same? A. No, sir.

Q. You didn't tell him what you heard? A. No, sir.

Q. All three of you boys were there at that time, were you? A. Yes, sir.

Q. Nobody else but just you three children and father and mother? A. No, sir.

Q. You don't know what your father said when your mother told him that do you? A. No, sir.

Q. You just heard that one single expression? A. That is all I remember about it.

Q. That is all you remember of having heard? A. Yes, sir.

Q. Your mother didn't tell your father where she had heard, or how she knew that Ben Wiltshire had threatened anything of that kind, did she? A. She said that he told her that he was going to do it.

Q. Did she say when it was he had told her? A. No, sir.

Q. Or where it was? A. No, sir.

Q. Didn't tell anything about that? A. Not that I heard.

Q. Well, when Judge Cole talked to you or Mr. Sloane, one of them, about how you would be examined, as to whether you was capable of being a witness or not, you ran and got your Sunday School book and showed him what would be the result if you told a story, did you? A. Yes, sir.

Q. What Sunday School book is that? A. I don't know what Sunday School book, it is just a little book we had.

Q. Very well, a little book that you had there at home? A. Yes, sir.

Q. Who pointed that out to you? A. Ma has read it to us every Sunday.

Q. Pointed that out to you, did she? A. Yes, sir.

Q. And told you to remember that when you come to be examied as a witness? A. Yes, sir; she said that that was what I would come to if I didn't tell the truth.

Q. Well, that is what you would come to if you didn't tell the truth. Did she tell you you would be a witness? A. Yes, sir; she told me that Mr. Cole said so.

Q. She told you Mr. Cole said you would be a witness here. When did she tell you that? A. She told me one evening before I went down to Mr. Cole's to let him talk to me.

Q. She sent you down to Mr. Cole's? A. She took me down.

Q. Did she send you down to Mr. Cole's office to have you talk to him? A. Down to the house.

Q. To talk about this thing? A. Yes, sir.

Q. And she told you this before she sent you? A. Yes, sir.

Q. Did she get the book and read it to you then? A. Yes, sir.

Q. Do you know the name of that book? A. Well, it is the little book that has got the pieces in about John Rogers. I don't know what.

Q. Well, can you remember anything else that is in the book? A. I can remember some things.

Q. You do remember some things. Where did you get the description that you gave about hell fire, that you told us a little while ago? A. That is in that book.

Q. That is in that book too, is it? A. Yes, sir.

Q. You got it from there? A. Yes, sir.
Q. Did your mother point that out to you? A. Well, I studied it and she read it to me too.

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. You have gone to Sunday School too, have you, before coming here, and learned about that there also, havn't you, Arthur? A. Yes, sir.
Q. You learned about God? A, Yes, sir.
Q. Who made you? A. Yes, sir.
Q. And all about that? A. Yes, sir.
Court adjourned until until 9 o'clock to-morrow morning.

MORNING SESSION.

SATURDAY, DECEMBER 9, 1882.

MRS. MINERVA A. BROUSE called.
Direct examination by Mr. Sloane.
Q. Mrs. Brouse, where do you live now? A. I live four miles north of Hillsboro.
Q. What relation are you to the defendant, Daniel Giddings. A. I am his mother.
Q. How old is Daniel? A. Daniel Giddings was born in 1843, May 20. You can tell how old he is.
Q. He is your oldest son, is he? A. Yes, sir; my oldest son.
Q. There were but the two? A. But the two.
Q. During his boyhood and early youth where did you live? A. We lived up near Vienna; two miles and a half south of Vienna for a time until he was about four years of age, when we moved to Lexington.
Q. In Fairfield township? A. Yes, sir.
Q. What was your husband's name? A. J. Giddings.
Q. How old was he when he died A. He was born January 1st, I believe, 1819.
Q. What year did he die? A. 1857, July 14.
Q. Before his death and during his life, after you were married, what was the condition of his health? A. He was a very healthy man; very healthy, indeed.
Q. A man of apparently vigorous mind? A. Very.
Q. Did he suffer any business losses? A. He did.
Q. About how long before his death? A. Well, about—well the losses were all along, but the final came about two or three months before his death.
Q. Well, while these financial disasters were culminating upon him, I will

ask you to state to the jury, if you noticed any change in your husband's mental habits? A. I did, sir.

Q. State to the jury, as far as you can, what that was? A. Well, he seemed to brood over his troubles and seemed to have lost his energy; seemed to just sit down and brood and was not inclined to be talkative, at all, and seemed despondent nearly all the time.

Q. Well, did you notice a loss of mind? A. I did.

Q. Who attended upon him? A. Dr. R. P. Judkins.

Q. Was he confined to the house for any length of time before his death? A. Yes, sir; he was for, I think, about three weeks.

Q. What had been his habit, or disposition, prior to this time, as to being a kind, gentle husband and father? A. He was very kind in disposition; he was a very kind husband.

Q. Had never done anything that looked like violence? A. No, sir.

Q. Now you may state, during the time that he was confined to the house, and before he took down to his bed, any manifestations of loss of mind. A. Well, he would sit sometimes at the table when called to a meal; he would sit there, I should think, nearly an hour, and he didn't seem inclined to get away; we could not get him away; seems as though he didn't know he had then eaten; sit there sometimes it seemed to me nearly an hour at a time. That is the only particular that I remember of.

Q. Now what did you notice, if anything at all, as to a change in his disposition after his trouble, as to violence? A. During the latter part of the time it seemed that he sometimes would be a little irritable if anything troubled him, and would throw up his hand to strike sometimes, as it seemed like he wanted to strike at me, if I would happen to say anything that did not seem to just suit him; I know he would do that (witness indicating); raise his hand.

Q. You may state to the jury whether during that time, for two or three weeks before he took to his bed, his mind was unsound or not, according to your opinion? A. Yes, sir; it was. His looks and utterances and everything went to prove it.

Q. Well, you have stated that he would sit alone in a brooding, moody condition by his fire-place talking to nobody. I will ask you to state what manifestations he gave as to—well, I mean with reference to talking to himself? A. He didn't seem inclined to talk at all; just seemed to brood over his troubles. I tried to talk and tried to cheer him up and tell him we would rise in the world yet, and done all I could to try and cheer him up, but he said, "No, it don't make any difference; it is all no use now; we never can, never can." He just gave up entirely.

(Counsel for State objected to this statement of witness. Objection overruled.)

Q. When he took down, how long was he confined to his bed? A. I think he was down nearly as long as three weeks, I think; I am not positive. I could be positive if I had my diary here. I have a diary that tells all about it.

Q. That is your recollection that it was about three weeks? A. Yes, sir.

Q. State to the jury whether at that time he was unconscious, or knew, or did not know people? A. He was unconscious most of the time. He had a great many friends to come to see him, and sometimes he would rally, seem to know them for a moment, and then it was all gone and he didn't seem to recollect.

Q. Did you have a talk with Dr. Judkins as to his condition? A. Yes, sir.

Q. Well, don't answer this question until you see whether it be objected to, and whether it would be proper. I will put the question, but don't answer it until you see. What statement did Dr. Judkins make to you?

Mr. Sloane.—It is a statement of the attending physician, and he being dead, it may not be admissible.

The Court.—It may come within the rule. For when Dr. Judkins would make an examination of the patient, or prescribe for the patient in that way —and that fact may be proved in the case as reflecting on the issue—what he said or did is also a part of the act; and if in making a prescription such as it is competent to do, when a man is sick and the physician is calling, and, as what the physicians would say, was diagnosing his case, if he made any observation connected with the act, or in making the prescription, that would be competent, otherwise not. What he said at other times would not be competent.

Q. By Mr. Sloane.—At any time when Dr. Judkins was there examining your husband, or prescribing for him, state whether or not he stated to you what was the matter with him?

(Objected to by Counsel for State.)

A. Well, he said he thought that was the matter, that is, that his trouble had been brought on by this financial trouble.

Q. What, if anything, did he say at any of these times when he was there examining him, or prescribing for him, as to the disease being of the mind or the body?

The Court.—I don't think that is competent.

Col. Gilmore.—Of course they will bring that within the rule.

The Court.—That is a very different thing from what he may have said was the character of his ailment in making the prescription. That might be reported by the witness; beyond that the opinion of the witness as to the effect of that disease is not competent.

Q. By Mr. Sloane.—During the month of July last, before this homicide, Mrs. Brouse, where were you? A. I was at Daniel Giddings', I was called there the 7th day of July. He telegraphed me early in the morning and I went there in the evening.

Q. Well, during the time that you were there these troubles with his wife were hanging over him, were they? A. Yes, sir; I was there for three weeks.

Q. Now the only thing I seek to inquire about that matter is, what was the condition of Daniel during that time? Just go on and state all you noticed and saw to the jury. A. I found him in a very troubled state of mind when I went there, and he remained so and was in much more trouble I would say, until I came away, and just before I came away, until his wife went away I know, and then for a time he would seem a little more reconciled. After he had filed the petition for divorce I thought he would try to be reconciled, and I noticed that he was troubled every now and then. I seen that he was troubled very much and would talk about going after her after she had gone.

Q. Well, go on and state what manifestations of trouble he gave? A. Well, at times he was moved to tears, and he says, "Ma, this thing is killing me." He says: "This is worse than death." He says: "I lost my dear little babe not long ago, and I thought I saw trouble." He says: "That was nothing, ma; that was nothing to this." And he would say, "It seems to me I am in some terrible nightmare." And he seemed so troubled many times I thought him strange; I had never seen anything of the kind before; I never saw him in such trouble.

Q. Well, state whether or not his habits were regular or irregular, as they had been before, or different? A. Not at all; he didn't sleep, he could not work, nor he didn't eat; his appetite had failed, and sometimes he would sit to the table, and he would sit right back and says, "Ma, I can't eat." Says he, "I have no heart for work and I have no heart to do anything;" and he would go out and stay for an hour or two and try to work, then come in and sit down and say, "I can't do anything." Seemed as though he just lost all his energy for work. And then he had lost his appetite; seemed as though he could not eat. And then he lay awake. We both lay in the same room; we both laid awake. I know he was so troubled it troubled me, and

we both lay awake. Well, several nights I think we didn't sleep more than two hours. Of course we did sleep some, but we were awake the greater part of that three weeks.

Q. You left, if I understand, on the 28th of July, and went home, did you? A. Yes, sir.

Q. Came on the 7th, and left on the 28th? A. Came on the 7th, Friday evening, and went home on the 28th, on Friday; started on the noon train down here.

Q. Were you there the morning he brought his wife to Chillicothe? A. I was there.

Q. Did you hear or learn from them there, when they were together, where she desired to go, any station to which she was going? A. She wanted to have the things taken to Chillicothe to go to her father's.

Q. Her father's in Erie county? A. In Erie county, near Berlin Heights.

Q. Do you know that Daniel brought her up that day, and her goods? A. Yes, sir; I saw him start with her and he took her goods and went up with her.

Q. You spoke of his having lost a child. They had four children born to them then, one of which died? A. Yes, sir; they did.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Mrs. Brouse, I will first ask you in regard to your husband's case, bu nothing about Daniel now. In the year 1857, in the spring of 1857, I understand you, your husband's money troubles, business troubles, commenced? A. Yes, sir; all along during that summer he had troubles.

Q. The trouble culminated in bankruptcy, didn't it? A. Yes, sir; well, that is the final trouble; bankruptcy, yes, sir.

Q. I say, that is what it ended in? A. Yes. sir.

Q. You lost your farm, I believe? A. Yes, sir; we had a nice home.

Q. You had a nice home and you lost it at that time. A. Yes, sir.

Q. It was sold at sheriff's sale, was it? A. Oh, no; he disposed of it himself, but it took the farm. It was not sold at sheriff's sale.

Q. But he had to sell it to meet his obligations? A. He lost it, I know.

Q. Lost all your personal property, too, didn't you? A. Yes, sir; lost everything.

Q. That troubled your husband very much? A. That troubled my husband very much.

Q. He went around trying to borrow money to meet his obligations, didn't he? A. Yes, sir; he did some.

Q. Now, I want to ascertain here for the purpose of this examination, what time was it that he took down sick to his bed in his final sickness? A. Well, that was about three weeks before his death. He died, I know, on July 14th.

Q. He died the 14th of July; then in the latter part of June he took down to his bed finally? A. Yes, sir; as well as I remember.

Q. Well, now, up to the time that he took down to his bed, was not he engaged in settling his business, trying to save his property? A. Well, part of the time when he was competent. He was not competent of doing any business for some time.

Q. Well, not competent, how long before he was taken down to his bed? A. I should say as long as three months, or more.

Q. As long as three months, or more? A. Yes, sir; I think so.

Q. Well, now, that is in April, May and June, then? A. Yes, sir. I don't remember exactly as to the time, but I should think that that was it.

Q. In April, May, and the early part of June, you say he was incompetent to attend to any business? A. Well, it may be that it was not quite so long a time, but that is my recollection.

Q. You wont say then that he was incompetent to attend to business for three months before he was taken down? You modify your answer? If so, state what time now, you think he was incompetent? A. Well, that is as well as I can remember.

Q. Now, then, during the month of June, the two or three weeks just preceding the time that he was taken down with his final sickness, I will ask whether he was not borrowing, or trying to borrow money to pay off certain debts? A. I don't think he was.

Q. You don't remember? A. I don't think he was competent.

Q. That is your opinion now; but I ask for the fact, not for the opinion. I asked for the fact whether or not, he didn't go around among his friends endeavoring to borrow money to meet his debts? A. No, I think not, because——

Q. Well——

Mr. Sloane.—I object to the witness being interrupted in the middle of an answer.

The Court.—This is on cross examination; he has a right and cross examination is of such a character that you can hardly impose any limit on it without destroying it.

Col. Gilmore.—I don't mean to be unfair.

Mr. Sloane.—I think myself, you didn't, but you did, however.

Q. By Col. Gilmore.—Mrs. Brouse, I don't ask you to answer because you think just now, that he was incompetent then, but I ask you to try and think what he did do in those three weeks. Now did he or did he not try to borrow money? A. I don't think he did.

Q. Well, did he or did he not execute mortgages during those weeks? A. I don't remember anything about it.

Q. Don't you know that he mortgaged his chattel property to your father? A. Well, yes, I believe I remember something of that.

Q. That took place just before he was taken down, didn't it? A. I don't know how long.

Q. Well, try and remember if it was within a week or two or two or three weeks before he was taken sick? A. I could not tell to save my life; I could not tell you the time.

Q. Do you recollect his going to New Vienna and other places to see friends to see if he could not borrow money at any time that spring? A. Well, I don't know about that spring. He went there some time or other, but I could not tell as to date, at all or the times.

Q. You say you kept a diary of daily occurrences, at that time? A. Yes, sir; but I never entered any such thing as that in my book.

Q. Where is that diary? A. Why that is at my home.

Q. Did it occur to you that it would be a good thing for you to bring that here to refresh your memory? A. I didn't think that diary would be wanted, until I came to my brother's, but I live six miles away from my brother's; if I had known it, I should have brought that diary with me, but I was away and had to start on the 9 o'clock train, six miles away and had to start Monday morning and I could not return for it.

Q. But you could have sent for it, could you not? A. Well, I might have done it.

Q. I will ask you whether that diary contains, as a fact now that you remember, any statement or remark about your husband's insanity? A. No, I don't expect a word; I don't expect it contains a word as to that. It contains the dates of his sickness, etc.

Q. Dates of his sickness and his progress in sickness, probably, but is there a single entry indicating that he was insane? A. I don't know that there is anything of that.

Q. Now we will go back to where you were. Your memory is entirely incompetent to recall when and how long he had these difficulties in business such as trying to borrow money to pay his debts? A. No, sir; and the diary would not contain that.

Q. I am not talking about the diary; I am talking about your memory now. You can not remember and can not tell within two or three months of when these business transactions were attended to by your husband? A. No, I cannot tell.

Q. Did your husband ever imagine that he owed any other sums of money, more, than he did owe and did he know how much he owed? A. Well, I don't know that myself; never said to me any such thing.

Q. Any such thing as what? A. What he imagined. No, I never heard.

Q. He had no delusion then about owing debts that he didn't owe; he talked of those debts that he actually did owe, didn't he? A. He talked about owing, of course.

Q. Well, he knew whom he owed? A. Yes, sir; I expect so.

Q. He knew exactly how much he owed? A. Well, not exactly. There was three partners in the concern.

Q. Well, I mean he knew as much as, under the circumstances, and being a partnership affair, he would know as accurately an anybody else could know, under the same circumstances, didn't he? A. Well, I suppose likely; but he didn't know how much, you see, because the gentlemen might borrow.

Q. Yes, that is the firm might owe debts that he didn't know about, you mean? A. Yes, sir.

Q. But he never made any mistakes about the debts that he did know of, did he; that is, he knew just what they were, those that he was acquainted with? A. I suppose he knew. He didn't tell me. He knew more than he told me, perhaps.

Q. He didn't talk with you much, then, about his business affairs, did he? A. Not a great deal, but he was not a great talker; he would tell me that it troubled him.

Q. Did he ever talk to you about great expectations of getting money? A. No, sir; he seemed about all the other way.

Q. He seemed about all the other way, that he didn't know where to find money to pay his debts; that is the way of it, was it? A. That is the trouble.

Q. Now did he ever have any delusions; did he ever talk about things that you knew could not be and were not true about his business; did he ever talk that way to you about it? A. How?

Q. Did he ever talk about his business affairs there just before or during his sickness, asserting things to be true that you knew were not true? A. No, sir; never did. He was a truthful, honest man.

Q. I believe that he was a truthful honest man, and you say he never told anything but what was true about his debts? A. No, sir.

Q. Nor about his means to pay neither? A. No, sir; he told things just exactly as they were, always.

Q. Did he ever have any delusions about any subject, whatever?

The Court.—Now Colonel, don't dwell too long on those things. We will have to get along with this. That question about delusions has been asked.

Col. Gilmore—Delusions about special things; then I asked the question if she knew that he had any delusion about any subject, whatever.

The Court.—She can answer that question, and try and not dwell too long without being admonished.

Q. By Col. Gilmore.—I will ask you just this one question, Mrs. Brouse; can you remember now that your husband had hallucinations?—You know what that word means? A. Yes, sir.

Q. Hallucinations or delusions upon any subject, whatever, at any period of his life? A. No, sir; never, until this trouble.

Q. Well, I include the time of his trouble. Now did he have any hallucinations or delusions, I mean, during that time? A. Well, he was out of his mind. You can call it what you are a mind to call it

Q. Well you have given us all the indications that he was out of his mind that struck you, already, havn't you? A. Well, he was not in his right mind.

Q. Well, you have given us all the reasons that you have to believe that he was not in his right mind, in your testimony, havn't you? A. Well, he was not right.

Q. Well, come now to Daniel. You visited Daniel; that was in July last? A. Yes, sir.

Q. When you got there was Mrs. Giddings, Daniel's wife, there at the house? A. She was not.

Q. She had left there? A. Yes, sir.

Q. Daniel was troubled about it; excited? A. Very much troubled; yes, sir.

Q. Did he know at that time, where his wife was? A. Yes, sir.

Q. Where was she? A. She was in the little town of Massieville. They lived near Massieville.

Q. His wife was in the town of Massieville, near? A. Yes, sir.

Q. A short distance from home? A. A short distance.

Q. How long had they been separated? A. I can not tell how long.

Q. That is his wife didn't come home at night or didn't come home at all, did she? A. No, sir.

Q. She was within a quarter of a mile of home, was not she? A. Yes, sir; a little more than a quarter; half a mile.

Q. Well, you say he was so excited that he could not work regularly? A. Yes, sir; he was.

Q. Did he go out to work frequently? A. He didn't work but little; he would work some and come in and say that he felt so badly.

Q. But he would go out every day to work, would not he? A. Yes, sir.

Q. That is each three times a day; did he go out to his work daily? A. About half a dozen times a day; several times a day, he would go out and come in.

Q. Stay out sometimes, how long? A. Sometimes two or three hours he would be out.

Q. And then he would come in and say that he didn't feel like working? A. Didn't feel like working.

Q. You say he didn't eat well either? A. Didn't eat but little.

Q. But he did eat every meal, some little? A. I could not say positively, but I think he didn't eat every meal, a little.

Q. Well, nearly so? A. I could not tell whether he did nearly so, but sometimes he would sit down, but I think he did not eat for several meals.

Q. Consecutive meals, one after the other or was there ever a day that he didn't eat, at all? A. Well, miss a meal and then eat a meal, but there was no day but what he would eat some.

Q. No night but what he would sleep some, too? A. Sometimes he would sleep; sometimes he would lay awake all night. He would tell me he did not sleep.

Q. He would tell you he didn't sleep, in the morning? A. Yes, sir.

Q. How often did that occur? A. Not very often, but about every other night he would sleep a little; both of us slept some.

Q. Well, you didn't sleep any more than he did, did you? A. Not very much.

Q. You were worried too, were not you, about the state of his mind? A. I was troubled because he was troubled; sympathized with him.

Q. He understood at that time, and you understood too, that his wife was

maintaining, at that time, adulterous relations with somebody else, didn't you? A. Well, we thought it was so; we heard that it was so.

Q. Well, he believed so, at that time, and you believed so? A. We had reason to believe it.

Q. That is not it; did he believe it at that time? A. I think he did.

Q. He talked to you about it didn't he? A. Yes, sir.

Q. That commenced about the first of July, did you say? A. Well, I suppose it was before; that is, I can not tell as to the time.

Q. Well, it was about that time that you went there? A. Yes, sir; I went there on the 7th of July.

Q. And from the time you went there, you heard from him, knew from him, that he believed his wife was living in adulterous relations with somebody else? A. Yes, sir.

Q. How long had he known it before you came there? A. I don't know that.

Q. Well, he played the violin some, didn't he? A. No, sir.

Q. He can fiddle on it? A. Yes, sir, he played, but I don't think he had the violin out at all while I was there.

Q. Don't you recollect that he had it out at all while you was there? A. No, sir.

Q. Well, during the time you were there, did she go away from Massieville, and to Chillicothe, that you know of? A. Yes, sir, we heard that she went several times.

Q. That is, come to Chillicothe, you mean? A. Yes, sir.

Q. Yes, but I mean did she leave the country at any time while you were there? A. Yes, sir, she went away, as we heard, with Mr. Wiltshire.

Q. To Washington Court House? A. Yes, sir.

Q. You were there at that time? A. Yes, sir.

Q. I will ask you, if during this time, Giddings didn't tell you, if your son didn't tell you of his wife's adulterous relations before the Wiltshire case? A. Before what time?

Q. Before her acquaintance with Wiltshire, at all? A. Well, I don't remember of his telling me that.

Q. Are you sure that he didn't speak of it? A. Before this time came up?

Q. Yes, before Wiltshire came into the scene at all? A. No.

Q. Didn't he tell you of his wife's adulterous conduct in Erie county? A. No, sir; he could not tell me that, because it wasn't so.

Q. Did he tell you of her having left him when one of the babes was only three weeks old and left him to take care of the babe, and was gone for weeks? A. Three weeks old—the baby?

Q. Yes, three or four weeks old, something along there. A. I don't remember of his telling me any such thing.

Q. Did he tell you that he had ever seen adulterous connection between Wiltshire and his wife? A. Never told me such a thing as that.

Q. Did he tell you what he intended to do, if anything, when he saw Wiltshire, about the matter between Wiltshire and his wife? A. No, sir, he didn't tell me.

Q. Didn't tell you anything of the kind? A. No, sir.

Q. Made no threats? A. No, sir.

Q. Did he tell you about intending to get a divorce? A. Well, yes sir, he told me about that.

Q. Did he tell you what his purposes were, as to his wife, as to living with her any more? A. Well, no, I don't know that he told me.

Q. Don't know that he told you anything of that kind? A. No, I don't remember of his telling, but I don't know that he thought about her coming back; I don't remember of any such conversation taking place; I don't remember of his telling me what he thought he would do in case of her coming back.

Q. He thought, and you thought, the separation was final then, didn't you? A. Well, yes, he thought it might be.

Q. Didn't you say a while ago that he was more composed after he made up his mind for a separation by divorce; that he became reconciled then? A. He seemed to be for a while. But I could see all along he wanted to go up to Washington to see her, and once in a while he would think that he would give her up, but he could not give her up; he wanted to go and see her, but I told him no, she had gone now and to let her go, and I persuaded him not to go.

Q. In your talks about the affair did he tell you this: That he used to love her, but he hated her now and didn't love her any longer? A. Well, he hated her actions, of course; anybody would hate such actions.

Q. That is what he told you was it? A. Yes, sir.

Q. Did he tell you that he never would have anything more to do with her? A. Well, I dont know that he did tell me that.

Q. Did he talk to you about having her arrested for stealing? A. No, sir, not for stealing.

Q. Didn't you know of his attempting to have her arrested for stealing, taking his property away when she went away? A. I don't know that he said anything about having her arrested, but I know that he said he would go and try to get the goods back again; but as to having her arrested for that I don't remember.

Q. Didn't he tell you about going and having a talk with 'Squire Mick? A. No, sir, I don't remember. If he had such thoughts he went and told some one else. He didn't me.

Q. You conversed and talked with him a good deal while you were there? A. Well, yes, considerable.

Q. Daily and hourly while you were together? A. Well, no, not hourly.

Q. I mean while he was in the house? A. Well, we talked together considerable.

Q. He could tell you anything and everything that you asked him and knew? A. Yes, sir.

Q. Had no trouble about maintaining a conversation upon any subject, did he? A. Well, no; but that was the subject, the only subject he could talk about.

Q. Could not talk about anything? A. Well—

Q. You mean that was the leading subject? A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. You were just asked whether he conversed with you all the time freely. I will ask you to state this—I, perhaps, should have asked it in chief: whether, or not, you recollect at any time of his inability because of his trouble and because of his weeping, or any cause, to express himself, and he used other means to express himself to you? A. I don't get the question exactly.

Q. I am asking you this question: You say he conversed freely with you all the time; whether you recall to your mind any time, or occasion, when, from his crying, or any other manifestations of his trouble, he was unable to talk to you and used other means of expressing himself to you? A. Yes, sir. He felt so badly sometimes he could not talk to me and he would write to me; he would write on the slate sometimes and shed tears and felt as though he could not talk to me, and he wrote to me once, or twice, a letter on the slate so I might read it, and would be moved to tears a great many times; seemed to be all broken up.

Q. One more question I wanted to ask, but had forgotten was this: You stated in your examination in chief, that your husband in his last sickness would raise his hand, impatiently, as if so strike you? A. Yes, sir.

Q. Did he ever lay his finger on you, in anger, in his life? A. No sir.

Q. Never tried to before did he? A. Never tried to.

Q. I understood you to state that for several weeks before he took down he was confined to the house? A. Yes, sir.

Q. Did he do any business during that period? A. No, sir; didn't do anything to my recollection, for as much as three months, I think; I can not tell the exact time.

Q. By the Court.—I want to ask one or two questions: Does, or not, your son here, Daniel, in any way resemble his father; if so in what respect does he resemble him? A. Well, yes, sir, he looks like him.

Q. Well, in what particular? A. He is like his father more than my other son. My other son is like his mother's family, but he is like his father's family.

Q. Do you mean that he resembles him in his face in any particular? A. Yes, sir, something like him.

Q. How was it in habits of mind? A. He is something like him.

Q. Now state in what particular? A. Well, sir, I don't know; I will have to study a little while before I can tell exactly. He is quiet. I think he is rather peculiar in some ways in his manner, his disposition, rather quiet; and yet he is talkative and lively at times. His father was the same.

Q. Before your husband's troubles came on, was he a quiet man? A. Yes, a quiet man.

Q. Backward? A. Yes, sir, he has been a quiet, peaceful man, as far as I know, all his life. I don't know anything to the contrary.

Q. Was there any difference in their size? A. Not very much difference in their size.

Q. Was your husband a thin man, ordinarily, or a fleshly man? A. Not very thin; just about, I think, the weight of my son here. (Witness referring to defendant.)

Q. Do you remember what was the color of his eyes? A. About the color of my son's eyes.

Q. What was the color of his hair? A. Light; was something like my son's.

Q. What was his complexion? A. Light complexion; blond.

Q. What was his mode of speech; how did it compare with your son's? A. Well, he is something similar.

Q. Was there a difference in their mode of talk? A. Not very much difference; about the same of my son.

Q. Can you remember whether there was a resemblance in the voice, or not? A. I don't know; but something similiar. I hadn't thought about it, but I think something similiar.

MICHAEL KIRSH called.

Direct examination by Mr. Sloane.

Q. Mr. Kirsh, you live here in Chillicothe, I believe? A. Yes, sir.

Q. Did you know the deceased, Benjamin Wiltshire, in his life-time? A. I knew him to see him, for a number of years.

Q. You keep a hotel here? A. Yes, sir. I hardly knew them apart; he has a brother that looks a good deal like him. I sometimes mistook one for the other.

Q. You remember the time of this killing, the 5th of August? A. I remember it, yes, sir.

Q. You can state whether, or not, about three weeks before that, Benjamin Wiltshire was at your house, any night, over night? A. Yes, sir.

Q. Who was with him? A. There was a woman with him. He come there after dark a little while and wanted to know whether him and his woman could not stay there all night, I told him he could.

Q. Have you found out since who that woman was? A. I heard since that that was Mr. Giddings' wife.

Q. You have seen her since that? A. Yes, sir.

Q. You recognize her as the same woman who was there with him? A. Yes, sir.

Q. Were they there more than one night? A. I think they were there three different nights; not two nights in succession.

Q. About what time would they come in; at night or in the day time? A. Well, sometimes it would be daylight yet, and it was summer time, you know, when the days were long. I was not in the house at that time; I was building a stable back there and I was busy with the mechanics and didn't pay much attention to the house.

Q. It was about three weeks, I understood you to say, before the killing? A. I could not tell the exact time, but it was sometime before the killing. The first I heard of it I knew that that was not his wife, when I heard that him and her went off to Washington Court House.

Q. Then it was a short time before they went off to Washington Court House? A. Yes, sir, a week or two before that.

No cross examination.

DANIEL GIDDINGS called.

Direct examination by Mr. Sloane.

Q. Daniel, you are the defendant in this case? A. Yes, sir.

Q. How old are you? A. Thirty-nine years old, last May.

Q. Where were you born? A. In Highland county, near Lexington; a little over two miles from Lexington.

Q. From your birth, up to what age did you live in that township or in the county? A. Well, about sixteen years, I presume. I took a trip out to my uncle's, in Illinois, at the time I was sixteen years old, about that time.

Q. How long were you in Illinois, at your uncles'? A. About six months.

Q. That was on a visit, was it? A. No, sir; that was with the intention of staying until I was twenty-one, but I didn't stay.

Q. Where did you live upon your return? A. I came back and lived at my grandfather's, Daniel Hixson's.

Q. About how old were you at the time of the death of your father? A. About fourteen years old.

Q. Your family consisted, did it, of your mother and your brother Arthur and yourself, after the death of your father? A. Yes, sir.

Q. You may state whether or not as soon as you became old enough to work, you assisted your mother in the support of the family. A. Yes, sir.

(Counsel for State objected to the consumption of time on irrevellevant testimony.)

(The Court held that it might be competent as relating to the formation of a character, and that it was in the discretion of the Court to terminate it; that when it transcends the bound of reason and a fair examination, objection can be interposed and sustained.)

Q. By Mr. Sloane.—How long did you go to school, Daniel, in Highland county? A. Well, I will have to guess at it.

Q. Well just tell us as near as you can recollect? A. I suppose about five or six years; may be more.

Q. You attended the district school in your district there? A. I attended the district school in Lexington where I formerly lived with my father, and also, in Penn township where my grandfather lived; I attended that school.

Q. Well, that is the education that you received? A. I attended a short time in Illinois, while I lived with my uncle, during that six months out there.

Q. How soon were you put out to work, did you go to work? A, You mean worked for neighbors or away from home?

Q. Yes, sir; away from home for the assistance of the family? A. I believe I was about 15 years old.

Q. You used to go to school in the winter and do what work you could in summers? A. Yes, sir.

Q. What was the character of that work? A. General farming.

Q. While you were living at your grandfathers's did you enlist? A. Yes, sir.

Q. How old were you at the time you enlisted? A. Twenty years old.

Q. How long were you in the service? A. About three years I believe. I might have lacked a day or so.

Q. Did you have any severe sickness during that time at all that you were in the service, or prior to going into the service? A. All my life before that?

Q. Yes, sir. A. Yes, sir; I had had some severe sickness before that at times; had a severe spell of sickness while I was with my uncle in Illinois.

Q. What was it? A. It was in the nature of dysentery, I believe, and fever.

Q. Had you any severe attack of fever or pneumonia or anything of that kind, at all? A. Well, I have been more or less subject to fever and sick headache all my life.

Q. Well, you had no severe attack of fever that you know of, where you were confined to bed with fever? A. Not fever alone, no, sir; I had fever attending other sickness, always.

Q. When you returned from the army where did you go to live? A. Came home to my grandfather's when I first came home from the army.

Q. How long did you remain at your grandfather's? A. Not a great while; I don't remember; I believe I went to work for my uncle in a short time after that.

Q. What uncle? A. David Hixson.

Q. At what work; farming? A. Yes, sir; farming.

Q. How long did you work there? A. I think I worked about six months or eight months; I disremember.

Q. Well, how long, were you there in Highland county, after you returned from the army, before you went to Erie county? A. I was in Highland county, I believe until 1868. I returned from the army in 1866. I think I left Highland county for Erie county in 1868.

Q. You went up to Erie for the purpose of opening what business? A. I went up there simply to better my condition financially. I thought I could make a litte more money. I had a cousin up there, Mr. Johnson, who gave me a flattering account of the country and wages and I went to work for him, at first.

Q. At what work? A. Fruit farm.

Q. How long were you employed with him? A. Six months, I worked for him.

Q. After getting through with him where did you go and what work did you do? A. Well, I worked with farmer's most of the time. Mostly farming.

Q. It was a matter of necessity, for you, that is, daily labor; you were poor? A. I was poor; yes, sir.

Q. When did you marry? A. I believe it was in 1872; I think the winter of 1872.

Q. Do you recollect by whom you were married? A. Yes, sir.

Q. Married by a magistrate up there, were you? A. Yes, sir.

Mr. Sloane.—I offer the certificate of marriage in this connection, to Your Honor.

The Court.—I guess that is not competent.

Mr. Sloane.—Well I didn't know wether it was or not, but I didn't want any harping to the jury upon the fact that the marriage was not proved; didn't want any cry here that she was not his wife.

Col. Gilmore.—We have no objection in the world, but I don't see that it cuts any figure in the case.

Q. By Mr. Sloane.—Your wife's maiden name was Burton? A. Burton; yes, sir.

Q. You were married, I believe you said, in 1872. A. In the winter of 1871–2, in January, 1872, I believe.

Q. How long did you live in Erie county after you were married? A. You mean the whole time, including the removal to Highland county?

Q. I mean how long did you live in Erie county after you were married? A. Without moving?

Q, Yes; you didn't move to Highland county, and then back to Erie county, did you? A. Yes, sir.

Q. I didn't know that. Then state how long you lived in Erie county, before going to Highland. A. I am poor to recollect dates. I think it was four or five years; I don't think it is over five years.

Q. Then you moved down into Highland county? A. Yes, sir,

Q. Where did you live in Highland county? A. I lived about two miles west of Hillsboro, on the Cincinnati pike.

Q. How long did you live there? A. Well, we didn't live there long; five or six months, I believe.

Q. To what place did you go from there? A. To Erie county.

Q. After you were married and were living in Erie county, both times, what business were you engaged in? A. Well, I worked some at stone work and a good deal of everything; farming and general work.

Q. How many children were born to you? A. Four.

Q. How many are now living? A. Three.

Q. Which one is dead, the youngest? A. The youngest; yes, sir.

Q. When did that child die? A. Well, it died the winter we moved down to Highland county; it has been, I guess, five or six years; I don't remember exactly.

Q. Your children were all born in Erie county, were they? A. Yes, sir.

Q. When did you move to Massieville or in that neighborhood? A. Five years ago, this spring, I think.

Q. When did you first become acquainted with the deceased, Benjamin Wiltshire? A. I don't remember sir; I don't think it has been over two years ago.

Q. You didn't become acquainted with him when you first moved to Massieville? A. I might have become acquainted with him then; I might have some slight acquaintance, I wont' say sure.

Q. Well, how near did he live to you? A. He lived about three quarters of a mile, I should judge; around the road.

Q. With whom? A. Well, if he made his home there at all it was with his father and mother. I understood that he didn't make his home there all the time; worked away sometimes.

Q. Did he work away in the summer and make his home there in the winter? A. I understood it in that way.

Q. But you came to know him well, only about two years ago, you think? A. Well, I could not say that I knew him well; was not intimately acquainted with him, I should not say, until probably a year ago.

Q. Do you know when your wife first became acquainted with Wiltshire? A. No, sir; I can not say that I know when she first became acquaited with him.

Q. Well, do you recollect an event when she first was thrown with him, at all? A. Yes, sir.

Q. When was that? A. I should think it was sometime last winter.

Q. Towards spring, toward the latter end of the winter? It seems to me it was; I won't be positive.

Q. What was the occasion? A. Well, Ben Wiltshire deceased had a sick child, a boy said to have chicken pox, and my wife went over to attend on the boy. I can't say that she was sent for; I don't know. She was a great hand to attend to the sick, and she went over, anyhow, to attend to the child.

Q. Your occupation down there was that of a farmer? A. Yes, sir.

Q. You had a little farm your mother had bought for you there? A. Yes, sir.

Q. You may state to the jury whether or not, you noticed after the time she went to nurse this child of Wiltshire's who was sick, any change in her disposition with reference to home and yourself? A. Yes, sir; immediately afterward I noticed a slight change in her conduct and demeanor toward myself and the children.

Q. After that time, I will ask you to state what were Wiltshire's habits, as to coming to your house, or as to acquiring more intimate relations with your family? A. Previous to that he had not been in the habit of coming to my house very often, scarcely ever was there at all, but after that his visits became more frequent.

Q. Now, then, this estrangement that you noticed, the dissatisfaction your wife expressed with yourself and home, you may state whether it seemed to grow, or increase? A. That estrangement of my wife?

Q. Yes. A. It seemed to increase, somewhat, to grow without any definite cause.

Q. Up to this time, up to the first of July, or the latter part of June, you may state to the jury, whether, or not, you had any suspicions of infidelity on her part? A. I had no suspicions of infidelity.

Q. I will ask you to state whether, or not, about the first of June, you had any talk with your wife, and if so, what, in your house, with reference to the frequency of Ben Wiltshire's visits?

(Objected to by counsel for the state.)

The Court.—I don't think that is competent. That is, the husband can not state what transpired between himself and wife.

Q. By Mr. Sloane.--Well, I will ask you to state then when it was that she first left the house down there, as near as you can recollect? A. Well, it was sometime about the first of July, or the latter part of June, I can not say exactly; I have not the date.

Q. Well, had you had some words? I can not ask you to state them. State whether, or not, you had words with her? You need not state what they were.

(Objected to by counsel for state. Objection sustained, to which counsel for defendant excepted.)

Q. She went away at that time for about how long; that is, the first time you speak of? A. About three days.

Q. Where did she go? A. She went over to old Mr. Wiltshire's; I don't know what his name is.

Q. You may state whether, or not, you went there while she was there for the purpose of causing her to return? A. Yes, sir.

Q. Did you see her there? A. I saw her there; saw her come out of the house.

Q. Did you see Ben Wiltshire there? A. I didn't see Ben Wiltshire there that time.

Q. State whether you saw any of the members of the old gentleman's family? A. I saw none of them.

Q. At the conversation you had with her, no one else was present? A. No, sir.

Q. Well, it is not proper for you to state that conversation. After that where did she go? A. Well, in about two days after I made that visit she came back over to my home and told me she wanted her clothing, that she was going over to Mr. Wiltshire's to work.

Col. Gilmore.—That also comes within a conversation between husband and wife.

Mr. Sloane.—I guess he has a right to state that she came after her clothes, without stating any conversation.

The Court.—Yes, sir.

Q. By Mr. Sloane.—Well, she came after her clothes? A. Yes, sir.

Mr. Sloane.—Is not this matter a part of the *res gestae*, which makes it an exception to the rule? Here is a relation of the manner in which she went away the first time, of which there is no other way of proving it, because the wife is not a competent witness.

The Court.—I don't want to depart from that rule at all, and I am pretty sure this comes under the rule.

Q. By Mr. Sloane.—Well, when she took her things, you mean got her clothes, where did she go? A. She didn't take them.

Q. She didn't take them? A. No, sir.

Q. Well, did she go from there anywhere? A. I made an agreement with her there before she went away.

Q. Well, it would not be proper for you to state that, but did she go anywhere at that time? A. She went over to a neighbor's.

Q. That is just what I wanted to get. Over to Mr. Carter's? A. Yes, sir.

Q. What portion of the time did she stay at Mr. Carter's; or did she come to your house at all? Mr. Carter lived just across the road? A. Yes, sir. She staid at Mr. Carter's at night, slept there, and staid at my house in the day time and done my work.

The Court.—Anything that transpired between them in the known presence of a third person does not come within the rule; you understand that?

Mr. Sloane.—I understand that; yes, sir.

Q. At the time she went off to Wiltshire's, did the conversation that occurred between you and her, occur in the known presence and hearing of any one you know of, who would be a competent witness? A. No, sir.

Q. By the time she had gone to Carter's, did your mother come over to your house? A. Not at that time.

Q. Not at the time she first went to Carter's? A. No, sir.

Q. I will ask you how long she was there? A. I don't remember exactly; I think about ten days, spending the nights there and working for me in the day time.

Q. You are guessing at the time, here, now? A. Yes, sir.

Q. During that time, I will ask you to state whether, or not, you had any conversation with Mr. Carter? A. Yes, sir.

Q Well, now, I want you to state this fact, what Mr. Carter stated to you —you may wait a minute to see whether counsel object, before answering— with reference to the conduct of your wife at night, and only that conversation; I don't care to call for anything else.

Col. Gilmore.—Mr. Carter has been on the stand, has not he?

Mr. Sloane.—Yes, I believe Mr. Richard Carter was on the witness stand.

Col. Gilmore.—I object to the testimony.

Mr. Slone.—I can state to the Court, if he desires it, the object of it, so as to show that it comes within the rule laid down.

The Court.—I suppose it is material to show the defendant's knowlegde of his wife's infidelity. He has stated that up to a certain time he had no suspicions in that regard. Well, now, inasmuch as the killing of the deceased had grown out of what is claimed to have been his knowledge of infidelity, of his connection with his wife, it is important to show when and where he got that information, how he got it, whether he got it at all, or not.

Col. Gilmore.—It has been already shown by the testimony, that anterior to that time, the defendant was satisfied of it.

The Court.—It is for the jury to judge as to the weight of the testimony. Go on.

Q. By Mr. Sloane.—Now, before I ask that question I have just asked, at the time she had gone to Wiltshire's and was there, I will ask you to state whether, or not, you then entertained any suspicion of infidelity on her part? A. No, sir.

Q. Now, then, what was it Mr. Carter told you? A. Well, he didn't tell me a great deal at that time; we were talking about my wife's conduct, and he told me about the frequency of deceased, Ben Wiltshire's, visits at his house, making some excuse to come there, and he told me that he had suspicions that everything was not right.

Q. Come where; to Carter's house? A. To Carter's house.

Q. At night or in day time? A. Well, he would come near the house at night, and she would go out to meet him, he said.

Q. And stated to you that he had suspicions something was not right? A. Yes, sir.

Q. Well, now I want to know, at that time, what you said with reference to it? A. I told him—I don't remember just what I told him, but I gave him the impression that I didn't think that there was anything of that kind; that I had no suspicion; that I could not believe anything of the kind.

Q. Could not believe that? A. No, sir.

Q. You may state to the jury then whether his information aroused anxious suspicions in yourself, or not? A. Yes, sir; it aroused anxiety.

Q. Now, during all this time, from the time she first went away and went to Wiltshire's, and during this time that she was remaining over there at Carter's, and when this information you spoke of had come to you from Mr. Carter, you may state what was the condition of your mind and your feelings with reference to it? A. Well, my mind was greatly disturbed; my feelings were wrought up a great deal; my impression was that my wife was estranged from me, from some unknown cause to me and what I afterward understood to be the real cause. At that time I didn't imagine what the real cause was. I knew that she was estranged from me, but I could not offer inducements, or any arguments to prevail upon her to come back to me, and I was greatly troubled.

Q. Now, then, after she had been at Carter's, where did she go? A. Well, after she had been there, you mean after she had left me entirely?

Q. Already you have stated that she was at Carter's for a week, or ten days. Now I want to know what was her next stopping place? A. Her next stopping place was Scott Finley's.

Q. Scott Finley is a brother-in-law of Benjamin Wiltshire's, and lives near Chillicothe? A. Yes sir.

Q. How long was she there? A. I can not say how long. I think off and on, about a week; I can not say for certain.

Q. Did you go there for the purpose of reclaiming her, or getting her to come back home, while she was at Scott Finley's? A. Yes, sir.

Q. How often? A. Twice that I am certain of.

Q. You failed in your object? A. Yes, sir.

Q. After she was at Scott Finley's, you may state whether or not, she was here about Chillicothe, that you learned? A. I learned that she was.

Q You may state, also, about your coming here, if you did, seeking for her, at any time? A. Yes, sir; I came up here a number of times hunting her.

Q. Were you able to find them at any time, her or him? A. I saw them together, I believe, one day upon the street; that is, I thought I saw them; I am not certain; I could not find them, could not get to them.

Q. Well, now, I want to come down to the time when you brought her goods up here. I will ask you whether, or not, she came down from Chillicothe to the house? A. She came down from this direction.

Q. For that purpose¿ A. Yes, sir.

Q. Your mother was there then? A. Yes, sir; she came down for that purpose.

Q. That was about how long before she left for Washington, she leaving for Washington on Thursday the 19th. What day of the week was it? A. That she came down?

Q. Yes, sir; after her goods? A. I don't know. Let me see; it was Monday that we started up with the goods.

Q. It was Monday that she came over to the house? A. Yes, sir, it was Monday that she came over to the house. She came over that morning.

Q. Immediately preceding her going to Washington Court House with Wiltshire? A. Yes, sir.

Q. Your mother was there then? A. Yes, sir.

Q. You may state what she said she came for, where she said she was going, what she said about it and what she did?

The Court.—In the presence of your mother.

A. I don't recollect all the conversation.

Q. By Mr. Sloane.—Your mother was there? A. Yes, sir.

Col. Gilmore.—It was not that your mother was present about the house, but that she was right present and heard the conversation.

A. She was present and heard the conversation; yes, sir. She came up there and stated that she wanted to go north to see her mother, her mother's folks; that she wanted some money and we talked the matter over. I can not recollect the conversation, but that was the drift of it; and I told her that if she wanted to go up that I would give her some money and did give her a part of what I had, in order to go up there.

Q. Well, what did you say to her at the time, as to her going up there and staying, or returning? A. I told her that she could go; I was perfectly willing for her to go, if she wanted to go and make a visit and stay as long as she wanted, and come back to me again, and she appeared to agree to it.

Q. You may state to the jury whether her statement of intention was that she was going there to stay or not? A. No, that was not her statement of intention. I understood that she was going there to stay on a visit and come back.

Q. You consented to her going there and furnished her some money, what you had? A. Yes, sir.

Q. What arrangements were made, if any, as to your furnishing her other funds? A. There were none, I believe.

Q. Well on Monday morning, you took her up, did you? A. Yes, sir.

Q. Where did she say, when she started, that she wanted her goods taken? A. Scioto Valley depot.

Q. When she got there where did she direct you to take them? A. To Mr. Shower's, I believe the name is, on Second street.

Q. You left them there and went home? A. Yes, sir.

Q. What was the next think you learned with reference to her, the fact of her elopement to Washington Court House, or did you learn of anything here afterward? A. I learned before her elopement, that she was up here and

had not gone and that Benjamin Wiltshire was here with her; I heard that.

Q. The next thing was—— A. Then I came up here the next Thursday expressly to try to find out where she was, if I could learn anything of her. That was the Thursday after the elopement.

Q. That was the next day, was it? A. Yes. sir; I hadn't learned anything of the elopement until I came up on that Thursday and I went directly to Mr. Showers' house and they told me that she had left there, and told them that she was going to have her goods taken to the Scioto Valley depot and go north. I went to the depot, also the Marrietta depot, and inquired and they told me no goods of that character had been shipped. So I went down to the Narrow Guage depot and inquired there of the agent, and I took the book and looked and I saw Benjamin Wiltshire's name registered there, and the agent told me he had shipped the goods up to Washington Court House and had a lady with him, and gave me a description and asked me if she was my wife.

Q. Very well, then you can state what you did after learning that fact of their elopement together? A. Well, I went home that day.

Q- Well, reflect now a moment, and see whether you attended to any other business here that day. That was Thursday the 20th? A. Yes, sir; I attended to some other business. That was my first busines. I came back from there and came up here and saw 'Squire Mick, I believe. And went and saw 'Squire Mick about some kind of warrant or replevin to get my goods.

Q. That was the same day you had the talk with George Smart, was it not? A. Same day; yes, sir.

Q. Well you heard Mr. Smart's testimony? A. Yes, sir.

Q. You may state to the jury what was your condition of mind at that time. Well, you need not answer that question; I don't know whether it is a matter you can testify about; it is a matter for the jury to judge. You heard Mr. Smart's testimony? A. Yes, sir.

Q. You remember his testimony that you said you had come here on one or two occasions with the intention of killing Mr. Wiltshire, but upon reflection, and thought of your children you had concluded not to do it? You may state whether you made that statement to Mr. Smart? A. Yes, sir; I made that statement to him, in substance.

Q. Did it represent a fact or not? A. Yes, sir.

Q. Well, after seeing 'Squire Mick and learning from him that you would have to go to Washington Court House to bring suit, where did you next go? A. I went to 'Squire Denig's office and talked to him with regard to getting a petition for divorce, and he took me over to Judge Cole's office and I filed a petition for divorce, that day before I went home.

Q. You say it was two or three days afterward you wrote this letter and sent it up by Judge Cole, was it; I mean the letter that you sent to your wife at the time of the divorce suit? A. Yes, sir; I believe about that.

Q. Twenty-third, it bears date. It was written on the date it bears? A. Yes, sir.

Q. Well, after bringing suit for divorce you went home, did you? A. Yes, sir, I believe; I didn't attend to no business that I recollect.

Q. You may state whether, or not, at that time, having filed your petition for divorce, you had abandoned any intention, or whether you still retained any intention to do violence upon Wiltshire? A. No, sir.

Q. You had abandoned that intention? A. Had abandoned all thoughts of it.

Q. You may state whether, or not, you expected after she left, that the separation was to be final? A. Expected it to be final, yes, sir; I tried to banish the thoughts of her from my mind, but I found it was impossible, but I still at the same time expected the separation to be final.

Q. You may state what had been the condition of your mind, coming home to your children, and the condition of your mind afterward? A. Well, it is impossible to describe it; very disturbed state of mind.

Q. The children were there without their mother? A. Yes, sir. Such a condition of mind can only be imagined; can not be described.

Q. Were you at home the day she returned? A. Yes, sir.

Q. You may state what occurred that day as near as you can recall it. A. Well, I was sitting in the house a short time after the dinner hour, I believe after we had eaten dinner, and there was a couple of ladies there. Mrs. Blair was in the house. They had washed up the dinner dishes. Another lady had stopped on her way home in Massieville; they was in there talking; they were sitting at one kitchen door and I was sitting at the other kitchen door. I looked out toward the front yard and I saw a woman coming up in the yard and stop. She had a handkerchief over her face and I didn't recognize her at first, and wondered who it was. I started out and thought it was some neighbor woman, probably, and went out to her and I recognized her. Says I, "Mary, is this you?" She says: "Yes," and I was overcome with emotions and grief. We didn't say many words then.

Q. State where the children were at that time? A. The children came out very shortly after I did.

Q. What was their condition? They were all moved to tears, all cried. I asked if she had come back to stay, and she said she had and she asked me to forgive her for all she had done.

(Objected to by counsel for the state.)

The Court.—Well, we will have to stop there.

Mr. Sloane.—His children were there.

Col. Gilmore.—Yes, sir; he has testified to hearing one single expression.

Mr. Sloane.—Yes, we know what he has testified.

The Court.—It is very easy sometimes for the mind to imagine what folfows, so I don't think that we need to go further there in that unless there was a known third person present.

Mr. Sloane.—He simply described what occurred there at the yard. Now he goes into the house and I don't want to prove what they said in the yard, but what was said in the house, as it is an essential part of this case.

The Court.—What occurred in the presence of other persons can be gone into; what happened between them in privacy can not be.

Q. By Mr. Sloane.—Now I want you to bear in mind and state nothing Mr. Giddings of that conversation between yourself and your wife, or the transactions between yourself and wife, except as to those that occurred in the room or in the yard, when you recollect that your oldest boy, as least, was present.

Col. Gilmore.—And heard it.

Mr. Sloane.—Well, it is for the boy to state whether he overheard it.

Col. Gilmore.—He overheard one single word; not all of it.

Mr. Sloane.—Well it is not necessary for him to state that he overheard it all.

The Court.—Well, I think it is.

Q. By Mr. Sloane.—When this conversation occurred after you went into the room, she begged your forgiveness and all of that out in the yard, as you have stated——

Col. Gilmore.—Now that is counsel stating what the Court excluded when the witness was stating the matter.

Mr. Sloane.—That is not so; I was simply as a starting point to the further question, repeating what he had stated occurred out there when she asked his forgiveness.

The Court.—That is all right, but mind that I have applied the rule.

Mr. Sloane.—I will endeavor to bring it within the rule.

Q. Now after this time that you have stated, when all the children were

present, when you were out in the yard, I will ask you whether they were clinging around their mother and you? A. Yes, sir?

(Counsel for the state objected to this form of examination as leading.)

Q. Now, I am simply calling your attention to that fact, after you stated what occurred there, you have already stated that you went into the house together; did all the children go in with you into the house. A. Yes, sir.

Q. When you got into the house what did she and they do, as you recollect first, that is, did you sit down, or stand up all around? A. Well, we stood up all around for awhile.

(Counsel for the state renewed the objection on the ground that counsel for defendant was repeating the testimony of the witness.)

Q. By the Court.—Was your oldest son, Arthur, present at that time? A. Yes. sir; he was present all the time.

Q. By Mr. Sloane.—Now, then, I want you to state what conversation occurred in the house when you know that Arthur was present and in a position to hear; but state nothing that occurred between yourself and your wife, or what was stated by you to her, or by her to you, when you don't know and recollect that Arthur was present and in a position to hear, close enough to hear? A. Well, there was a part of our conversation occurred when Arthur was not present and in a position to hear. But with regard to the letter that has been read in court, at the time she received it at Washington Court House, and in the room together she handed the letter to Wiltshire and our conversation was with reference to how he acted; she was telling me how she acted, how he cussed and swore; what effect it had upon him.

Col. Gilmore.—I want to interpose another objection.

The Court.—What is it?

Col. Gilmnre.--That objection is, that it is perfectly apparent that the subject of conversation between himself and wife which is about to be detailed, when his oldest son was there, is above the comprehension of the boy. It is questionable whether he can be a witness at all, and that he can be made a pretext for detailing a conversation between husband and wife that is evidently above and beyond his comprehension, is, I think, a shocking thing.

The Court.—I do not consider it a pretext. As regarding the objection to the testimony of the boy, he is said now to be eleven years of age. That is a period in which he can be lawfully a criminal, consequently he is responsible to the law, now, in a measure, and I am sure that he is a competent witness. We have examined him on the stand and he is certainly up to the average of boys at that age. It will not do to say that this is a mere pretext to get this evidence in. The question as to the weight of his evidence, I leave to the jury. I think that what was said and done in his presence can be related by the husband under the rule.

Q. By Mr. Sloane.—Now, you may go on and state what was said and done. Remember this; don't state just your inferences and conclusions from what was said; try to avoid that; but state what she said in her exact words. I don't expect you can recollect them, but what was the substance of what she conveyed to you. A. As I was telling you, about the time she received the letter at Washington Court House, she handed the letter to him —the one that has been read in court—that was written at the time; the sheriff deliver it to her at the time the petition was delivered for divorce. She handed him the letter, so she said, and he went into a great rage, walked up and down the floor, and told her that he was going to kill me the first time he came down. That was in the hearing of my boy and the children; I noticed that he stood there and listened at that time. I don't know that he was present at any more of the conversation.

Q. Now, I want to call your attention to a matter as to what she stated. You need not state what it was, because I want to know first whether or not the boy was present at the time. Was the boy present at any time when she

stated to you the manner in which she got off to come down here? A. Let me see a minute.

Q. I don't want to put the testimony in Mr. Giddings, unless you recollect pretty certainly that the boy was present; I don't want to violate the rules of law here. A. I don't think he was sir; I don't think he was present at that time.

Q. Well, then, it would not be proper under the Court's ruling, for you to state what occurred between you and her not in the known presence of your boy, or of some other witness. A. He might have been.

Q. He might have been, but you are not certain, you say? A. No.

Q. Very well, now, you need not state the conversation. You may state whether, or not, an arrangement was made by you to go to Washington Court House to get her goods? A. Yes, sir; that arrangement was made.

Q. On the Thursday evening before going, where did you go? A. I went to Massieville.

Q. Did you see any one there from whom you procured anything? A. Yes, sir.

Q. Who? A. Lyman Blair.

Q. What did you get from him? A. I got a revolver from him.

Q. For what purpose? A. Can I tell what I told him that I wanted.

Q. That has been testified to? A. Well, I got it for the purpose of the trip to Washington Court House, to defend myself with, should occasion require it.

Q. Well, you may state whether, or not, you were led to get it by reason of this threat that had been communicated to you? A. Yes, sir; to a great extent I was.

Q. Did you hear other threats of Wiltshire's besides that one you have already testified to; were other threats communicated to you? A. Against me?

Q. Yes. I don't mean simply threats to take your life, but threats with reference to your wife, if any; that is, with reference to taking her away, or interfering—

Col. Gilmore.—I object to your leading the witness right to the answer you want.

Mr. Sloane.—I am doing it for the purpose of preventing him from testifying to something that we don't want.

Col. Gilmore.—You are full of resources.

Mr. Sloane.—And you full of technicalities to get a man's blood.

The Witness.—Yes; I think I can safely say that my woman did tell me—

Q. By Mr. Sloane.—Don't state that. You have already stated that only one occurred in the presence of your boy. From no other source; no one else tell you that you know of? A. No.

Q. When did you start to Washington Court House with your wife? A. On Friday, August 4th.

Q. Where did you start from? A. Started from our home at Massieville.

Q. Where did you go to? A. Come up to Mr. LaBeau's and left the horse and wagon.

Q. Mr. LaBeau is the husband of the lady that was on the stand, Mrs. Christena La Beau? A. Yes, sir.

Q. You came there? A. We came there early in the morning and left the horse and buggy, and took the train on the narrow gauge to Washington Court House.

Q. From Washington where did you go? A. Hired an express there.

Q. Where were the goods? A. The trunk and rocking chair were at Mr. De Witt's, but her goods were still at the depot.

Q. What was this rocking chair? A. It was a keepsake from her mother. The balance of the goods were at the depot.

Q. And you went out in the wagon and got the trunk and rocking chair at the farm. A. Yes, sir.

Q. And you got them without trouble? A. Yes, sir; we got them and re-shipped the goods back to Chillicothe, marked them and got them billed, but they could not be shipped that evening, and we took the trunk and rocking chair.

Q. State what you did when you returned? A. Went down to Mr. La Beau's and got the horse and wagon and come back and put the trunk and rocking chair in, and my wife and I returned home.

Q. You may state whether you remained at home that Friday? A. Yes, sir.

Q. The next morning did you go anywhere? A. Yes, sir.

Q. Where? A. I came up here to Chillicothe, that is I came to Massieville and stayed there until the mail man got ready to come up, and I got in with him and came up here.

Q. You may state whether, or not, you had on the same suit of clothes, at least the same coat on, that day when you came up from Massieville, that you had on the day before? A. Yes, sir.

Q. Where did you go to when you came to town? A. Well, I got out somewhere opposite, about Mosher's grocery, I believe, somewhere in that neighborhood, and went to Mr. Lindley's office, the land agent.

Q. For what purpose? A. To inquire about some property he owned down on the Cincinnati and Marietta Railroad. Before that I had employed him as my agent, to try to sell my farm down there, or trade it, and I had come—or I understood he had some property down there, and I come up to try to make a trade, sale, or something, and he tried to trade my farm for some property down there; he had some in view.

Q. You had talked with him? A. I had talked with him; yes, sir.

Q. Where did you go from his office? A. I started to go home and went down as far as the narrow gauge—not as far as the narrow gauge depot; I stopped at the restaurant this side of the narrow guage to take some dinner, thought I would take some dinner before I went on, and I got through dinner and I concluded I would go back and see Mr. Lindley again further about some property in a different place.

Q. Do you recollect the particular matter that you wanted to come and see him about? A. I don't, as there was—

Q. You can just state whether you recollect it, or not. A. I don't recollect; I believe—

Q. Well, did you find Mr. Lindley at his office? A. I did not find him at his office, no sir.

Q. Mr. Lindley's office is over on that side of the street, in the Carlisle building, is it not? A. I am lost in here; I don't know. It is on the east side of Paint street, I believe.

Q. His office is up stairs? A. Yes, sir.

Q. When you came down from his office, you may state where you went, and in what direction? A. I went down on the same side of the street, and I may have stopped in Mosher's, I don't know; I went down that side of the street, and on the way home until I came to Mr. Adler's saloon; I concluded to stop in there and take a glass of beer.

Q. I will ask you to state to this jury whether, or not, you had seen Ben Wiltshire, before that time, that day? A. No, sir; I hadn't thought of seeing him. I stopped in Mr. Adler's saloon and there was quite a number of men in there and the first man that spoke to me was Ben. He stepped up and said, "How do you do, Daniel?" I shook hands with him in a friendly way. I don't know as we said anything more. I asked him if he would have something to drink, and he said he never refused. We took a friendly drink together. I believe I took a glass of beer and he took a little whisky; and he started—

Q. Well, did that conversation occur between you before starting out? A. Yes, sir. He started out, or made a motion as if to go out, and I believe one of us, I think he said, "I would like to have a talk with you"; and I

agreed to it. I told him I thought I would like to have a talk; and he then went out ahead of me; I followed him, and we went and turned to the left and turned around the corner and went down a cross street.

Q. Well, that minute when you got out on the pavement, was anything said; which, if anybody, proposed going further than the pavement, than the place where you went out? A. Not just at that place there was nothing said. We got a little further on around the corner and he proposed to—

Q. But Adler's saloon is on Paint street, is it not? A. Yes, sir.

Q. I mean when you went out of the door, state if either of you proposed to go to any particular place, and if so, where was it? A. Well, I believe Ben proposed to go down to another saloon he said we would strike another saloon down there; I believe he did.

Col. Gilmore.—If the Court please, I want to raise the question here. I don't know as there is anything in it, but the books say that the rules of evidence in criminal cases are precisely those of civil cases; and if this were a civil case, would the party be permitted to testify to conversations between himself and the deceased man?

The Court.—I think you have offered testimony here of what transpired at this saloon and what was said and done.

Col. Gilmore.—These conversations that are now being elicited by the counsel for the defendant, are conversations that occurred after leaving the saloon and between the deceased and the prisoner, nobody else being present.

The Court.—I think it is competent to go on and testify to all that passed between them.

Col. Gilmore.—Well, I simply wish to say to the Court that in our opinion the rules of evidence don't permit it, and to cite—

The Court.—Well, simply because he would not be able to testify in his own behalf, or testify as to declarations, or conversations that he had. I apprehend in a civil case where the very question would be the same as it is here, he might do it, as reflecting upon a question of malice, most undoubtedly, I think, even if he was sued in a civil case for damage.

Col. Gilmore.—He could testify to conversations between them?

The Court.—Yes, sir. Suppose this were a civil action now between him and the deceased with reference to damages, I think he could testify.

Col. Gilmore.—It seems to me that it is in violation not only of the rules—

The Court.—You have tracked the deceased and the defendant from Adler's saloon, every step of the way, as far as you could go, in regard to the matter, which is certainly proper and right; and certainly now, as he is made a witness in the matter, he is to be heard.

Col. Gilmore.—To be heard as to all facts which, by any possibility, in the nature ot things, rebut the fact of his knowledge of the death of the deceased.

The Court.—You overlook the fact that these conversations are a part of this transaction.

Mr. Sloane.—If I may be permitted, I would suggest that the conversation is competent for another reason; that the parties here are the State of Ohio and Daniel Giddings. It is not a question between Ben Wiltshire and Daniel Giddings.

The Court.—I think it is competent, without enumerating reasons that might made it competent. You can go on and the state can reserve the question.

Q. By Mr. Sloane.—Now from the time that he said come on down there to strike the saloon, you went on together? A. Yes, sir; we went on down until we came to the next street running north and south, but I don't know the name of it myself.

Q. You mean the street that runs parallell with Paint street. A. Yes, sir.

Q. Mulberry? A. Mulberry. We got there and turned to the right and went on as far as what is called Struble's saloon and we went in.

Q. I will ask you at that point whether, or not, you knew that saloon then, or have since learned that was the name of the saloon? A. I have since learned it. I never knew the name of the saloon; never was there before.

Q. Well, go on. A. We entered the saloon, both. I believe Wiltshire went in first, and he called for the drinks, asked me what I would take. I took a little blackberry wine, I believe, and he took a little whisky—but did you want me to relate that?

Q. Yes, just state all that occurred in there. A. Well, either before, or after the drinks, I don't remember which, Wiltshire stuck his nose down on some Limberger cheese, I believe it was, on the counter, and held it there a while, and I suppose it made him sick, and he throwed up, vomited some on the floor, and I didn't like the looks of it and I started out; I says, "Come on, Wiltshire, don't make a hog pen of the house." And so we went out and went on down toward the cornfield south, walked on down.

Q. You may state whether you came to the railroad, or not? A. We came to the railroad, I believe, and there was some conversation about going down through the field.

Q. State what that was. A. Well, I was just thinking.

Q. If either of you suggested the going another way, or going down to the cornfield, just state what it was? A. We went on down until we came to the railroad and before we got there, he proposed that we go down to the cornfield; there was a shade there and we could have a talk; and after we crossed the railroad, I kind of turned up that other street, and I told him I believed I would rather go home the pike, it was a nearer way, and he finally insisted that we go down in the cornfield, there was a shade and we could have our talk there, and I finally agreed to it, and we went on and went down past the slaughter house, went through the fence and went down a little bank, and there was a run there, a mill race.

Q Did you notice anybody as you went down, standing up in the street? A. I think I noticed a young man on the left hand.

Q. Did you recognize him here, at any time, on the stand? A. I didn't recognize him; I didn't take notice enough to him that day.

Q. Well, go on. You had come to where you had to cross the mill race. A. We got down to the run and found we could not jump across it and I picked up a rail and told Wiltshire, "Here's a rail." I threw the rail across, and said he, "I don't want to walk across; that's too small for me." And he went and got a pole, it looked like a young round limb broken off a tree, and he threw it across and walked across on it, and we passed across the cornfield leisurely.

Q. Now, you may state how you were situated with reference to each other; I mean which ahead and which behind. A. Well, my recollection about it is, sometimes he was a little ahead and sometimes I was; sometimes we both walked about together.

Q. About the time of crossing the race did you see anybody in the cornfield? A. Well, I saw a man, but I didn't know his name at the time; I know him now.

Q. Was he one of the witnesses upon the stand? A. Yes, sir.

Q. Who was it? A. Mac Pickens.

Q. You saw him there? A. Saw him, yes, sir.

Q. Well, go on. A. We walked on across the cornfeld leisurely, talking about common-place matters; didn't talk a great deal about anything; some; and we got very nearly across the field and Wiltshire kind of took out to the right ahead of me where there was a couple of logs, and he sat down on the largest log.

Q. You may state whether you followed him to the log? A. Of course I followed him up nearly to the log. There was two logs, one large and one smaller.

Q. Now state just what occurred there. A. I came up to the small log and Wiltshire went over on the large log and sat down, and he pulled off his

hat and laid it on the log. "Now," says he, "by God, what do you want to tell me?" I stepped up to the little log, and says I, "Ben, Mary has come back," and says I, "She has repented of her conduct and her sin; I have forgiven her. She has promised to be a true and faithful wife to me, and you know that you have a great influence over her, and now, I beg of you for God's sake, and for my sake, and for my children's sake, not to have any further intercourse with my family"; "improper intercourse," I believe, I said. Says he, "You be damned." Says he, "I have as much right to your wife as you have. I have come down here to take her away from you, and by God I will shoot you but what I will get her away." As he spoke he was sitting on the big log and he raised up this way (witness illustrating) and threw his hand behind him. Well, just at that time, I suppose the shooting occurred. I was very much scared and excited and I recollect of having a revolver in my hand and pointing it and seeing him fall.

Q. You may state to the jury whether you have any idea which shot was fired first? A. I have no idea about shots; I have an idea about, I believe—I don't know whether I fired one shot, or two, or a dozen.

Q. Very well, go on and tell what next you did; where you next found yourself, if you recollect at all. A. Well, my recollection is very dim. It appears as if there was a blank there. I did recollect of seeing some driftwood, is the first thing I recollect of seeing, and when I first realized the condition I was in, and what I had done, I was about half way up to the bridge with the revolver in my hand, carrying it this way (witness indicating). I don't know how I got away from there, or what direction I took around the logs.

Q. Or whether you went over them? A. I don't know.

Q. Well, when you say you came to yourself and discovered the pistol there, what did you do with it? A. I put it in my pocket.

Q. Do you recollect of seeing Mrs. La Beau? A. I don't recollect of seeing her.

Q. Crossing the bridge? A. I got over the bridge, I believe; I recollect crossing the bridge, but I didn't notice any person. I recollect of being on the pike and went down the pike. I struck the woods by the hills over there somewhere.

Q. Well, is it a fact, as stated by some of the witnesses, I forget their names, that you went out of your road a considerable way west? A. Yes, sir.

Q. You may state to the jury, after you realized what had been done, as you have stated, what your condition of mind was, with reference to fright, or fear? A. Well, to tell you the truth, I was frightened nearly to death; my mind was nearly unbalanced.

Q. You finally went home, did you? A. I finally went home.

Q. Well, you can state to the jury where you were for two or three days before you came and delivered yourself up? A. During the whole period?

Q. Yes, where you were, whether around in that neighborhood, or whether you went away? A. I didn't go away any distance; I was down in the woods.

Q. But you were in hiding? A. I was in hiding; yes, sir.

Q. I want to ask you about a conversation that Columbus Lindsey testified to, about your hunting for your wife, asking if he had seen your wife, and that you thought she was crazy, and that you had said to Ben Wiltshire, at one time, if anybody ever come between you and your wife, you would shoot him. State whether, or not, you recollect of that conversation? A. Where did he say that occurred; that conversation? I have forgotten.

Q. I have forgotten too. He lives in Massieville; my recollection is, he said it was at his house. A. I heard that evidence; it was yesterday, was it not? I heard that, but I can bring no such conversation to recollection. I may have told him all of that; my mind was in such a state that I would say and think most anything. I may have said it and forgotten it.

Q. What do you say as to the Lockwood conversation? A. I have no recollection whatever.

Q. You don't say that you didn't have it? A. I don't deny that I didn't say it; my mind was in a very distracted state; very distracted condition.

Q. Now you heard the testimony of Mr. Eichenlaub, that some three or four or five weeks prior to the homicide, you were in his back saloon. Do you recollect the testimony? A. I recollect the testimony; yes, sir.

Q. Well, what do you say about that? A. Well, I can recollect being in there one day; I suppose it has reference to that time I was in there; I recollect of being in the back room there and sitting there a while, but I don't recollect the other, of starting to the door and having that conversation with reference to Wiltshire, I don't recollect that part of it. However, I don't know as I can conscientiously deny, but I don't recollect of that part. I recollect of being in there and sitting there a while and coming out; in fact I had been in, I guess, three or four different times in that very saloon. Sometimes I would go in there and sit down and rest and come out again, not take anything, at all.

Q. You may state what was Ben Wiltshire's condition when you met him at Adler's, when you were with him at Strubel's, or when you were with him at any time during that evening, after you saw him; was he drunk? A. No, sir; he was not drunk.

Q. Could you see that he was at all under the influence of liquor? A. I think he had been drinking a little; in fact, I never saw Ben in my life, that I didn't think he had been drinking a little, but I don't think, at all, that he was intoxicated, that is, to call drunk. He may have felt his liquor a little.

Q. You may state to the jury what your object in seeking the conversation with Wiltshire, that day, was? A. The thought in my mind was to kind of make a compromise in our affairs in some desirable way, some way without trouble. I knew that he knew that I felt hard against him, probably, and I wanted to——

Q. You may state whether it was to do what you asked him to do down there? A. Whether it was necessary?

Q. Whether your object in wanting to converse with him was that that you did ask him when you got down there—to stay away from your house and family? A. Yes, sir; that was my object.

Q. You may state also, to the jury, whether or not, you hoped and expected that he would yield to your solicitation in that respect? A. I had a hope of that kind.

Q. Now you may also, state to the jury, whether you went down there with him with any intention whatever or any desire whatever of doing violence to him? A. None whatever, sir; I had no idea of any violence and in fact I had no idea of seeing him that day; I was very much surprised to see him when I stepped into the saloon. I had no idea of violence, whatever.

Court took a recess until 2 o'clock p. m.

At 2 o'clock p. m. Court met and the case was adjourned until 9 o'clock Monday morning. on account of the sickness of Mr. Cline, one of the jurors.

MORNING SESSION.

MONDAY, DECEMBER 11, 1882.

Examination of Daniel Giddings resumed as follows :

CROSS EXAMINATION.

By Col. Gilmore.

Q. Mr. Giddings, how long after your marriage was it, before Arthur was born? What was his birth day, in the year, to start with? A. His birth day, I most forget ; I believe I don't remember his birth day.

Q. How long after your marriage before he was born? A. It seems to me nine or ten months ; I don't recollect.

Q. You were married in 1872, you say? A. Yes, sir ; I think so.

Mr. Sloane.—The 9th day of January, 1872.

Q. By Col. Gilmore.—The 9th day of January, 1872, that you think you were married. You say he was born nine or ten months afterward ; so soon as that? A. I think so ; I forget sir ; I could not say.

Q. You have shown a letter that you wrote to your brother Arthur during the time of your trouble down there. Was that the only letter you wrote to Arthur? A. Sir?

Q. You have shown a letter that you wrote to your brother Arthur. Was that the only letter you wrote to Arthur during this trouble you had ; was that the only letter? A. I think it is ; I can not say positively.

Q. Can not say positively whether it is or not? A. I think it is the only letter.

Q. You remember that letter distinctly, don't you? A. Yes, sir ; I recollect it.

Q. Then can't you say with equal distinction whether you wrote any there or not? A. No, sir ; I can't. I recollect writing that letter, after hearing it read.

Q. Would not you have remembered it before hearing it read, if you wrote that letter? I know that I wrote one.

Q. But don't remember whether you wrote any other one or not? A. I don't recollect positively.

Q. You say you had been acquainted with Ben Wiltshire only a year or so before this occurred? A. No, sir ; I believe I did not state that.

Q. What was it you stated? A. I said, I think, about two years, and might be more. I don't recollect of his acquaintance over two years before the trouble.

Q. What did you say about the last year previous to his death was your connection with him or relations with him? A. I believe I said I was acquainted with him more.

Q. Intimately or otherwise? A. Well, you might call it intimately, I suppose.

Q. You knew all about him, all that time, didn't you; knew his disposition, character and everything of that sort? A. Well, I don't think that I did know all about him. He always treated me friendly.

Q. There was nothing more than the acquaintance as you have an acquaintance with other neighbors around you, was there; that degree of intimacy that you had with Carter, for instance, and other men around you? A. Well, I was a little more intimate with him, I believe, than with some others.

Q. Then there were many others that you were just as intimate with, were there not? A. Oh, yes, some; I was probably as intimate with his brother as I was with him.

Q. William, you refer to? Yes, sir; we sometimes met and played the violin together.

Q. Who? You and Ben or William? A. All; all together sometimes.

Q. You spoke of the intimacy between your wife and Ben as dating from the time that Ben's child was sick, when your wife went there? A. Yes, sir.

Q. You sent her there, did you not? A. No, sir; I did not send her there.

Q. Didn't you first go on a visit to the family where the child was, yourself, and was not that the first intimation you got of the child being sick? A. No, sir; that was not the first information I got of its being sick, I don't think.

Q. You was to see the child while the child was sick; whether you went to see the child or not, you was there before your wife went, were you not? A. I was there at one time to see the child, but I don't remember whether it was before or not.

Q. Was not you there when Dr. Miller was there and Ramsey? A. I was one time when Dr. Ramsey was there.

Q. Was not Dr. Miller there, also? A. No, I don't think Dr. Miller was there.

Q. The disease was pronounced to be chicken-pox? A. Yes, sir.

Q. Didn't you first go over and then go home and send your wife over? A. I don't recollect that; I don't recollect whether I was there before my wife was over there on her first visit.

Q. You have told us about your wife leaving and going to Carter's, and also, leaving and going to Washington Court House. Was that the first time your wife had left you? A. No, sir; it was not the first time my wife had left me.

Q. On what other occasions did she leave? A. She left for a short time on one occasion while we lived up north.

Q. Where did she go then? A. She went home, to her mother's house.

Q. Was her father living? A. Yes, sir.

Q. How far from where you lived? A. About five miles, I think.

Q. How long did she remain at that time? A. Well, she was gone a week or ten days, I believe.

Q. Did she have a young child at that time? A. Well, the children were all young.

Q. Well, a very young child? A. Not a very young child, no; it was not very young.

Q. Less than two months old? A. Oh, no.

Q. On what other occasion did she leave you? A. She never left me on any other occasion.

Q. Didn't she go away from you and leave you with a very young child to take care of? A. Not that I remember of, sir.

Q. Did she ever leave you since you lived in Ross county and go to Erie county? A. She left me and went on a visit up north to her friends.

Q. When was that? Well, two or three years ago.

Q. Did she have a young child at that time? A. No, sir.

Q. The youngest child was then dead? A. The youngest child died up north before I came to Ross county at all.

Q. Well, you remember the birth of the third child, the youngest of the three that are now living, do you? A. Yes, sir.

Q. Now during the very early infancy of that child, did she not leave that child in your care, and go away? No sir, no sir.

Q. She did not? No, sir.

Q. You were still living in Erie county when that child was born? A. Yes, sir.

Q. How old was it when you left Erie county? A. I don't recollect the children's ages; I can not recollect that. I have tried to keep it in my head; it was up and running around; I don't know; two years old, may be.

Q. Now you are positive that she didn't, during the first three months of that child's life, leave you and stay away for some time, some days? A. Yes, sir; I think I am positive of that.

Q. Your wife washed for Wiltshire, did she not? A. You mean Benjamin Wiltshire, deceased?

Q. Yes, that is the one I am talking about? A. I recollect that she washed a shirt once, or twice, for him.

Q. Was that all? A. All that I know of. He brought them over to our house.

Q. At what period of time were the occasions that you do remember? A. Well, that was some time about the first of last July. It might have been a little later.

Q. Is that all the washing she did for him that is within your knowledge? A. That is all, sir, within my knowledge. I knew of him bringing a shirt two different times; that is all I know of.

Q. Did she wash for anybody else than your own family? A. I don't recollect as she did, sir.

Q. With this exception, I mean, of course? A. You mean go away from home to wash?

Q. Well, either go away from home to wash, or wash at home? A. I think, sir, she went to Mr. Theodore Lockwood's and done some washing for his wife on one, or two, special occasions.

Q. This was on one, or two special occasions; she did not make a regular business of it? A. No, sir; not a regular business.

Q. And the two, or three occasions you refer to, Mr. Wiltshire brought shirts there for her to wash were the only times that she washed for him? A. Yes, sir; I think so.

Q. That was, you say you think, about the first of July; It could not have been much later? A. It could not have been much later; It might have been along about the latter part of June, about that time. I took no notice of the circumstance at the time and of course don't recollect.

Q. At that time had you any information, or idea, that a criminal intimacy existed between your wife and Benjamin Wiltshire? A. No, sir; none at all. I hadn't any idea that any kind of intimacy existed; no suspicion, whatever.

Q. You have looked at this letter that you wrote to Arthur; that was shown you on the witness stand, was it not? A. I have not read it since I came into court, sir.

Q. Well, look at it now. That is your hand writing, and that is your letter, is it not, to your brother, Arthur? A. Yes, sir. Did you wish me to read it?

Q. Did you wish to read it? A. Not unless you wish.

(Witness examining contents of letter.) A. I guess I know about the substance of it.

Q. Well, that is your letter? A. Yes, sir.

Q. That is the point I want to get at. This letter is dated the 21st of July, 1882, you noticed, perhaps? A. I didn't look at the date, I believe.

Q. Well, that is the date, July 21, 1882. You speak here of Wiltshire's improper connection with your wife as having existed since the winter before, do you not? A. I suppose I had suspicions of it at that time, may be. That is the date, the 21st, you say?

Q. Yes, sir; dated July 21, 1882. A. Yes, sir; at that time I had probably some suspicion, but didn't believe it was a fact.

Q. "And sneakingly crept into the good graces of my wife and formed a criminal intimacy, which has been exisiting since some time last winter, but didn't come to my certain knowledge until a little over a month ago." Then at the time you wrote to Arthur, July 21, 1882, you had known of the criminal intimacy, you say here, of your certain knowledge, for a little over a month; was that true? A. What time would that make?

Q. Well, it is immeterial what time it would make. I want to know whether it was true when you stated to Arthur, in your letter, that you had known to your certain knowledge for a little over a month prior to writing to him? A. I don't understand it; in what connection?

Q. I will read it again. I will read the whole paragraph: "A devil in human form has sneakingly crept into the good graces of my wife and formed a criminal intimacy, which has been existing since some time last winter, but didn't come to my certain knowledge until a little over a month ago. By obversation and investigation I have found out all." Was that true when you wrote it to Arthur, that you had then for a little over a month known of it to your certain knowledge? A. What I stated in that letter to my brother I wrote a good deal on some things I had heard but thought was not true myself, really

Q. Then you didn't believe at the time that you wrote this letter that the facts were as you stated them to Arthur, in this matter; is that it? A. I hardly believed it; I had suspicions.

Q. But you hardly believed it, even when you wrote this, you say? A. No, sir; I hardly believed it then.

Q. Now, you say in this letter, "By observation and invistigation I have found out all." Was that true? A. Well, I can not say it was true. I might have thought sometimes, but sometimes I didn't. My mind was in a distracted state.

Q. You say you had found it out by observation. What do you mean by that expression? A. Well, I mean more from what I had heard than anything else.

Q. Well, hearing is not observation, is it? A. I suppose not in a real sense.

Q. Well, now then, what did you mean by telling your brother that by observation, you found it out? A. Well, I suspicioned things from seeing Wiltshire coming so often to my house.

Q. That was all? A. That is one cause of suspicion.

Q. Those things excited your suspicion, you say? A. Yes, sir.

Q. And because your suspicions were excited, you wrote as you did to your brother; is that it? A. Well, when I spoke of observation there, I went a great deal by reports.

Q. You didn't mean observation, then, at all, but meant by reports only; is that it? A. Well, I can not say, not, at all; but taking the thing altogether, what I would hear and what I had seen.

Q. What had you seen up to the time you wrote this letter to your brother? A. Well, the conduct of my wife and her conduct and disposion.

Q. Well, describe to the jury exactly what you meant. A. My wife was so distant and appeared to be dissatisfied with everything I could do, nothing pleased her.

Q. Is that all? A. Well, I can't describe it to you; she seemed to be alienated from me, and getting more distant all the time.

Q. And that you mean to say was all the observation that you had had at the time you wrote this letter? A. This of July 21st?

Q. July 21st. I ask it, however, more as a matter of appealing to your memory for the facts now, not was it what you say the letter said. A. The elopement; what time was that?

Q. I don't know. I am not asking to compare dates in that way, Mr. Giddings. A. Well, I can't make the statement without I have some connection of dates with that obversation.

Q. This was July 21st.

Mr. Sloane.—The elopement was on Wednesday, the 19th.

The Witness.—I had probably seen them together at Mr. Finley's before the date of that letter.

Q. By Col. Gilmore.—You probably had? A. I probably had. I don't know the date I saw them at Mr. Finley's.

Q. How long after your wife and Wiltshire had gone to Washington Court House, before you ascertained that they had gone there together? A. The next day after.

Q. Now, I will ask you if you didn't mean, when you used that expression, that it came to your certain knowledge a month ago, by certain observation, that you had in fact seen Wiltshire and your wife together in criminal connection in the woods? A. No sir, no sir; most emphatically no.

Q. Most emphatically no? A. Yes, sir.

Q. Up to the time you wrote this letter had you seen anything of that kind? A. No, sir.

Q. Had you seen them meeting in the woods together? A. No, sir.

Q. Hadn't, night, or day? A. No, sir.

Q. Saw nothing of that kind? A. No, sir.

Q. Then if this letter was written after Mr. Wiltshire went to Washington Court House with your wife, there was no other time after that when you could by any possibility, have seen them together, was there? A. No, sir.

Q. Mr. Wiltshire never was here, to your knowledge, after going to Washington Court House with your wife, except on the day when the homicide occurred, was he? A. Not to my knowledge.

Q. Then if you hadn't seen anything of that kind, that is a meeting between Wiltshire and your wife in the woods, a secret meeting, or criminal intimacy between them, or anything of that kind at the time of the date of this letter, you never did see it? A. No, sir.

Q. You remember distinctly the time at which your wife left your house and went to Mr. Carter's and stayed, do you? A. I recollect the time.

Q. When was that? A. I was going to say I don't recollect the date just now.

Q. Now, in answer to that question, you can compare by the dates that you can recollect, and see if you can fix the dates. A. The time she left my house and went to Mr. Carter's?

Q. Went to Mr. Carter's? A. You mean went there to stay nights?

Q. Yes, sir; I mean that. A. Well, that was immediately after she left Mr. Wiltshire's.

Q. By Mr. Wiltshire's, you mean Ben Wiltshire's father? A. Yes, sir.

Q. Were Ben Wiltshire's father and mother living then? A. Yes, sir.

Q. Are yet, are they not? A. Yes, sir.

Q. They are old people, are they not? A. Yes, sir.

Q. About how old? A. I am not much of a judge. I should suppose sixty years old, may be.

Q. Are they not a great deal older than that? A. Might be older than that—seventy.

Q. They live in that vicinity down there, how far from you? A. About three-quarters of a mile, I should think.

Q. Ben was living there with them, or staying there with them? A. Yes, sir.

Q. Was that the time one of Ben's children was sick, that you refer to now, that she had left? A. No, that is not the time that his child was sick.

Q. She had gone there afterward to Mr. Wiltshire's and remained there how long? A. I am referring to the time she left me in the summer, about the first part of July, or latter part of June.

Q. It was about that time that she went to Wiltshire's? A. Yes. sir.

Q. And was there about how how long? A. I think about three days.

Q. And from there she came home? A. Yes, sir; she came back.

Q. How long did she stay at home? A. That is the time she came back and wanted her clothes; wanted to go to work for Mr. Wiltshire.

Q. How long did she stay when she came for her clothes? A. Well, she stayed a week or ten days, I believe.

Q. When she came back that time? A. Yes, sir.

Q. And then she left you and went to Carter's, did she? A. Well, she did stay at Carter's, she had her things there and made her home there.

Q. Made her home there; well that is what I mean. Now I want to understand accurately, and I perhaps may be a little confused about that. Then after staying two or three days at old man Wiltshire's she came back to your house for clothes, but didn't take her clothes back right away again, but remained about a week at home? A. A week or ten days.

Q. And during this week or ten days she slept at home, and everything? A. No, sir; she slept at Mr. Carter's.

Q. Now that is what I want to get at. She did not then, after she came home, after being at Wiltshire's, stay and sleep at your house, at all? A. No, sir.

Q. She only came and stayed during the day time and slept at Carter's at night? A. Yes, sir.

Q. The whole of that time. Now, Mr. Giddings, how did she come to go to Carter's; I will ask you that? A. Well, she——

Q. Why didn't she stay at home all night? A. Because she said she never would live with me any more.

Q. I will ask you, if at that time, and when she came home for her clothes, you didn't order her out of the house? A. No, sir.

Q. I will ask you whether you didn't threaten to brain her, if she didn't leave the house? A. No, sir.

Q. Nothing of that kind? A. No, sir.

Q. I will ask you whether she did not charge you with threating to brain her, in the presence of Mrs. Carter and her husband? A. I heard her say that she charged me with it.

Q. She charged you while at Carter's with having driven her from the house, and threatening to brain her if she came in? A. She charged me with it at that time.

Q. You denied it of course? A. Denied it, sir; and do now.

Q. Didn't she tell you in that same conversation. that the reason why she stayed at Carter's at night, was that she was afraid to stay at your house at night.

The Court.—Of course the cross examination is of matters that transpired in the presence of witnesses.

Col. Gilmore.—I won't ask any question outside of the known presence of Mr. and Mrs. Carter; and you need not answer any question, Mr. Giddings, that I ask you in that connection, that was not in the presence of Mr. Carter and his wife. If I ask for any conversation or remark made between you and your wife, and nobody else present but you and your wife, I don't want you to answer it.

The Court.—It would be better, perhaps, to frame the question advising him.

Col. Gilmore.—I did so in the question, in the presence of Carter and his wife.

The Witness.—I didn't understand it in that way in the question.

Q. Now you can repeat, eliminating anything you have said, that didn't take place in the presence of Carter or his wife?

The Court.—Oh, no; he can go on.

Mr. Sloane.—We have no objection. Let him go on.

Q. By Col. Gilmore.—Then I will repeat the question; didn't she in that conversation, and in the presence of Mr. Carter or his wife, state to you that she stayed away from your house because she was afraid to stay there at night? A. She probably said so; I don't recollect it; she would say most anything, at that time.

Q. About what time was it that your mother came down? A. Well, I telegraphed for my mother very soon after my wife went away from my house for good.

Q. That is, you mean to Carter's or otherwise? A. When she left doing my work in the day time; left entirely.

Q. Where did she go then. A. Well, she shortly afterward went to Mr. Finley's.

Q. Well, she didn't come home in the day time, while she was at Scott Finley's, at all, then, but did do so while at Carter's house? A. You say she didn't come home while at Scott Finley's?

Q. Did she? A. I can't say postitive. She was backward and forward. Once in a while she came to see the children and where she came from I can not say now. Dates are kind of confused.

Q. Now you say you telegraphed for your mother to come? A. Yes, sir.

Q. Was that before your wife left Carter's? A. It was about that time. My wife told me she was going to leave me altogether, and I telegraphed my mother. It was before my wife's——

The Court.—Avoid anything that your wife told you. You might say you were informed.

The Witness.—Excuse me. It was then my wife took her things over to Carter's. She rather made her home there.

Q. By Col. Gilmore.—It was before she had taken her things which she had taken to Carter's, away from Carter's? A. Yes, sir.

Q. Did your wife come back to your house during the time your mother was there, except on the one occasion for her clothes? A. Yes, sir.

Q. How many times did she come back? A. Well, I can't say. She came back a few times; I don't know how many; probably three or four times; come back and talked with mother.

Q. You say she came back and talked with your mother and finally she came back and got her things? A. Yes, sir.

Q. Now at the time she came back to get her things, she told you it was for the purpose of going away to her mother's, up in Erie county, didn't she? A. Yes, sir; that was the understanding.

Q. Now at that time when she came after her things to go to Erie county, had you any knowledge of her criminal intimacy with Ben? A. Not any certain knowledge. I had suspicions, I had horrible suspicions, but I could not persuade myself to believe any such thing. I don't think I did believe it.

Q. Did you in presence of your mother, tell your wife to go away, and that you were glad she was going away? A. I don't recollect any such conversations. I know I was continuously trying to persuade her to stay.

Q. You always tried to persuade her to stay? A. Yes, sir; in one way and another, directly and indirectly and all ways I could think of.

Q. You had always lived happily with your wife prior to this time had you? A. Well generally. Sometimes we would have little differences, but it never lasted long; never was any lack of affection.

Q. There never was any lack of affection? A. On my part. Of course we would have little differences.

Q. I will ask you, if, in May last, prior, of course, two months prior to any of this trouble, whether there was any thought or talk of a divorce be-

tween you and your wife? A. Nothing that I know of, seriously. We talked of it in a joking way a good many times.

Q. It was all a joke, was it? A. Yes, sir; it was on my part. I had never thought seriously of anything of the kind, at that time.

Q. I will ask you, sir, whether in May last, you didn't in the presence of Mrs. Halderman—you know her, don't you? A. Halderman?

Q. Halderman. A. I know her, I believe, when I see her.

Q. You know William Wiltshire well? A. Yes, sir.

Q. I will ask you if you didn't, at that time, say to them that you wished your wife would get a divorce, and that you would give twenty-five dollars to any man that would swear a lie for her to get a divorce? A. Where did that conversation occur, sir?

Q. At your own house, on the evening of the day there was a celebration or an excursion here of the Knights, I believe, of St. George, when you were thinking about going fishing or preparing to go fishing. A. That was in May?

Q. That was in May; yes, sir. A. I don't recollect the conversation, but if such a conversation occurred it was nothing serious on my part.

Q. Were not you angry with your wife at that time? A. I don't think I was, sir.

Q. I don't understand you then, as denying but that you might have said in the presence of Mrs. Halderman and William Wiltshire, that you wished your wife would get a divorce and go away and that you would give twenty-five dollars to any man that would swear a lie to get her a divorce? A. I don't recollect any such conversation. I might have said so, but if I ever said any such thing at that time, it was certainly a joke, because I never had a serious thought of the kind, at that time.

Q. You say that at the time of her packing up her things, you confidently expected her to come back again after visiting Erie county? A. Yes, sir; that was the understanding.

Q. That was the understanding and you had no other thought at that time but that it was a temporary visit and she would come back again to your house and be your wife? A. Yes, sir; that was the promise.

Q. How did she come to pack up such articles, then, as a big rocking chair to go on a visit with? A. Well, I could not understand that at the time.

Q. At that time you had no strong suspicion, at all, of her infidelity? A. No, sir.

Q. You thought it strange that she was packing such bulky articles as that to go on a visit and come back again? A. Yes, sir.

Q. Did you ask any explanation? A I asked an explanation but could not get any.

Q. And that didn't excite any suspicion that she was not coming back? A. Well no, it didn't excite any suspicion that she was not coming back from the north. I, of course, encouraged her to go.

Q. Did she pack up all her things? A. I believe she said she had all of them.

Q. She had more than all of them, hadn't she? A. I never knew anything about it at that time.

Q. How long before you did know? A. I found out afterward.

Q. How long afterward? A. Well, I don't recollect. The circumstances and dates are so confused.

Q. You recollect that date that she started away under pretense of going to Erie county? A. I believe that was the Monday before the elopement.

Q. And the elopement, I believe it is admitted all around, was on the 19th.

Mr. Sloane.—Wednesday, the 19th.

Q. By Col. Gilmore.—On the 17th of July, that was Monday then; was that about the time? It was on Monday, was it? A. Yes, sir; it was on Monday.

Q. Beg pardon; then it was only two days before the elopement, instead of four or five days? A. Well, I think it was Monday; I am not positive; I think it was the Monday before the elopement.

Q. At that time still, you had no knowledge of her adultery? A. No, sir; I had no certain knowledge.

Q. And did you have any suspicion of it at that time? A. Well, I had horrible suspicions in my mind. I could not bring myself to believe that such was the case.

Q. You kept them to yourself, did you; didn't communicate them to her? A. I never communicated them.

Q. I don't ask you what you said to her, but only the fact whether you communicated them? A. I don't recollect whether I did, or not It is impossible for me to recollect, for my mind was in a distracted state.

Q. Yes; I don't mean about that. Just please be responsive to my question. Your counsel gave you full opportunity to state all you desired to state. Now, please confine your answers to my questions. You say you gave her money to go away with? A. I divided my money.

Q. How much money was it? A. I believe I had $10 or $15; I believe I gave her half, or more; I forget how much.

Q. You forget how much? A. Yes, sir.

Q. Did the thought suggest itself to you at that time, that this was not enough money to go to Erie county with? A. She said she had some money.

Q. I didn't ask you to state what she said. A. That is what she said, anyhow.

Q. Did this conversation occur in the presence of your mother? A. Yes, sir.

Q. Did you ask her where she got money? A. I don't recollect that I did.

Q. Did it excite your surprise that she should have money without your knowledge? A. No, not under the circumstances.

Q. What circumstances? A. The then existing circumstances.

Q. What were they from which money would be derived? Well, I could not tell you sir; she had simply said she had some money.

Q. Did she tell you how much she had? A. No.

Q. Well, was it before or after this departure that Carter, you say, told you about Wiltshire's attention to your wife? A. It was before.

Q. How long before? A. Yes, it was before, I know. Well I can not tell you how long.

Q. Did you have any conversation with Mrs. Carter after that conversation in which Carter told you his suspicions, up to the elopement? A. I had conversations with Mrs. Carter, I think.

Q. Between those periods? A. Between that time—I probably had; I don't recollect.

Q. Did you have any conversations with Mrs. Carter after the elopement, after the 19th of July, about your wife? A. Yes, sir; we spoke of my wife.

Q. When and where? A. Well, Mrs. Carter came over once or twice to take care of the milk in the cellar. I think she spoke of it one morning; I don't recollect the date.

Q. That is the only one then, was it? A. We might have had other conversations.

Q. None that you recollect now? A. I was backward and forward to Mr. Carter's during that time.

Q. Did you have any conversation with Mrs. Trego? You known Mrs. Trego, do you not? A. Mrs. John Trego?

Q. Mrs. John Trego? A. Yes, sir.

Q. After Carter had told you what he did and before the homicide? A. I had some conversation with Mrs. Trego, but I can not tell you whether it was after or before the homicide. Well, I think it was before the homicide,

anyhow, that I had the conversation with Mrs. Trego, but as to the other, I can not tell you.

Q. I will ask you whether you told Mrs. Carter, in any of those conversations to which I have now directed your attention, those between the time of Carter's telling you, what he suspected and your wife's going away, if between those periods in any conversations you had with Mrs. Carter, that you had seen your wife and Ben Wiltshire in criminal connection, or words to that effect? A. No, sir.

Q. Did you tell her that you had been within ten feet of them while they were wallowing like hogs in the leaves? A. No, sir.

Q. Did you tell Mrs. Trego, in any conversation——

Mr. Sloane.—When and where?

Col. Gilmore.—I have directed the witness' attention to the conversation.

Mr. Sloane.—Well, I want the time and place of the conversation.

Q. By Col. Gilmore.—Do you recollect having a conversation with Mrs. Trego there on the street, at Massieville, between the store and the house of Mrs. Trego? A. I recollect of having a short conversation there at one time.

Q. Well, it is the only conversation you ever had with Mrs. Trego there, is it not? A. Oh, no.

Q. At that conversation did you tell Mrs. Martha Trego, that you had seen Wiltshire and your wife wallowing in the leaves like hogs? A. No, sir; that I had seen them?

Q. Yes, sir; that you had seen them. A. No, sir.

Q. Did you tell her that you were witnin ten feet of them when they were wallowing in the leaves? A. Not to my recollection, sir.

Q. Did you tell her at that conversation, time and place, that you had often seen your wife and Ben Wiltshire going into the woods together? A. No, sir.

Q. Nothing of that kind? A. No, sir.

Q. If you had said anything of that kind you would certainly have remembered it now? A. I think I would.

Q. You would not have forgotten? A. I don't think I could. I have not the slightest remembrance of any conversation like that.

Q. When was it that you first came to Chillicothe to see Wiltshire, after your wife came to Chillicothe from Scott Finley's? A. Do you mean after she came to Scott Finley's?

Q. Yes.

Mr. Sloane.—No, that aint the question.

Q. By Col. Gilmore.—She came from Scott Finley's here to Chillicothe and staid sometime, didn't she? A. Yes, sir.

Q. I will ask you, whether or not, when you thought she was in Chillicothe, was after she came from Scott Finley's? A. Well it was within a very short date.

Q. How many times did you come? A. I don't recollect how many times; several times.

Q. As many as three or four? A. Yes, sir.

Q. Five or six, you think? A. Yes, sir; it may have been even more than that.

Q. Now were you looking for your wife or were you looking for Ben Wiltshire? A. I was looking for both of them. I wanted to find my wife.

Q. You remember the conversation with Mr. Smart; I believe in your examination in chief that you remembered talking with him? A. Yes, sir.

Q. Was it these times when you were coming to Chillicothe, that you have now stated would be four or five or six, or more, was it these times that you referred to, when you told Mr. Smart that you had come determined to kill Ben Wiltshire, if you could find him? A. I don't think that I stated

that I came five or six times to kill Ben Wiltshire.

Q. You have stated that you did come up five or six times or more? A. Yes, sir.

Q. Now I ask you whether those were the times that you had mentioned or not, that you told Mr. Smart, you came to Chillicothe to killl Wiltshire? A. I suppose some of those times.

Q. Which one of those? A. Well there was once I come up to Chillicothe nearly crazy and I thought I would kill him if I would see him, and then I gave over the idea; gave it up.

Q. When was it you borrowed the pistol from Lyman Blair, the first time? A. I don't recollect.

Q. You did borrow the pistol from him twice, did you not? A. I don't recollect of borrowing it. I recollect of talking some about it; I don't think I borrowed it.

Q. Didn't you go to his house once, before he was out of bed in the morning, some three weeks before the homicide, and borrow that pistol? A. I recollect of going there; I don't recollect of borrowing any pistol; I may have borrowed one.

Q. Can you recollect whether you did or not? A. I don't remember distinctly.

Q. You had no pistol of your own at that time? A. No, sir.

Q. And you can not recollect whether you did or did not borrow a pistol at that time? A. No, sir; I don't remember; I may have borrowed one.

Q. When you borrowed one what was it for, at that time? A. Well, I suppose if I borrowed one it was with the intent of killing Wiltshire.

Q. You suppose if you borrowed one it was with the intent to kill Wiltshire? A. I suppose if I *did* borrow one.

Q. But you say you don't remember borrowing it? A. I don't.

Q. But if you did it was for that purpose. Now sir, when was it that you remember of being in Eichenlaub's saloon, that you referred to? A. I can not give you the time, sir, at all. I was in there two or three times during the time my wife went away.

Q. You was in there two or three times? A. I think so.

Q. What were you in there for? A. Well, I went in there one time and sat down in the back room and stayed there I suppose——

Q. Was that the only time you were in that back room? A. It seems to me I went in there one time to take a lunch when there was some men out at the door.

Q. You remember that distinctly but you think you went in on one other occasion? A. I went in there once and took a lunch and I think I went in the back room and sat down. I don't remember the circumstance that Eichenlaub stated.

Q. When was that? A. Well, it was during the time that my wife was away; I don't remember the time.

Q. It was early in the time after your wife went away, was it not? A. I can not say, sir.

Q. You do remember being in there and going into that back room and sitting down? A. Yes, sir.

Q. Did you drink anything? A. I don't recollect that I did.

Q. What is your best impression about that? A. My best impression is I went in to sit down and rest.

Q. And your best impression as to whether you did or did not drink anything? A. I don't think I drank anything.

Q. Do you recollect talking with Eichenlaub? A. I may have said something to him, but I don't recollect the conversation.

Q. Was there any person else there but you and Eichenlaub? A. I don't recollect seeing anybody else at that time.

Q. What is your best recollection as to whether there was or was not anybody else there? A. I think there was not.

Q. Now then whereabouts in that room did you sit; how far back did you go? A. Well, I don't recollect. I guess I sat pretty well up toward the partition. I don't recollect distinctly.

Q. That is your impression, though, now, is it? A. Yes, sir.

Q. Was there a table by you? A. It seems to me there was, I can not say certain.

Q. Now Mr. Giddings, you recollect being at Eichenlaub's on that occasion; you can recollect going into that back room; you can recollect sitting down; you recollect that there was nobody else there—— A. Not distinctly.

Q. You have an indistinct recollection that you spoke to Eichenlaub; you remember all these things, but you say you can not recollect having followed Eichenlaub to the back door when a knock occurred there, and to have made the remark to him, "Oh, I thought it was Ben Wiltshire?" A. No, sir; I can't recollect that; I was thinking of that when he gave his evidence.

Q. You said in your examination chief, that when you went to 'Squire Mick's—that was the day after your wife left you, was it not, the day after she went to Washington Court House, I mean? A. Yes, sir; that was the day.

Q. The day after she went to Washington Court House you remember going to 'Squire Mick's office? A. Yes, sir.

Q. What did you say in your examination in chief you went to 'Squire Mick's for? A. Why to get some kind of an attachment for some goods.

Q. To get out a replevin, didn't you; was that what you said? A. I believe I said replevin or he told me I would have to.

Q. I am only asking you what you went for, not what 'Squire Mick told you. A. Yes, sir; I went for the replevin for some goods.

Q. And you distinctly remember that, do you? A. Yes, sir; I remember it.

Q. I will ask you whether or not you didn't ask 'Squire Mick for a warrant for larceny for stealing your goods? A. I think I did, first.

Q. It was only after Mick told you that larceny would not lie, that you asked for a replevin, then? A. Yes, that was after he told me that.

Q. You did then, purpose to have her arrested for stealing, did you? A. Well, I wanted to recover my goods in some way.

Q. You were thinking more just then of your goods, than of your love and affection for your wife? A. At that time I had tried to banish my wife from my mind.

Q. You had succeeded pretty well, hadn't you, if you wanted to arrest your wife for larceny? A. I didn't want to arrest her for larceny if I could recover the goods without.

Q. You are a man of sufficient education and knowledge of the world to know what larceny means? A. Yes, sir.

Q. You knew it was a crime you wanted her arrested for? A. Yes, sir.

Q. And you knew what the punishment would be if she was convicted? A. Yes, sir; I understood something of what it would be.

Q. And you admit that you did ask for a warrant for larceny? A. I don't know that I stated it in that form; in substance. I think I talked with 'Squire Mick and told him that I wanted to recover these goods in some way and he told me that a writ of replevin would be the best way.

Q Now Mr. Giddings didn't you use the words, "steal and larceny," in your application to 'Squire Mick? A. I don't know what I did use.

Q. Was not that the expression you made? A. I don't know what expression I made.

Q. The first expression of your wants to 'Squire Mick? A. I don't recollect the expression.

Q. I will ask you whether you stated anything about wanting to recover your goods before you asked for that warrant for larceny against her? A.

I can not tell you; I don't recollect which expression I used first, but I wanted to recover the goods.

Q. On that day, also, you did file an application for divorce didn't you? A. Yes, sir; not before that.

Q. Not before that? A. Immediately after that.

Q. It was in the afternoon of that same day, however? A. Yes, sir; I believe it was in the afternoon.

Q. And in that petition for divorce, you swore it was for adultery and so on; that is, swore to your belief of course? A. Yes, sir; the best of my belief.

Q. And the ground of the application upon which you wanted the divorce was by reason of her having committed adultery, as you swore you believed she had? A. Yes, sir.

Q. In the conversation with 'Squire Mick, what did you tell him at that time about your intention to shoot Wiltshire or kill Wiltshire? A. I might have said something about it; my recollection is very indistinct; I might have said something about shooting Wiltshire then or that I had intentions of shooting him at some other time.

Q. That you had the intention of shooting him? A. I might have said that I had intentions before that.

Q. Did you not tell him that you had come to town several times with the intent to shoot Wiltshire? A. I can not positively say that I did tell him so and I don't recollect.

Q. Why, was not that very subject uppermost in your mind, at that time? A. Yes, sir; that subject was uppermost; I don't recollect the conversation, all of it.

Q. Well was it, or was it not true that you was talking to 'Squire Mick, that you had come several times with the intent to shoot Wiltshire if you could find him? A. It is true that I had come once or twice before.

Q. Only once or twice? A. That is all; not over twice.

Q. Not over twice? A. I think not; I had given up the idea at that time.

Q. You had abandoned the idea at that time? A. Yes, sir.

Q. Well it appears you had abandoned it then, once at least, according to your statement, and reformed the purpose to do it again, afterward, had you? A. At what time?

Q. Why the second time? A. I didn't say I had abandoned the idea before I came twice.

Q. You kept the idea or purpose long enough to come twice. How long an interval between those two times? A. I can not say. Not very long.

Q. Two or three days? A. I was coming up continuously.

Q. Now was not the purpose in your mind, every time you came here, to kill Wiltshire if you should find him? A. No, sir.

Q. You swear positively, that it was not? A. No, sir; because I had given it up.

Q. Didn't you at that time, and when you came up to Chillicothe, have Lyman Blair's pistol on your person? A. At what time?

Q. At the times you came up to Chillicothe looking for Wiltshire and your wife? A. I don't recollect.

Q. Can't tell whether you had or had not; you do recollect coming up, but you can't tell whether you had a pistol with you in Eichenlaub's saloon? A. I don't recollect certain that I did.

Q. Young Smart was present, I believe when you had the conversation in 'Squire Mick's office, was he not? A. Yes, sir; he was present.

Q. You can remember that distictly. Now do you recollect with equal distinctess that you met him on Paint street, somewhere after leaving Mick's office, and had another conversation? A. Two conversations, you mean.

Q. Yes, sir; two conversations with Smart, one at Mick's office, partially with Mick and partially with Smart, and afterward a conversation with Smart on the street? A. Yes, sir; I recollect that.

Q Where was that? A. Well it was out somewhere near Judge Cole's office, I believe; I think somewhere out in that locality.

Q. Where were you standing; in or out of the house? A. Oh, we were outside.

Q On the pavement? A. On the pavement or very close to it; I don't recollect.

Q. It was not in the street. You would recollect that would not you? A. I think it was right out off of the pavement, may be.

Q. Toward the gutter? A. It may have been on the edge of the pavement. It was right there somewhere.

Q. Which way was Smart coming when you met him there? A. I can't tell you. I didn't notice in what direction he came. He stepped up to me.

Q. You remember his stepping up to you. What did he say first? A. I don't recollect distinctly. I think he told me he was a reporter for the paper; I think that was the first expression.

Q. Then what did he say? A. Oh, I don't know just what he said, but I understsod he wanted to get the facts about my case; that is the way I understood it.

Q. You readily gave them, did you? A. Well, not very readily. I gave him a few facts. I believe I told him I didn't like to give them.

Q. Do you recollect that? A. I think I may have said that, that I didn't want the case to be in the papers.

Q. Do you recollect whether you did or did not say that to him? A. I can not say, sir.

Q. Well, you went on from that to tell him what he wanted to know did you? A. Yes, sir.

Q. Now please repeat what you did tell him; can you do so? A. No, sir; I can not.

Q. Well, I will direct your attention then, to this; did you tell him at that time, that you had once left your wife, that you had discarded her, and all you wanted was to get your things back and she might go? A. I might have told him so, sir. I have no doubt I did. At that time I was trying to banish her from my mind.

Q. Did you also tell him at that time that she often told you that she cared nothing about you and that she would be glad if you would go away and never come back? A. She told me that a number of times after her connection with Wiltshire.

Q. After her connection with Wiltshire, you think? A. After the beginning of my trouble she told me that frequently.

Q. What were her words? A. Well, in substance, she didn't care anything for me and she wanted me to go away.

Q. And never come back? A. She might have said that.

Q. Did you also tell Smart in that conversation, that you had then ascertained that your wife had had criminal connections with a number of other men, besides Wiltshire? A. No, sir.

Q. What was it you said on that subject, if you said anything? A. I don't recollect saying a word in that connection, whatever.

Q. Didn't say anything of the kind? A. I don't think I did, sir.

Q. Well, was it true at that time that you did know that she had criminal connection with other men, committed adultery with other men? A. No, sir.

Q. It was not true at that time? A. No, sir; not to my knowledge.

Q. Then if you didn't know anything of that kind, at that time to your knowledge, could you have used the expression that I have quoted? A. Which expression?

Q. These in your remarks with Smart, that you had found out that she had criminal relations or committed adultery with other men besides Wiltshire? A. I could not have consistently told him any such expression, at all.

Q. You could never have done so, because you didn't know anything of that kind, at all, then, did you? A. No, sir; If I did say it I could not have meant it, I don't think; and not having known it I don't think I could have said it. I might have been told. There was great reports coming to my ears at that time and bad reports of my wife. I might have told Smart that I had been told this, but I didn't believe any such thing.

Q. You were not prepared to believe it even after she eloped with Wiltshire? A. I didn't believe she had ever had any connection with other men besides Wiltshire, because I always believed her character above reproach.

Court took a recess until 2 o'clock p. m.

AFTERNOON SESSION.

MONDAY, DECEMBER 11, 1882.

CROSS EXAMINATION.

Examination of Daniel Giddings resumed as follows:

By Col. Gilmore.

Q. Mr. Giddings, as Court adjourned at noon, you had just stated in answer to my question, that you didn't say to Mr. Smart, in a talk you had with him, over here at the foot of Judge Cole's stairway, that you had found out that other men had had criminal relations with your wife; you say you hadn't found out anything of the kind at that time? A. No, sir.

Q. Now when you went up to Washington Court House after your goods, your wife went with you, did she? A. Yes, sir.

Q. You didn't see Wiltshire up there, I believe? A. No, sir.

Q. You borrowed this pistol just before you went up again? A. Yes, sir; just the evening before I started.

Q. From Lyman Blair? A. Yes, sir.

Q. You took it up there with you, did you? A. Yes, sir.

Q. And brought it back with you, of course? A. Yes, sir.

Q. Where did you see Lyman Blair when you came back? A. I saw him down at his house.

Q. That evening after you came back? A. Yes, sir.

Q. Came back from Washington Court House with your goods, I mean; after you had been up to Washington Court House after your goods and came back, having boxed them up and brought part of them here, you went directly home with your wife. did you not? A. Yes, sir; I went home.

Q. What day of the week was that? A. That was Friday.

Q. You saw Lyman Blair there at your house that evening, didn't you? A. Friday evening?

Q. Yes, sir. A. I don't recollect that I did.

Q. Where did you see him after you came back first? A. I will correct myself. I didn't see him any more until Saturday evening.

Q. Correct yourself. What gave you the impression that you had seen him? A. Well, I was thinking of Saturday, instead of Friday.

Q. Going home you passed Lyman Blair's house, didn't you? A. No, sir; it is beyond.

Q. How far beyond? A. Oh, it is a quarter of a mile.

Q. You are sure you didn't see Lyman Blair that night, after you came home? A. I think not, sir.

Q. Didn't see him the next morning before you came to Chillicothe, either, did you? A. I think not; I don't recollect that I did.

Q. Do you think you would recollect if you had seen him? A. I think I would.

Q. But you have no recollection, you say, of having seen him, at all? A. I have no recollection of having seen him from Thursday evening until Saturday evening.

Q. Did you see his mother? A. I don't think I did; I don't recollect of seeing her.

Q. None of them were over to your house that Friday evening? I don't recollect. They might have been.

Q. You don't recollect of their being there Saturday morning either, before you left? A. No; we left very early Saturday morning, in order to get to the train.

Q. Saturday morning to get to the train? A. Oh, I meant Friday morning.

Q. Well, I am talking about Saturday morning? A. You mean Saturday morning before I came to Cnillicothe?

Q. Yes. A. You want to know if I seen Lyman, that morning?

Q. Yes. A. I don't recollect of seeing him, sir.

Q. Nor his mother, either? A. I don't recollect of it.

Q. You was not over there to their house? A. I don't think I was. sir.

Q. Well, what did you come into town for Saturday morning or Saturday at noon? A. I came up with the mail man; came up to see Mr. Lindley, I believe his name is.

Q. That was your only purpose, was it? A. That was my only purpose that day.

Q. Had you any other business in Chillicothe that day, that you know of or remember? A. No, other particular business. I might have bought a few things; I believe I bought a few cartridges.

Q. Well, they were merely incidental to your being here. You didn't come up for any other purpose than seeing Mr. Lindley, did you? A. No, sir; that was my main purpose.

Q. Now I will refresh your mind a little about seeing Mrs. Blair. Did you see Mrs. Blair on Saturday morning before you came to Chillicothe, and send word to Lyman by her, that you would not come to work that day, and that may be you would not come at all? A. I was thinking with reference to the house. I met Mrs. Blair at Lockwood's store as I came through, when I was waiting for the mail man.

Q. You did meet her there and talk with her? A. I met her there but I didn't recollect that. I didn't meet her at the house.

Q. Lyman was not there? A. I don't know; I didn't see Lyman.

Q. Well, you came in town and you say you got out on Paint street near Mr. Mosher's, and came up to Mr. Lindley's. Now had you any expectation or idea, or thought of seeing Ben Wiltshire that day? A. No, sir; none whatever.

Q. None whatever? A. No, sir.

Q. You went and talked with Lindley, went down to the Narrow Guage Depot, to get your dinner and then started back again? A. Well, I had started home; I thought of going home and stopped in and got some dinner and I thought I would come and see Lindsey or Lindley, whatever his name is, further about some property.

Q. Now what was the "further" that you desired to see him about? A. Well, to talk about trading; he had two or three properties in view around in that place on the Marietta road.

Q. You had talked that over with Lindley before dinner? A. We hadn't talked them over specially. only one, and I thought I would see him further about the trade. There was a property at Monroe that I concluded that I liked best and that I would see him further about that; and we had agreed to go down together but I didn't think I could be ready at the time.

Q. When were you to go down together? A. I disremember just the day; it was soon after that; I believe it was the next week, sometime; I don't recollect.

Q. You came back for the purpose of telling him you would not go or could not go? Was that it? A. Well, that was one thing, and to talk to him about his other property.

Q. By the way these properties, this one at Monroe—and where were the other two? A. One was at Cozzaddale, I believe they called it, and another I can not recollect the name, this side of Cincinnati.

Q. It was Cazaddale and Monroe then, that were the only ones you discussed and thought of exchanging for, was it not? A. It seems to me those were two of them.

Q. You were acquainted both at Cozaddale and at Monroe, were you not, in that neighborhood? A. No, not at Cozaddale; I was acquainted, though, at a distance from Monroe, not a great distance; two or three miles, probably.

Q. Did you ever live in the vicinity of Monroe? A. I had lived within, probably two or three miles; I had worked down in that section when I was fifteen years old or sixteen, somewhere along there.

Q. That was, then, when you got acquainted down there, was it? A. Yes, sir; some acquainted with the people.

Q. Monroe is in the same township where you were born and raised, up to the age of sixteen or seventeen, is it? A. I don't know whether it is in the same township or not.

Mr. Sloane.—It is in Fairfield township.

The Witness.—It is? Well, quite a distance away from where I was.

Q. By Col. Gilmore.—After coming up to see Mr. Lindley the second time, how far up did you go; clear up to his office? A. Yes, sir.

Q. Went to his office? A. Yes, sir.

Q. About what hour was that? A. I didn't note the time, it was after noon.

Q. Well, I wish you would fix the hour as near as you can. Was it as late as 1 o'clock or 2 o'clock? A. Oh, it was not 2 o'clock.

Q. Was it later than one? A. I could not say positive. I don't know just the time the mail hack came in. I believe it starts from Massieville about 11 o'clock.

Q. And it takes it about an hour to come here does'nt it or more? A. May be a little more.

Q. Then how long had you been at Lindley's, after you got up there the first time? A. I didn't stop at Lindley's a great while, the first time.

Q. As long as thirty minutes or more? A. I don't think I stopped that long.

Q. Well, perhaps fifteen. Then you had gone down to the Narrow Guage Depot; walked leisurely, I suppose? A. Well, I walked pretty brisk.

Q. Then you had eaten your dinner and come back to Lindley's. A. Yes, sir.

Q. The second time you say was somewhere near one or two o'clock? A. I don't think it was that late; it might have been.

Q. Was it as late as one? A. It might have been; I didn't take any note of the time. I know I went anyhow.

Q. You had no other business in coming to town than of seeing Lindley? A. Well, I got a few cartridges.

Q. You say you got a few cartridges? A. Yes, sir.

Q. Where at? A. At Mr. West's, I believe. I told Lyman Blair I would return a few cartridges with his revolver when I brought it back home.

Q. How many cartridges did you buy? A. I think about a dozen.

Q. You had the pistol with you then had you? A. Yes, sir; it was in my pocket

Q. Well, you hadn't fired any cartridges, however, at that time? A. No, sir.

Q. You had told Mr. Blair you would return him the same number of cartridges he lent you? A. I told him I would return a few cartridges.

Q. You had bought them with the view of returning him a dozen extra? A. I don't know what number I told him, but told him I would return him a few.

Q. Are you distinct in your recollection as to that? A. Well, I don't know.

Q. When had you been in Mr. Adler's saloon, before? A. Well, I don't recollect when I was in; may be a month before that.

Q. Why were you carrying that pistol that day? You had got back from Washington Court House and had no further use for it. You say you had borrowed it to protect yourself while in Washington Court House? A. Well, I had a sack coat, a gray coat and there was an inside pocket, and I had it in there the day I went to Washington Court House, and I put the coat on Saturday morning and forgot all about the revolver, didn't take any note of it until I got in the road.

Q. You could feel the revolver by the weight? A. I probably would feel it instinctively, but I don't remember of feeling it until I got out on the pike.

Q. May be you took it to West's to get the cartridges to fit? A. I knew the size.

Q. You knew the size? A. Yes, sir.

Q. You didn't have to have it then, at Mr. West's to get the cartridge to fit it? A. Not necessarily.

Q. Well, I will ask you, when you were at Adler's saloon before that day? A. About a month, I think; I don't know exactly.

Q. You knew Wiltshire was in the habit of going there, didn't you, before that day? A. I didn't know he was in the habit of going there no more than any other.

Q. While you were down there at the depot getting your dinner, did you hear of Wiltshire's coming into town? A. No, sir.

Q. Didn't know that he was at Adler's? A. No, sir.

Q. Didn't know of his being there until you stopped in? A. Yes, sir.

Q. The meeting was unexpected to you entirely? A. Yes, sir.

Q. He spoke to you first? A. Yes, sir.

Q. What did he say? A. "How are you, Daniel."

Q. Was he in the habit of calling you Daniel? A. Well, I believe he was.

Q. He called you Daniel that time? A. "Daniel."

Q. You recollect that? A. I think I can speak positive as to that.

Q. Now what was the next step between you and him? A We shook hands in a friendly way.

Q. What did you say to him when he said, "How are you Daniel?" A. I said, "How are you," I think.

Q. Did you call him by name? A. I don't believe I called over his name; I don't think I did.

Q. Just shook hands and said, "How are you?" A. I generally don't call a person by name when I shake hands. Sometimes I do.

Q. What next did you say? A. I don't recollect of saying a great deal until I asked him if he would have something to drink.

Q. And he replied that he never refused and you stepped up to the counter for drinks? A. Yes, sir.

Q. You drank beer, I believe? A. I drank beer, yes, sir.

Q. What sized glass of beer? A. Well, the common size.

Q. Did you drink it all? A. Drank it all, yes, sir.

Q. He drank whisky? A. Yes, sir.

Q. Before drinking, what, if anything, did you and he do? A. I don't recollect. We might have said, "Here's luck" or something.

Q. Didn't you clink glasses together and say, "Here's luck?" A. I presume so.

Q. What is your recollection about it? A.. I suppose that is the custom. We probably did that. I don't recollect distinctly.

Q. You say you don't recollect distinctly? A. Not of clinking glasses together, not distinctly; my recollection is not so minute, but I recollect we drank.

Q. Drank good health and good luck to each other? A. I don't recollect about the good luck. It might all have occurred that day, but I don't recollect it.

Q. How much whisky did he then drink? A. Well, I don't think that he poured his glass full. It might have been half full or two-thirds. I don't think he poured it full.

Q. Half or two-thirds full of whisky? A. These small whisky glasses.

Q. He drank it all did he? A. I guess he did; I didn't notice particularly.

Q. Then did you have any further talk while you were there? A. We might have said a few words to one another.

Q. They were in a friendly way? A. Oh, yes sir; everything we said in there was friendly.

Q. Everything you said in there was friendly? A. Yes, sir; on my part.

Q. I believe you said in answer to Mr. Sloance that he then told you he would like to have a talk with you? A. Well, we both spoke about the talk.

Q. Well, is not that what you said first, in answer to Mr. Sloane? A. Yes, but I have thought about that since, and I think that I proposed the talk first, myself, if I recollect. That occurred to my mind as soon as I saw him, that I wanted to talk to him.

Q. You think now you were mistaken that he told you he wanted to talk? A. Well he said he would like to have a talk after I said it first. I think I said I would like to have a talk first.

Q. Didn't you say in your examination in chief that he told you he would like to have a talk? A. Well, I guess I said that but since I have though it over, I think I proposed the talk first.

Q. Since you have thought over what occurred at the logs? A. No, sir; since I thought over the occurrences in the saloon.

Q. What changed your mind on that subject? A. Which, the saloon?

Q. Yes as to whether you told him you wanted to talk or he told you? A. I was uncertain in my own mind when Mr. Sloane asked the question.

Q. Now didn't you say this in answer to Mr. Sloane's question, that "He then told me that he wanted to have a talk with me, and I answered very well, Ben, I would like to have a talk with you, too." That was what you said, was it not? A. I suppose words to that effect.

Q. Now how could you be mistaken in a matter of that kind, and refresh your memory by thinking over it, as to both the remark that elicited the reply, and the reply? A. Well sir, the result of the conversation, that that

occurred afterward, and my thinking over that backward and forward two or three times about the talk, I think that I said I wanted to have a talk first and we mutually agreed on having a talk.

Q. How long did you stay in there after drinking? A. Oh, we did 't stay over three or four minutes, I don't suppose.

Q. Those three or four minutes you were talking together, were you? A. Well, we said some few words, I don't recollect what.

Q. Was Ben under the influence of drink, perceptibly, at that time? Did you notice it? A. Not very perceptibly. I noticed that he had been drinking a little.

Q. That is before he drank at that time, when you first saw him you noticed that he had been drinking some, did you? A. Well, a little, yes sir; I thought he had been drinking a little, but he was rational and all right.

Q. That was before taking the drink at Adler's. And then where did you propose to have the talk; what was said about that? A. Well, when he got outside Ben said we would go where there was not such a crowd.

Q. Was there any crowd outside? A. Inside.

Q. I know; but was there any crowd outside? A. No.

Q. Was any person there but you and him? A. There was not outside, no sir.

Q. Why didn't you have your talk there? A. Well, I just could not say. He proposed to go down and said we would go on down and strike another saloon; didn't seem to be ready to have the talk there.

Q. When he led the way to Strubel's, he did he? A. Well, we walked right along together side by side, as well as I recollect it. I don't know as there was any leading. I didn't think about leading. We walked along side by side along that cross street.

Q. What is the distance between Adler's and Strubel's? A. Well, I have not any idea. We took that cross street down to Mulberry street and then south to Strubel's saloon, and I have forgot——

Q. What is the comparative distance from Mulberry street down to Strubel's saloon, as compared with the distance from Adler's to Mulberry street? A. Well, I could not tell you, sir; I could not say that there was any difference.

Q. Adler's saloon is on the west side of Paint street, too, aint it? A. East.

Q. Well east side; I was mistaken. If the distance from Adler's saloon to Mulberry street is 800 feet, how much further was it than 800 feet from Mulberry street where you struck it, to Strubel's saloon? A. You are supposing that it is further to Strubel's saloon than to where we struck Mulberry street somewhat. Is it? Well now, in my judgment I could not say that I recollect it is further across there; I don't recollect the comparative distance, whether it would be further from where we struck Mulberry street to Strubel's saloon than from Adler's saloon to Mulberry street. I don't recollect enough about the distance to know whether either is further or not.

Q. Well, the comparative distance is about as far as from where you struck Mulberry street, where you struck Strubel's saloon as from Adler's to Mulberry street? A. I should think it was.

Q. Now what did you talk about in that 1,600 feet that you walked? A. Well we didn't talk a great deal about anything. There was a few common place matters we spoke of.

Q. Well, what were those common place matters? A. I don't recollect, sir. We didn't say anything in relation to my trouble, at all.

Q. No allusion made to it? A. None at all.

Q. By you or him? A. No, sir.

Q. Talked in a friendly way, though? A. Talked in a friendly way. I told him, I believe, among other things, that I didn't know of a saloon

down that way. He said he did; said we would strike a saloon down there.

Q. Was it a warm day or cloudly? A. I called it a warm day.

Q. Bright sun shiny day or cloudy day? A. It was a bright sun shiny day, I believe.

Q. Well, do you remember that it was a hot oppressive day? A. Yes, sir; it was a pretty warm day.

Q. Did you pass another saloon in going there, until you struck Strubel's? A. I don't know as we did. We didn't stop anywhere until we struck Strubel's.

Q. Then you went into Strubel's and you say Ben asked you to drink? A. Yes, sir.

Q. That time Ben took whisky again, and you took a little blackberry wine? A. Yes, sir.

Q. How much blackberry wine did you take? A. Well, I filled up the glass.

Q. Small glass or a large one? A. I don't know; it was not very large nor very small; a common wine glass.

Q. Did you drink it all? A. Yes, sir.

Q. Ben drank whisky again. How much? A. Well, he didn't take very much.

Q. Did you notice how much he took? A. It seems to me he didn't take over half a glass of whisky at that time; I don't think he did.

Q. That is your recollection of it? A. Yes, sir.

Q. Now was it before or after the drinking of the whisky, that the Limberger attracted attention? A. Well, that was a question to my mind in the other examination. I can't say positive. I know he put his nose down on the Limberger and it appeared to make him sick.

Q. Turned him sick and he vomited? A. It seems to me it was after.

Q. Had he shown any manifestation of being sick before that? A. No, not that I seen.

Q. Did he after that? A. Not that I saw, not after we went out of the saloon.

Q. Well, we don't care about going over the details of what took place in Strubel's after the vomiting, further than that you told him to "Come on and let us go now, Ben." A. I says, "Come on out." I says the words after the vomiting, "Don't make a hog pen of the man's house," something that way. I didn't like to see him vomiting on the floor and told him to come on out.

Q. Did he make any effort to get out of the house to vomit? A. Not that I saw.

Q. Was there any shade between Adler's and Strubel's? A. I don't recollect of any; might have been.

Q. Did you suggest to him, at any time in the long walk that you could have your talk here or there or anywhere else along the line of the road? A. It seems to me I said something to that effect, and he appeared to want to go on and strike another saloon.

Q. Where were you when you think you said that? A. After we left the corner of Adler's.

Q. Now do you recollect distinctly of having said that? A. I think that I said words to that effect.

Q. You don't know where that was? A. After we got out a little, out of the saloon.

Q. Was it under the shade of any tree? A. Not that I recollect.

Q. Just walking along. Where was it that he said he wanted to go and talk with you in the shade? A. That was after we left Strubel's.

Q. How far had you gone from Strubel's? A. Well, we hadn't got out very far. He proposed to go down that way.

Q. You hadn't thought once of that pistol, up to that time, had you? A. No, sir.

Q. Didn't know that you had it with you? A. Of course, I knew it, but I hadn't thought of it.

Q. Is it not a fact that you thought of it during this whole conversation? A. I hadn't thought of it during this conversation from the time I had seen him, but I was thinking about other things.

Q. You have testified that your wife told you before, that he intended to kill you on sight, haven't you? A. Well, she did tell me that he intened to to shoot me when he came down.

Q. You hadn't thought of your pistol at all, in connection with that, had you? A. No, sir; I can not say that I had.

Q. Well you went on down past this butcher shop that has been referred to. You say you threw down a rail. Was there no shade there on this side of Honey creek? A. Oh, yes; plenty of it.

Q. Did you suggest that there was shade enough to talk in? A. Yes, sir; I did.

Q. Was there not enough shade for him? A. He proposed to go on across the corn.

Q. And you proposed to go with him wherever he wanted to go? A. I said I would go. He proposed to go down that way when we got out of Struble's saloon, and I wanted to turn up that street there by the railroad, and he insisted on going and I agreed to go down with him.

Q. He gave no other reason for going down through the trees on this side of Honey creek and across the cornfield to the other side, than that he wanted to get to the shade, did he? A. Well, that was not a very desirable place by Honey creek. It was kind of a damp and muddy place.

Q. Well, there was shade up on the bank, before you got down to Honey creek? A. Yes, sir; there was some.

Q. It was not damp and muddy there? A. No.

Q. Did you suggest that there was shade enough to talk? A. I did suggest it and he still wanted to go on across the cornfield and I went.

Q. Had you crossed that cornfield before in that locality? A No, sir.

Q. You could see the place, though, as you passed? A. On the pike, yes, sir; I could.

Q. You knew that there was no road or path there, didn't you? A. I never had seen any road, but I didn't know anything about it.

Q. When you were crossing the cornfield you knew you would strike the creek at a place where it could not be crossed, didn't you? A. Of course, if we struck the creek at all.

Q. If any person testified that you led the way across the cornfield they are mistaken, are they? A. They are mistaken if they say I led the way all the time. We were sometimes walking together, sometimes one ahead and sometimes the other, is the way I recollect it.

Q. How did you come to pass one another that way? A. Well, Ben saw Mack Pickens, I believe, and asked me if I knew who that was aud I told him I didn't.

Q. He spoke about Mack Pickens. Did he tell you he knew who it was? A. No, sir; he didn't, he told me that he thought it was another man, but whose name I have forgotten, but he was mistaken, didn't know; and he stopped and looked at Mack Pickens, and at that time I think I got ahead of him, perhaps eight or ten feet.

Q. When he stopped where you saw Mack Pickens, that is the time you got ahead of him? A. I think so.

Q. You kept that distance ahead of him on across the corndfield? A. I could not say that I did. We walked together a good part of the way across the cornfield.

Q. You held up until he got up to you? A. I can't say positive.

Q. You didn't see him when he sheered off to the right a little, did you; didn't notice? A. Yes, sir.

Q. And you went on straight. Now did you notice that he had sheered of

until you got on to the edge of the brush and then turned round to see that he had sheered off? A. I was him all the time when he sheered off, and turned to the right.

Q. He was ahead of you then was he? A. Yes, sir.

Q. Positive? A. Yes, sir.

Q. That is your knowledge in the mere matter of recollection but you know he was ahead of you when he sheered off that way? A. Yes, sir; he went and sat down first.

Q. If you were going there together, why did you go off to the left while he went to the right? A. I don't believe that I went to the left any great distance.

Q. How far from the brush shade did he sheer off from you and leave you going straight on to the bank of the creek, while he took to the left? A. Well it was not very fair; I don't recollect the distance; not more than ten or fifteen feet.

Q. You mean at the time that he struck the brush and you stopped at the edge of the brush that you were only ten or fifteen feet apart? A. The time that he struck the brush?

Q. Yes, when he sat down at the log. Now how far off were you at the time you mean he sat down? A. At the time he sat down?

Q. Yes at the time he sat down? A. I was not over fifteen or twenty feet. I know I walked on up pretty close to him.

Q. Were you walking slowly or fast? A. Walking leisurely along.

Q. And you didn't walk any faster when you turned toward the edge of the brush to where he was sitting, that is when you turned and went west to where he was sitting on the log you walked no faster than you did anywhere else? A. I don't think; I don't recollect that I did; had no occasion to walk any faster.

Q. Now point out in the court room here how far you were apart at the moment he sat down. Where you as far from him as from where you are to this balustrade here? A. I can not say definite.

Q. Well was it about that far? A. How far we were apart when he sat down?

Q. Yes, and just at the moment he sat down on the log? A. I can not say? I don't think it was that far.

Q. Was it nearly that far? A. No, I don't think it was.

Q. Well, give me your best impression about how far you were apart at that instant, the instant he sat down on the log. A. I don't think it was over fifteen feet, if it was that.

Q. Then you were fifteen feet further down the creek, that is east of him? A. No, I was not exactly east of him; kind of come up quartering toward the log.

Q. Say this line is the creek (Counsel illustrating.) You were crossing here and he sheered off to the logs and you went straight on. Now then the creek don't run exactly straight——

Mr. Sloane.—You are assuming.

Q. By Col. Gilmore.—The creek don't run exactly east and west but at this point you observed he had sat down and you turned up that way toward him, did you? A. No, sir; I did not.

Q. Which way did you? A. I came up round, quartering, came up rather quartering to the small log.

Q. You yourself came up quartering to the log, as I understand you? A. That is my recollection. I didn't pass the logs.

Q. You were not conversing while crossing the cornfield, were you, at all? A. We may have said some things; I don't recollect.

Q. You have just stated that you had some little talk about this man who was plowing there? A. Yes, Wiltshire spoke and said who he thought it was, Sam somebody, I think. We said something about him and might

have said something more before we got across. We didn't say a great deal.

Q. Well, then you have told here about what occurred at the log. Wiltshire had laid his hat down, had he? A. Yes, sir.

Q. And sat down on the log, had he? A. Sat down, yes, sir.

Q. Before you got up. Did you sit down on either log? A. No, sir.

Q. Didn't sit down, at all? A. No, sir.

Q. As Wiltshire was there sitting on the log, which side of him were you on? A. I was on the side that we come into the field from.

Q. On the right? A. On rather the north side, I suppose; northeast, you might call it. The logs don't lay exactly east and west, I guess. I can't state positively, but it was on the northern side.

Q. Say that that was the log that he sat down on (Counsel illustrating.) Now that is north and south. Place that cane in something of the position that the log he sat down on was lying, as to direction. This is north and south and that is east and west. A. Well, I don't know. I know it was laying a little quartering one way or the other, but I cant recollect; could not say positive. I know that small log was pretty close to this large one. I came up to the small log pretty close to where he sat down.

Q. Which way was he facing when he sat on the log? A. Facing this way.

Q. Sitting with his face toward Chillicothe when he sat down? A. Yes, sir; that is my recollection, toward the cornfield.

Q. But you were on the east side of him? A. No, sir; not east.

Q. East and north then? A. It is my impression east and north.

Q. Call that cane the log and here is Wiltshire sitting at that point (Counsel indicating)———A. This large log and this small log was pretty close together. My impression is that after he sat on the log, I turned and came up this way, pretty near opposite, pretty close. (Witness indicating.)

Q. Did you step up on the small log? A. I may have had my foot up on it; I don't recollect.

Q. How long after you got up to Wiltshire before anything was said between you and him? A. Well, it was right away; immediately, almost.

Q. Well, up to that moment there had not been one unfriendly word between you, had there? You had met as friends, drank together as friends, walked together as friends and talked together as friends, up to that point, had you? A. I believe we had, sir.

Q. As soon as you came up who spoke first? A. Wiltshire.

Q. Please repeat again what he said? A. He sat down on the log, laid his hat down; "Now," says he, "By God, what do you want to say to me; what have you got to say to me?"

Q. "Now. by God, what have you got to say to me?" A. Yes, sir; about that.

Q. And you didn't say anything to him until he had said that to you? A. That is my best recollection.

Q. You say his manner was he threw himself back on the log. How did he throw himself back. A. Threw himself back on the log?

Q. Yes, and ask you. "Now by God, what have you got to say?" A. Well, he sat down on the log and threw his arm back.

Q. He was sitting down on the log when you came up? A. Yes, sir.

Q. When he was already sitting down on the log, what do mean by saying he threw himself back on the log? A. Well, put his hands back this way on the log (Witness illustrating); didn't throw his body back, not any distance; sat with his hands back that way.

Q. Well, then what next? A. Well, it was in substance what I told in the other examination.

Q. I would like for you to repeat it. A. Said I, "Mary has come back.

Q. What did he say to that? A. He didn't say anything until I got through with that part of it.

Q. He waited for you to say all that you had to say without interrupting you or putting in a word, did he? A. He didn't interrupt me until I made that statement I made in the examination here.

Q. Can you give us literally now or substantially, the whole talk that took place between you? Just go over it. A. That was the whole of it.

Q. What was? A. Says I, "Mary has come back," says I "She has repented of her conduct and her sin"——(Witness exhibiting emotion.) "She has promised to be a true and faithful and loving wife to me; and you know that you had a great influence over her; and now I beg of you for God's sake and my children's sake——(At this point the answer of the witness was again interrupted, apparently in an effort to control his emotions) ——"not to interfere with my family relations again," or words to that effect.

Q. Or words to that effect. Do you think that was all you said, Mr. Giddings, at that time? A. That is all I can recollect.

Q. Did you speak deliberately to him? A. I spoke slow.

Q. Well, he sat and listened to all that before he said anything, I understand you? A. He sat and listened to it.

Q. Did he move at all while you were saying that? A. I don't think he did.

Q. You don't think he did? A. Not much; didn't move out of his position.

Q. Now I would like to have your position while you were saying that to him, just exactly; how your own person was situated? A. I was standing by the small log right in front of him, not over three or four feet, I guess.

Q. Well, now go on from that point and let us see what took place? A. Well, he says, "You be damned."

Q. Was he still sitting when he said that? A. Yes, sir; says he, "I have as much right to your woman, as you have."

Q. Still sitting when he said that was he? A. Yes, sir.

Q. Well? A. Said he, "I've come down here to take her away from you and by God I will shoot you but what I get her away."

Q. Still sitting when he said that? A. No, sir; as he said that—the log is high—he slid down off the log and reached his hand behind him.

Q. Well, show us, as exactly as you can, his position at that moment. A. I can't show the position without a log here.

Mr. Sloane.—Well show as near as you can.

The Witness.—Well, say that is something about like the log. (Witness illustrating.) Now I can't recollect anything more than the position, and this, (witness placing his hand behind him). He was talking in a pretty loud and violent manner when he got that far. Says he, "By God, I will shoot you, but what I get her away from you." And just as he said that I seen his hand behind him.

Q. Did you see any pistol? A. I didn't see any.

Q. Didn't see any at any time, did you? A. Not on his person, no sir.

Q. Not on his person or about him? A. No, sir.

Q. He had thrown his had around to his pistol pocket, you think? A. Yes, sir.

Q. Before you made any motion, whatever, and had said all that you now say he said? A. No, sir; just at the time that he threw his hand around was when he said, "By God, I will shoot you," just at that moment, at that time he threw his hand.

Q. Well, where were your hands at the time he said that? A. Well, my heart came right up in my throat.

Q. I was speaking about your hands, not your heart, Mr. Giddings. A. Well, I've got to explain my heart before I can tell anything about my hands.

Q. I don't know that you have. State where your hands were, if you can recollect. at that time? A. I got hold of my revolver, I suppose or I could not have killed him.

Q. Don't you remember of drawing your revolver? A. I don't recollect it distinctly. I recollect pointing the revolver and seeing him drop, seeing him fall.

Q. Just illustrate how you pointed now. You say you were standing in front? A. Yes, sir.

Q. And he you say, was in this position. (Counsel illustrating.) Now just get up and just imagine you are pointing your revolver as you did? A. Well, we was in pretty close quarters, I suppose. I recollect of having my arm out and I seen his body reel over in between the two logs, and then appeared to be a blank.

Q. You remember the first shot, do you? A. I don't remember any number of shots.

Q. You recollect of drawing the revolver and pointing it, don't you? A. I recollect of hearing the report of the pistol. I don't know whether it was one shot or a dozen shots.

Q. How close was your revolver to his head when you fired? A. I could not tell you.

Q. Have you any idea? A. I know we were standing in close quarters, pretty close; I could not tell you, sir, whether the revolver was close to his head or not; I know I fired toward him.

Q. You do know that you fired toward him? A. I must have fired toward him.

Q. Toward what part of him? A. I didn't take any aim I just pointed it toward him.

Q. Were your heads about upon a level at the time you fired. A. I don't know whether they were or not. I don't know whether there was any difference how the grounds lay; I didn't notice the ground. When I was there my mind was so occupied upon the subject that was so on my mind, the one next my heart——

Q. You remember Mr. Wiltshire's position at the moment you fired; you have described that? A. Yes, sir; he slid down off the log. I think his feet must have been on the ground when he was shot.

Q. How when he fell, did he fall in front of the log or behind the log—the big log? A. I think he fell—my recollection is—I think he must have fell between the logs.

Q. You recollect that? A. I don't recollect it distinctly.

Q. Well you recollect it whether distinctly or indistinctly; you know he fell between the logs? A. I don't know; I think he did.

Q. Did his head hit upon the log when he went down? A. I don't recollect anything about that; but I recollect seeing him fall, but I don't recollect about getting away from there.

Q. I am not asking about getting away. You are still there at the point. In what position was his right hand at the moment you fired? A. It was still behind him, I suppose.

Q. You can remember that now, but can't remember what part you fired at? A. I didn't fire at any particular part.

Q. You didn't know where the ball struck him, the first shot? A. I don't know, sir; I don't know anything about where the ball struck him.

Q. And you can't remember about shooting the second time? A. I don't know whether I fired once or twice.

Q. You don't remember while his body was down, of bending over it and shooting him while he was down? A. I don't indeed. I don't think I ever fired a shot when he was down.

Q. You don't think you fired a shot when he was down? A. Pretty certain of it, because he was standing with his hands behind him when the shooting took place.

Q. He stood up then and received all the wounds that he did receive on his body, while he was still standing? A. I think so, yes sir; because I fired in succession and must have fired pretty rapid.

Q. It was not a self-cocking pistol? A. No.

Q. You had to cock and re-aim before you fired the second time? A. It had to be cocked before I could fire the second time, of course.

Q. And had to re-aim the second time? A. Of course I had to point. I took no aim.

Q. You say you don't know which way you started from the log? A. No, sir; there is a blank. I recollect something of some drift wood. I don't know how I got away from the logs.

Q. Before you got away from the logs at all, I want you to recall, if you can, whether you were standing on the small log or in front of the small log or anything of that kind, at the moment you fired? A. I don't think I was standing on it; I might have had one foot on it.

Q. Is it your recollection that you did have one foot on it? A. Not certainly. I think I was standing on the ground.

Q The little log would be between you and him, at that moment, would it? A. Yes, sir.

Q. If you were standing on the ground? A. I was close to it.

Q. If you had one foot on the small log in front of Wiltshire that is what you mean? A. I was in front of him, yes sir.

Q. I understand you as saying that Wiltshire was standing with his feet on the ground at the moment he was shot? A. Well, I think he was partially. I think his feet were on the ground.

Q. Well, do you mean by that that his feet were on the ground but that he was sitting on the log, too? A. He kind of just slid off the log, kind of leaning against it and standing on the ground, together. I don't know whether his feet were solid on the ground or not.

Q. Was supporting himself by the log? A. I think he was partially.

Q. Partially standing on the ground and partially sitting on the log? A. No, partially leaning against it. You know it is a very large log.

Q. Well, now was the center of that log high enough for him to have been leaning against it while his feet were on the ground and his body in anything like an upright position? A. Yes; his body was not in an upright position, not entirely upright.

Q. You are sure of that, are you? A. He was not straightened clear up.

Q. You are sure of that are you? A. I think so.

Q. Now can't you remember in what direction you held the pistol? A. I suppose I pointed it toward him.

Q. But you can't tell whether you shot him in the head or heart, or where? A. No.

Q. That position of Wiltshire's, was taken at the instant you shot, was it not? A. Yes, sir; or a little before the instant because he done that before.

Q. Well, all the words had been uttered at that time, hadn't they, that you have told about? A. He was just uttering those last words of his, as he reached behind him.

Q. Just uttering them? A. Yes, sir.

Q. Hadn't time to utter them all though, had he, before you shot? A. Well, he had uttered most of them. He reached behind him as he was uttering the last of them.

Q. Well, there was a failure of memory and everything at that moment, and you say to the jury that you can not remember anything about what occurred just at that instant? A. No, sir; I recollect of hearing pistol shots.

Q. Shots? A. Smoke.

Q. Saw the smoke? A. I recollect that I was in the smoke.

Q. How high did did the smoke rise? A. I don't know, exactly; could not tell.

Q. You did notice the smoke, though? A. I have dim recollection of that. There appeared to be a blank, but I recollect of seeing some drift wood, a pile of it, something like drift wood.

Q. You saw that after the firing? A. Yes, sir.

Q. Saw the smoke after the firing, of course, for the smoke was not there until after the firing? A. Of course. Just at the instant of the firing, probably. It might have been before the last shot or at the last shot. It appears as if my recollection ceased. I knew nothing; didn't realize anything that I had done until I got about half way to the bridge.

Q. But your recollection and consciousness didn't cease until after you fired the second shot? A. Didn't cease?

Q. Up to that time you had your consciousness, I suppose? A. Not entirely.

Q. Could you tell what proportion of consciousness you had and what proportion was gone, at that moment? A. At the firing of the second shot?

Q. Yes, sir. A. I tell you I can not speak distinctly in regard to moments. I recollect of pointing and hearing shots and then I don't know whether it was one or two or how many. I didn't until I heard the account.

Q. You didn't know, until you heard the account, afterwards? A. No.

Q. You didn't look at the pistol, afterward, did you? A. Well, I saw the pistol, yes, sir.

Q. Didn't know from the pistol how many shots you had fired? A. I suppose I had fired two, from the looks of the pistol. I didn't know anything certain.

Q. Where did you re-load that pistol? A. At my home.

Q. After night, Saturday night? A. Yes, sir.

Q. How many cartridges did you put in? I put in two; I filled it up just as I got it.

Q. It was fully loaded when you got it? A. Well, there was three in it when I got it and Mr. Blair gave me more to put in.

Q. And you put them in? A. Yes, sir.

Q. Then you filled up the chambers again after you got home? A. Yes, sir.

Q. What did you do with the pistol after you got home? A. Took it down and gave it to Mr. Blair that evening.

Q. That same evening? A. The same evening.

Q. Did you tell Mr. Blair what you had done? A. I didn't tell him a word, sir.

Q. You remember crossing the bridge, do you? A. I recollect being in the bridge, yes sir.

Q. I believe you said in your examination, that between the place of shooting and the bridge, you was nearly scared to death? A. Well, about half way, I should think, between the place of shooting and the bridge, was where I realized for the first, knew where I was, rightly. I was going along swinging the revolver. I had it out of my pocket.

Q. What did you do with the revolver as quick as you realized that? A. I stuck it in my pocket.

Q. And when you went across the bridge, you walked slowly, didn't you? A. Not very slow across the bridge.

Q. Where was it you commenced to walk slow? A. I was very much excited. It must have been after I got across the bridge.

Q. As soon as you came to any house or came to any person? A. I don't recollect seeing any person. I saw some houses.

Q. Then did you continue walking slowly until you got to the hill? A. I can not say, sir; I don t recollect; it seems to me like a dream from the

bridge to where I got to the hill. It seems to me I went up on Cook's hill.

Q. How do you know you went up Cook's hill? A. I don't know it; I suppose I did.

Q. What makes you think so? A. From what I heard since.

Q. From whom? A. Well, I have seen it in the papers.

Q. You got your impression from the newspapers, as to where you went? A. No; I have an impression, too, of it, sir.

Q. Which way did you take from Mr. Cook's hill? A. I don't know; I could not tell you.

Q. Didn't you re-gain consciousness then until when? A. I re-gained consciousness, that is sometimes I would be conscious in one place and walk on with my thoughts busy, like a crazy man for perhaps half a mile or a mile, before I would notice any locality, or notice where I was.

Q. Well, when you did notice where did you find yourself? A. Well, I found myself over the other side of Cook's hill.

Q. Then what did you do when you did notice? A. I kept on; I crossed the country to what I thought was my latitude. I went over and come down by Caldwell's, down that road, Trego's

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. Mr. Giddings, there are two questions I forgot to ask. I forget whether I asked them in chief or not. Did you suffer from palpitation of the heart? A. Yes, sir.

Q. I will ask you, also, to state whether, or not, you are prone to constipation? A. Very much,

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Mr. Sloane here read the following letter to the jury.

WALLER, July 21, 1882.

DEAR BROTHER ARTHUR: Ma requests me to send you a line, and I thought a few lines would be in place. A cloud is darking my life, or it seems as if I am in some terrible nightmare, but I am thankful the worst is over, also I am conscious that I have the deepest sympathy from my only brother and his good wife, and I hope your compassion for good or evil report, may always prove true and faithful to you as long as life lasts, and also that you may be the same to her and may love, unity, peace and happiness crown you both in the journey through life. It seems as if I am doomed to trouble, trouble almost too great to stand and keep a balanced mind. My mind has been tortured to desperation and had it not been for the love of my children and our dear mother I should certainly have done something rash, but out of regard for her feelings and in consideration of my poor helpless innocent children, I have so far desisted, my better judgement has triumphed and I thankful for it.

The circumstances attending the case from beginning to end have been aggravating in the extreme, I give you a mere outline: A devil in human form has sneakingly crept into the good graces of my wife and formed a criminal intimacy which has been existing since sometime last winter, but did not come to my certain knowledge till a litttle over a month ago. By observation and investigation I have found out all, I have been deeply wounded and greatly depressed, discouraged and maddened to a point of desperation many times, but the wound is healing. I once loved my wife

but now I have cast her out once and forever. her actions and that of her paramour during the past month have been so low, so degrading and so beneath all common decency public and above board, regardless of all respect for themselves or any one else as not fitting to be inserted here, I will not disgrace this letter with my details, suffice to say he is a libertine and a drunkard of the lowest type of humanity and deserves death in any shape. The guilty pair have carried on their operations under the guise of the greatest friendship, and until within the last month all has been kept very secret. Mary is as much to blame as he is and more too. My wife and her paramour took the train the day before yesterday and eloped. I have filed a petition for a divorce and my lawyer says there can be no possible failure of my obtaing it, so no more. Love to all, write me soon.

Your Brother,

D. GIDDINGS.

Mr. Sloane.—I desire now to offer this letter in evidence, the one written by the defendant to his brother on July 21st, as indicative of, and reflecting upon, the condition of his mind during that period.

[Letter handed to the Court for inspection.]

The Court.—I would ask Arthur Giddings, are you familiar with the hand writing of your brother?

Arthur Giddings.—Yes, sir.

Q. By the Court.—Is this letter in his hand writing? A. Yes, sir, I should say so at this distance.

Q. Look at the letter. (Letter handed to witness.) A. Yes, sir, that is his.

Q. That is his own hand writing? A. That is his own hand writing, yes, sir.

Q. It was received by you from the mail? A. Yes, sir.

Q. At Rochester, New York? A. At Rochester, New York.

Mr. Sloane.—Your Honor can examine this one, also.

(Another letter handed to the Court for his inspection.)

Mr. Sloane.—Did I understand your Honor to determine that I should read this letter to the jury, that is, to determine the admissibility of it?

The Court.—Wait until I finish this one.

Mr. Sloane.—Very well.

The Court.—Colonel, have you read it through?

Col. Gilmore.—I have read this letter; not the other.

The Court.—Have you any objection to make?

Col. Gilmore.—No, sir; no, sir.

(Mr. Sloane here read to the jury the first letter before referred to, being the one from the defendant to his brother, at Rochester, New York, post-marked at Waller, Ohio, dated July 23, 1882.)

Mr. Sloane here read the following letter to the jury.

WALLER P. O., ROSS COUNTY, O.,
July 23, 1882.

Mrs. Mary Giddings:—My poor disgraced and ruined wife, no longer dear to me, but alas! an object of pity whose present condition and future prospects is enough to make angels weep. Tears come to my eyes as I attempt to write. Mary, do you realize your dreadful condition and the fearful path you are paving for yourself? Your paramour, the miserable imp of Satan in human form that has always claimed to be such a friend to me. What is he? What is his record? It is only a question of time till he will cast you from him and spurn and desert you forever. Don't you realize that

fact? Don't you know that he will never have confidence in a woman that has acted as you have? He knows or thinks that you are as liable to prove untrue to him as you were to me. I was up to town Thursday, the next day after you eloped for Washington Court House, and learned all about it from the agent at the depot, and I saw Ben's name registered on the freight book of record. You and him tried to cover everything up so skillfully, but I have kept myself informed of all your movements so far. I have received a letter from your mother up North that contains very important news for you, but I suppose you care for nothing now but the embraces of your paramour. You poor ignorant child, the Lord only knows how I have suffered at heart for you, and how I have tried to save you. But all my efforts were vain trouble. To think that you would sacrifice your virtue, honor and standing in society, your name and most, and worst of all, to forsake your dear children for that guilty wretch—that drunken low-lifed "nothing"—not possessing the first principle of a man. He yet owes for his wife's coffin in Chillicothe. People tell me it was through his neglect and abuse that she died. He was in Chillicothe drunk at the time.

Well, Mary, I must close, when your paramour casts you off and all the world forsakes you and spurns you, then probably you will come to your sober senses; and you know what I have told you, I will not take it back. You will learn from the man that gives you this letter that I have filed a petition for divorce and will get it at October Term of Court whether you appear or not. I would like to hear from you if you choose to send a line by the Constable that gives you this summons. With great pity for you and eternal hatred for your paramour, I am still your husband.

DANIEL GIDDINGS.

(Mr. Sloane also offered to read to the jury the second letter above referred to, being the one written by the defendant to his wife, and sent at the time the summons was served in connection with the petition for divorce.)

Col. Gilmore.—I object to that because of very important erasures on the letter, most of them which seem to have been of a very recent date. That is the only ground.

The Court.—That is not a ground of objection to the admissibility, but of comment to the jury, perhaps. It will be as apparent to the jury as to anybody else.

(Objection overruled and the letter, dated July 23, 1882, was read to the jury by Mr. Sloane.)

WILLIAM KELLY called.

Direct examination by Judge Cole.

Q. Where do you reside? A. Down at Massieville.

Q. How long have you been living there? A. I was principally raised there.

Q. Were you acquainted with Benjamin Wiltshire, deceased, in this case? A. Yes, sir.

Q. How long were you acquainted with him? A. Well, I know him ever since I was a boy.

Q. Raised boys together, were you? A. Yes, sir.

Q. You may state to the jury whether or not, you saw Benjamin Wiltshire a short time before his death, last August or July, a month or so? A. Yes, sir; I saw him about a month before he was killed, I believe.

Q. Well, whereabouts was it you saw him, do you remember? A. Why, I first saw him at John Trego's pump; that is the first place.

Q. Where is that? A. That is up at the upper end of Massieville.

Q. Well. A. And then along in the afternoon—well that was rather in the afternoon, that I saw him there; and then in about an hour or more I saw him at Mr. Defew's barn. He come there to where I was at the barn.

Q And that is near Massieville, is it? A. Yes, sir; a the lower end of Massieville.

Q. Well. A. I saw him there.

Q. Well, did you have any conversation with him then in reference to Mr. Giddings? A. Yes, sir; we talked a little about Mr. Giddings and his wife at the barn.

Q. Well, what did he say. Just tell the jury? A. He told me—we were talking about working the roads and we got off on that to what I had saw at Trego's pump.

Q. Well, what had you seen? A. Why, Mrs. Giddings come out of Mr. Trego's door there and come down the pike and she spoke to us. A little bit after that, why, Wiltshire said he would have to go down to the post office and he went on and overtook her down, oh, I suppose it probably four or five hundred feet, just about where the culvert is there. and they walked down until they got down to the old foot log, and Ben turned off and went up the creek, and Mrs. Giddings went on down the road.

Q We don't care anything about Mrs. Giddings. Go on and tell about Ben? A. And so in a short time we went down the road, me and Mr. Lott, and she went back and went up the creek and then he come on down to the barn where I was. First he come to my house and I was not there and then he went on over to the barn where I was and we talked about the road, working the roads, and so finally he got off on to this. I told him that I had seen a bad move out of him by there. I didn't think it would lead to anything.

Q. Out of that you say you got on this? A. Yes, sir; on to what I am going to tell you. I told him he had better let that thing alone.

Q. What thing was that? A. That was about being after Mr. Giddings' wife.

Q. Yes; very well. A. And, oh, he said he was on top and he was going to stay on top and if Giddings fooled with him he would shoot him. That was at the stable. And we talked there a little while longer about one thing and another and finally he turned and went off.

Dr. R. T. Trimble called.

Q. Doctor, you are a physician? A. Yes, sir.

Q. Where do you reside? A. New Vienna, Clinton County.

Q. How long have you been in the practice? A. Nearly fifteen years.

Q. You are a graduate of what medical school? A. The University of Pennsylvania, Philadelphia.

Q. I will ask you if you have given the question of mental pathology and physiology any attention? A. I have given it some attention.

Q. I will ask you to state to the jury whether or not hereditary insanity is recognized by the profession? A. It is; that is, understanding it a tendency.

Q. What you mean is, a tendency derived from a hereditary source? A. Yes, sir.

Q. What temperament would you call it, then? A. Well, it is an extreme nervous temperament, called "an insane temperament."

Q. I will ask you to state whether or not this nervous temperament is likely to be one of the results of hereditary taint or transmission? A. It is.

Q. I will ask you to state whether or not transitory mania or impulsive insanity, is a form of insanity recognized by the best medical authors? A. It is.

Q. Their use is almost synonymons, transitoria mania, and impulsive insanity? A. By some.

Q. What temperament would be most likely to be affected by nervous shock? A. Why, this nervous temperament.

Q. I will ask you to state, now, from your own observation, and also from study of the leading and recognized authors on mental pathology and physiology, whether or not insanity may often be caused by sudden mental shock? A. It can, yes sir.

Q. What is understood, I believe, Doctor, by the term "transitoria mania," is a transitory insanity wherein no antecedent or subsequent intellectual lesion will be noticeable save to the eye of an expert? A. Yes, sir.

Q. Is it also true, and a recognized fact by leading medical authorities, among whom I mention Maudsley, Guy, Ray, Pritchard, Esquirol, Winslow, Blanford, Woodward and Carpenter, that such a condition as I have described, of transitory mania, may exist? A. Yes, sir.

Q. And there be, after the culminating act, which is one of the evidences of it, no perceptible intellectual lesion? A. Yes, sir; that is, unless it would be to the eye of an expert, and even then it might escape observation.

Q. Doctor, you have heard the testimony in the case? A. Only part of it.

Q. I desire to submit to you the following question, which I have already submitted to you to be read, and will read it to you again here:

"Taking into consideration the defendant's temperament and age; the fact that as boy, youth and man he was always of a quiet, peaceful, kind, gentle and humane disposition, that as a boy at school and elsewhere he was thought by his school-mates and companions to be, and was odd, or pecuiar, prone to wander away by himself and sit down seldom engaging in the ordinary sports and occupation of those of his own age, but often sitting apart alone; taking into consideration the fact that his father, owing to trouble and distress occasioned by financial losses and business reverses, had suffered great mental and emotional disturbance which increased upon him until he finally became insane, and was almost wholly unconscious for about three weeks before his death, and so died, having no well-marked physical disease or sickness, save the mental decay; taking into consideration the fact that the defendant 'took after' his father, greatly resembling him in size, complexion, height, color of hair and eyes, in manner and habits, and general appearance; taking in consideration that his education was chiefly or entirely that obtained in attendance for six or seven winters at a country district school; that up to and since the time of service in the army he has chiefly been engaged in agricultural pursuits; that he spent about three years in the army, enlisting when about twenty years of age; that during said three year's service he bore a high character among his comrades for gentleness, peacefulness, quietness, kindness and humanity; but was still of a retiring disposition, prone to be by himself, not seeking companionship; that after his return from the army he lived for about two years with his grandfather, in the neighborhood where he had been born and raised, at which time he worked at farming for a living; that then he went to Erie county in this State where he was engaged in farming and where he met and married his present wife, who bore him four children, one of which is now dead; that he was very much attached to his wife loving her tenderly and clinging to her and yearning for her even after the knowledge that she had wronged him by dishonoring his bed with an adulterer; that he removed thence to this county on a little farm in the neighborhood of Massieville where he has resided for about five years up to

the time of the homicide; that during all the time of his residence in the last named place, he bore the reputation of, and was recognized by the people of his neighborhood as a good and industrious neighbor, a peaceful, quiet, kind, humane and inoffensive man and law abiding citizen; that about two years ago he became acquainted with the decease who occasionally visited defendant's house; that during the latter part of the last winter or early part of last spring, defendant's wife went to the home of the deceased to nurse his child who was very sick and remained there several days; that since that time defendant noticed a gradual estrangement of his wife's affections from him and a growing dissatisfaction with her home; that Wiltshire's visits to his house became more frequent; that about four or five weeks previous to the homicide the defendant's wife left his house and went to the house of the deceased's father where she remained about three days during which time the defendant went there and besought her in vain to come home; that she came from there to the house of Richard Carter, a very close neighbor of the defendant, where she stayed for a week or ten days at night going over to defendant's house during the day time and doing the cooking and other housework; that up to this time her actions were unexplainable to the defendant and he had no suspicion of her infidelity; that while she was at Carter's Richard Carter told defendant that Wiltshire would come to the house of night's and she would go out with him and expressed to him the suspicion that she held improper relations with Wiltshire; that defendant although disclaiming any belief that she was thus unfaithful, repudiating the thought, began nevertheless to harbor and be troubled with suspicions that were too true that she was in adulterous intercourse with the deceased; that she went to the house of Scott Finley, (a brother-in-law of the deceased) who lived about a mile from Chillicothe where she remained for a few days; that defendant went to see her while there and earnestly besought her to come back home, but in vain; that shortly afterwards the defendant learned that she had been in Chillicothe with Wiltshire and stopping together at night at a hotel; that during all this time from her first going away the defendant was greatly distressed in mind, sleeping hardly any at all, eating very little and that irregularly; unable to do any continuous labor, but working only by fits and starts; his mind all the time running on his wife and his consequent domestic troubles, frequently bursting into tears and weeping when talking about her; restless and inconstant in his actions; feeling and believing that he was ruined; that life was all unhappiness and was valueless; repeatedly conversing with his neighbors and domestic friends 'in season and out of season' about his domestic troubles (this being the absorbing topic in his mind) which he invariably entered into when he had opportunity; being seen in Chillicothe after midnight walking wildly up and down the pavement pressing his hand to his head, talking wildly to the policeman, a perfect stranger to him, about his domestic trouble, and bemoaning his situation; that during this time he did on several occasions say he would kill Wiltshire whom he believed to be the destroyer of his domestic peace, and he came two or three times to Chillicothe to do so, but considering of his children relented and determined to stay his hand from violence; that on Monday, July 17th, his wife came to his house and said she was going to Erie county to her parents and requested him to haul her goods up to Chillicothe for her and leave them at the Scioto Valley R. R. depot; that he consented, gave her some money, told her to go, stay as long as she wished and come back when she wished and he would receive her; that he took her and her goods to Chillicothe on said Monday morning, under the belief that she was going to Erie county to her mother; that he returned home; that he came to town on Thursday, July 20th, and learned the fact that instead of going to Erie county, she and the deceased had gone off together, the day before to Washington C. H.; that he on that day applied for divorce; that the next day, July the 21st,

he wrote the letter to his brother at Rochester, N. Y., which is in evidence."

Q. Do you know of that letter, I will ask you? A. I believe I heard part of that letter.

Q. (Resumed) "And on the 23d wrote and sent the letter to his wife which is in testimony, to the Sheriff of Fayette county to deliver to her at the same time he should serve the summons in divorce; that the wife received and read the letter, repented and after high words with the deceased, and his threatening he would come after her and take her back or kill defendant, she came home, arriving there on the afternoon of Wednesday, August the 2nd, begged her husband's forgiveness with tears, and prayed to be received back to her children and home; that he consented to and did receive her back on her earnest promises of reformation; that all during the time from her first departure up to her return from Washington C. H., he had been greatly agonized and troubled as above described; that on filing his petition for divorce, he had concluded to give her up and looked upon the separation as final; but he could not banish her from his mind nor rid his heart of the yearning for return and frequently resolved to go after her, but was prevented by his mother; that the wife told him on her return that Wiltshire had said to her that he would come and take her away again or kill defendant; that on Thursday they determined to go up to Washington on the next day to bring back her goods; that on account of the threats that had been communicated to him, he borrowed on Thursday evening of a neighbor a pistol to take with him, when he should go to Washington on the morrow, for his protection; that on Friday morning defendant and his wife went to Washington and returned that same evening with part of her goods; that on Saturday morning, the 5th of August, the deceased, Wiltshire, started from Washington and came to Chillicothe, arriving here about 1 o'clock p. m.; that just before he started he stated he was coming down to take defendant's wife away again or whip him, defendant; that he had as much right to her as defendant had, and that he would have her or see whose hide could hold the most bullets and that he was prepared to put them in as fast as anybody; that defendant came to Chillicothe on the morning of Saturday, the 5th of August, arriving here about noon and going directly to the office of a real estate agent to see him about a farm he wished to buy and about the sale of his own; that after attending to his business, he started home and on his way stopped into Adler's saloon; that there he saw Wiltshire, who spoke to him, the defendant returning answer and asking him to join in a drink; that they drank, after which defendant said to deceased that he wanted to talk to him; that deceased consented and they went out to the pavement down on Mulberry street, and thence south to the saloon of Frank Struble which they entered at Wiltshire's instance, he leading the way; that in there at Wiltshire's call they both drank; that they then left the saloon and proceeded south on Mulberry street, crossing the railroad; that when they came to New street, defendant started to turn up it to Paint street, but deceased said to him, "come, let's go down across this cornfield and we'll find some shady place along the creek, where we can sit down and talk;" that defendant consented, that they went down, Wiltshire leading the way passing near Hunn's slaughter house at the south end of Mulberry street within about ten feet of one Joseph Seeberger; that right after passing him they crossed the fence from the street, crossed a race, and entered the cornfield, passed in front of the witness Pickens and at a distance of about 10 steps from him, the man Pickens being at the time engaged in plowing corn, and seeing them both and they seeing him, that they proceeded on across the cornfield in a southerly direction for a certain distance when Wiltshire struck off a little to the right of a direct line in the direction of some logs under the shade of some trees, Giddings following a few feet in his rear; that when Wiltshire reached the logs, he sat down on the larger or southermost log, as he sat down taking his hat from his head, throwing

it on the log and saying to defendant just as he had about reached the first log, "Now, by God, what do you want to say to me," to which defendant answered: "Ben, you know Mary has come home now, and begged me to take her back and forgive her. I have done so on account of my children; she has promised to be a true wife to me and love me and not do wrong any more, and she will keep her promise, if you will leave her alone; you know you have a great influence over her. I beg of you to promise me for my sake and my children's sake not to come about my house anymore or interfere with my wife" To which Wiltshire, answered: "You be damned. I've got as much right to that woman as you have and I've come to take her away, and I'll do so, if I have to kill you," with which expression he here rose from the log and threw his hand behind to his hip-pocket as if to draw a weapon; that then the defendant instantly drew his pistol and fired, he didn't know how many shots he fired, remembers nothing for a while until he was nearly to Paint creek bridge, when he began to realize his situation, finding the pistol in his hand which he then put in his pocket, went up on to the pike, crossed the bridge and started on the road to Massieville, passing Mrs. Le Beau, an acquaintance without seeing or speaking to her, after proceeding down the pike some distance was seized with fright and wandered out of his direct road home a considerable distance over in a direction west of Massieville, remained in hiding a few days, and then came to Chillicothe and delivered himself up to authorities. That he was subject to constipation and suffers from palpitation of the heart. Now Doctor, considering all the facts here stated, what do you say was the condition of the defendant's mind at the time he fired the shots which killed Benjamin Wiltshire?"

Col. Gilmore.—Wait, Doctor. The question, as I suppose, has not been submitted to the Court before being asked.

Mr. Sloane.—No, I don't know that it has to be.

Col. Gilmore.—I don't know that it has to be either; but it has not been submitted to Counsel on the other side until about the time it was to be asked, when at my request it was handed to me, but before I could read a page or half a page it was asked for by Counsel, and was handed to him and asked without our having an opportunity to read it.

Mr. Sloane.—It has been here all day, and it is an oversight only that you have not seen it.

Col. Gilmore.—Our point is this: The hypothetical question, so-called, covers some—how many pages? eigh or ten? I should judge ten or more pages, constitutes or is constituted of a rehearsal of the full testimony upon the part of the defendant, after percolating through my friend Sloane's mind, and being clothed largely with his verbiage, that was never used by the witnesses whom the question purports to follow in the narrative. That must have struck the Court in the reading of that question. Outside and above and beyond anything in that question, however, it is noticable that the question contains a narrative that in no sense or way could reflect upon or affect the question of insanity; that it omits carefully—that it omits, I won't say "carefully;" that it omits largely the testimony that has been elicited from his own witnesses that reflects upon the question of insanity, as well as other points in the case. Now, I don't want to consume the time of the Court, but I respectfully submit that it is not entirely optional with the Counsel who desires to draft a hypothetical question of this kind, that he should stuff it with anything and everything that may suit his fancy, but that the question, under the supervision of the Court, must be in correspondence with the facts proved, and that part of the case especially that is supposed to reflect upon the question of sanity or insanity. I submit that this question, I have not had opportunity for examining, and know nothing of it except as it has been read to the Doctor on the stand, is not of that character that it should be, and is highly objectionable in many of its features I have not alluded to.

The Court.—You object, then, to the question being asked or offered?

Col. Gilmore.—I object to the question as put.

Mr. Sloane.—Now, if the Court please, I have tried to draw up the hypothetical question on the best models. If the gentleman has any other hypothesis of this case than contained in it, the prosecution has the right to put it to the witness upon cross examination, and have his testimony upon it. The medical witness does not have to assume whether or not the facts presented are true; he supposes they are true as stated in the hypothetical question, and he is asked, What, upon that statement of facts, was, in your opinion, the condition of his mind at the time he fired the fatal shot? Whether or not the hypothetical question is true, whether or not it states facts necessary or unnecessary upon which to found the opinion of insanity upon the part of the medical expert, is a question wholly for the jury. They are to determine whether or not that opinion is predicated upon a false basis or a true. I never knew a case in which there would not be some difference of opinion between Counsel as to whether or not, of the facts set forth a certain fact is proven. They have a right to assume a certain basis of facts, which they incorporate in what they call a hypothetical question, which is put to the medical expert, and he is asked what, in his opinion, upon that state of facts, was the condition of mind of the defendant at the time the fatal act was perpetrated. If the other side assume or claim, that certain things in the hypothetical question are untrue or are not in accordance with the facts or the statements are put in different words, it is their right, and their proper course, to formulate a hypothetical question corresponding with their view of the facts, and put that to the witness on cross examination, to know whether or not he, upon the state of facts that they assume, would give the same opinion, and then it is for the jury to determine which state of facts is the correct one, upon which the medical witness has testified. Now, I have endeavored, as I say, to take what seems to have been the precedent in a great many cases, as to the preparation of these hypothetical cases. The gentleman says that it has been clothed in verbiage of my own. I say that is not true, and he is simply mistaken about it. I may have used a verb or I may have used an adjective which may not have fallen directly from the lips of the witness, but was the equivalent or synonym of the one he used. I endeavored to use, as far as my recollection would enable me, the exact words, whether verb or participle, that were used upon the stand.

Col. Gilmore.—Was the word "yearning" used by any witness upon this trial?

Mr. Sloane.—No, but its equivalent was by Mrs. Brouse. She said that Daniel was continually mourning for his wife, and wanted and determined to go, two or three times, to Washington to bring her home, and she induced him not to do so. The gentleman may have forgotten the testimony, but he should not assume that other men have put into a hypothetical case facts that are not proven, unless he assumes for himself infallibility of memory. And I have right here the McFarland case, and the hypothetical question framed by one of the best lawyers in the United States, one of the leading counsel in the defense of Gen. Sickles, John Graham, of New York; and my question is modeled almost completely upon his.

Col. Gilmore.—My recollection of Brady's statement, in the Sickle's case, is——

Mr. Sloane.—Not the Sickle case. There was no hypothetical case put to medical experts in that case; for none were upon the stand, at all; so in the Amelia Norman case, no medical witnesses were put upon the stand. It was left for the jury to say whether or not the man was insane.

The Court.—In putting these hypothetical cases, I have my own experience at the bar and on the bench, and that of some of the leading practitioners of the bar, and my recollection about the law is—and about this my recollection is that it is about accurate—that the party putting the case as-

sumes for himself, and, out of regard for the rule applicable to a hypothetical case, he will put it, and he should, if he expects it to have any weight with the jury, as nearly in accordance with the facts as he can possibly make it. The rule is this: He puts his case, (and he puts it at his own hazard) and if he puts it too strongly, he is the party that loses it; that he may put the case as he thinks the evidence will warrant him in putting it, and then he is entitled to have the opinion of the medical expert upon the case as he puts it. Then it devolves upon him by the evidence adduced to substantially establish that case as put, and if he does not do so substantially, the hypothetical case is of little or no weight with the jury. Then the opposite side has the right to introduce testimony of what is called "infirmative facts" as to this question, that is, facts which will tend to infirm the hypothesis. Now, it is true that in these hypothetical cases Counsel don't always confine themselves to the statements of the witnesses. It is somewhat after the manner of drawing a petition. Your client comes to your office and states to you in his own way what he conceives to be the facts in his case, and it then becomes the duty of the pleader to put it into technical and approved language. If Counsel has undertaken to color the hypothetical case—I am not assuming here to say that it is done; I don't say he has; but I will say it is not the duty nor is it required of the party to use the exact language. He is to state the case as he thinks the evidence will warrant him in stating it, and if he fails in that, he fails with the jury. So that while many things might be inserted not actually necessary but would be true, still that is not an objection to the question, but of course it will have to be weighed, under the instructions given by the Court, by the jury. The question can be answered.

Q. By Mr. Sloane.—You can answer, then, Doctor, what, in view of the facts stated in that hypothetial question, in your opinion, was the condition of the defendant's mind at the time he fired that shot? A. Probably in a condition of great emotional excitement, in which he would act upon impulse of the moment, without any intellectual act, whatever.

Q. Well, you may state, then, as further answer to the question, based upon those facts, whether or not, in your opinion, the mental faculties—and by that I mean those which make choice between right and wrong—were subordinated to or in abeyance to the emotional excitement created by that answer, and those antecedents? A. In such condition I would say most certainly they would be. The man would be governed by his emotions and impulses, not by reason.

Q. Well, you may state, then, whether or not, at that particular moment, owing to all of these facts as stated, he was in a state of sanity or insanity? A. Well, as I understand the question, I would say, in a state of insanity; that is, in a state that he would be irresponsible for the act.

Q. And representing that form of insanity which you have described as transitory mania or impulsive insanity? A. Well, rather the impulsive insanity. I don't look at the case as described as a fair typical case of transitory insanity, where the person is apparently perfectly sane up to the time of the act, and perfectly sane afterwards. I take into consideration the fact of the hereditary tendency and nervous temperament, the cause, the great nervous agitation, the fact, as in the hypothetical case, that he showed evidence of great agitation, sleeplessness and vacillation, indicating weakening of the nervous power.

Q. And general disturbance of the nervous centers? A. Yes, sir; and then the sudden revelation, the feeling that would necessarily govern such a man in such a condition, and he would not be in a sane or normal state. That is, the act is the culmination of all the preceding conditions, as I understand the hypothetical case.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Doctor, I didn't understand you. I was busy at the moment. I didn't hear your statement of your own opportunities to become an expert in matters of this sort. A. By practical experience they have not been great. I have seen some cases of insanity, and I have read considerable upon the subject, been interested in that study; but, of course, in general practice I don't claim to have a great deal.

Q. For what length of time? A. I have been in the practice of medicine some fifteen years.

Q. You say you have treated cases of insanity? A. I have treated some cases of insanity, yes sir.

Q. Did you ever have a case within your observation of this sort? A. Well, not exactly; we hardly ever meet two cases exactly similar. We meet some cases similar.

Q. Well, have you known of such insanity, where the time covered by the insanity is two or three to four months in all? A. No, I don't know that I have met with that case, nor do I understand, that this hypothetical case given me is of that nature.

Q. Doctor, I want to be corrected if I am wrong, but I understand you as using the term "insanity" as interchangeable with intense passion or intense excitement in connection with this case? A. Well, it is hardly, perhaps, interchangeable, although they are very similar. I think we too often make a mistake in supposing that there is a clear line or distinction between sanity and insanity, whereas that is not the case. They gradually approach each other.

Q. It is your opinion that sanity is nearly as rare as insanity, is it not? A. No, sir; no, sir. Sanity is much more frequent, of course, as the general rule. Insanity is the exception to that rule.

Q. It is said that the boundary lines are not even within the ken of experts, sometimes; are they? A. That is true, yes sir.

Q. What part of your answer to this hypothetical question——you have given a general answer to it? A. Yes, sir.

Q. That all this being true as read to you by my friend Sloane, all that being true, your opinion would be that this act was done at a moment of emotional insanity. I understand that to be your answer? A. Yes, sir.

Q. Now then, what part of your answer is predicated upon his history as boy and man, up to the time of this occurrence? A. To ask a physician to separate each particular fact in the case——

Q. I do ask you to separate the facts in that particular hypothetical question, so as to inform us how much of the answer is dependent upon the antecedent matters, before the hour and the instant of this homicide. A. It is exceedingly difficult to make such a separation. One nearly never does it. It is artificial. They always take those things together. I take the fact, in the first place, of the hereditary tendency, and then the indication of the nervous temperament. We put all these together. Just how much weight to give to one or the other is a very difficult thing to state. I don't know that I could separate them with nicety.

Q. Now, if there was a developement of insanity, in any proper sense of the word, in this case, in any degree dependent upon his antecedent history, or inherited peculiarities, would not insanity develope itself in mania that

would be permanent, or more or less permanent, at any rate, rather than in that momentary paroxysm? A. No, sir, it would not necessarily be so, at all.

Q. You don't think that it would be so, at all? A Not necessarily; just as it happens. Would not be any more apt to be so.

Q. In a person with the temperament, and so forth, that you have been told by the hypothetical question belongs to Daniel Giddings, would it not continue to act longer than the momentary impulse? A. As I understand, it did continue to act longer than the momentary impulse. I don't look at it, as I said in my answer, as the condition of a person perfectly sane, in a perfectly normal condition, up to this act, and then sane again.

Q. That is, insane long enough to commit the homicide and then become rational again? A. Yes, I would look at it as nothing more than being in an unnatural condition.

Q. How do you distinguish between that form of insanity and the kind that leads to murder? A. Well, it is sometimes difficult to distinguish them, but by getting the hereditary tendency and the peculiarities of the person, and putting all together you have a distinction.

Q. Outside of murders committed for sordid reasons, money, etc., is not every murder an act of violent excitement? Can you conceive of a case in which there would not be violent excitement, at all? A. Yes, sir; and some authorities hold that it is a sort of temporary insanity. As I understand it, they hold that in such a case, the man is not responsible, strictly, for the act, but he is responsible for allowing himself to be in that condition by which he is controlled by the passion for the time.

Q. Responsible to the law, then, for becoming excited? A. Yes, sir.

Q. Not for permitting the excitement to—— A. Control him at the time.

Q. To control him to the commission of the crime? A. Yes, sir; just like a man is responsible for getting drunk, but not exactly irresponsible, though being drunk.

Q Do you attribute importance to Mr. Giddings' personal conduct in the case up to the time when he came to the place where the crime was committed? A. Yes, sir.

Q. What portion of it? A. That portion which shows loss of sleep, and nervous excitement.

Q. Suppose that nervous excitement had fully ceased; that loss of appetite had fully ceased; that the sleeplessness had ceased, and everything that you have mentioned as affecting your mind in giving your opinion had fully ceased, and quiet and composure had intervened; that he had met the person that he had supposed guilty of adultery with his wife, shaken hands with him, talked in a friendly way with him, drank with him, clinking glasses together, drank his health, and so forth; would that state of things have set aside all antecedent reasons that influenced your opinion?. A. No, sir; it would not, because the history of the insane shows them very prone to sudden and impulsive acts.

Q. You are talking of persons that are actually, within the common sense, insane; not of persons who are only emotionally insane at the time of committing the act. A. At the same time, the same reason would influence, with the man who had shown this excitement. That would indicate to the physician, I think, the destruction of nervous tissue, and we would hardly expect such an one had health restored so soon, but he would be in a condition that a sudden excitement or emotion might throw him into the same condition.

Q. A person with the nervous temperament, with the tendency, as the hypothetical question informs you, the hereditary tendency to insanity, and so forth, would it be possible for such a person so to meet the man who had so excited him by having committed adultery with his wife, be calm and cool, and drink with him, and walk with him, and talk with him, would that be possible that a person with the tendencies that the hypothetical question

states Mr. Giddings is? A. It seems to me, I say, that it would be more possible for an insane person to do that than if he were sane.

Q. Be more possible for an insane person to? A. Yes sir.

Q. Your answer, then, is predicated upon the idea that there has been a continuing insanity in Giddings' case, is it? A. That is probably so; at least, during that time.

Q. During the whole of this period which is covered from the discovery of the adultery of his wife up to the homicide? A. It looks so. The evidence looks very much in that way. I would not like to be positive.

Q. Then you would say, professionally, in answer to the hypothetical question, that, in your opinion, he was not only insane at the moment of the commission of the homicide, but that he had been, all through from the time of his discovery of the adultery of his wife up to and immediately after the homicide. A. It looks rather so to me; yes, sir.

Q. Well, is or is not that your opinion? A. Well, on the hypothetical case it would be my opinion; yes, sir; and that was the culminating act.

Q. And that opinion is as clear and well-founded in your mind as the fact that he was temporarily insane at the moment of the homicide, is it not. A. Yes, sir.

Q. Would it influence your opinion if the fact should have been that after the elopement of his wife, after the discovery of the adulterous connection, after the elopement of his wife, he should make endeavors to have her arrested for larceny? A. No, it would not make any great difference.

Q. Or applied for a divorce? A. What influences me more in that is the vacilating condition that it indicates.

Q. What vacillation do you refer to? A. Those different resolutions of applying for a divorce, and then applying for a warrant for larceny.

Q. First he attempted to have her arrested for larceny, and afterwards filed a petition for divorce? A. And after applying for a divorce, then the letter was written to her.

Q. The letter, if I remember right, informed her that the separation was final. A. I never read the letter.

Mr. Sloane—Oh, no; it don't. The letter says, when he throws her off, and the world forsakes her, then to remember what he had told her.

Col. Gilmore—Oh, no; it don't.

Mr. Sloane—You will find it does; that the letter told her that then he would take her back.

Col. Gilmore—I will read that portion of the letter: "Well, Mary, I must close. When your paramour casts you off, and all the world forsakes you and spurns you, then probably you will come to your sober senses, and you will know what I have told you. I will not take it back." Now, he explains that by saying that the separation is final.

Mr. Sloane—No, he does not explain it that way. He explains it by the statement that he told her when everybody threw her off that she could come back and find a home with him and his children.

The Court—Gentlemen, you are not reading the language of the letter.

Col. Gilmore (reading)—"Then you will probably come to your sober senses, and you will know what I have told you. I will not take it back. You will learn from the man that gives you this letter that I have filed a petition for divoree, and I will get it at the October term of court, whether you appear or not. I would like to hear from you, if you will choose to send a line to me by the constable that gives you the summons. With great pity for you, I am still,

Your Husband,

DANIEL GIDDINGS."

That is the expression.

Q. These changes of mind in Mr. Giddings largely entered into the formation of your opinion? A. Yes, sir. It seems to me, in other words, that the natural, healthy mind forms decided resolutions—that is its tendency—and

carries them into effect. That requires at least a certain amount of nervous power to do that.

Q. Vacillation, *per se*, does not indicate insanity, does it? A. Not *per se*, no, sir; without we——

Q. Is it sufficient even to raise the presumption, *prima facie*? A. Well, no, not that alone.

Q. How soon, in your opinion, doctor, would it be possible for a person with the temperament, and everything considered as you do in the case of Mr. Giddings, to recover control of himself after having committed a homicide of this kind, under the influence of emotional insanity? A. So far as any apparent, or outward appearance of it, it might be very soon, very suddenly. These——

Q. Could recovery take place in the course of five or ten minutes. A. Sometimes it could.

Q. Do you know of any such case in the books? A. I think it is frequently mentioned in the books. If I mistake not, most of the authorities speak of this suddenness.

Q. Do you remember any, now, that speak of that? A. I don't know that I can mention any special case, but most all of these authorities I think refer to it.

Q. By the Court—I want to modify that question as put to you, slightly, and see then what your answer may be, and I have written it down, so that there may be no mistake about it, and I will read it to you: Suppose, now, in the first place, that you strike out the possibilities or supposed indication on the part of the deceased of an intention to take the life of the defendant, strike that out of the case as put to you, and suppose that, instead of this, that the two were simply in conversation about the wife of the defendant; that the latter stated that his wife had returned, and he had forgiven her and taken her back, and requested the deceased to have nothing more to do with her, for his sake and that of his family; whereupon, the deceased asserted that he had as good a right to her as the defendant; whereupon the defendant instantly killed the deceased. Take these for the facts, in connection with the others stated in the question put by the defendant's counsel; what, in such a case, in your opinion, would have been the power of the defendant to distinguish between right and wrong, and to govern his conduct, as a good citizen, thereby? Take the whole case, omitting acts of violence, and then give us your opinion of the ability of a man such as he was, under those circumstances, to distinguish right from wrong, and, as a good citizen, govern his conduct thereby? A. I understand, the right of that particular act?

Q. Of course, the right or wrong of that particular act. A. I don't suppose that he would have the power to do so. I don't think that would materially alter the case. I would still consider him likely to be governed by emotion or sudden impulse.

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. I will ask you if you ever noticed the article by Dr. Jarvis, who is one of the chief American experts, given in the American Journal of Insanity, volume 26, No. I, July, 1869, under the head of Mania Transitoria. A. Yes, sir.

Q. The American Journal of Insanity is recognized as a standard authority upon the subject of insanity, is it not? A. Yes, sir.

Q. I will ask you if he does not define emotional insanity as "a form of mental disorder which suddenly appears in persons previously sound, or not supposed to be unsound, in mind, having short duration, and suddenly disappearing?" A. Yes, sir.

DR. D. A. MORSE called.

Direct examination by Mr. Sloane.

Q. Doctor, you will state to the jury where you reside? A. I reside at Oxford, Ohio, Butler county.

Q. You are a physician? A. Yes, sir.

Q. How long have you been practicing? A. Twenty years.

Q. I will ask you to state what opportunities you have had of observing the insane? A. Well, I have had opportunities, such as being in asylums where we have had from 600 to 1,000 patients, and lectured for ten or twelve years, upon these subjects, in the medical colleges.

Q. And you have written works upon them? A. I have written considerable upon these subjects. I suppose that in the last six or eight years I have had at least 2,000 different persons under my care for treatment for insanity.

Q. I will ask you to state, also, if you are familiar with the writings of the leading alienists, writers upon mental pathology and physiology? A. I believe I have been over pretty much all of it.

Q. You have been for some time in charge of a private insane asylum? A. Yes, sir.

Q. You also were in charge of the old Dayton asylum. A. Yes, sir.

Q. You have also testified in such cases before. A. Yes, sir, I have.

Q. Testified in criminal cases? A. Yes, sir.

Q. You have frequently been called upon to testify in cases where the sanity of a testator was in question? A. Yes, sir, I have been.

Q. Do the authors recognize a state of insanity, and do you, also, from your experience, reading and observation, recognize the same, known as transitory mania, or impulsive insanity? A. Under certain restrictions.

Q. I will ask you the question, doctor, if you, yourself, recognize, and do the authorities recognize, a condition of insanity known as mania transitoria, and also known as impulsive insanity? A. Well, that is a sort of a double question. Athorities, a great many of them, recognize mania transitoria as a distinct form of insanity, with certain restrictions as to what you mean by it. There is some dispute as to the existence of such a thing. Our leading authorities in Germany, France, England, and this country, those who are regarded as the more standard and best authorities, all recognize such a condition.

Q. And that condition of mania transitoria pure, is where there is no perceptible intellectual lesion or mental disturbance just before the commission of some violent act, and none observable in a very short period after? A. Well, not so distinctly defined as that.

Q. When I say "perceptible," I mean, to the ordinary observer. A. It may have been passed over unnoticed, and yet all authorities agree that if the case were carefully studied and carefully observed, there are things in the case that have been passed over, and if it were not for consuming time, I could illustrate that.

Q. And which, to the expert eye, could have been discoverable? A. Yes, sir.

Q. Now, I will ask you if Dr. Jarvis is considered an eminent authority? A. Dr. Jarvis has been the superintendent of the Taunton asylum, Massachusetts, and was one of the experts in the Guiteau case.

Q. And was also an expert in the Andrews case in Massachusetts? A. Yes, sir.

Q. The American Journal of Insanity is one of the standard periodicals? A. It is one of the standard magazines, but not every article in it is standard authority. They insert various articles that are written, but are not responsible for the views advocated by those articles. Every article must be

judged on its own merits, just as a newspaper publishes matters which may not always be the truth.

Q. Now I will ask you to state whether or not you have read the article by Dr. Edward Jarvis, on mania transitoria? A. Yes sir.

Q. Do you agree mainly with his conclusions in that case? A. Well, I don't agree with Dr Jarvis to the full length in everything that he claims. I have met him on different occasions in our Associations, and other places. Dr. Jarvis, in the main, is right.

Q. But he carries the doctrine of mania transitoria, you think, to a little extreme extent? A. A little, I think. That is, I think all those things have certain restrictions and limitations. They don't spread over everything.

Q. I will ask you if every case is not to be judged by itself, to a great extent? A. Yes, sir; every case of insanity will stand out by itself alone.

Q. And judging whether or not a man was insane at any particular time, he is to be judged by his antecedents? A. Well, a man is to be measured by himself. You cannot measure one man by another, for what would be insanity with one man would be sanity with another.

Q. And what would be uncontrollable passion in one would be insanity in another? A. That depend's upon the man's condition. A thing that would stir one man to uncontrollable passion would not affect another man at all.

Q. Now I will ask you to state just there whether or not Dr. Maudsley, Dr. Winslow, the elder Dr. Blanford, Dr. Ray, Dr. Esquirol, and Drs. Bucknill, Pritchard, Guy and Edwards are not recognized as leading alienis, authorities, and Dr. Hammond, also. of New York? A. Yes, sir.

Q. I believe you were sitting close to me and heard the hypothetical question read? A. Qes, sir.

Q. I will ask you to state to the jury, then, doctor, upon that hypothetical question, what was the condition of the defendant's mind at the time he fired the shot? A. Well, I don't know; I suppose the jury understands, and the Court, that I have not heard the evidence in this case, except a little sketch on Saturday, and probably twenty minutes or half an hour to-day. I have no basis to form an opinion on in the case, except, exclusively, upon the hypothetical question. Now, before I give an opinion on this case, as it goes to the jury, I wish that distinctly understood, that the opinion that I give is based wholly and exclusively upon that as submitted in the hypothetical case. If all the facts, individually and collectively, as presented in that hypothetical case, are proved and sustained by the evidence, no man could reasonably conclude otherwise than that he was irresponsible at the time. The reasons which I will base that upon would be these; First, it alleges that there is an insane temperament. I have no right to dispute the allegations. Second, we have a continued provocation, which, acting in connection with the hereditary tendency, or hereditary taint, aggravates and developes that condition which already exists, and following it a period of sleeplessness and loss of appetite, which results in a want of nutrition to the nervous centers, which become more irritable and less controllable by the will, then a sudden provocation which no man could resist, under such circumstances, sane or insane; and I need not say that the majority of men would not resist the temptation to hammer him, anyhow. There would be stimulated an action which, in all probability, the man would be irresponsible for, provided all the ingredients of that were present.

Q. You take into consideration, do you, the statements in the hypothetical question, that the defendant expected a different answer, or hoped for a different answer from the deceased, to his request than what he received, as forming a portion of what you consider the mental shock? A. Well, my answer is based upon this view of it, that, according to that hypothetical case, they met to have a little talk together about the matter, and that he tried to get the man to go away and let her alone, and that, in addition to the injury and insults, that man attempted to rub it in, and of course that

provocation would produce a mental shock, which the man would scarcely be able, under the circumstances, to control.

Q. Well then, taking all those facts, individually and collectively, as set forth in that hypothetical question, I will ask you to state whether or not, at the moment he fired that shot, he was, in your opinion, sane or insane? A. In the sense of the inability on the part of the will to control the impulse to commit murder, I should say he was insane; not in the general, broad sense of complete uprooting of mental faculties, nor in the sense of continued and protracted chronic insanity. It is nothing more than the passion goaded on until it becomes irresistible.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Of course, if such conversation did not occur at all, then your opinion is not given at all? A. I understand that I have nothing to do with the truth of it; the jury is to determine that; that it is none of my business whether it is true or false.

Q. I understand that, and want the jury to understand it, that in giving your opinion as you do you accept everything in the hypothetical question as being literally true? A. I have no right to dispute it.

Q. If I understand you correctly, you would not call it insanity in any common sense, but merely uncontrollable passion? A. Yes, sir; that passion continued until it became what the works recognize as irresistible impulse.

Q. Now, Doctor, the party being of the temperament which the hypothetical question asserts, and with the family history that the hypothetical question asserts, and having heard of the adultery of his wife, and become sattisfied of it, having manifested all the symptoms that the hypothetical question asserts, up to the time of meeting with the adulterer, do you believe that a person subject to such impulses could smother resentment, meet the adulterer in a friendly spirit, shake hands with him, converse in a friendly manner with him, drink with him clinking glasses, and wishing one another good health, and walking for 1,600 feet or more with him, and conversing, without manifesting some of this passion and impulse? A. A man, for the sake of policy, if he thought that he could get rid of him by a little soft soap, or a little talk, and never be troubled with him any more, and have his wife at home, and enjoy peace, and all, I believe could do that. My experience has been, with the insane, that there is not a man of them, unless he is so completely upset and uprooted as to become almost demented, whose conduct is uniform; that he is quiet and peaceable, or very violent, for any great length of time, one way or the other; and you will find that they will do things, and resort to more methods of concealing their motives and feelings, than a sane person, and they will cover up their tracks most effectually.

Q. You have had no man in the asylum whose manifestation of insanity was as momentary as this, have you? A. I have had patients whose insanity, up to the time of the act itself, had not been manifested but a little time.

Q. It had been manifested a little while? A. Yes, sir.

Q. And it was manifested afterwards? A. In some cases it is. Coming back to mania transitoria, we have some cases which are transitory and impulsive in their character, in which a man may be seized with a sudden impulse to kill, and, without any motive, will kill. I had one patient at Dayton that stuck a knife in a man and killed him, at the table, before he was brought to the asylum. He was considered a victim of homicidal mania, and was considered dangerous to be at large, yet, about the house

there was no indication of it, but what the man might do if he were out, it is impossible to say.

Q. By Mr. Sloane.—Was the act he committed motiveless? A. Was apparently so at the time.

Q. By Col. Gilmore.—I will ask you if, in such cases, there was not some lesion of the brain, or some intellectual disorder? A. I don't believe that with an ordidarily sound, well-balanced, and healthy mind we have cases of transitory mania; so transitory that he will be a second or a minute insane, kill a man, and then sane again instantly, without there be some physical condition that brings it about. I don't believe that it is possible to exist except it be associated with some form of epilepsy, or some congestive or convulsive disorder.

Q. Well, those physical conditions would be manifested, more or less, would they not, in his history? A. No, not necessarily, in this case, because these troubles are like a shot, and pass away; and the man may be, up to the instant——well, if you have ever seen a fit of epilepsy, seen a man walking along the street talking, and all at once fall in a fit, and in a little bit be up on his feet again; and some have an attack and do not fall.

Q. Well, if he was sound and well up to the time of the meeting, and no evidence to the contrary, then you would not define it as emotional insanity? A. No, if you remove it from all the antecedents, if you strike out everything up to that meeting.

Q. No, I mean, leaving everything there, but with a healthful physical condition. A. Well, that is the most essential thing in it. I say, if you strike it out, and place the man at the log in conversation in a sound, healthy physical condition up to that moment, that of course you make an entirely different case of it.

Q. If, then, I understand you, Giddings was in sound health up to that moment, and has been in sound health ever since, you would not regard it as being a case of emotional insanity? A. Not coming within the meaning of the word as we use "transitory mania."

Q. You would not consider it that, you say? A. I would not, no sir; no, I could not be so sure.

RE-DIRECT EXAMINATION.

By Mr. Sloane.

Q. And when you speak of sound health, you mean not having his mind perturbed by great trouble? A. Well, I mean the man is in a good physical condition, as to digestion, and in the actions of his body, a man who would be able to control the operations of his mind.

Q. A man who was not being operated upon by any strong emotions? A. Well, a man who, if he was, would be able to resist them.

Q. By the Court.—What do you mean by mania transitoria? A. What the writers describe as transitory mania is a condition in which the man was supposed to be sound up to a given time, and then instantly became insane and committed some act, and after the act was committed afterwards became sane.

Q. By Mr. Sloane.—And is it not a fact, too, in these sudden acts of violence, that the very violence of the act is a relief to the strain of mind? A. Yes, sir; oh, yes.

Q. By the Court.—Suppose a case like this. One man meets another whom he has always regarded as a great friend, and suppose that man says to him, "I can have adulterous intercourse with your wife whenever I wish, and I will do so as often as I please," and thereupon the party addressed immediately raises his hand and shoots him down, would you consider, in

that case, that he became insane in that instant? A. I would say, in that respect, that in this case the facts show that the man's nervous system was undermined, and his nerve-centers not controllable, but uncontrollable, and hence he was less able to resist provocation.

Q. That would be the distinction? A. Yes, sir; that would be the point upon which I would turn my opinion in it.

Q. By Mr. Sloane.—And a subject of hereditary taint? A. Taking it altogether. You speak of hereditary taint. Murrell, who is one of the most distinguished writers in the world, upon that subject, says that the characteristic of hereditary insanity, from any other form, is the sudden explosions——he terms them "explosions;"——those violent, explosive acts.

Q. By Col. Gilmore.—Not apt to be single, and isolated, in a whole lifetime? A. Well, it may be that one great act is all they ever commit.

Q. By the Court.—Once more: Do you think that, under the circumstances stated in that case put in the question, simply leaving out of the supposition that the deceased indicated an intention to do violence, or to take the life of the defendant, but that, the subject of conversation being the defendant's wife, he stated to the deceased that his wife had returned home and repented, and he had concluded to take her back, and then requested the deceased to have nothing more to do with her, for his sake and his family's sake, and that then the deceased made the remark that is attributed to him; now, applying those facts to the case supposed, leaving out the other as to the indication of an intention to do violence, is it your opinion that, upon such a case, the man would have, still, the faculty to distinguish right from wrong, that is, not in the abstract, but, as his duty as a citizen, and if so being able to distinguish, would he also have the faculty of restraining himself, and doing what was required of him by his duty as a good citizen? You may separate that, if you want to. A. Well, I will divide it in this way: Leaving out of the question all the fear of grievous bodily harm; all that would make it self-defense, I would say that it would be much more natural for the man, under such circumstances, to consider the provocation of continued adultery, or, at least, he would, unless he was a coward and feared his life. Of course, the other element is a question of self-defense, and one with which an expert has very little to do. Of course, if the condition existed in which the provocation pushed the man until irresistible impulse resulted, then, of course, he was in no condition to resist it.

Q. I mean, leaving out the provocation that resulted there. A. I am speaking of that part of it in which he says, "I have as much right to the woman as you have," but leaving out the other part of it.

Q. In other words, do you think that would dethrone his reason so he could not distinguish between right and wrong? A. Of course it is impossible to just tell the condition of another man's mind at a particular time, and what was passing in it. We judge by the act itself as to what the man's mind was when he performed that act, taking the man as he was previous to the time and subsequently; we can only infer his condition at that particular instant by the act itself. Now, if it were shown that the man had malice aforethought, and premeditation, and all the ingredients of a crime deliberately carried out, then, of course, that alters the case materially.

Q. Can you give us an opinion as to what effect it would have upon his reason, or whether he could actually distinguish right from wrong, or his duties in the premises as a good citizen? A. I should say he would be in no condition to distinguish right from wrong.

Q. Then, suppose he should be able to distinguish, probably, that it was wrong to kill the man, yet, how far, under such circumstances would he be capable of restraining himself, this particular kind of a man? A. When you speak of a knowlecge of right and wrong with reference to that specific act, I should say we have always, of course, ability to do or to refrain

from doing, because that knowledge of right and wrong with reference to that act of course involves thought upon that, and man knows, in the abstract, that it is not right to kill a man, yet, under such circumstances and conditions, they would alter that; under certain circumstances a man would not and could not stop to reason.

Q. But you don't see the point of what I am aiming at. Do you think that such a man would propably think as to what his duties were? A. No, not if all the other conditions were present.

Q. Then, let us put the question, Suppose he would be able to stop and think for a moment, would such a man then probably be able to restrain himself? A. Yes, if he was able to stop and reason about it he would be, most assuredly, accountable, because it would then suppose time enough to premeditate the act, and premeditation does not involve an hour, but five minutes, or two minutes are sufficient for a man to reflect upon it.

RE-CROSS EXAMINATION.

By Col. Gilmore.

Q. How would it affect your opinion in this case if it be true that, growing out of the discovery of adulterous relations, the defendant had threatened to kill the deceased on sight, and had come once or twice to Chillicothe hunting him with the intention to kill him, etc., coupled with such threats and conduct as that, how would that affect your opinion as to the impulsiveness of the act, and the uncontrollable character of the act? A. Well, that, so far as the final act is concerned, would not necessarily affect the impulse of that. It would rather come in as evidence to determine the question of premeditation.

Q. Yes, I know, but I ask you with reference to the mental operations of the act? A. There is no better established fact, in the condition of the insane—I have heard them say it time and time again—than that they think of a thing and brood over it, and meditate, and almost come to the sticking point of doing, and then back down. I had a patient who kicked out the windows in one ward. I think it was in Dayton. He says to me, "Doctor, I went up to them five or six times, and you don't know how hard I tried to prevent it, but something came over me, and for God's sake I could not help it." That is the history of this case. That man is in my house now. He got well four or five years ago, and about five or six weeks ago he was brought back to me in just such a condition again.

DR. J. C. KENNEDY called.

Direct examination by Mr. Sloane.

Q. Where do you reside? A. In Batavia.

Q. How old are you? A. Seventy-two.

Q. How long have you been in the practice of your profession? A. Fifty years.

Q. During the course of your professional experience, I will ask you to state to the jury, whether or not, you have given a good deal of attention to the study of mental pathology and physiology? A. Since 1867, I have.

Q. You were led to the study of it, I believe by reason of domestic——— of your wife's insanity, in other words? A. Yes, sir; of twenty years standing.

Q. That led you to give a great deal of study to the matter? A. Yes, sir.

Q. And you have since testified as an expert in questions of mental derangemant? A. Yes, sir.

Q. You were one of the experts in the Buford case, I believe? A. Yes, sir.

Q. I will ask you to state if the books, or the writings of the leading alienists, recognize these two conditions of insanity as similar, mania transitoria, and impulsive or emotional insanity? A. Well, they are very analagous. They are recognized by the leading alienists of the day.

Q. I will ask you to state whether or not Dr. Ray, of Boston; Dr. Jarvis, Dr. Hammond, Mark, Esquirol, Pritchard, Guy, Bucknill, Maudsley and Blanford are recognized alienists, mental pathologists? A. Yes, sir. They are recognized as standing at the head of mental pathologists, and are given general credence.

Q. Dr. Maudsley stands pretty high in that branch of his profession, does he not? A. Yes, sir.

Q. You have heard all the testimony in this case, have you not? A. I believe I have.

Q. You have, also, heard the hypothetical question read? A. Yes, sir.

Q. So I need not read it. I will ask you to state then, first upon the testitimony, as you have heard it——

(Objected to by Counsel for the State.)

Mr. Sloane.—Well, I don't care particularly about that.

Q. I will ask you to state to the jury, what, in your opinion, was the condition of the defendant's mind at the time he fired the shots, as based upon the facts stated in the hypothetical question? A. Well, that would make a case of impulsive insanity.

Q. I will put it in another form. State whether or not, taking the facts to be true, as stated by the hypothetical question, Daniel Giddings was sane or insane, at the moment he fired the shots? A. According to my acceptation of the term, he was insane.

Q. I will ask you to state, whether or not the mental faculties, I mean those faculties which are exercised in making choice, forming judgment, discriminating between the doing and not doing of a particular act, the taking, or the not taking of a particular course, were at the time subordinated to the emotional shock he received, or were in abeyance? A. If he acted at all, he acted in a subordinated manner; they were held in abeyance by the violence of the emotion under which he acted.

Q. State whether or not, from the facts as made apparent to you by the hypothetical question, he could have restrained himself from doing the act, in your opinion? A. The restraining would have taken more intellectual action, I think.

Q. I will ask you whether hereditary insanity is recognized by the medical profession? A. Certainly, it is.

Q. This hypothetical question assumes to set forth the testimony with reference to his father's condition. You have heard it? A. Yes, sir.

Q. I will ask you in the first place of what temperament the defendant is? A. Well, what would commonly be recognized as the nervous temperament.

Q. Is not one of the results of hereditary transmission that same nervous temperament? A. Yes, sir; a very common thing.

Q. I will ask you to state, whether from the testimony you have heard in this case as to the condition of his father, for two or three months prior to his death, up to the time of his death, you see traces, or evidences of mental insanity in him, an insane neurosis, I mean?

(Objected to by Counsel for the State on the ground that it is asking the witness to find a verdict, in part, or a fact for the jury.)

Mr. Sloane—If the Court thinks the form improper, I will put it in another form.

Q. By the Court.—Have you examined the defendant, doctor? A. Simply a few minutes conversation.

(Objection sustained.)

Q. By Mr. Sloane —Now, doctor, I will ask you to state this, whether or not a son is more likely to inherit a hereditary taint, or any mental characteristic from the father, than the daughter is? A. I could not answer that definitely now. But my impression is, he is.

Q. Well, do you attach much weight to the fact that of two sons, this one resembles the father in the color of his eyes and hair, complexion, size manner and habits, while the other resembles entirely the maternal side of the house, do you attach much force to that in determining hereditary taint? A. I should say where he showed all the signs of physical formation of the father, that he would be more likely to inherit the mental qualities than the other man would, who took to the other side of the house.

CROSS EXAMINATION.

By Col. Gilmore.

Q. I want to distinguish for you, doctor, whether all your answers in this case have been in response to the hypothetical question purely, or whether you are testifying from your own inferences, as to the evidence you have heard? A Well the hypothetical question has amounted to the same as my hearing of the testimony has.

Q I am asking you whether your answer is predicated on this question or not, and were they intended to be responsive to this hypothetical question? A. Generally.

Q. Well, you were only asked, doctor, to respond to that hypothetical question. Then you say you have answered in part outside of the hypothetical question, from other impressions derived? A. I don't think that I answered on anything outside that was antagonistic to this. If I did, I didn't intend it.

Q. By the Court.—One question, doctor, I had thought to ask. I don't know as there is much need of it. It is this: You take this man here, and leave out of that question all that relates to his domestic trouble, and take his other history, and then does he differ greatly from other men who have lived and who have been near us? A. I think he differs in this, as to the eccentricities shown in his character. Eccentricity, I hold, bears pretty nearly the same relation to insanity that varioloid does to small-pox—a mere shade of it.

Q. So that he is distinguished, you think, in that way, from men in general? A. Yes, sir; I think he has distinguishing marks.

Q, Well, is there anything in that history that would lead an intelligent physician, without a knowledge of his insanity, to expect anything of this kind? A. I think so. I think he is more likely to become desperate and to be a desperado when once thrown off his guard than a man with a better balanced intellect.

Dr. James D. Miller called.

Direct examination by Mr. Sloane.

Q. Dr. Miller, you are a physician living here in town? A. Yes, sir.

Q. How long have you been in the practice of your profession? A. Forty years last March.

Q. During that time you have had occasion to observe insanity in persons? A. Well, I might say I have had more or less to do with it twelve or thirteen years of my practice.

Q. During that time you have also testified here as an expert in cases? A. Well, I believe I have been before the Court before.

Q. You were not in when I read this hypothetical question? A. No. I have heard but little of the evidence.

Q. Well, sir, I hope you will follow me closely as I read the question, and take into consideration every fact that is herein stated, because upon these facts will your opinion be sought. But first let me ask what temperament do you consider the defendant? A. Rather nervous temperament.

Q. Now I will read this hypothetical question.

(Counsel here read to the witness the defendant's hypothetical question, and also the letters of defendant, one of July 21st, to his brother Arthur, and the other of July 23d, to his wife, adding the following:)

Q. I will ask you to state to the jury what, in your opinion, was the condition of his mind, as to sanity or insanity, at the time that he fired that shot? A. I would look upon the man prior to that time as having been a monomaniac on that subject.

Q. Well, now, taking all these antecedents then set forth in that hypothetical question, what, in your opinion, was his mental condition as to sanity, or insanity, and his ability to determine the right or wrong of that particular act, with reference to that particular man, and the added ability to refrain from doing the act, was he sane or insane? A. I am inclined to think the man was unbalanced in his mind.

Q. I will ask you to state, as part of that answer whether or not, in your opinion, he was able to refrain from doing the act he did on account of the sudden shock occasioned by the answer of the deceased? A. I would think that it would be impossible for him to do it.

CROSS EXAMINATION.

By Col. Gilmore.

Q. Doctor, supposing a case where a party had discovered the adultery of his wife, would not the average man be excited, restless, to some extent sleepless, to some extent lose his appetite for food, apt to threaten the destroyer of his peace, etc., etc., and do, in short, everything that Giddings is said to have done, up to the time of this homicide, as set forth in that hypothetical question? A. I think, Colonel, any man with any decision of character, would have killed him long before.

Q. That is not the question I asked, Dr. Miller, by a very long ways. You think, however, that any man of decision of character would have killed him, that is your answer? A. Yes, sir.

Q. My question was this, doctor. That taking an average, ordinary man, as we know him all around us, upon the discovery of the adultery of his wife, would he not, in a great majority of cases, become restless, excited, and to some extent sleepless, and lose his appetite. and make threats and denounce the adulterer and talk about killing, would not he ordinarily have done so? A. No, I think not. I think he would do it without talking. That is my opinion of mankind.

Q. Now, I will ask you, doctor, if you have not heard of dozens of cases of adultery coming to the knowledge of the husband in your experience without there being any attempt to kill? A. Not that I know of.

Q. Then, doctor, you don't consider that it is a case of insanity, or not, but simply a case of manliness, is that it? A. No. You asked me on this hypothetical case.

Q. Yes, sir; I tried to get you to answer, if it would not be natural, that

a man after that should exhibit those same symptoms that Giddings did, and you gave a very epigramatic and tragic sort of an expression? A. The evidence of insanity to me, in his going on this length of time, and subject to mental torture, and, under the hypothetical case put to me, of his father going in the same way from trouble, he undoubtedly inherited from the family more than ordinary predisposition, under similar circumstances, to act the same way, and the undergoing this mental torture for I don't know how long, a month it says in the hypothetical case, I believe, and going on in this way until that brain could not bear what other brains could bear, has given way in a certain sense, and he has produced the result that he did. That is my understanding.

Q. Now, then if the condition of things that you are stating, has, in your opinion, existed, if the hypothetical question be true, would it be possible for the injured husband to meet the adulterer, shake hands with him, talk pleasantly with him, drink with him, drinking one another's health, and walk 3,200 feet with him in ordinary conversation about ordinary topics———. A. A stronger indication to me as to his monomaniacal condition than anything else.

Q. In fact, your trap is set to catch the coon whether going or coming, either way. A. No, the fact is, that insane men can cover, and hide, and secrete, better than any sane man can. That is my experience with them.

Q. You have seen Giddings in jail? A. Yes, sir.

Q. You have seen him here and talked with him? A. I have seen him in jail professionally. I saw him twice, and I have been in the court house, sitting here.

Q. Where do you see any indications of insanity existing now, I mean since he has been in jail? A. Well, I have seen his nervous condition most of the time; palpitation of the heart has been one of the common symptoms with him.

Q. By Mr. Sloane.—Constipation, also? A. Yes, sir; he complains of that.

Q. By Col. Gilmore.—Are not those all natural incidents to his situation and confinement in the jail for the approaching trial? A. I have no doubt, Colonel, that that would increase it.

Q. Well, would it not be a cause for that same condition of things in an ordinary man? A. Well, it would cause some excitement, in some shape or form, and I have seen men in the jail with worse palpitation of the heart, from more trivial causes than him.

Q. Well, there is no indication of insanity there, is there? A. Well, there was that about him in the jail that would indicate it, as I have said before, and I have seen some indications that the man was not exactly right in his mind.

Q. Since he has been in jail? A. Yes, sir.

Q. Now, just state that so others can judge? A. Well, he didn't think that he had committed any murder, nothing wrong about it.

Q. He didn't think he ought to be convicted, either, did he? A. No, sir; I am speaking of the moral wrong; he didn't think there was any moral wrong about it as far as he was concerned. If there was any murder committed it was his wife that committed it.

Q Did he mean that his wife held the pistol? A. I don't know what he meant.

Q. Did he convey that idea to you?

(Objected to by counsel for defendant.)

A. He didn't state what he meant; said he didn't think he had committed any murder. I didn't ask him any questions as to what he meant.

Q. And that you conceive is an indication of insanity, do you? A. Yes, sir.

Q. Do you think, in his case, there is any lesion of the brain, or anything

of that sort? A. I think there is a functional derangement about his brain.

Q. Will you please describe it? A. I cannot tell you what the derangement is in the brain, but there is undoubtedly a difference; whether there has disintegration commenced there or not I cannot say, but the functional derangement is there. Whether it is chronic yet or not I cannot say, but there is some trouble in the man's brain functionally, undoubtedly, in my mind; but whether it has gone to the point that there is any indication of a softening of the brain, or anything else, I cannot say.

Q. You cannot say that there is anything of that kind? A. No. It would take a post mortem to tell that just now unless he goes on further.

Q. Is not most of your opinion upon that subject derived from the circumstances of meeting him, and the excitement surrounding the party? A. No, it is from my experience in former cases, and some post mortem examinations after the death of the party. I derived the inference from his present condition, not so much as from personal experience in the past with other deranged people.

DANIEL GIDDINGS recalled in his own behalf, testified as follows:

Direct examination by Mr. Sloane.

Q. In your letter to your wife you say this: "Well, Mary, I must close. When your paramour casts you off, and all the world forsakes you and spurns you, then probably you will come to your sober senses and know what I have told you. I will not take it back." Now, you may state, in the first place, whether or not you did not testify this morning that that was an allusion to the statement that you had made to her at one of the other times, when she had threatened to go away, that when she tired of everything else, you would permit her to come back to her home and her children? A. Yes, sir.

(Objected to by Counsel for the State.)

Q. Now, I will ask you to state what does this refer to which you say you will not take back?

(Objected to by Counsel for the State. Objection sustained.)

Defendant rests.

Court adjourned until 9 a. m. to-morrow.

MORNING SESSION.

STATE IN REBUTTAL.

TUESDAY, December 12, 1882.

ROBERT CALDWELL called.

Direct examination by Mr. Bitzer.

Q. Mr. Caldwell, were you acquainted with the deceased Benjamin Wiltshire? A. Yes, sir.

Q. How long had you known him? A. I guess about fifteen years.

Q. You knew him intimately, did you? A. Yes, sir.

Q. Now, from your knowledge of him, what was the character of Benjamin Wiltshire for peace and quietude? A. Well, I never seen any harm with the man at all, as I know of.

Q. Were you well acquainted in the neighborhood where Benjamin Wiltshire lived? A. Yes, sir; I am tolerably well acquainted in the neighborhood where he lived.

Q. Well, what was his reputation for being a peaceable, quiet man, or otherwise? A, Well, so far as I know, he was a very peaceable man.

CROSS EXAMINATION.

By Col. Sloane.

Q. You are related to him in some way or other, by marriage? A. No, sir.

Q. Didn't Billy Wiltshire marry into your family, or into a family that was related to you? A. William Wiltshire married a Trego, James Trego married my sister.

WESLEY BRAGG called.

Direct examination by Mr. Bitzer.

Q. Where do you reside? A. I live below Massieville.

Q. Did you know Benjamin Wiltshire in his lifetime? A. Yes, sir.

Q. How long had you known him? A. Well, I have known him eighteen or twenty years, I reckon.

Q. From what you know of him, what was his character for being a peace-

able, quiet man, or a violent, vicious and dangerous man? A. Well, I would not consider him a dangerous man, at all.

Q. Were you well acquainted in the neighborhood around Massieville? A. Yes, sir.

Q. What was his reputation for being a peaceable and quiet man, or otherwise? A. Well, he was quiet. He would drink a little, once in a while.

Q. Well, did you consider him a peaceable, quiet man, or otherwise? A. I did when he was sober.

Q. Well, now, when he was drunk, was he vicious or dangerous; did you regard him so? A. No, I never saw that he was.

Q. Did you regard him as a vicious, dangerous man? A. No, sir.

CROSS EXAMINATION.

By Mr. Sloane.

Q. What relation are you to him? A. He is a counsin of my wife.

The following named persons also testified as to the reputation and character of Wiltshire, substantially as the last two named:

Samuel Caldwell, Samuel Trego, Nathan McCarty, A. B. Pricer, David Nolce, John Hiner, Mrs. Willis Brown, Rev. Wm. Seabrook, Willis Brown.

GEORGE EDWARDS called.

Direct examination by Mr. Bitzer.

Q. Mr. Edwards, what is your business? A. Well, farming a little, fruit growing a little; carrying the mails at present.

Q. Were you carrying the mail on the 5th of August last, on the day of the killing of Benjamin Wiltshire? A. Yes, sir.

Q. I will ask you if you saw Daniel Giddings on the day of the killing of Benjamin Wiltshire?

(Objected to by Counsel for defendant, on the ground that all testimony as to defendant's whereabouts was properly a matter in chief.)

The Court to Mr. Bitzer.—What is the next question to which you are leading.

Mr. Bitzer.—The next question is, I want to know where he saw him.

(After argument the objection was over-ruled.)

A. Yes, sir.

Q. Where did you see him, Mr. Edwards! A. I saw him in Massieville.

Q. For what length of time was he with you? A. Well, I suppose about, probably, three-quarters of an hour to an hour.

Q. Where were you during that three-quarters of an hour to an hour? A. I was driving from Massieville to Chillicothe.

Q. I will ask you who was with you at that time? A. Mr. Columbus Lindsey?

Q. Was there anybody else besides Mr. Giddings and Mr. Lindsey? A. No, sir.

Q. Columbus Lindsey is the witness who is sick and had to go home last night? A. Yes, sir. There was nobody with us.

Q. I will ask you now, during that time of the ride from Massieville to Chillicothe, to describe the manner of Mr. Giddings during that ride.

(Objected to by Counsel for defendant, that if competent at all it should have been in chief.)

Mr. Bitzer.—We propose to rebut, if the Court please, the idea that he was disturbed in mind, or that he experienced any mental emotion about the period of the homicide.

(Objection over-ruled, to which Counsel for defendant excepted.)

A. Well, I could not tell you what the condition of his mind was, for he set right behind me. When I drove to the postoffice to get my mail he was there, and he says, "Doctor, I want to ride up to town with you." Well, I had Mr. Lindsey in the buggy, and I says, "I don't know, Mr. Giddings, I've got about a load for such a one-horse buggy." He said that he wanted to come up to town, and he had business, and he hated to walk. Finally I told him if he could ride on the seat, it is an open buggy, says I, "If you can ride on the seat between me and Lindsey, and sit with your back to us, I will try and haul you." And he done so, set there behind us, and the man kept whistling occasionally.

Q. Who did? A. Mr. Giddings.

Q. Kept whistling occasionally? A. Well, once in a while he would whistle a little. I didn't ask any question, or pay any attention to him, for I was ahead of him.

Q. What was his manner at the time that he asked you to ride to town? A. Why, he was standing, if I am not mistaken, with a lady called Mrs. Blair, out on the steps, when I drove down; I didn't notice his manner at all, for I was busy getting my mail.

Q. I will ask you whether he was excited, or appeared to be cheerful? A. Well, I—he always appeared to be cheerful enough. I didn't pay any attention about it, Mr. Bitzer, at all.

Q. What time in the day did you start from Massieville, and what time did you get to Chillicothe on that day, the day of the killing? A. I really don't know exactly the minute when I started from Massieville, but I generally aim to get my mail half after eleven o'clock.

Q. What time do you get to Chillicothe? A. Oh, I aim to get to Chillicothe between twelve and one sometime. The mail is due at one.

Q. You may state whether or not you got to Chillicothe on that day between twelve and one o'clock, whether it was earlier or later? A. I could not say, for I didn't pay any attention, but I am satisfied it was about that time, for I generally make my own time with my horse.

Q. You are satisfied it was between twelve and one o'clock? A. Yes, sir.

Q. That is on the day of the killing? A. On the day of the killing.

No cross examination.

William Wiltshire called.

Direct examination by Mr. Bitzer.

Q. Where do you live? A. I live in Massieville.

Q. How far beyond Massieville? A. Well, it is about a mile, I suppose.

Q. What is your occupation? A. Well, I work on the farm, so you can call it farming.

Q. You are a farmer? A. I work there on the farm at home.

Q. How near to your father do you live? A. In the same house with my father.

Q. You are a brother of the deceased Benjamin Wiltshire? A. Yes, sir.

Q. I will ask you now whether you were acquainted with Daniel Giddings, previous to the 5th of August? A. Yes, sir; I was.

Q. You may state how long you were acquainted with him? A. Well, that I cannot tell. I got acquainted with him pretty shortly after he came there.

Q. I will ask you now to state whether you knew him very well. A. Well, I thought I did.

Q. I will ask you whether or not you had a conversation with Daniel Giddings, on or about the 20th of last May, at his residence? A. Yes, sir.

Q. Now I will ask you to state what that conversation was? A. Well, on the 20th day of May, he told me sometime before that when the waters got up for me to come over and we would go to the dam and catch a mess of fish. He had a dip net, and I went over there early on the morning of the 20th, and got off my horse and went to the house and went in. He told me to come in. I seen they were having a disturbance. I went just inside of the door of the kitchen and sat down on a chair. At that time he was getting ready to go to the dam with me fishing, and his wife spoke to me and asked me if——

Mr. Sloane.—You need not state what she said.

Q. By Mr. Bitzer.—Was Daniel Giddings present? A. Yes, sir.

Q. Go on then and state. A. And she asked me if we did'nt want to hire a girl. I said, "Yes, we wanted to hire a girl, but we don't want you." I said that, you know, to kind of stop the——

Mr. Sloane.—Just state what was said, you need not state your motives or purposes.

Q. By Mr. Bitzer.—State what was said. A. Well, she had a family. She says, "Well, I am going to have a divorce; I am going to leave Dan." I don't remember what was said then. I, of course, tried to break it off.

Mr. Sloane.—Just state what was said, and not what your motives or thoughts were.

The witness.—That is what I am trying to do. I says to him, she wanted to come, it was the day of the Catholic Knights—

The Court.—Well, state the conversation that occurred and leave out the balance.

The Witness.—She wanted to come to town. The Catholic Knights were to march that day. I says to him, says I, "Dan, take her to town." Says I, "I can go to the dam by myself." Says I, "Go with her to town." Says he, "I told you I was going fishing, and I am going." Then she went on to say that she was going to leave him and have a divorce; she had lived in hell for ten years. And he says to her, says he, "I told you to go and get a divorce and I will pay for it." And he says, "more than that, I will give some man twenty-five dollars to go and swear to a lie, so you can get it." And at that time he had eat his breakfast and we fixed up the dip net and got on our horses and went to the dam.

Q. By Mr. Bitzer.—Well now, what was her manner? A. Well, she was crying at the time.

Q. State whether or not, she made any accusation there to him, and what it was, if any? A. I don't know as I can understand you.

Q. State whether or not, she accused him——

The Court.—Let him state all that was said.

Q. By Mr. Bitzer.—Have you stated all now, that was said there? A. Well, I believe I have, so far as I know. There was a great many things said that I don't recollect. I didn't pay no attention to it at the time, because I didn't care about hearing it.

Q. Well, I will ask you now, whether or not, she accused him of anything? A. Well, she says to him, "You don't think anything of me." And he turned around and laughed, and says he, "I don't."

Q. You may state now what his manner was at that time, whether it was the manner of one joking or in earnest? A. Well it was not joking.

Q. Well, what was it? A. I would consider him out of humor, right smart.

Q. Was there any other person present besides you and Mr. Giddings and Mrs. Giddings? A. Mrs. Halderman came in shortly after I got there that morning.

Q. What part of the conversation did Mrs. Halderman hear? A. Well, she heard what I have stated last, of him telling her for to get a divorce and he would pay for it and he would give some man $25 to swear to a lie, so she could get it.

Q. I will ask you if Mrs. Halderman has been present at any time during this trial? A. No, sir; she has not.

Q. And whether or not, she has been supœnaed by the State? A. She was supœnaed.

Q. State why she was not present here to-day? A. Well, she was not able to; she was not well; I stopped at her house to get her and she could not come. I don't know what you call it.

Q. Now I will ask you whether you ever had any conversation with Daniel Giddings about his wife? A. I had a conversation with him in the harvest field, yes, sir, last harvest.

Q. When was that?

Mr. Sloane.—The Court will bear in mind that there was no foundation laid for that. I admit that they have a right to prove the declaration, but they have laid no foundation for this particular part of it.

The Court.—That rule don't apply to that part of it.

Mr. Sloane.—I simply call the attention of the Court to it, so that I may have the right to call the defendant for the purpose of asking him with reference to that.

The Court.—The question as it is now, has nothing to do with what may turn up in the future.

Q. By Mr. Bitzer.—Well then Mr. Wiltshire, you can go on and state what you were going to state about seeing Daniel Giddings and having a conversation with him in the harvest field. When was it? What harvest do you refer to? A. It is the last harvest.

Q. Where were you harvesting? A. Harvesting there on my father's farm.

Q. You may state how Daniel Giddings came to be there? A. Well I got him to help harvest.

Q. State where you were in the harvest field? A. We had went to work in the morning and cut wheat until noon and bound it up, and after dinner it looked like a rain. Then we cut a little after dinner and when we cut that too, we proposed putting it up in shocks, then we would come over in another piece, across the creek: and I proposed to him that him and me would shock together and let the other two shock together, and so we got to talking about his family troubles, and I understood that he had——

Mr. Sloane.—You need not state what you understood; just state what occurred between you.

Q. By Mr. Bitzer.—No don't state what you understood. A. Well, I don't know as I can come at that without telling the whole thing.

Mr. Sloane.—Just tell the conversation, Mr. Wiltshire. A. Well, he got to talking to me about his troubles.

Q. By Mr. Bitzer.—State what he said as near as you can? A. Well—— a working along he asked me if I had said anything about his wife and Lyman Blair running together. I told him no that I hadn't, any more than the neighborhood had spoke about it, I was not talking about it no more than the balance of them; and I don't like to go over what was said, what he said.

Q. State all that was said.

Mr. Sloane.—I want to know just what he said.

A. Well, says he, "I told my wife that she was running round with that damned whoremaster."

Q. Whom did he refer to, if anybody?

Mr. Sloane—Just state the conversation: you need not state what reference he had.

A. Well, Lyman Blair.

Q. By Mr. Bitzer.—If he talked about any person, tell who it was and what he said about him. A. How the thing commenced, you mean?

Q. Yes, sir; tell what you said and what he said. A. I told him, then, "I understood you was mad at me." Says he, "No I aint." Well, I says, "I understood you was mad at me." And then he spoke about this, talked about Lyman Blair, if I had said anything about him, or his wife, that is his wife running round with Lyman Blair.

Q. That was the witness who was here, the one that identified the revolver? A. Yes, sir. And he asked me if I had said so and so and I told him not no more than the neighborhood had talked about it; I supposed I talked just like the balance did; and he said then he had told his wife that she was running round with that damned whoremaster; and from that he went on talking, and I can not tell, I can not recollect all that was said. I didn't charge my memory with it, because all that I was interested in was to know whether he was mad at me about it, or not.

Mr. Sloane.—You need not state what you were interested in. State what occurred. A. Well whether he was mad. I hadn't anything against him, I know, and he had always treated me right.

Q. By Mr. Bitzer.—I will ask you whether you had any other conversation with Daniel Giddings in which his family troubles were mentioned to you? A. Well, he did tell me once, on the pike there, that his wife had went off and left him in Erie county, and was gone three weeks and was buggy riding around with other men; and he told me, also, that he had come down there, because he thought she would do better; and so he took her back, on account of his children.

Q. How is that? A. He took her back on account of his children.

Q. Now do you remember any other conversation? A. Well, I don't know that I can. I have talked with him several times, but——

Q. Now I will ask you if that is all that you remember; whether you remember ever having a conversation with him, in which he said anything to you about the comparative guilt of Benjamin Wiltshire and his wife? A. Well, he always spoke to me that his wife was more to blame than Ben was; in fact he never had anything to say about Ben's guilt; of course, he talked about it, and I supposed he blamed him as much as he did her.

CROSS EXAMINATION.

By Mr. Sloane.

Q. You have already stated that you are a brother of Benjamin Wiltshire? A. Yes, sir.

Q. When was this conversation on the pike, that you have stated? A. Well it was, I think, a day or two after they went away.

Q. After they went away to Washington? A. Yes, sir.

HENRY KLEINDINST called.

Direct examination by Mr. Bitzer.

Q. Where do you live? A. I live close to Massieville.

Q. How long have you lived at Massieville? A. A little over eleven years.

Q. Are you acquainted with Daniel Giddidgs? A. Slightly.

Q. I will ask you if you rode down from Chillicothe to Massieville with Daniel Giddings sometime previous to the homicide? A. I rode down with him, yes, sir; a short time before the homicide.

Q. I will ask you whether or not, you had any conversation with him at that time in relating to his family troubles? A. Yes, sir.

Q. Well, you can just state what it was. Give the language of both parties, as near as you can. A. I would not like to undertake to give the exact language used.

Q. Well, as near as you can. A. But the conversation first commenced with regard to the elopement of his wife with Wiltshire when he——it bothers me to get it in the shape that it occurred though; I don't know as I can do it.

Q. Commence where you remember the conversation began and give as much of it, in substance, as you can. A. Yes, sir.

Q. Can you state anything more, Mr. Kleindinst, that occurred between them? A. Well, I am bothered.

Q. Well do you remember any point along the road to Massieville, where there was anything said about it? A. The conversation with regard to those parties commenced after we got about or nearly half way to Massieville. I think the conversation opened up with regard to these matters, by my asking him whether he had heard from them since they went away.

Q Heard from who? A. From his wife and Wiltshire, when he told me that he didn't, and that he didn't care whether he ever did hear from them. When I told him what rumor I had heard, that he followed them with a writ for his goods——that is the reason why I spoke about it, the curiosity with regard to the goods——and he said he didn't follow them, nor he didn't intend to, and if they would stay away, it was all right; he didn't intend to follow them; that he never followed them and if they would stay away, it was all right and he would never want them to return, and if they did he would prosecute them for adultery.

Q. Now what was his manner while describing that? A. His manner was rather calm.

Q. Well, now, what else was said in relation to his family troubles, in any way, if you can remember anything? A. Well, he said in that connection, that, perhaps, that may not have been the next thing on the programme, or next in order, but he stated also that she had gone away before.

Q. Now give all you can of that. A. That this is not the first time; that at one time after the birth of the third child she left him and went away with another man, and that she was gone, either he said either three weeks or three months; I am not positive now whether it was three weeks or three months, but I think it was three weeks; that is my impression, that it was three weeks instead of three months.

Q. I will ask you whether, in that connection, he said anything about the age of the child? A. I believe not, but that during that time, while she was frolicking round with this other man, that she had promiscuous intercourse with various men. I cannot just think now whether anything else was stated in that connection or not.

Q. Have you stated all you remember now? A. All I can think about now in that connection.

Q. Well, then, if you don't remember anything in that connection, was there anything said further on? A. I asked him whether he knew anything, after stating this, whether he knew anything about his wife getting lost in a blackberry patch with a certain fellow up the creek.

Q. What was the man's name, if it was mentioned? A. The name was not mentioned, but the description and his residence had been described that both knew who we were talking about.

Q. Tell what residence had been described so the jury can know. A. The house right above him, his next neighbor.

Q. Just the next house above him? A. Yes, sir; Blair.

Q. Which Blair? A. Lyman Blair.

Q. Well, now, go ahead. You stated that you asked him——? A. I asked him this, whether he had heard of being lost in a blackberry patch with his wife. He said no, he hadn't heard of that, but that he had heard so much of that kind, that it was not anything new nor surprising to him to hear anything of the kind. He had heard so much that it sickened him to hear of it.

Q. How was that last? A. That it sickened him to hear of it, or words to that effect. Then he went on and told me that during the last winter, a year ago, which would be two years this winter, his wife attended a protracted revival meeting in Massieville, and that he went with her one night, and he said that did him and he did'nt go any more; that he worked hard, and when night come he was tired and he staid with the children, and that she went in the morning, she generally dressed up in her best, and started off in the morning to go to the morning meeting, and never got home until ten, eleven, twelve, and sometimes one o'clock at night, and that she kept it up for twenty-two nights—it is either twenty, twenty-one or twenty-two nights—in succession, and that the meeting was over, she expressed her regret that the meeting was over, stating that "we have had such a good time of it." He said that he told her, in a joking sort of a way, that he guessed he understood what kind of a good time they had, that he believed he knew all about it, understood; and that afterwards he found out that she had not attended more than about half of those night meetings, but that she had put in the extra time at this house above with this young man Blair.

Q. Lyman Blair? A. Yes, sir; that she had put in her time there, instead of the protracted revival.

Q. By a Juror,—Is that Blair a married man! A. I believe not.

Mr. Sloane.—He lives with his mother.

The Witness,—Well, he went on to say that his wife and Blair had been seen out in the bush at various times; that he had learned so, at least, that he had found out, or heard that they had been seen in the bush various times, and that upon sundry occasions they were seen crossing the dividing ridge between his house and the river going to Three Locks, or Stony Creek, to attend meeting on Sunday, when in fact he found out that there had been no meeting there, but that they had went over there and came back at ten, eleven and twelve o'clock at night.

Q. Anything further now, that you remember? A. I can not think of anything else in that connection.

Q. Now, I will ask you what his manner was during all this time, as to his being excited or calm all the while he was talking to you about what you have related? A. Why, he seemed very calm in the matter; quite calm.

Q. Now you need not answer this question. I think it competent, that is, whether or not, at any time upon that road, at the time that you were with him from Chillicothe to Massieville, he made a threat against Benjamin Wiltshire, or had made a threat, and what was his manner, if he did make a

threat, at the time that he made the threat against Wiltshire? Now, don't answer that.

The Court.—That was a matter in chief.

Mr. Bitzer.—Well, I wanted to know what his manner was, if he made a threat, whether he was cool and collected.

The Court.—Well, we cannot admit evidence in chief afterwards. The manner must all be subordinate. The direct effect of that evidence will not be to rebut, but to introduce in addition evidence criminative.

Mr. Bitzer.—It might have that effect, but my object in asking the question was not that.

The Court.—I understand, but it will not do to apply the rule in that way. In that way you could go on and introduce threats of a dozen men.

Q. By Mr. Bitzer.—Now, was there anything else, Mr. Kleindinst, that you remember? A. Excepting what you have now spoken of?

Q. Yes, sir. A. In that conversation?

Q. Yes, sir. I will ask you if you saw him very often before the homicide, at any time from the week before, or at the time his wife eloped and went off with Wiltshire, or previous to that time, did you see Daniel Giddings? A. I have seen him at various times, but not very often.

Q. Now I will ask you what his manner was during all these times when you saw him? A. Always about the same, always calm. I don't think I ever saw him excited.

Q. How was his conversation during all that time when you saw him and conversed with him, as to being rational or otherwise? A. He seemed to know very well what he was talking about.

CROSS EXAMINATION.

By Mr. Sloane.

Q. You say you have lived down in that neighborhood about eleven years? A. Yes, sir.

Q. Where did you come from to there? A. New Philadelphia, Ohio.

Q. What is your business? A. Well, my business has been varied a great deal by circumstances.

Q. Well, let us know what it is. A. I am a professional phrenologist, but circumstances will not allow me to follow my profession, so I turned my attention when I came down there to farming and teaching writing school. Would teach writing school during the winter time and part of the time during the summer, and carry on fruit farming on a small scale besides.

Q. You were born in Germany? A. Yes, sir.

Q. Are you a phrenologist by profession? A. Yes, sir.

Q. Have you any particular religious belief, or do you believe in any God at all? A. Have I any particular belief? I don't know why that should affect this case any.

Q. Well, you are not to judge of that.

(Counsel for the State here objected to this line of inquiry, on the ground that neither the religious beliefs or non-religious beliefs of the witness could be inquired into as reflecting upon his credibility as a witness.)

After extended argument by counsel on both sides, the Court held that the objection goes more to the credibility of the witness than to his competency, and that he might be examined, the examination, however, being with a due regard to the man's rights in this matter.

Q. By Mr. Sloane.—I will ask you then if you believe in the existence of a God, or an over-ruling providence? A. Put it in a different shape.

The Court.—You can answer that question, can't you?

Q. By Mr. Sloane.—Answer the question. Do you believe in the existence of a God, or an over-ruling providence? A. It depends on what you

call your God. Now describe your God and I will tell you whether I believe in it.

Q. Answer the question—by the common acceptation of the word and the meaning of the God. A. There is many acceptations of the God.

The Court.—He has a perfect right to know what you mean by the word "God."

Q. By Mr. Sloane.—I will ask you if you believe in any over-ruling providence which, either in this life or beyond this life, punishes for wrong. A. I do.

Q. You do? A. Yes, sir.

Q. Do you understand that to be simply what you call a "God in yourself?" A. Will you let me explain myself in my own language?

Q. Yes, you may. A. I shall do so cheerfully.

The Court.—I think it has gone far enough. If I understand the witness, he states that he does have a belief in a God, who rewards human actions that are good and punishes offenders. Is that what you mean?

The Witness.—I have no objection to answering the question. I would just as lief answer it as not.

(Further discussion here ensued between counsel, at the close of which the Court said):

The Court.—Well, if you desire now, and I understand upon the part of the witness that he does desire to state briefly what he understands or means by "God," he can do so.

The Witness.—I can give you in few words what I believe and what I don't believe.

Mr. Sloane.—Just tell the jury.

The Witness.—I believe there is a principle permeating all things, which binds all things in a common brotherhood, and that no man can do anything either for good or evil, but what will affect, either directly or indirectly, the whole human family, either for good or evil. That is what I believe in regard to that over-ruling principle. Now I will tell you what I don't believe. I don't believe that a man can commit any crime whatever, and then by just simply offering up a long prayer, or having somebody else pray for him, swing off the gallows into heaven. I don't believe in such thing.

Q. You don't believe in prayer at all, do you? A. Yes, I do, I do; but I don't believe that the prayer of one man, or a dozen men, will screen him from punishment, and that he can swing off the gallows into heaven. I don't believe it.

Q. You don't believe then that Christ's prayer, "Father, forgive them," has any avail?

(Objected to by Counsel for the State.)

The Court.—It has gone far enough.

Mr. Sloane.—Very well, I will pass from that.

The Court.—You can reserve any question you desire.

Mr. Sloane.—Well, I don't care to reserve any. We have got this matter before the jury sufficiently.

Q. I will ask you, sir, if you havn't been making yourself busy in this case, looking up evidence for the prosecution? A. Hunting up evidence.

Q. Yes. A. No, sir, not that I know of.

Q. Hav'nt you been rendering any assistance to the prosecution in this case? A. Not particularly.

Q. Well, have you at all? I did'nt ask you "particularly." A. I have not hunted up any.

Q. I will ask you if you have not rendered any assistance at all to the prosecution in this case? A. I don't know that I have.

Q. Havn't you been consulting with the attorneys for the prosecution? A. Only as you have seen me here. They have come to me and asked me what I knew, and I told them.

Q. I didn't mean with reference to your own knowledge or what you would

testify. Hav'nt you been consulting with them and giving them information, and of those that you knew of who would testify to any particular things? A. Yes, sir.

Q. I will ask you to state to the jury whether you have not been seeking information beneficial to the prosecution in the neighborhood of Massieville? A. Seeking information?

Q. Yes, sir. Finding it out and informing the prosecution of it. A. I think not.

Q. Well, you know better than I. A. I think not.

Q. Don't you know whether you have or not? A. I don't know of any.

Q. Don't know of any at all? A. I don't know of any that I have been hunting up.

Q. You are certain of it? A. I don't know of any, do you?

Q. I am asking the question of you, sir. A. I don't know that I have been.

Q. That is not an answer to the question. A. And if I have not, I don't know that I need charge myself with it.

Q. Answer my question; have you? A. Not that I know of.

Q. You don't know whether you have or not, certain? A. I don't know whether I have. I believe if I had, I would remember it.

RE-DIRECT EXAMINATION.

By Mr. Bitzer.

Q. Now, Mr. Kleindinst, where was the first time the prosecution inquired of you for information concerning this case? A. I don't remember.

Q. I will ask you whether or not the first time that the prosecution inquired of you for information in reference to this case was, or was not, in the rear of this court room, on yesterday morning or Saturday morning? A. The prosecuting attorney?

Q. Yes, myself? A. Yes, sir.

Q. Was it or was it not the first time that I had got any information from you? A. I don't remember just exactly what day it was, whether it was yesterday or Saturday.

Q. Well, on that day, whichever day it was? A. It was since I came here as a witness.

Q. Was not that the first time, and was not the information you gave me at that time at my instance and my inquiry? A. It was at your request. You inquired of me and I just told you what I knew.

Q. Now, do you remember at any time, in this trial, when you came to me and gave me any information, as to what you knew, or any witness knew, in regard to this case, voluntarily? A. I know that I did not; I did not.

Q. Now I will ask you whether Mr. Gilmore and you have ever had any conversation about the case? A. Mr. Gilmore and I never had a word of conversation in regard to the subject.

The Court.—That is enough.

RE-CROSS EXAMINATION.

By Mr. Sloane.

Q. I desire to ask a question which may not include the attorneys; you said a while ago that you did furnish information. I will ask you if you have had frequent conversation with William Wiltshire? A. Oh, yes, sir.

Q. About this case? A. Yes, sir; we have had frequent conversations with regard to the case.

RE-DIRECT EXAMINATION.

By Mr. Bitzer.

Q. I will ask you where it was that you have had any conversations with William Wiltshire? A. Why, I met him the same evening after the murder was committed.

Q. Where? A. I saw the murdered man and had a conversation with William in regard to it.

Q. Where was that? A. It was here in town.

Q. At whose instance? A. It was accidental. We just happened to get together.

Q. At whose instance was the information given, yours, or his? A. I don't remember.

Q. Did you at that conversation with him give him any information as to what any other witness knew concerning the case? A. I don't remember anything about the conversation. I simply remember that we met and that matter was talked over promiscuously. I didn't charge my memory with any conversation that took place at the time. Everything was hurried and excited; everybody was excited over the thing.

Q. Have you had any conversation with William Wiltshire since that time concerning the case, in which you gave him information regarding the case? A. I don't remember just what conversation we had. I remember that I frequently met him and we talked about it.

The Court.—He simply wants to know whether you did.

Q. By Mr. Bitzer.—Just simply whether you did have any conversation with William Wiltshire, in which you gave him any information with regard to the testimony of witnesses in this case. A. Yes, sir.

Q. Now where was it?

The Court.—It makes no difference where it was, or when it was, or what it was; that is not the subject. The only question is whether he had conversation with him.

Q. By Mr. Bitzer.—I will ask you then, what witnesses you referred to, who knew anything about the case, if you referred to any?

(Objected to by Counsel for defendant. Objection sustained.)

MRS. MARTHA TREGO called.

Direct examination by Mr. Bitzer.

Q. Mrs. Trego, where do you live? A. In Massieville.

Q. In what business is your husband engaged? A. In the mercantile business.

Q. Are you acquainted with Daniel Giddings? A. Slightly.

Q. Do you remember about the time that Benjamin Wiltshire and Mrs. Giddings went away from Chillicothe together? A. Yes, sir; I do.

Q. I will ask you whether you had any conversation with Daniel Giddings, at any time before she went away from Massieville about family troubles? A. No, sir.

Q. I will ask you whether you had any conversation with Daniel Giddings

in relation to his family troubles, after Mrs. Giddings left Massieville? A. He spoke to me once.

Q. Where was that? A. At our store.

Q. When was that? A. Well, I can't just say; I don't remember.

Q. Well, I mean what part of the time, between the time she left Massieville, and when she came back? A. I don't know; I don't remember.

Q. It was sometime between those two events? A. Yes, sir; I think it was.

Q. I will ask you to relate that conversation to the jury; just what was said by you and him. State fully all that you can remember. A. Well, in the post office——he came in our store just as I was going in, and he seemed excited and told me that he had run down one horse, and had got a fresh horse and was hunting his wife and I asked him whether he had heard from her. He said he didn't know anything about her, that she had left him and he didn't know where she was. And he said——did you want me to tell it just in his language?

Q. Yes, just in his language. A. Well, he says, "Mrs. Trego," he says, "It is a nice thing for Ben now, but," he says, "It will be hell for him if I live and he lives." He says, "If it had not been for the love and respect that I have for my mother and my children, Ben Wiltshire would be lying in some graveyard here, and I would be away some place else," I think that was about all he said.

Q. Well, just think a little and see if you remember anything else. A. I believe I did meet him at another time.

Q. When was that? A. I don't remember whether it was after this, or before.

Q. Well, where was that? A. Well it was in front of our store. I was just going from the store to the house.

Q. Well, what was said there then? A. Well, I don't know just how the conversation came up, but he said that he had followed his wife and Ben Wiltshire time and again, and had watched them, and had saw them and they didn't see him, didn't know that he was about, and he had saw them laying in the brush like hogs, and said that it was not any further than from here to the fence. That distance was about as far as from here to that stove. I think. And that is about all that I remember that he said.

Q. Now what was his manner there when he told you that. Did he appear to be calm? A. He appeared to be excited.

Q. At that time? A. Yes, sir; I know I made the remark to my husband when I went into the house——

Q. Well, you need not state what you said to your husband. What was the expression there? You used the word "wallowing." What was the expression in connection with that? A. "Laying;" it was not "wallowing."

Q. You didn't use the word "wallowing?" A. No, sir; "laying in the brush like hogs." That is just the expression that he made.

Q. I will ask you whether or not, he said anything in that conversation as to what time it was; in the daytime, or night time? A. No, sir; he did not.

Q. I will ask you whether or not, he said in that conversation, as to where the brush was, where he saw them? A. No, sir; nothing at all.

CROSS EXAMINATION.

By Mr. Sloane.

Q. What is your husband's name? A. John R. Trego.

Q. Are you connected by marriage with the Wiltshire's? A. No, sir. Well, Mr. Wiltshire married Mr. Trego's sister.

Q. Mr. Wiltshire married your husband's sister? A. Yes, sir.

Q. Now this last conversation you have spoken of, I would like to have you try and fix the time of, as near as you can. A. I can not do it.

Q. You don't know whether it was before or after the former conversation? A. No, sir. I think it was afterwards, but I can not remember positive.

Q. But you thought him to be excited? A. Yes, sir.

Q. Did you talk over the fact with somebody, of his being excited? A. Yes, sir; I went in and told my husband.

Mr. Bitzer.—Well, you need not state what you told your husband.

Q. By Mr. Sloane.—This occurred casually on the pavement as you were going from the store to the house? A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Bitzer.

Q. There is one question I would like to ask you, and that is if you can fix the time of the conversation when he said that he had seen his wife time and again, laying in tha leaves like hogs. How long before the homicide, as near as you can tell, did that conversation occur? A. I can not tell you. I think it was before they left.

RE-CROSS EXAMINATION.

By Mr. Sloane.

Q. Are you guessing at that? A. Yes, sir.

Q. Not certain about it? A. No, sir.

Dr. James Dewey called.

Direct examination by Mr. Bitzer.

Q. Where do you live, doctor? A. I live near Massieville. I don't know its exact bounds, whether it is in, or near.

Q. What is your profession? A. Well, I am farming in a small way now.

Q. Anything else? A. I once studied medicine and practiced a short time, but that was 25 or 28 years ago.

Q. I will ask you if you knew the defendant, Daniel Giddings? A. Yes, sir; I knew him.

Q. How long have you known him? A. Well, I have known him, I suppose, nearly four years; from three to five years; I don't know exactly.

Q. I will ask you now, of your own knowledge of the man, from what you have seen of him and know of him, whether he has ever been considered by the people down there in that vicinity as an insane man or a man with insane tendencies.

(Counsel for defendant objected to witness testifying as to what he was considered to be, but admitted that he could testify as to his own knowledge of the man. Objection sustained.)

Q. Well, from your own knowledge, doctor, have you ever regarded him as an insane man, or a man with insane tendencies? A. No, sir; I have not.

Q. I will ask you, whether previous to the homicide, on the 5th day of August last, you had seen him frequently? A. I saw him frequently pass our place. Our place is between where he lived and Massieville, and he was passing frequently.

Q. Had you conversed with him before that, often, or seldom? A. Before all of this?

Q Yes, sir. A. Oh, I often conversed with him before any of this trouble commenced.

A. And for a few weeks before the homicide? A. Never had but one conversation with him; it was a delicate subject, and I never broached it at all.

Q. I will ask you whether at that conversation you had with him, you regarded him at all as an insane man, or otherwise than a sane man. A. No, sir; certainly not, certainly not.

Q. Where was that conversation you had with Daniel Giddings? A. That was in his own house.

Q Just relate the occasion. A. May I be allowed to state here his mother was visiting the——

Mr. Sloane.—Just answer what you are inquired of.

Q By Mr. Bitzer.—Relate that occasion when you were at his house, all the circumstances of the conversation. A. Myself and wife called on his mother. We heard that she was going away the next day, and we called to pay our respects to her and visit her, and this conversation, all that I ever heard him say at all about it, was during that visit.

Q. Was that the day before she went away? A. It was the day before she was reputed to go away, and I think it was the day before she went, certainly not over two days.

Q. Now I will ask you if Mrs. Giddings was there? A. No, sir.

Q. Do you know where she was? A. Only by report.

Q. Well, go on and state what the conversation was. A. We had been talking with Mrs. Brouse before Mr. Giddings came in. He was not in when we first went there, and, of course, the burden of conversation was about Mrs. Giddings——perhaps it is not proper to say anything in regard to that.

Mr. Sloane.—If it was in the defendant's presence.

Q. By Mr. Bitzer.—If Daniel Giddings was present you can state it. A. After he came in, he was very severe in his denunciations of his wife, and wife's conduct.

Q. Well, state it in the language. A. I can only repeat them in detatched scraps; I can not carry it on as it was delivered, at all, but I can remember some expressions.

Q. Well, give them. A. Fist and foremost in the order of my recollection, he stated that he had been a long time cognizant of his wife's infidelity; ever since the birth of his third child, he said she had been too intimate with other men, and then went on to state, in support of this, that she left the child, a babe, and he had rheumatism, at the time, confined to the house, and she left his house and went off with some other man, the name not stated, as I know of. That was before she came here. Now right in that connection, I don't know what else was said; I don't remember; I didn't expect to be called upon as a witness, and didn't try to remember.

Q. Was there anything said as to the time she staid away, when she left there with another man? A. No, sir, I don't remember that. If there was anything stated, I don't remember that but he stated she had gone, and he had known ever since the birth of the third child, that she was too intimate with other men. That was nearly the language used; he had known that. Whether he noticed this, or whether the rumor concerning Lyman Blair, or whether it was spoken of by myself and wife, he said he knew of a report of her having——

Q. Give all you know that was said there, in that connection about Lyman Blair. A. Well, there was something said about his wife and Lyman Blair

being over towards the Three Locks and spending a day there one Sunday, I think. My impression is that I remarked that that was all I had ever heard regarding Mrs. Giddings, all I had ever heard, that rumor before this present trouble; all I had ever heard, I think was my own remark. He said he had heard of it, to.

Q. Who said? A. Mr. Giddings said he had heard of it. He was very severe in his denunciations———

Mr. Sloane.—Just state what he said.

Q. By Mr. Bitzer.—Now while he was saying this what was his manner? A. Well, his manner was as usual. I knew nothing except that he condemned her conduct; and he went on to say that he had given her up, and that he didn't expect to live with her any more, and had only lived with her so long as he had——it was remarked that it was wonderful that he had lived with her knowing these things. He said that he had only done so for the sake of his family; expected to leave her sometime after they grew up and got able to take care of themselves. She had precipitated this now. He came back and he went on through in stating what he knew that she had attended this revival meeting, and said she would not get home often until 12 o'clock, and 1 o'clock, and he had made inquiries afterwards and found out that she was not at the meeting, at all; didn't say that she was with anybody else, that I know of.

Q. Now I will ask you whether or not, during this conversation he expressed his mind, or expressed himself———

(Objected to by Counsel for defendant.)

Mr. Sloane.—I submit as the rule has been laid down, that the witness must state in the first place, if he has stated all that he knows.

The Court.—I can not say what the question is yet.

Q. By Mr. Bitzer.—I will ask you whether or not, he stated anything in regard to his feeling towards his wife, state of affection towards his wife?

The Court.—The defendant?

Mr. Bitzer.—Yes, sir.

The Court.—Put the question in this form, as to whether he has stated all, and then you can call his attention particularly to anything that you think has been omitted.

Q. By Mr. Bitzer.—Go ahead, now, doctor, if you think there is anything else that you remember. A. Well, I don't know unless my attention was called. Of course, I can not give this in the order. I don't pretend to do that, in the order in which it was stated. However, in further confirmation of this liason between the wife and Wiltshire, he stated that he had followed them often, and been within a few feet of them, while they were together, without their knowledge.

Q. What Wiltshire did he refer to? A. Benjamin Wiltshire.

Q. Well go on. A. Well, I don't know that there is much else to say. You see we were a mixed crowd there. My wife and his mother were present and of course, things were not very broadly stated.

Q. Did he state where he had followed his wife and Wiltshire? A. No, sir.

Q. What was the subject of the conversation just before that? A. Oh, well. the subject of the conversation was his wife and his wife's amours and infidelity.

Q. Well, now do you remember anything else, doctor? A. I do not. Well, I do not know, perhaps I might think of something, but there was a good deal said.

Q. I will ask you whether there was anything said by him as to the comparative guilt of Wiltshire and his wife, and if so, what was it? A. Not that I remember; I don't recollect that. I do remember that he said that she had got just as low and mean as a woman could get, and that he was done with her; I remember that, and that she swore like a trooper, or sai-

lor, or something of that kind, and went on in confirmation of that; I don't remember the expression.

Q. I will ask you whether he said anything about his affection for his wife, or want of affection? A. Definitely, I don't hardly know; but then the whole tenor of the conversation——

Mr. Sloane.—You need not state the tenor of the conversation; just state what he said that you recollect.

The Witness.—I told you that his whole tirade was in condemnation of her character.

Q. By Mr. Bitzer.—I mean his affection, or want of affection at that time, for her. A. I would not like to say anything about that. That is one of the circumstances I can not recollect.

Q. Were there any tears shed by Mr. Giddings during the time you were there? A. No, sir.

Q. Was there any appearance as of a man that was about to be affected to tears?

Mr. Sloane.—Now all this is leading.

The Court.—That is not proper. You can state what were his appearances.

The Witness.—Oh, as a man that felt deeply; that was all. And I know that I fully sympathized with him.

Mr. Sloane.—You need not state what you felt about it. Please confine yourself to the questions that are put.

Q. By Mr. Bitzer.—I will ask you whether there was anything said about his wife's intimacy with any other man, except Lyman Blair and Mr. Wiltshire? A. Nothing else, except that he said he knew since the birth of their third child, that she was too intimate with other men; the word "men" was used.

Q. I will ask you whether or not, he said anything in reference to her intimacy with Lyman Blair's grandfather?

Mr. Sloane.—I submit to the Court that there should be some limit to this course of leading the witness.

The Witness.—My impression was that I didn't hear him say it.

The Court.—I think you have gone as far as you probably should with your own witness.

Mr. Bitzer.—But it relates to an entirely different subject.

The Court.—I can not help that.

CROSS EXAMINATION.

By Mr. Sloane.

Q. Your wife is a cousin of Mr. Wiltshire, is not she? A. Yes, sir; I believe so.

Q. You have been here sitting near the Counsel for the state most of the time? A. Yes, sir; I have been anxious to listen and could not hear unless I got close.

Court took a recess until 2 o'clock p. m.

AFTERNOON SESSION.

TUESDAY, December 12, 1882.

MRS. MARY DEWEY called.

Direct examination by Mr. Bitzer.

Q. Mrs. Dewey, are you the wife of Dr. James Dewey, who was on the stand this morning? A. Yes, sir.

Q. Do you know Daniel Giddings, the defendant in this case? A. Yes, sir.

Q. How long have you known him? A. Either three or four years, I don't know which.

Q. State whether or not, you had a conversation with Daniel Giddings, or a conversation in his presence, in which he took a part, sometime before the homicide? A. Yes, sir.

Q. Where were you? A. At his house.

Q. Who was there beside yourself? A. His mother, Mrs. Brouse, Dr. Dewey and Mr. Giddings was present.

Q. When was that? A. I don't know. It was some time after the elopement.

Q. How long afterwards? A. I don't know whether it was one or two weeks; I don't know how long.

Q. Do you remember how long it was before the homicide? A. No, sir.

Q. Do you know how long it was before Mrs. Brouse went home? A. It was the day before she went away, or was to have gone.

Q. What day in the week was it? A. I can not tell you that.

Q. Now Mrs. Dewey, you may go on and state to the jury what conversation you had there with Daniel Giddings and in his presence, as near as you can? A. Mr. Giddings spoke about his wife being untrue to him and he had known it since the birth of their third child.

Q. Was that his language, as near as you can give it? A. Yes, sir; I think it was. And that she went away at that time when the child was six weeks old, I think—I am not positive as to the age of the child—and left him sick and the child to take care of and went off with another man.

Q. Now what else do you recollect in relation to anything else? A. I don't know. I know she was gone. Mrs. Brouse spoke of her having gone off with another man; she spoke of it in his presence, and he seemed to know of it.

Q. Well, go on and state in reference to that. A. It was Lyman Blair's grandfather, that she went away with, and they undertook to room together and he was locked up in his room, is what I recollect of it.

Q. Well now, if there is anything else? A. He said he had been very near Wiltshire and his wife, when they didn't know it.

Q. Where, if any place, did he mention? A. It seems to me, it was back

of Mr. Carter's house, they were in the bushes; and that she was as low as any woman could get; that she could swear like a sailor, or something like that, and that no woman, or person could get any lower than she was.

Q. Well was there anything else you remember? A. I believe not.

Q. Did you know Lyman Blair's grandfather? A. I had seen him.

Q. When did you see him?

(Objected to by Counsel for defendant, as incompetent.)

Col. Gilmore.—We want to show his age.

(Objection overruled. Counsel for defendant excepts to all this.)

Q. By Mr. Bitzer.—I will ask you whether you know what his age was? A. No, sir; I do not.

Q. Well, did you ever see him? A. Yes, sir.

Q. About what age would you say he was? A. I suppose he was past middle age.

CROSS EXAMINATION.

By Mr. Sloane.

Q. What relation are you of Mr. Wiltshire's? A. Cousin.

Q. How near do you live to Massieville? A. We live within a quarter of a mile.

Q. How near to where Mr. Giddings lived? A. Perhaps half a mile.

Q. How near to old man Wiltshire's where Ben staid? A. About three quarters.

Q. What was your name before you were married? A. Stinson.

Q. Do you know what day of the week this was, you were there? A. I do not.

Q. Do you know what time of the day? A. It was afternoon.

Q. What time of the afternoon? A. Well, I think between three and four, perhaps three.

Q. How long were you there? A. I can not say. Perhaps half an hour; perhaps not.

Q. Do you know whether it was a week day, or Sunday? A. I know it was a week day.

Q. How do you know it? A. Because I don't make calls on Sunday, as a general thing.

Q. Is that the only way you know it? A. No, sir; that is not the only way I kow it.

Q. How otherwise, do you know it? A. I didn't suppose Mrs. Brouse would start home on Sunday.

Q. She was not going to start home the day you were there? A. She was going to start the next.

Q. What was Dan doing when you went in there? A. He was not in at all. I didn't see him.

Q. Did you see him as you went to the house? A. I did not.

Q. What time of the year was it? A. I forget now.

Q. What month? A. Well, I don't know whether it was July or August.

Q. Which do you think it was? A. It might have been the latter part of July, but I am not positive.

Q. When had you been to Daniel Giddings' house, before that? A. I can not recollect that.

Q. How long before? A. It was some time.

Q. What do you mean by some time? A. Well, six months, perhaps.

Q. Do you think it was that long? A. I think so.

Q. What was the occasion of your being there then? A. I don't recollect.

Q. Would you think of anything that took you there, then? A. No, sir; I can not think whether it was to call on Mrs. Brouse, or not.

Q. Do you say to the jury here, that Mrs. Brouse was there six months before that time? A. I don't know. I didn't say that it was six months. I don't know that it was; I don't know the time.

Q. Did not you state that your recollection was six months before? A. It might have been.

Q. I know it might have been two years? A. It might have been a year, but I don't know.

Q. Do you think it was as long as a year before? A. I can not tell.

Q. I am not asking you to state exactly, but I am asking you to state what you recollect as to the length of time before this that you had been there? A. Well, I guess it was nearly a year; nearer a year than six months.

Q. Were you and your husband together, at that time? A. I think not.

Q. Do you know? A. I am sure that he was not with me then.

Q. Do you know on what occasion you went there then, and for what purpose? A. I don't; but I think it was soliciting for a festival.

Q. You didn't go on a visit? A. No.

Q. Now what time were you there the time before that, and prior to that? Had you ever been there before that? A. Yes, sir.

Q. When? A. I called on them when they first came, and I was there after that.

Q. I want to know the time prior to this time, that was a year before the time you are testifying to, chiefly? A. I cannot think whether it was when Mr. Giddings had an aunt there, and his mother was also there, I called.

Q. What aunt was there? A. Mrs. Wright, I think her name was.

Q. How long before this time that you speak of, after the elopement, was that? A. I could not tell you. It might have been two years, and might have been but one year.

Q. Is that your recollection? A. Yes, sir, or more than that.

Q. You called on them when they first came there? A. Yes, sir, or shortly afterwards.

Q. You were there once when Mrs. Wright was there? A. Yes, sir.

Q. And there this last time that you speak of, after the elopement? Are those the only three times you were there? A. No, I think not.

Q. Now, can you tell any other time? A. I went there to a carpet rag sewing once.

Q. Was that before the time you had gone there to call on Mrs. Wright or Mrs. Brouse? A. I think it was after that time.

Q. You think it was after that time and between the time you went there soliciting for the festival? A. Yes, sir, I think it was between those times.

Q. So, Mrs. Giddings was having a carpet rag sewing, was she? A. Yes, sir.

Q. And you went there with other neighbors? A. Yes, sir.

Q. About how long was that before this elopement—about a year? A. Yes, sir, it was more than that?

Q. A year and a half? A. It might have been about that; I cannot remember positively.

Q. Was there any time before that when you had gone there, that ever your husband went with you, prior to this time of the elopement, I mean? A. Yes, he was with me once when Mrs. Brouse and Mr. Brouse were there.

Q. When was that? A. Well, it was a year after they came there, I think; I cannot say.

Q. You mean a year after Giddings moved there? A. I think it was the first year that they came,

Q. Can you recollect anything that occurred on either of these visits, any conversation that was had? A. No, sir, I cannot think of anything.

Q. Were you all in one room together at this time you are speaking of? A. Yes, sir.

Q. How long had you been there before Daniel came in? A. The last time?

Q. Yes, ma'am, I am coming back to that now? A. Well, I cannot tell; twenty minutes or more.

Q. Well, what door did he come in at? A. I think he came in at the back door.

Q. How many rooms were in his house? A. Two; a front and a kitchen back.

Q. The first you saw him was when he came in from the kitchen to the sitting room, then, was it not? A. Yes, sir.

Q. You are certain that is the way he came in? A. Not certain; I think he came that way; that is my recollection of it.

Q. What time in the afternoon was that? A. Well, I think it was between three and four o'clock; from three to four.

Q. What kind of a day was it? A. A pleasant day; warm out.

Q. All the doors and windows were open? A. The doors were open.

Q. Were the children there? A. Yes, sir.

Q. All of them? A. I think so.

Q. Well, do you recolleet of them being there? A. I think they were all there.

Q. This boy, Arthur, the eldest, and the other two, were all in the room at the time this conversation was going on? A. They were in and out.

Q. I am asking you whether you know that they were there. This boy, Arthur, the eldest boy, was he there while this conversation you have detailed was going on? A. I don't know whether he was in the room or not.

Q. Do you know whether any of the other children were in? A. I don't know what time I seen them; they were in and out.

Q. Well, do you know whether they were there at all. while this conversation took place, that you have detailed? A. No, I don't know as they were.

Q. Can you state anything of the conversation that occurred before Daniel came in? A. No, sir; I can not.

Q. Reflect and tell the jury, whether or not, you can think of one thing that occurred the twenty minutes before Daniel came in. You were not sitting there silent, were you? A. Not altogether.

Q. Were you anywere near silent; were not you talking and conversing together all the time. A. Mrs. Brouse was telling me about the condition of the children, that they were well clothed and that the house was left in very bad order, and all this kind of thing she was telling me. I could not converse very much with her.

Q. Were you sitting there simply conversing with your husband? A. No, sir; I was trying to listen to her.

Q. Were you conversing with the children? A. I was trying to listen to her.

Q. Go on and tell anything you can recollect there that you heard during that time. A. It would be hard for me to recollect everything that was said.

Q. Can you recollect anything that was said by her, save that that you have just related? A. Well, I think she told me that she had advised Dany to be divorced, that he had applied for a divorce, and let her go and not have anything more to do with her.

Q. What else did she say right in that connection. A. I don't recollect what was said.

Q. Did she say anything in that connection? A. That he tried to live with her all these years just on account of the children.

Q. Did she say that to you? A. I think it was like that. It might not have been those words.

Q. I am not asking as to those words; did she substantially say that he

had lived with her during those years on account of the children. Was it Mrs. Brouse said that to you. A. Yes sir.

Q. Anything else you recall she said to you? A. Well, I can't recollect.

Q Did she say anything else about Dan when she said she had told him to apply for a divorce and not live with her any more? A. Well, I don't recollect anything else.

Q. Nothing else was said then. She was twenty minutes, then, saying all of this? A. Well, I didn't say that it was twenty minutes.

Q. Didn't you say a while ago you thought it was about twenty minutes before Dan came in? A. It might have been.

Q. Well, it might have been two, or three hours, for all the jury know, but I want your recollection. Didn't you state a while ago it was about twenty minutes? A. I said it might have been that; it might have been longer.

Q. What do you say now? I don't want impossibilities; I want your recollection? A. I say it might have been twenty minutes.

Q. Do you recollect anything you said to Mrs. Brouse during that twenty minutes? A. No, sir, I dannot state anything that I said to her.

Q. Can you recollect anything your husband said during that twenty minutes? A. No sir, I can not.

Q. You have stated about all you can recollect that was said? Now when Dan came in the back door from the kitchen, what was the first thing he said? A. He said, "Good afternoon," I suppose.

Q Certain he did? A. I am not certain of that; he might have said, "How do you do," or "Good afternoon."

Q. You don't whether he said, "How do you do," or Good afternoon," or "Good day?" A. No, sir.

Q. You would not swear positively he said either, would you? A. No, sir.

Q. Well, what was next said by him? A. I can't recollect what was the next said.

Q. Did you say anything to him just then? You understand my question, don't you? A. Yes, sir.

Q. Well answer it. A. I didn't say say anything to him, that I know of.

Q. Did you say anything to him during the afternoon, that you know of? A. I said I didn't know how he lived with her all those years, knowing these things of her.

Q. Did you say that to him? A. Yes, sir.

Q. Just as he came in and said, "How do you do?" A. No, sir; there was some considerable delicacy in talking about the matter, at all, to him.

Q. I am not asking as to your feelings; I am asking what you did? A. Well I aint positive about what I did, or what I said.

Q. What was the first thing done by Dan after coming in and passing the compliments of the day? A. I think he took a chair and sat down.

Q. Was he in his shirt sleeves, or did he have a coat on? A. I am not positive as to that.

Q. Where did he sit with reference to you, his mother, and your husband? A. He sat near the front door and nearer to me than to any one else, I think.

Q. Now as soon as he sat down, what did Dan say, if anything? A. I can't tell whether he spoke to me or the doctor.

Q. I don't care which one he spoke to; what did he say? A. I was trying to pay attention to his mother and the talk that was going on, and I don't know what he said.

Q. Now can you recollect the first expression that Dan used after taking that chair, what it was about, that attracted your attention? A. No, sir; I can not.

Q. When was it, at what time, that Mrs. Brouse made this expression about Lyman Blair's grandfather, what you have spoken of? A. I think it

was before Dan came in that she commenced talking about it, and she was telling us about that when he came in, to my recollection.

Q. Now how much had she told you and what had she told you about when Dan came in, before Dan came in? A. I can't tell.

Q. Well, how do you know she said anything about it then; how are you so certain as to the time she said it? A. I didn't say I was certain about the time, whether it was before or after he came in; but I think she was telling us about it when he came in.

Q. Now up to the time, and at the time he came in, is what I want to know; what had she said? A. She asked me if I recollected the man, and his being——

Q State what she said now, not your conclusions and inferences. I want the conversation; what she said? A. That they went off together and were trying to room together, and he was locked in another room.

Q. Did she say all this that you have enumerated, to you? A. She said that the people of the house where they had gone locked him in the room—the old gentleman.

Q. Answer the question I put to you; did she say that to you? A. Yes, sir.

Q. What brought her to say it? Had you asked her anything? What had you said to her just previous to that? A. Oh, I don't know. I hadn't said anything to draw her out, because I didn't want to talk about that.

Q. Oh, no; you didn't want to talk about it, at all; it was not a matter that excited your curiosity, at all? A. No, I was not there for that.

Q. You were not there for that and didn't want to talk about it? A. No, sir.

Q. Mrs. Brouse just launched right out into a conversation about it, did she, before Dan came in? A. She volunteered what she did say

Q Now when did she say when this was——the grandaddy business? A. It was not very long after Mr. Giddings moved there; in the same year, I think.

Q. Did she say the time? State her words, as near as you can, not your inferences and conclusions drawn from it. When did she say this occurred? A. She asked me if I recollected the grandfather, at the time he was here, and was going off, he and Mrs. Blair together to visit some relatives; if I recollected seeing the grandfather there.

Q. The grandfather does not live in this country, does he? A. No, sir.

Q. Where does he live? A. I don't know that. In the northern part of the state, I believe.

Q. When was he down here? A. Well it was perhaps, during the first year that Giddings had moved here; they had not been here very long.

Q. She asked you if you remembered of his and Mrs. Blair——that is Lyman's mother, you mean? A. Yes, sir.

Q. Was Mrs. Blair his daughter, or daughter-in-law? A. His daughter.

Q. Going off on a visit somewhere together. Was that the first of that conversation, or what brought it up? A. Yes, sir; I think that was about it.

Q. Now did Mrs. Brouse say anything, at all, in that conversation; will you swear she did? A. No, sir.

Q. Well now the truth is, that she did not; did she? A. I don't think she did.

Q. Well now then, Mrs. Dewey, did she ask you this, had you heard of such a tale as that? A. Yes, she asked me if I knew it, and she related that.

Q. Now go on and state what she related, just the words, as near as you can. A. She related that they went off together at the time they went to make this visit. She asked me if I knew the time they went and I told her I did not, but I recollected of their going off to make a visit and Mrs. Gid-

dings went with them, and she said the grandfather paid Mrs. Giddings' way to this place, wherever it was.

Q. Do you recolllect the place? A. No, sir.

Q. It was stated, was it? A. They went on the railroad to Londonderry station.

Q. The place was stated? A. I don't know whether it was or not.

Q. How do you know they went on the railroad to Londonderry station, if Mrs. Brouse hadn't told you? A. I knew that they had; I knew from my own knowledge they went in that direction.

Q. Now you are certain Mrs. Brouse said Mr. and Mrs. Blair started off on a visit somewhere and Mrs. Giddings went with them? A. Yes, sir.

Q. And that Mrs. Blair's father——what was his name? A. I don't recollect.

Q. Paid Mrs. Gidding's fare? A. Yes, sir.

Q. Now where did she say they went? A. Well, she didn't recollect, nor I didn't recollect the station. It was some place beyond Londonderry, was my impression at the time.

Q. She told you that this grandfather—whatever was his name—and Mrs. Blair went off on a visit to some station unnamed, and that Mrs. Giddings went with them, and that Mrs. Blair's father paid the fare of Mrs. Giddings; now what else did she say? A. That they undertook to room together that night and that the old gentleman was locked up in a room.

Q. That is the night when they had gone to the place to which they went? A. Yes, sir.

Q. She told you she knew it, did she? A. It was news to me.

Q. She told you she knew it, did she? A. Yes, sir.

Q. Did she tell you she knew that? A. She spoke of it as something she knew, as anybody would speak of it.

Q. Did she say she knew it, or she had heard it? A. I don't recollect whether she said she knew it, or had heard it.

Q. Was that the only time she had said anything about that while you were there? A. Yes, sir; that was the only time.

Q. Now then she had said this and finished talking about it just as Dan came in had she? A. I don't know whether she had finished it, or was in the middle of it, or exactly where.

Q. Well, I asked you to state what it was she had told you prior to Dan's coming in, and you have related this. A. Prior to his coming in? I didn't understand it that way, at all. I was telling what she told me along as I recollected of it.

Q. I want to know whether she had finished telling that when he came in. What is your best recollection? A. I think she hadn't, and he corroborated what she said.

Q. Now what portion of it had she stated to you before Dan came in, and what portion did she state to you after he came in, which you say was corroborated? A. I can't tell at just what point he came in.

Q. Then how do you know she told any of it after he came, if you can not state at just what point he came in? A. Well, I don't know; I wont swear that he came in before, or after.

Q. Now Mrs. Dewey, you have stated what was being talked of by Mrs. Brouse up to, and for a short time after Dan came into the house, through the kitchen door and into the front room and sat down on a chair near the front door. What was the next thing Dan said then, if you recollect? A. I have already stated that I could not recollect what he first said.

Q. What was the first thing that attracted your attention, that you now recollect, that he said? A. Well, I think it was the conduct of his wife.

Q. I wan't to know what she said, not your conclusions from it. I want to know what Dan said first relative to his wife, if you think that was the first thing that attracted your attention of his saying, after he came in? A. I don't know if he said first that she had sunk as low as any human being,

or any person, or woman could; that she could swear like a sailor, and there was no lower depth for a woman to go than she had, already.

Q. Can you tell whether it was in reply to any question that was put to him, by you, or anybody else? A. Well sir, I don't recollect.

Q. But you do swear to this jury, do you, Mrs. Dewey, that that was the first thing he said, to which your attention was attracted? A. Well, I don't know; if I had known I would have to swear to it, I would have paid better attention, perhaps.

Q You went there when you knew about his troubles, didn't you? A. Yes, sir.

Q. You went there at a time you knew your cousin had run off, or eloped with this man's wife, didn't you? A. Yes, sir.

Q. I will ask you to state what brought that about? Did you ask any question which did it; did you make any inquiry? A. I don't know if I spoke in regard to what his mother was saying, already.

Q. I asked you a while ago to state the first thing you recall of his saying with reference to his wife, or his domestic troubles, and didn't you answer that the first thing he said was that she had got down as low as any woman could get, and that she could swear like a sailor, or trooper, or words to that effect? A. I said that might have been the first thing.

Q. I ask you not for might have beens, or possibilities, but what your recollection is? A. That is what my recollection is; that that was the first.

Q. Very well, now what was the next thing that followed right on that? A. I don't know whether he spoke then of having been near them, or——

Q. Hold on. Was nothing said by any of the rest of you just at that time, after he had made this startling observation? I am only asking you as to your recollection, Mrs. Dewey. You are not called upon to state with mathematical precision. A. I don't recollect.

Q. Now what is the next thing that did take place after he said that? A. I can not tell whether he spoke about knowing these things, or had known for a long while——

Q. Now wait a moment. That is the next thing he said, that he had known these things for a long while, is it; or the next thing that was said by anybody after that; is that your recollection? A. I can not tell what was said next, of course.

Q. Well I am not asking you with all certainty, but what do you think was said next; as you have just stated that he had known these things for a long while? A. Yes sir, he was aware of Wiltshire and her having done so.

Q. What were his words? A. He said he had been near them——

Q. I mean those you have just spoken about, that he had known of the intimacy between Wiltshire and her for some time. I want to know what were his words; "I know," or "have known for a long time that she had been intimate with Wiltshire," or "I have found out that she has been intimate with Wiltshire for a long time," which was the phrase? A. I don't know.

Q. Which was his phrase that he used? A. "I have known for a long time that she has been."

Q. Now you swear to that positively, do you, that those were the words that Dan Giddings used; "I have known for a long time, or a long time ago found out that she has been intimate with Wiltshire," and not that, "I found out that she has been intimate with Wiltshire for a long time." Will you swear on oath here, that you are certain that it was either one, or the other, and which one it was? A. I would not like to swear to the exact language.

Q. Well, I don't care whether the exact language, or not, but you understand the difference between these two statements, don't you? A. That he had known a long time of his guilt?

Q. Or that he had found out that she had been intimate for a long time;

which was it. Now I want you to swear positively to that. A. I think he had found out; he had been near them and knew ——

Q. Hold on; I am not coming to that statement now. I want the statement which he first made, that the fact of their intimacy had existed for a long time. Now I ask you to state to this jury, whether or not, you can say truly and certainly that he said, "I have known for a long time that they had been intimate," or, "I have found out that they have been intimate for a long time," or, "I now know that they have been intimate for a long time." A. "I have known for some time"——I don't know whether he said, "long time" or "some time."

Q. Now are you certain that this was the expression, "I have known for some time that they have been intimate," or "I now know that they have been intimate for some time." A. He went on to state when he had seen them right away——

Q. Hold on. Answer that question: will you swear positively that it was one and not the other of the two phrases that I have put to you? A. Well, I don't know as I see the difference.

Q. You don't know that you see the difference. Well that is sufficient for me, as to that. Then you state that he said to you, what about having seen them, or seeing them? A. That he was near them, and that they didn't know it, and that they were just like hogs; I recollect the expression of the "hogs" and I recollect that well.

Q. Did you use in your examination in chief, any expression as to hogs, when you answered Mr. Bitzer? Did you say anything about hogs at all? A. No.

Q. You recollect that? A. I recollect that, but I didn't want to say anything about the matter.

Q. You were told to testify to the whole truth as you recollected; to relate all that occurred there. Now please go on and repeat that expression to me as fully as he stated it there? A. He said he was very near them, "nearer than I am to you," he says, "or almost as near;" I don't know whether he said "as near" or "almost as near." But I was sitting nearest one to him at the time he was speaking.

Q. You were sitting as near, about, as you now are to me, were you not? A. Yes, sir.

Q. Let us see if that is all the expression. You have not told me yet, will you please tell that whole expression to the jury, what he said with reference to being near them? A. He was near, almost as near as I am to you, and that they didn't know it; that they were just like hogs.

Q. Where did he say they were? A. They were in the bushes, as I understood, back of Mr. Carter's house.

Q. I am not talking about what you understood; what did he say? A. In the bushes, pointing in the direction of Mr. Carter's house.

Q. Now we have the whole statement as he made it: "I was near them, as near to them as I am to you when I saw them over there in the bushes," pointing to Carter's house, "and they were just like hogs." That was what he said, was it? A. Yes, sir.

Q. Certain of that? You didn't say anything about bushes in your examination in chief, did you? A. No, sir.

Q. What they said right after that, was the expression you have stated? A. Right in connection with saying that; it was right along.

Q. Now what did he next say, right after that? None of the rest of you were saying anything while he said this, were you? Please state whether you can recollect of anything that was said by any of the rest of you, during the relation of those things you have stated, by Dan. A. I don't recollect anything.

DR. R. B. HALL called.

Direct examination by Mr. Bitzer.

Q. Doctor, you live in Chillicothe, I believe? A. Yes, sir.

Q. What is your profession? A. Physician.

Q. How long have you been practicing, doctor? A. Ten years.

Q. I will ask you, whether or not you have given the subject of insanity any attention? A. I can not say that I have given it any extra attention, more than the general practitioner.

Q. Now I will ask you, doctor, what elements of insanity characterize transitory mania?

Mr. Sloane.—I doubt whether this man is qualified as an expert, even by the rule that Wharton lays down, that a layman may testify as well as physicians.

The Court.—Well a layman can only testify as to its actual knowledge, and I understood from the doctor that he was probably as well qualified as some who have testified.

Q. By the Court.—You have been a practicing physician how long? A. Ten years.

Q. Have you had any experience with insanity, insane people? A. Why I have had about what usually comes under the head of a general practice in ten years.

Q. Do you mean to say you have had some experience? A. Yes, sir, some.

Q. Have you treated any insane people? A. Yes, sir.

Q. And I suppose you have observed the peculiarities of insane people, in that regard, have you? A. Yes, sir; but I don't want to be classified though as a judge or expert on insanity. I don't make any pretentions to that, in that direction, whatever.

Q. You consider yourself able to express an opinion as to insanity, that is, in two ways: by having the individual or subject before you, and also the history of the person and his peculiarities, and then make a diagnosis, and then a statement from your own knowledge and experience as a physician, and give an opinion in regard to the class of insanity? A. I think, Judge, that is a broad question. In these disputed cases I think that it taxes the mind of an expert to draw the line between the sane and the insane man.

Q. You would undertake to give an opinion—would you undertake, in the first place, in your way, to prescribe for one on the knowledge and the information that you could thus form, as you would in any other disease. You examine, I understand, every case and make a diagnosis before you prescribe? A. Let me understand your question, Judge. Would I undertake to diagnose or prescribe for an insane man?

Q. Yes, or to treat him? A. Yes, sir.

Q. You would? A. Yes, sir.

Q. And have you done so? A. Yes. sir.

The Court.—I think that is sufficient.

Mr. Sloane.—Well, we will save the question as to his proving himself an expert at all.

Q. By Mr. Bitzer.—Doctor, then I will ask you what are the elements that characterize transitory mania? A. Do I understand that I am to give the symptoms, or describe a case, diagnostic of transitory mania?

Q. I want to know the characteristics of temporary insanity, transitory mania. A. Well, I know there are a number of elements that enter into a case of that kind.

Q. Well now name them, or some of them. A. Well, hereditary taint would be one, and sleeplesssness preceding outbursts of the transitory attack; change in the character of the individual preceeding the attack, that is

in his manner and conversation; and his general make-up; and so much so that it would be observed by his friends, as a rule.

Q. Well, how as to passion? A. Well I don't know as I understand what I am to take as my basis.

Q. Well in a case of transitory mania, while in the commission of a crime, must passion be present or absent? A. Well, if you take a case of transitory mania, in the commission of crime, why, there is quite a list of symptoms we could not bring in before. His commission of crime is without premeditation, or without passion, or without a motive on the part of the patient, and that he does not try to hide the crime afterwards, or conceal his crime in any way, or with a perfect indifference that he has in regard to the matter, would all go together to—at least they would be evidence weighing in his favor, that he was laboring under temporary insanity, or transitory mania; and also in temporary insanity, why, they are as likely to injure their most intimate friends, as they are to injure an enemy.*

CROSS EXAMINATION.

By Mr. Sloane.

Q. You say you have been practicing about ten years? A. Yes, sir.

Q. Can you tell me, sir, who are the leading alienist writers in this country, France, Germany, and in England? A. I can not tell all of them, sir.

Q. Can you tell me any of them? A. I think that Maudsley is one.

Q. Tell me any books Maudsley has written. A. Well—

Q. Well tell me. A. His "Pathology of the Mind" is one, and "Responsibility in Mental Diseases."

Q. You have read both of these books? A. Yes, sir.

Q. Go on. A. That is all the works I can call to mind now.

Q. You have been living in this country during a number of years? A. Well, I think I have.

Q. Can you tell me who are the leading mental pathologists and leading alienists in this country, or one of them? A. I think Hammond is one of them.

Q. When did Hammond write about mental pathology? What is his book on mental pathology? Can you tell me any book of his on mental pathology? A. I don't understand your question.

Q. I think I made myself very plain. Tell me what book Hammond has ever written—you mean Surgeon General Hammond, of New York City, do you? Sir? What Hammond do you mean, doctor? There are several Dr. Hammonds in the United States, are not there? A. I don't think there is any other very prominent Dr. Hammond.

Q. Well, what prominent Dr. Hammond do you mean is a leading alienist in this country? A. Dr. Hammond who writes a work on mental diseases.

Q. What Hammond? A. I think it is William Hammond.

Q. Well what Hammond is that? Has he any distinctive appellation that you know of? A. The New York Hammond.

Q. What position does he hold? A. I think he was once Surgeon General.

Q. What army, the British or the American? A. The American, sir.

Q. Well now, what work has Dr. Hammond ever written on mental pathology? A. On mental diseases, I said.

Q. On mental diseases; well, what work? A. Well, he has written one work—I don't know how to designate it.

Q. Well, Hammond's books have names haven't they?

The Court.—He wrote one on Hemiplegia.

Mr. Sloane.—Yes, he wrote one on nervous diseases, but no work on mental pathology at all.

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*See hypothetical question of State with answer of Dr. Hall in Appendix.—Rep.

The witness.—I want to go slow; I don't pretend to be an expert.

Mr. Sloane.—That is what I want to show to the jury, that you are no expert—how much you know. A. I don't know very much; I told you that in the start.

Q. How did you come in this case? A. I was subpœnaed for the State.

Q. I will ask you if you didn't first volunteer your services? A. No, sir.

Q. I will ask you if you were not here yesterday, sitting right by counsel for the State, and offering suggestions to them? A. No, sir.

Q. When were you subpœnaed? A. Yesterday.

Q. What time yesterday? A. Yesterday afternoon.

Q. After the physicians in this case had testified? A. I believe I was temporarily in when Dr. Morse was testifying. I wanted to hear his testimony, I had nevar heard him. I was in the court room once or twice before, and in the afternoon I came in and asked Mr. Bitzer if he knew when Dr. Morse would testify, and he said he would soon be on the stand and I sat there, but I didn't suggest anything to the prosecuting attorney.

Q. Did you ever testify in any case in which the question of insanity was raised, before? A. No, sir; I did not.

Q. How many insane people do you see? A. That is a question I can not answer.

Q. Tell us, as near as you can. A. A dozen or so.

Q. How many cases of insanity did you ever treat? A. I never treated to exceed three.

Q. Now let us see what kind of insanity the first one was. Are there different kinds of insanity? A. Yes, sir.

Q. What is insanity? A. That is a broad question.

Q. Can't you give any definition of it, at all? A. It is about as broad, as what is not insanity.

Q. Can you tell what is sanity, and what is insanity? A. You could tell about as well as I could.

Q. But I am not on the witness stand, nor am I a doctor. Can you define insanity or sanity, at all? A. That would be pretty hard work.

Q. Can you define sanity? Have you ever read Dr. Bucknill? A. No, sir.

Q. Can you give us the definition of sanity and insanity? A. No, sir; I can not.

Q. You say you have read Dr. Maudsley? A. Yes, sir.

Q. When did you read him? A I have read him.

Q. Can't you give Dr. Maudsley's definition of sanity and insanity? A. Not verbatim.

Q. Can you give your own, then? First define sanity, if you can, and then define insanity. A. Well, a man that is sane, is in his right senses and he is normally mental; his mental faculties are normal.

Q. Well, that is the very question to be decided; that is the very question to be defined. I want you to define the abnormal faculties, or what is insanity, and what is sanity? A. I don't know that I can define it technically.

Q. Now tell us, if you can. Just define sanity for us, in your own language. A. Well, a man which is perfectly sane.

Q. Yes, I should suppose he is a sane man. What is sanity? A. Well, he is mentally strong; is a well-balanced man in his mind.

Q. Well, now, what is insanity; the fellow that aint that way? A. The fellow that aint that way.

Q. That is about the best definition you can give of sanity and insanity? A. That is a pretty fair definition.

Q. Before I leave you, can you tell me any of the leading alienists? I will ask you if you know who was the earliest English doctor to treat of moral, or emotional insanity? A. I will admit that you have confused me a little. I have got things confused.

Q. Well, people who speak of the insanity of other people ought to be able to answer the question, too. A. I can not name him now, sir.

Q. You can not name him? A. No, sir.

Q. You don't know who was the next earliest man who wrote on the question, and who has lectured, and is called the father of the doctrine of emotional insanity in England, you don't know that, do you? A. I can not say, sir.

Q. Now will you tell me who are the leading French writers on mental alienation? A. I can't tell you.

Q. Can't tell any of them, can you? A. No, sir; I can't any.

Q. Can you tell any of the leading German writers on mental alienation? A. I can not call them to mind.

Q. You were asked a while ago what transitory mania was, and you undertook to define: now will you tell me whether you know the difference between the incipient symptoms of insanity and the characteristics of insanity? A. Well, there are many things that go into the incipient symptoms.

Q. I am not asking what they are. I am asking for the definition; what is the difference between the incipient symptoms and the characteristics? A. Well, the characteristics, if the symptoms were well defined, that is if a man was insane—

Q. What is a symptom? A. Well, it is any perverted function.

Q. A symptom is a perverted function? Now do you mean to swear positively, that a symptom is a perverted function? A. Well, you have a symptom—a man that has the headache—

Q. I am not asking for illustrations; I am asking what is the definition of a symptom? Do you know what a symptom is? Or shall I put you on the record as it being a perverted function?

The Court.—Oh, well, now that is not proper. Treat the witness with due respect.

Mr. Sloane.—I am doing that not with any intention of offending the witness, but I put to him the question, simply, do you want it on the record, as your definition, that a symptom is a perverted function.

The Court.—That is not the way it was stated.

Mr. Sloane.—Well, that is the way it was intended.

The Court.—Well, go on.

Q. By Mr. Sloane.—Now then, I will ask you if you still insist upon your definition of a symptom, doctor, that it is a perverted function? A. No, sir; I told you awhile ago that I did not.

Q. Well, what is a symptom, then? Symptoms are one of the things we have to regard in making a prognosis, or diagnosis of insanity, are they not? A. Yes, sir.

Q. What is a diagnosis? A. Well, after a man forms his conclusion in any case, he says that is his diagnosis.

Q. Will you give an illustration of a diagnosis? What does diagnosis mean? A. Well, it is weighing all the symptoms in the case in order to arrive at an opinion.

Q. For the purpose of an opinion as to what the condition is? A. Yes, sir.

Q. Now, what is prognosis? A. After you weigh all the symptoms and give your conclusion that the man will recover, or not recover, that is the prognosis.

Q. Now, please give us one of the things upon which, or out of which you make your diagnosis, or prognosis. The diagnosis, or prognosis, are not symptoms. Now what is symptom? A. Well, a man has a pain in his head—

Q. I didn't want an illustration. A. That is a symptom.

Q. Oh, that is a fact, is it not? He has a pain there. That is the di-

seased condition, is it not? The nerves are diseased. A. Not necessarily so.

Q. It is not? Pain is not? A. No, sir; a man may have a pain—

Q. Suppose I have the toothache; what is that pain that I suffer? A. You may not have disease in that.

Q. It is evidence of a diseased tooth, or a diseased structure. A. In that particular case it may be, but you may have a pain in your head and not have disease in the nerves of the head.

Q. And not have any trouble of the structures? A. Any abnormal condition.

Q. What do you mean by abnormal condition? A. Well, in an unnatural condition.

Q. Now you have given an illustration of what you call a symptom; that is a pain in the head; but what is a symptom? Because I asked you here whether you could tell the difference between the incipient symptoms of insanity and the characteristics of any particular form of insanity? A. You see a man has certain symptoms of a disease, is where it differs from the healthy condition.

Q. Well, doctor, I mean a definition, if you can give it, rather than an illustration. A. Well, as I remarked awhile ago, you have got me confused, as I will admit, and these things don't come very easy to a man who has not been on the witness stand; but Dr. Morse, perhaps, is every week or so on the witness stand and can call these things up readily.

Q. I am not asking you to compare yourself with Dr. Morse. What I want, is just your knowledge. A. Well, I told you in the beginning, I did not know much about insanity.

Q. Well, we want to find out what you know; we want the jury to see how much you know about it. Well, we will go back to another question. You say you have treated three cases of insanity. What character of insanity was the first case? A. Puerperal mania.

Q. Is that acute mania? A. It is in his case.

Q. That is the mania which seizes women after childbirth, and is the result of puerperal fever? A. Yes, sir; the case I treated came on some three or four months preceding the confinement and lasted about eight weeks afterwards.

Q. Well, puerperal mania is a form of acute mania? A. Yes, sir.

Q. I will ask you if you divide insanity into any subdivisions at all, yourself? Have you thought enough on the question of insanity, read enough, studied enough to be able to divide it, at all, into any classification; to classify insanity?

No answer.

Q. I will ask you then, without asking you whether you have done that, or not, to take the definition of the undeveloped, the degenerate, and the disordered, as three general divisions, under the head of undeveloped insanity, of the undeveloped class of insane, and what different kinds of insanity would you classify under that head?

The Court.—Well, Mr. Sloane, as this witness does not claim to be an expert, I don't think I will allow you to pursue that any further.

Q. Will you please define transitory mania to me again as you define it? A. As I have defined it to Mr. Bitzer, giving the symptoms as I did to Mr. Bitzer?

Q. I simply want you to define transitory mania for me. A. Well, in a case where I could suspect transitory mania, or have a person that was suspected, hereditary taint would be one.

Q. Can not transitory mania exist without hereditary taint? A. Yes, sir.

Q. Now, doctor, everything which you stated in that definition to Mr. Bitzer, of transitory mania, was simply symptoms which might be present in any case of any kind of insanity? A. Yes, sir.

Q. So you didn't define transitory mania, at all, did you; you simply gave symptoms that may be present in any kind of insanity; is not that true? A. I think so, sir.

Q. I will ask you if this is the definition of transitory mania, as you understand it: "A form of mental disorder which suddenly appears in persons previously sound, or not supposed to be unsound in mind. It is of short duration and suddenly disappears." A. Not always.

Q. Do you understand that to be a definition? A. That, would be a form of the definition, I think.

Q. Do you think you can give a better definition than Dr. Jarvis does in this? If so I would like to hear it. A. I think the weight of authorities is against Dr. Jarvis in that particular, as much as——

Q You never read any authority but Maudsley. What do you know about the weight of authorities, then? Do you say Maudsley differs with him in any particular? A. I think he does.

Q. Now, Dr. Hall, don't you know that Maudsley goes to a greater extreme, as to the doctrine of transitory mania than any writer upon mental pathology? A. I don't think he goes to that extreme.

Q. Does not he go to such an extreme that he is charged by the medical profession with having wiped out all sanity and making all men insane? A. I know we can not draw the line very closely between sanity and insanity.

Q. Is there any line of demarkation between sanity and insanity? A. I think that the line as drawn by Maudsley, at least, is drawn very fine.

Q. I am asking you to state your opinion. Is there any well-marked line between sanity and insanity? A. I think not.

Q. One imperceptibly runs into the other? A. Yes, sir; an insane man may, and will, at times, be as sane, to all appearances, as any person.

Q. It is certainly impossible to tell when sanity ends and insanity begins, very frequently, is it not? A. Yes, sir; very frequently.

Q. Now, sir; I will ask you if eminent authorities and alienists don't also, say that transitory mania may exist where the only evidence of its existence is the act that would otherwise be criminal—is the act itself? A. Yes, sir.

Q. Now then you have based your opinion upon a hypothetical case put to you by the prosecutor. Suppose there was added this—however, let me ask you, if you recognize vacillation, either incoherency of action, or incoherency of thought, as an evidence or symptom of a diseased mind? A. I think that I do; yes, sir.

Q. You have already stated that heredity is a potent cause of insanity? A. Yes, sir.

Q What is atavism, as applied to heredity? A. I don't think that I can define it.

Q. You don't know? A. No, sir; I don't.

Q. Suppose there is a case where insanity has existed in the grandfather, or great grandfather, and has skipped one, or two generations, and appeared then in some form, or kind of insanity, in another generation, what would you call that? Is there no name known to medical science by which that is characterized? A. I can not think of it, sir.

Q. Now then do you recognize the fact that the son of an insane parent—and I am putting it to you in the form that Dr. Maudsley does, which is better than I can put it myself, and I want to see whether you agree with Dr. Maudsley about it——carries in his organization a distinctly greater liability to an outbreak of insanity under the ordinary conditions of life, than the son of perfectly sound parents; you recognize that fact, don't you? A. Yes, sir.

Q. In saying that it is hereditary predisposition to insanity, that expresses this fact which is outside of general experience that everybody knows, in other words, don't they? A. I presume they do.

Q. Now I will ask you if you don't know, too, that eminent scientists,

Dr. Blanford, among the number, lays down the fact that a son is more apt to partake of the mental characteristics which tend to insanity from the father, than a daughter is? A. I don't think that he does.

Q. What do you understand by the word neurosis, as applied to it? A. It is where the child inherits a certain predisposition from the parent.

Q. Now, doctor, you are confounding your definition with the laws of heredity. I want to know, not by means of an illustration but as a definition what do you understand by the word neurosis? Does neurosis apply to the mind, altogether? A. Not altogether.

Q. Well, what does it apply to; does it apply to the muscle? A. No; sir.

Q. Well, what does it apply to? A. It applies to the nervous system.

Q. Then neurosis is a functional nervous affection, or disease, is it not? A. Yes, sir.

Q. Is it accompanied by any appreciable change of structure? A. I can't answer that.

Q. Now is not that the very application of the word? When you speak of a man having an insane neurosis, does not it mean that insanity lies there latent, and even to the eye of an expert there is no appreciable change of structure, at all, and is not that the application of the words "insane neurosis?" A. I think that is the meaning it is intended to convey.

Q. Now then you admit a predisposition to insanity, as shown in this case, don't you? A. I should admit that as one of the symptoms.

Q. In other words you admit what Dr. Maudsley has stated, that the son of an insane person is far more liable to an outburst of insanity than the son of a perfectly sane parent? A. Yes, sir.

Q. Is that included in this hypothesis put to you by the prosecution? A. No, sir; I think not.

Q. I want to see how much you know and I want to show how much you can recollect of this hypothetical question that was put to you. So you swear to the jury that the question of hereditary taint, or predisposition to insanity was not included in the hypothetical case put to you by the prosecution? A. I won't say about that.

Q. You swear upon those facts? A. I don't know whether it was, or not.

Q. So you don't know whether it was one of the elements that entered into your judgment, or opinion which you expressed a while ago? A. I do know it now; I recall it, that he says in his statement that his father died insane.

Q. You think he does? A. I think he does.

Q. Suppose that this hypothetical case here does not include any statement of hereditary taint, or predisposition to insanity, would the fact that the evidence does disclose such a state of facts make any difference in your opinion? A. Take that all in all, there are a number of elements in it, and as he described, he met the man and enticed him down into the cornfield—

Q. Oh, you have to conclude that. This hypothetical case makes no such statement? A. It says he led the way.

Q. Yes, it says he led the way from Mr. Adler's saloon. A. It says, I think, he led the way from the secend saloon across Honey creek.

Q. So you found your opinion upon the fact that Giddings led the way? A. Not entirely.

Q. That is one of the elements entering into your opinion? A. Yes, sir.

Q. Is that important, or unimportant? A. I can not say whether it is unimportant, or important.

Q. Does this hypothetical question express to you the fact that this man has found out the fact, that the deceased had committed adultery with his wife and that they had eloped together? A. It says that she had committed adultery six years before.

Q. It does say that, does it? A. Yes, and he didn't raise any fuss about it, then, apparently.

Q. You have been in consultation about the facts of the case and expressed your opinion upon all the facts, as well as the hypothetical case, repeatedly, haven't you? A. That is no such thing.

Q. You haven't? A. No, sir, I have not.

Q. Now I will ask you this question, which I ask you simply to give a direct answer to: does this state that this man, the defendant in this case, knew, or believed the fact that Wiltshire had committed adultery with his wife? A. Yes, sir, it says that she had went to Washington with Wiltshire.

Q. Does this state the fact that his wife had gone away, eloped with this man, that she, however, came back home and into his house, with tears and entreaty, and that he thinking of his children being motherless there, had consented to take her back; that he came to town with no notion, or intention in his mind, whatever, of meeting Wiltshire, casually having in his possession a pistol, not having brought it of purpose, but it being casually in his pocket; that he suddenly met Wiltshire; that Wiltshire spoke to him kindly, and that he intended and desired to talk with him and plead with him not to interfere further with his domestic affairs, and treated him kindly, and said to him that he wanted to talk with him; that they went down by Wiltshire's invitation to another saloon, he saying, "Come and go down here, we will strike another saloon, where you can talk to me;" that at his instance they went together to that saloon, and at his, Wiltshire's instance, they entered that saloon, and that at Wiltshire's call they drank; that Wiltshire's stomach was turned by smelling some Limberger cheese, after they had drunk; that they left the saloon and Wiltshire led the way down to Honey creek; that one picked up a pole, and the other a rail, and they threw them across it, upon which they crossed; and that they went across the field, one a little ahead at one time, and another at another time, as two men would ordinarily be in walking together; that when they were nearly to the creek Wiltshire deflected a little from a straight course, going to the right; that Giddings followed up to within a few feet of him, and Wiltshire sat down on a log and threw his hat down and said, "Now, by God, what do you want to say to me;" is that here? A. No, sir.

Q. And that then Giddings said to him, in pursuance of the purpose for which he had asked Wiltshire to have a talk with him, "Ben, Mary has come home; she has asked me to forgive her; I have forgiven her, and she has promised not to do wrong any more, but to love me as a husband and perform her duties as a mother. On account of the children, I have taken her back. She will keep her promise if you will leave her alone. You know you have great influence over her. Now I beg of you, for God's sake, for my sake, for my children's sake, not to come near my house, or further interfere with my wife;" and that in answer to that, Ben Wiltshire said, "You be damned! I have got as much right to your wife as you have, and I will take her away from you, or kill you." Is that in here? A. No, sir.

Q. Would that make any difference in the formation of your opinion, even with your definition and understanding of transitory mania, or impulsive insanity? A. Well, he would kill him then when he was in a passion.

Q. Aha, do you recognize any such thing as insane passion? Do the books teach any such thing as that of an insane passion in a perfectly sane man, as uncontrollable insanity in one whose mental condition has been perturbed? A. In making up the diagnosis, those things are always to be given due weight.

Q. That is the best answer you can give to it, then? A. Yes, sir, it is.

Q. Would the fact, that at one moment his heart went out to his wife, even after she had wronged him, and he wanted to go and bring her back, or that he had told her that at any time, even when this man threw her off, and the world should forsake her, that she could come back and he would take her to his home, and that the next minute he would fire maledictions at her

head, and then the next minute he would express affection for her and willingness to take her ba k, would all this vacillation, and all these troubles of mind amount to nothing as changing your opinion in relation to this hypothesis? A. I don't know but he done what most of us would have done. I am not prepared to answer the question.

Q. I am not asking you to usurp the functions of the jury here, but don't you know as a man, leaving out of consideration your medical experience and medical knowledge, that a man whose mind had already been perturbed and agitated, and with this hereditary predisposition, and having insane neurosis in his composition at that time, and then the further fact that he had been affiicted with sleeplessness and loss of appetite and inability to work, and the vacillations in his determinations and in his acts, and the incoherency and inconsistency of the man, taking all these into consideration, would not he be more liable by reason of that shock, to a sudden outbreak of insanity? A. Yes, sir.

Q. Unable to understand the moral qualities of his act, and right or wrong, to a greater extent than you, or Mr. Bidleman, or any man who had not previously undergone that mental emotion? A. More likely.

Q. You recognize the doctrine of Dr. Maudsley, that one of the great causes of insanity is emotional shock? A. Yes, sir.

Q. You recognize two faculties of the mind, of that structure, those functional structures that we call the mind, in which the mind operates, and one is the intellectual and the other the emotional, is it not? A. Yes, sir.

Q. The functions of the mind are not intellectual, are they? A. No, sir.

Q. There is an emotional condition, is not there? A. Yes, sir.

Q. Now is it not well laid down by all these authorities and recognized clearly by every leading alienist that you know of, that a sudden shock to the emotional nature of a man may hold in subordination, or in abeyance, to use the language of some of them, the intellectual faculties, so that for the moment they don't operate to make choice; is not that true? A. I can not answer that.

Dr. D. A. Morse re-called.

Direct examination by Mr. Bitzer.

Q. I will ask you whether you heard, or are familiar with this hypothetical question that we put to Dr. Hall? A. I heard it read through, but I would not undertake now, after all this discussion to remember every detail of it.

(Insert hypothetical question.)

A. Well now, let us understand one another. You wish me to give an opinion, conclusive, with no reference to my examination upon yesterday?

Q. Yes, sir; certainly. A. I see nothing in that to indicate insanity, or to contradict the theory that that the man might have insanity. It does not indicate an insane condition, nor would it be necessarily conclusive that the man was not insane. It would leave the matter in doubt. There is nothing in it—I want that understood, though—that I see, to indicate insanity.

Q. By Mr. Sloane.—Or the absence of it? A. Nor the absence of it.

CROSS EXAMINATION.

By Mr. Sloane.

Q. The shock, which is the usual prelude and exciting cause of what we call emotional insanity, or irresistible impulse, impulsive insanity, is entirely absent from that question, is it not? A. Well, it is a different question, of course. Certain points that were in the other are eliminated. Those, of course, are matters of evidence that I have nothing to do with.

Q. My question is, that the shock, which in the former question was the answer of the deceased to the defendant, and the disappointed hopes that he would get a different answer, that shock, as the prelude of such insanity, is absent? A. I say certain points are eliminated.

Q. It is also, stated here in this question, upon which your opinion is asked, that after the defendant fired the first shot, he leaned over him and fired the second shot while he was lying down. Would it make a difference as to that question, if the testimony of Dr. Lash, the man who made the post mortem, was that he could not have put the shot into his breast in a recumbent position, but that it must have been done while he was standing? A. I don't know as it would make any material difference whether he was shot once, or three times, as far as that is concerned.

Q. If it had occurred after that statement by the deceased, would it make any difference, in your mind, whether he was sane, or insane?

(Objected to by Counsel for the State, as being a repetition of the testimony in chief.)

The Court.—Having examined this witness once, it is not necessary to re-examine.

State rests.

DEFENDANT IN SUR-REBUTTAL.

Mrs. Charity Blair re-called for defendant testified as follows:

Direct examination by Mr. Sloane.

Q. Mrs. Blair, do you remember a time about a year, or may be more than a year after the Giddings family moved down there, that your father visited you? A. Yes, sir.

Q. Where does he live? A. He lived in Holmes county, near Millersburg.

Q. How old a man is he? A. He is about 83 years old.

Q. You and Mrs. Giddings and your father took a trip together at that time? A. We went on a visit at my aunt's at Londonderry.

Q. When you were at Londonderry, you may state to the jury, whether you and Mrs. Giddings slept together? A. Yes, sir; we slept together in a small bed room.

Q. Was there anything, at all, occurred, improper, or indecent with reference to her, at all? A. Not at all, sir; not a thing.

Q. Do you remember the revival meeting, protracted for some time there in Massieville, last winter a year ago? A. I was not at home; was not here, at that time, at all.

Q. Well, the winter, may be two years ago, whenever it was? A. Three years ago, I think it was.

Q. I will ask you to state whether, or not, Mrs. Giddings went frequently with you——

Col. Gilmore.—The revival meeting that our testimony was directed to, was last winter a year ago.

The Witness.—I was not in this part of the country, then.

Mr. Sloane.—Well, I don't care much about it anyhow.

DANIEL GIDDINGS re-called in his own behalf, testified as follows:

Direct examination by Mr. Sloane.

Q. You heard this man Kleindinst, testify? A. Yes, sir.

Q. I will ask you if you heard the whole of his testimony? A. Yes, sir.

Q. You may state to the jury, whether, or not, you told him any such stuff? A. I told him nothing of the kind, except I told him I had heard some reports. The main part of his testimony is false.

Q. Dan, do you remember a portion of his testimony was to the effect that your wife had left you while your third child was young, and had gone away with another man, and ran around with another man? A. Yes, sir.

Q. You were asked about it upon cross examination, and you have a right now to state to the jury, whether such a state of facts ever occurred, that your wife went away?

(Objected to by Counsel for the State, as repetition. Objection sustained.)

Q. Mr. Fox who was here was one of the parties to whose house, I believe, you said she went? A. Yes, sir.

Q. Mr. Fox and his wife? A. Yes, sir.

Q. And Mr. Andrews and his wife? A. Yes, sir.

Q. Mr. Rhodes and his wife were near neighbors, right there, during this time, for about a week, or ten days, when you say she went off to her mother's, after having a tiff with you? A. Well, not at this time; not very near neighbors.

Q. Well, they lived right there at Berlin Heights, and you were out about a mile and a half? A. Yes, sir.

Q. Now you have heard the Dewey conversation? A. Yes, sir.

Q. You may state whether, or not, any such conversation occurred between you and them? A. In the main, it did not.

Q. As to the question about your being near Wiltshire and your wife, pointing over in the direction of Carters, to the brush, you may state, whether, or not, such a statement as that was made by you? A. Well, that is entirely false, the main part of that statement.

Q. You may state what, if anything, you did say with reference to Carter's, or near Carter's house? A. I told them, I believe, that I had heard that Ben had come up there to Carter's.

Q. Well, you stated in chief, that Mr. Carter had told you something of that kind? A. Well, Mr. Carter did tell me.

Col. Gilmore.—That is re-examination as the to matter testified to by him.

Q. By Mr. Sloane.—You were inquired of as to the William Wiltshire's conversation in the examination before? A. Yes, sir.

CROSS EXAMINATION.

By Col. Gilmore.

Q. You have denied having this Trego conversation, of your cross examination?

Mr. Sloane.—He denied it then; well that will do.

Defendant rests.

Testimony closed.

ARGUMENTS BY COUNSEL TO THE JURY.

George B. Bitzer, Prosecuting Attorney, spoke as follows:

May it please the Court, and gentlemen of the jury, I will say in the beginning, that I intend to occupy as little time in the argument of this case, as I think I ought; and I shall not consume your time, or the time of the Court, in the argument of what I conceive to be the law and the facts, simply for the purpose of making an extended speech. It has always been my purpose to get at the facts in a case as soon as possible, and then conclude.

I will say here, that I have never engaged in the prosecution of a person at this bar charged with crime, for whom I have not experienced a heart felt sympathy. And it did not matter what the crime might be, whether it was for an atrocious one or for a petty misdemeanor. Standing as I do here, between society and the criminal, if I fail to do what I consider to be my duty in this case, I would not only be disloyal to my oath, but I would be a traitor to society. It is my duty to see that no wrong unjustly is inflicted on the criminal; and if I, believing that the facts do not warrant a conviction in this case, fail to tell you so, I would myself be a moral criminal. Now this is a case above all others that appeals to your sympathies; and if there ought to be one fear above another entertained by the prosecution, it is, that the circumstances of this case may so work upon your sympathies as to move you to acquit the prisoner on that sole ground.

The defense will tell you that there are a great many things existing in this case that appear to be and yet do not, and they will put them in a way that will strongly appeal to your sympathies. They will claim that there is in this case a heart crushed husband; a sinful, erring but repentant wife; disgraced children; and a desolated home; and that all these have transpired through the conduct of Mr. Wiltshire, the adulterer. And the adulterer will be so pictured to you, that you will look upon him as black as crime itself; and the deed done by the defendant, and which is supposed to have been done in honor of his family, will appear to you as pure as purity itself. And Mr. Sloane, counsel for the defense, is able to do this. You have had a foretaste of his eloquence—of his ability to portray to you in any color he pleases, any picture that he attempts to paint.

I have listened to the opening statement in this case, and there was no person present in this court room who was more pleased with the manner of his opening than I was, although I did not, nor never can agree with his conclusions. It is not folly to say that there is power and influence in a criminal lawyer beyond what should be; for there have been persons who committed the most atrocious crimes, the doors of whose prisons have been opened through the influence of the criminal lawyer, and the criminal let loose upon society to commit again his ravages as before.

All that I intend to do, is to present the facts, and what I conceive to be

the law, before you, and let them argue for themselves. I do not approve of the act of the adulterer; in the language of holy writ, it is a henious offense; yet, although it may be proven to your satisfaction that there has been adultery committed here, it was not such a crime as that it justified Mr. Giddings in taking the life of the deceased, Mr. Wiltshire. And we intend to put this killing on this ground: that it was in consequence of the adultery committed with this defendant's wife, or what he believed to be the commission of adultery with his wife; and feeling himself disgraced on account of the act of his wife; and feeling the shame and mortification that husband would feel whose neighbors and friends knew of his wife's disgrace he became so angry and brooded over this wrong until he felt that nothing would satisfy him but the blood of his unnatural rival, and in the thirst for revenge for this act of Mr. Wiltshire, he killed him on the 5th day of August, 1882.

In the discussion of the propositions of law, I intend to be as explicit and brief as possible, and if I misstate what is the rule of law in any case, the Court will say to you what is the law; but I shall endeavor to say to you in this case nothing but what I think His Honor will charge you.

And first, I would call your attention to the statute for murder, and it is this: "Whoever purposely, and either of deliberate and premeditated malice, or by means of poison, or in perpetrating or attempting to perpetrate any rape, arson, robbery, or burglary, kills another, is guiltly of murder in the first degee, and shall suffer death." I ask your attention to the four ingredients of this statute, which I will explain further on; these are the killing, the malice, the deliberation and premeditation, and the purpose.

Murder in the first degree is "the intentional, and unlawful killing, by one reasonable being, of another, in the peace of the state, of deliberate and premeditated malice."

Murder in the second degree is "the intentional, unlawful, and malicios killing, by one reasonable being of another, in the peace of the state; without deliberate or premeditated malice.

"Manslaughter is the unlawful killing by one reasonable being, of another, in the peace of the state; without malice, either upon a sudden quarrel, or unintentionally while the slayer is in the commission of some unlawful act." The difference between murder in the first degree, and murder in the second degree, is, that in murder in the second degree there is no deliberation or premeditation. The difference between murder in the second degree and manslaughter is, that in manslaughter there is no malice, no deliberation or premeditation.

If the design or purpose to kill was formed under provocation and in hot blood, and time afterwards elapsed for passion to subside and reason to resume her empire; the provocation and hot blood, would be no excuse or palliation. A man can not kill after his passion has subsided, and time has elapsed for his reason to resume its way; and then say that he is excused under the law.

One rule read to the Court by me in your hearing was: "If a person being in possession of a deadly weapon, enter into a contest with another intending at the time to avail himself of it and in the course of the contest actually use it and kill the other; it will be *murder*."

Malice is of two kinds, express or implied. Express malice, is where one with a sedate, deliberate mind, and formed design, kills another; which formed design is evidenced by external circumstances discovering that inward intention, as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him bodily harm. If the intention, or design to kill, could not be shown to exist from external circumstances, it would be impossible to know whether there was a design, for what is in the human mind no man can read except by outward circumstances.

Malice is implied where the killing is sudden without *any* or *great* provocation.

As to the intent. It is the *intent* that makes it murder, though formed but an instant before the homicide. Wherever it appears from the whole evidence, that the crime was at the moment deliberately or intentionally executed the killing is murder in the first degree. You are not to only look at the circumstances that transpire at the time the homicide was committed; but you are at liberty to take into consideration all the circumstances, to discover whether there was an intent to kill, or not. And if the party killing had time to think, and did intend to kill, for a minute as well as an hour or a day it is a deliberate, wilful, and premeditated killing, constituting murder in the first degree. It would seem to make no difference whether the deliberation was in forming the design maliciously to kill, or in the continuance of such design after being formed, until the same was executed.

If it was deliberated and premeditated upon while the design or intent to kill was being formed, that satisfies the law. Again you can ascertain whether there was design or purpose to kill, from all the circumstances attending the case. Among others, the manner of inflicting the wounds, and the nature of the weapon, its natural tendency to destroy life. For if there was inhumanity or barbarity exercised in inflicting the wounds and the weapon of such a nature that in the use of it it was plainly calculated to destroy life, the law and the common sense of mankind concur in holding that the perpetrator intended to produce that end.

As to the provocation. It is only on sudden provocation that the crime of murder can be reduced to manslaughter. And as before stated to the Court, if one person entertain malice toward another and form a deliberate design to kill him, and he afterward meet that other and engage in a quarrel with him and many blows pass and kill him, this is murder, if the jury believe that death was in consequence of previous malice and not of the sudden provocation. Otherwise it is not. And the Court said in a case of this kind that the jury must take into consderation the time that elapsed after the provocation; the prisoner's previous conduct; the deadly nature of the weapon, the repetition of the blows, and as was well said in this case, that although the law condescends to human fraililty, it will not indulge human ferocity.

There is indeed one species of provocation which though it do not amount to a personal assault upon the party himself, yet is of so grievious a nature as that the law reasonably concludes can not be borne in the first transport of passion, where the injury is irreparable, and can never be compensated. This is where a man finds another in the act of adultery with his wife in which case, if he kill him in the first transport of passion he is only guilty of manslaughter; but if hehad killed the adulterer deliberately, and upon revenge, it would be murder. Now it can not be said but that the law, as thus expressed, recognizes the grievous nature of the crime of adultery—the injury is so great that it can never be compensated. If the wife lose her virtue through her own act or by means of the wiles of the adulterer. the injury in either case can never be compensated to the husband; there is no compensation for that loss. The law recognizes that fact; and yet it says, if the killing be in the first transport of passion from finding them in the act, it will be manslaughter.

Again, if there be an old quarrel betwixt A. and B., and they are reconciled again and then upon a new and sudden falling out A. kills B. this is not murder, but if upon circumstances it appears that the reconciliation was but pretended or counterfeit and that the hurt done was upon the score of the old malice, then it is murder.

Now as to the law of self-defense. You will perceive, gentlemen, that there are two defenses in this case. The first is insanity; the second self-defense. If you should find from the evidence, that the party killing, was

a sane man at the time of the killing, then you are afterward to find whether he did it in self-defense. The law as to self-defense, as laid down by the Supreme Court, is this: Homicide is justifiable where the slayer in the careful and proper use of his faculties *bona fide* believes, and has reasonable grounds to believe, that he is in imminent danger of death, or great bodily harm, and that his only means of escape from such danger will be by taking the life of his assailant. He will be justified on the ground of self-defense, although in fact he is mistaken as to the existence or the imminence of the danger. In the first place he must exercise every faculty carefully; he must exercise his judgment with reason; he must believe *in good faith* that he is in imminent danger of death, or grievous bodily harm. It must not be an opinion worked up for the occasion, to excuse himself. The law goes further than that and says, that although he believes *in good faith* that he is in danger, yet if there is no reasonable ground for such belief then he is not excused.

And again, it is proper for you to take into consideration under another rule of law, the manner by which, and the purpose for which the weapon with which the homicide was committed, was obtained; where he got it; how he got it; under what circumstances.

Another rule is: that the evidence must satisfy you by a fair preponderance that the killing was done in self-defense. It devolves upon the defense to prove by perponderance of evidence, that the killing was done in self-defense.

You are to consider what weight is to be given to the character of the defendant. The presumption of innocence which it raises varies with the force of circumstances; and what weight is to be given to the character of the defendant, is to be entirely ascertained by the jury. You can give it just what weight you think it is entitled to. You can give it what consideration you think that it ought to have from all the circumstances. It has been said that a man who has always borne a peaceable, quiet, gentle and humane disposition, does not suddenly become a criminal, but it is the experience of all mankind, that there has been many a person tried, and convicted of an atrocious crime that was his first offense, who had always borne a peaceable and a quiet and humane disposition ever before.

On the question of insanity, it is said by the Supreme Court, that the evidence must show such a state of facts that it was not merely possible or probable that the defendant was insane at the time of the commission of the act; the facts must be such as to overrule the legal presumption of sanity it must satisfy you that he was not sane; otherwise, the Court says that great offenders would be turned loose upon society upon mere hypothesis, or conjecture. And where is the man, gentlemen, who would not avail himself, when he is charged with a great crime, of the defense of insanity, if he thought it would procure an acquital of that crime?

The defense of insanity is not uncommon. Wherever a crime of an atrocious nature is committed, and everything is so clear that there is no way of escape from punishment, the defense of insanity is frequently set up. It is a complete defense if satisfactorily established; for an insane man, or an idiot, should not be punished for any crime, as he is wholly irresponsible for his act; but I say to you, that it is made the *cover* for the commission of many crimes; and you should be careful that a criminal should not escape punishment simply by feigning a malady which never did nor does not afflict him.

Now applying the facts, gentlemen, to the law as I conceive it to be, what do we find? This crime was committed on account of the adultery with this defendant's wife. And you may well say in your own minds that there is no indignity greater, that could be heaped upon a husband's head. You can well say that it is an indignity that poisons a man's whole life. But there are many indignities that a man suffers from, during his whole life, until his hair becomes white, and his face wrinkled with age; but there is

no indignity that a man either on account of himself or family can suffer from, where only honor is concerned, that would justify him in taking the life of the person who had heaped that indignity upon him, and from whom he had suffered a terrible disgrace. You must dis inguish gentlemen, between a wilful provocation, and wounded self esteem.

The defendant, after the commission of the act of adultery, might have thought himself disgraced, might have thought that his peace was ruined for life, that he could not endure the reproach of his fellow-men that had been brought upon him, yet he had no right even though he suffered thus intensely, to take the life of the deceased, Mr. Wiltshire. If you, laboring under a sting heaped upon you by an enemy, if you suffering from some dishonor which has been brought upon you; challenge that enemy to a deadly combat, or kill or wound him in a duel which was formerly considered an honorable thing to do; the statute of Ohio says that you can be punished for the act, by imprisonment in the penitentiary for from one to ten years. So a man cannot kill because he thinks that he has been disgraced or his honor has received a stain. If he does he is amenable to the law.

Did Mr. Giddings prepare a deadly weapon before he made the attack upon Mr Wiltshire? He went to the house of Lyman Blair on two occasions, as was shown by Lyman Blair, and the defendant. One morning he went before day, and the next time just before he went to Washington. He got that weapon, as he says, for the purpose of protection, but as we say, for the purpose of killing Mr. Wiltshire, whenever, and wherever he should find him; and the only reason probably, that Mr. Wiltshire was not killed in Fayette County, was that he did not run across him. There is no evidence that Mr. Wiltshire was there, when he went after his wife.

And the evidence further showing that he intended to kill Mr. Wiltshire, is that he came from Massieville to Chillicothe, with the weapon in his pocket, on Saturday morning, when he could have left it at home. He had that weapon in his pocket for the purpose of killing Mr Wiltshire when he arrived here. And if you find that he did prepare that weapon for the deceased before he started from his home, and that upon finding Mr. Wiltshire, he killed him, the law says he committed murder.

He lay in wait for Mr. Wiltshire one evening in Eichenlaub's saloon; the circumstances show this. He knew that he frequented that place; and he went in there for the purpose of slaying him, on that evening. And you will call to mind that he remembers everything, where he sat, what his relative position to Eichenlaub was, and everything els distinctly but the time of following Mr. Eichenlaub to the door when he said that he thought it was Mr. Wiltshire who was coming in.

On the night that he was talking to Leonard Berg in this city he came here for the purpose of taking the life of Mr. Wiltshire. He was hunting him from one street to another. He inquired of the policeman Leonard Berg, where he would probably find him; at one time in front of the courthouse; at another time in front of the Emmitt House. Leonard Berg, at the conclusion of his testimony says, that he did not consider him an insane man at that time.

He was lying in wait. He knew as he says that Mr. Wiltshire had made threats against himself, to kill him; and he said that he came to town two or three times for the purpose of taking his life, and that he afterwards abandoned his purpose on account of his children.

But do the circumstances all show that he abandoned his purpose to kill Mr. Wiltshire? The evidence does not show that he abandoned that purpose, but from the first conception formed of taking the life of Mr. Wiltshire, he pursued his purpose with the avidity of a blood hound until he took his life at the logs near Paint Creek.

Did he intend to kill him? Did he deliberate, and premeditate? He certainly did. All the facts show that he deliberated and premeditated. Is

there anything in the transaction itself, and all the circumstances of this case that go to show a design, or purpose, to kill? The law says you may take into consideration the manner of inflicting the wounds. How did he kill Mr. Wiltshire? He exercised an inhumanity and barbarity in the killing that is not surpassed in the commission of any crime on record. He selected the two most vital organs of the human body, when he fired those two shots. He sought the heart and the brain, and he put a bullet through each; thus showing the hatred and the ferocity of the man. He did not have an insignificant weapon with him at the time of the homicide. It was not a trifling thing that he held in his hand, but a thirty-two caliber revolver, with long cartridges. It was a most terribly destructive weapon, gentlemen, and this is an indication to show you whether there was any design or purpose to kill.

Was the provocation sudden? Does not the manner of the defendant, his acts, prove to you that he entertained a malice, and ill will towards Mr. Wiltshire; that he longed to take his life, and that subsequently and long after he took his life. He did not fire one shot and then stop, but he repeated the blows.

I will ask you now, whether after having formed this intention to kill, after having shown to you that there existed malice in the mind of the defendant, whether, when Mr. Giddings met Mr. Wiltshire in Adler's saloon, that intercourse between the two, was counterfeit, or real on the part of the defendant? If you are satisfied from the evidence, that it was counterfeit, that it was feigned that he pretended to be friendly toward Mr. Wiltshire, and afterward led him out and killed him, it is murder.

Did he commit the crime in self defense, gentlemen? I wish to examine the testimony pertaining to this carefully, and I ask you to follow me as closely as possible. First, I intend to give the version of the homicide as they have told it. Mr. Giddings says, that on the day of the homicide he came to town; that after doing certain business which he relates, he went to a saloon, or restaurant near the narrow gauge depot, at the end of Paint street. He swears positively, that while he was in that saloon, and in its immediate vicinity, he did not see Mr. Wiltshire. This saloon is near the depot; but he swears that he did not see Mr. Wiltshire while there; that thinking of some business that he had been attending to, after he had been in the saloon he went up street again; that after he had done what he intended to do, he came back and stopped into Adler's saloon not knowing that Mr. Wiltshire was there. He says that he went into that saloon; that he saw Mr. Wiltshire standing by the counter, and the evidence shows to you, gentlemen, that there was no emotion exhibited on the part of Mr. Giddings, when he saw him; no ill feeling arose in his mind against Mr. Wiltshire, the man whom he knew had been lying with his wife in adultery time and again; the man who had eloped with his wife to Washington C. H.; the man who if he knew and believed all these things, would have been the natural enemy as he was of Benjamin Wiltshire. He goes into that saloon, looks upon him calmly, is not surprised at meeting him so suddenly; he speaks to him, and Wiltshire answers: "How are you Daniel?" Now is that natural? Would it be human nature for a husband, meeting the defiler of his bed, to be friendly with him? Or does it indicate something else? Was he really friendly? Was that counterfeit; was it feigned; did he really entertain anything else in his heart? He says that they drank together. Mr. Giddings says that he noticed what Mr. Wiltshire drank; that he drank whisky; that he drank but two-thirds of a glass. Why did he notice that, gentlemen? Why did he notice so carefully what Mr. Wiltshire drank, and how much he drank? Why would he notice that, the man that had been suffering from such a sting, what was in his mind; what would be his purpose at the time, in observing these trifling things? After paying for the drinks, he stated, when he was first on the stand that Mr. Wiltshire then said to him: "Daniel, I want to have a little talk with you";

and you remember that Giddings says he said: "All right, Ben; I want to have a little talk with you too." But now passing on for a second to what transpired at the logs: he swore that Mr. Wiltshire, after he sat down on the log slapped his hat down on the log and said: "Now by God, what have you got to say to me."

Is that natural, gentlemen? Is that consistent? If Wiltshire had said what Giddings says he said to him in the saloon, when he first went in: "Dan, I want to talk to you," would it be natural or consistent for Wiltshire to say at the logs "Now by God what have *you* got to say to me?" Would not he have said in effect if anything: "Now Dan, I want to have the talk that I proposed to have with you."? But he says: "Now what have you got to say to me?" What did that imply? Why, it implied that Giddings had proposed to have a talk with him.

This was all said by Giddings in chief. But on cross examination what does he say? He says he wanted to rectify that. Then he swore that he told Wiltshire that he, Giddings, wanted to talk with him, Wiltshire. Why was that change? There was an inconsistency there. Had he seen after the examination in chief, during the noon recess, that there was an inconsistency, that the facts were not thus explained reasonably to you? Why did he rectify it? But, taking their own version of it as rectified; suppose that that be true; suppose that Mr. Giddings said to Mr. Wiltshire: "I want to have a talk with you." Mr. Giddings is the man now who wanted to have the talk, if that is right, as corrected. He wanted to talk with Mr. Wiltshire about his troubles. He was the man who was hunting the retreat in which to talk. When he went out on the street did he say a word? Did he mention anything to him? They walked, he says, down the street; what did they talk about? They walked around to Struble's saloon. If he was the man that wanted to have the talk to Mr. Wiltshire, why was Mr. Wiltshire so anxious to find a place to talk in? Wouldn't it be Mr. Giddings that would want to find the place in which to have a talk.

But they go into Struble's saloon. They will deny that Mr. Wiltshire was in such a state of intoxication that would disable him to any extent; but we could not show, gentlemen, more plainly, that that man was in an intoxicated condition to the extent of almost entirely disabling him. He vomited in the saloon, and was seen to stagger by Joseph Seeberger. That evidence is plain enough.

After they drank in Struble's saloon, according to their story, they passed on down Mulberry street. Frank Struble says he saw them corss the railroad; they did not stop; they went on down Mulberry street; they came to Honey Creek; Mr. Wiltshire is in such a disabled condition from intoxication that he is unable to cross Honey Creek; Mr. Giddings gets a rail, and throws it across the creek, by which Mr. Wiltshire is enabled to cross with the assistance of a pole procured by Mr. Giddings. He cannot walk the rail even, and has to take the pole to assist him; they cross over, according to their version into the corn field. Mr. Giddings swears that at that time there was something said about who that man was. Why did Mr. Giddings want to know who that man was? Then they crossed the corn field. Mr. Giddings swears that sometimes one was ahead, and sometimes the other, and sometimes they were both together. Let it be as he says, for the sake of the argument. They pass over, they pursue a southerly direction toward Paint Creek, and come to the point where Mr. Giddings says Mr. Wiltshire passed him and went on toward the logs; and when Mr. Giddings discovered that he had passed him, and went toward the logs and sat down, he went up to where Mr. Wiltshire was.

Mr. Wiltshire was sitting on a log; he went up in front of him. Mr. Wiltshire says, "Now by God, what have you got to say to me?" I ask you whether that is a natural expression for a man to make under those circumstances. He says that Mr. Wiltshire was leaning against a log, on the inside between two logs——you will remember how it was——and he went there

and in effect said to him : "Mary has come home now, she has promised to reform and do her duty as a wife and mother, and you know you have a great influence over her. I beg you for my children's sake let her alone; go away and stay." And Mr. Wiltshire says. "You be damned;" and put his hand back to his hip pocket as though he intended to do him some injury. Now where does Mr. Giddings say he was at that time? He says that he was in front of the small log; that immediately he drew his pistol, and he remembers of raising it and of aiming at Mr. Wiltshire. He remembers that, but don't know where he shot. Where did the first ball strike, gentlemen, according to their theory of the case; did it strike in the left breast? Dr. Lash says that if unobstructed, the ball inflicting the breast wound, would have come out below a point from a horizontal direction on the opposite side from where it entered the body. If Mr Wiltshire was leaning against the log at that time, and threw his hand back for his revolver, how could that ball have taken the direction it did in the body. If I shoot at a man leaning backward who is standing on a level with me, would that ball come out at a point on the other side of the body if it took a straight course, above or below another representing a point directly opposite the entrance? Would it not come out above? But the doctors say that it came out below. This proves the falsity of their first proposition. Suppose that the second shot that was fired, was in the right ear; where was Mr. Giddings when he fired that shot? Immediately after shooting him in the left breast did he turn round with his right side toward Mr. Giddings? If this be true I ask you how you account for the blood stains on the log which extended to the right downward of where he would be sitting, if he were sitting on the large log. This wound was made horizontally. How could that appearance be caused, the large stains starting on the top of the log, about the middle of it? How do you explain that? If the shot that was first fired was in the right ear, where was Mr. Giddings at that time? Was he in front of the log, and of Mr. Wiltshire, as he swears he was? Apply the facts in this case, to their theory and see whether or not this would be reasonable, or even possible. From the facts, and the circumstances, it would be impossible for Mr. Giddings to do the shooting in this way. Then he said he went east of the logs down toward Paint Creek; that he didn't know where he was until about half way between the logs and the bridge when he found himself with the pistol in his hand.

Now gentlemen of the jury, having given their theory of this shooting, of the circumstances that occurred on that day, I ask you to follow me while I relate to you what we think the facts are and show. We think the circumstances abundantly show, that Mr. Giddings expected to see Mr. Wiltshire in town that day; he had the pistol in his pocket; that when he was at the restaurant near the Narrow Guage Depot, he was waiting for the appearance of Mr. Wiltshire; that he saw him while there; that he saw him go into Andrew Adler's saloon; that he went in that saloon knowing him to be there, preparing to meet him, preparing to show no emotion at the meeting; that he met him in a friendly way for the purpose of concealing his intention; that he watched what Mr. Wiltshire drank, and how much, for the purpose of mastering him when he came to that point of intoxication that he could not resist it; that he led him out on to the street, not saying anything of importance to him, because he intended to lead him to a secluded place where there could be no witnesses to observe them. He did not want to shoot him down on the street; he did not want to begin any conversation or explain anything there. They stopped on their route at Struble's saloon for the purpose of drinking something additional. Mr. Giddings wanted to get Mr. Wiltshire more intoxicated than he was. He called him after they drank; they went down and crossed Honey Creek; there he inquired who Pickens was for the purpose of knowing whether it would be safe to commit the homicide near that point, he desired that there might be no witnesses; and thence he went

acroos the cornfield, leading his victim to death. Mr. Giddings led the way; two witnesses swore positively that Mr. Giddings was leading the way through the cornfield.

We now come to the point where they separated, gentlemen I want the counsel for the defense to explain how they differ from us here. Joseph Seeberger testifies that when Mr. Giddings and Mr. Wiltshire arrived at a certain point, they separated, Mr. Wiltshire going to the logs and Mr. Giddings pursuing a southerly direction. Now if Mr. Wiltshire sheered off toward those logs, and Mr. Giddings was going in a southerly direction; where would that have taken Mr. Giddings to, Mr. Mosher? Would it not have taken him to the thicket of brush-wood to the east of the logs? What was Mr. Giddings going toward that vicinity for? Why was he tolling Mr. Wiltshire to the brushwood and drift-wood. If Mr. Wiltshire had been ahead of Mr. Giddings at that time, would not Mr. Giddings have seen him sheer off to the logs, and would he have kept on in a southerly direction *past* those logs? If he had been *behind* Mr. Wiltshire how could it be possible, gentlemen, that he went on when Mr. Wiltshire passed to the logs? But it is only after Mr. Wiltshire, being really behind him at that point, had gone to the logs, and sat down in a drunken stupor, that Mr. Giddings discovered that he was not following in his rear, and being east of him at that time, he would turn when he saw him, sitting on those logs, and walk up to him and shoot him in the head.

This explains those blood marks. While Mr. Wiltshire was sitting on the log, not having risen from it, he shot him and the blood spurted out on the log, the first and largest drop being almost on the middle of the top of it. This explains it.

After Mr. Giddings shot him, why did he run to the east of the logs? Does it not show design and purpose? Didn't he know that Thomas Pickens was ploughing in that field, and that by this time it was probable that he was at the other end of the field, and that by running to the west through the cornfield, he would be seen? Was it not his design and purpose to escape after the homicide, to the east of those logs, to gain a cover there in that thicket and that brushwood, and afterward drop into a leisurely walk along the Massieville pike, for the purpose of allaying any suspicion.

He says he recovered himself when he came to bridge and was passing through it; and he knew where he was when he got on Cook's hill. Then if he was aroused from his dazed condition why didn't he go back and return home by the pike? Gentlemen, he was trying to flee from that homicide; flee from apprehension.

If this homicide was committed in self-defense; if he was justified in committing this homicide in the way he did; then you can do no otherwise than acquit him. If he did not commit the deed in self-defense, was he insane?

They will argue to you, gentlemen, that he wns temporarily insane; that, laboring under the excitement that he did, on account ef sleeplessness, and hunger which he had suffered from, and from mental anguish, he had arrived at such a condition of mind, that the provocation in words which was so suddenly offered him at the place of the homicide by Mr. Wiltshire produced such a shock upon his feelings that he was irresistibly compelled to take the life of Mr. Wiltshire; and that he was wholly irresponsible for that act. Now, Mr. Sloane, I suppose will spend a great deal of time in reading to you, definitions of temporary insanity; but after all, gentlemen, after he has told you what temporary insanity is, you are to take a common sense view of this case, and ascertain for yourselves whether from the testimony adduced, such a man, under such conditions would be irresistibly compelled to take another's life; and whether he would be irresponsible for taking his life. And you are not to take as absolutely true the testimony of the medical experts. They may give an opinion on a certain state of facts; but

after all, gentlemen, you are not compelled to take that testimony as establishing absolutely what is sought to be established by it.

By the kindness of Mr. Sloane, from whose authority I now quote, I wish to read a short paragraph from the charge of the Court in Cole's case, in which the defense of temporary insanity was set up in the commission of a homicide. The Court says: "The value of the medical evidence, you can estimate for yourselves. You are yourselves the ultimate judges on this point; and it is upon your judgment as founded upon the evidence that the result must finally depend. The opinion of medical men may have a certain value in enlightening your minds in regard to it, but it should by no means induce you to discard your own grave and deliberate judgment upon the whole testimony."

I wish to refer for a short time to the hypothetical question submitted to the medical experts by counsel for defense. Even if all in it be true, the answers of the medical experts are not to be your absolute guide in forming your opinion upon the question of insanity. Bnt we do not admit to be true several very important elements that enter into the composition of this hypothetical question.

First I will refer to the language in it that reads, Mr. Giddings "was thought by his schoolmates and companions to be, and was odd or peculiar; prone to wander away by himself, and seldom engaging in the ordinary sports and occupations of those of his own age, but often sitting apart alone." etc.

Now it is very plainly, that they intend by this to prove to you that this oddity, and peculiarity in the defendant's composition is one of the characteristics of insanity.

Well, gentlemen, what was there odd or peculiar about Mr. Giddings, as boy, youth and man? For the purport of the whole testimony was, that he often sat apart while games were going on, and that when he was a soldier, he did not take an active part in the games and escapades of his comrades. That is about the extent of it. What does that show? Does it show anything more than that he was a quiet, modest, and reserved boy and man. How many school boys. Mr. Shotts, do you remember who exercised that same peculiarity, when you went to school? Mr. Aber, how many men do you call to mind that exercised the same peculiarity that Mr. Giddings did while he was engaged in military life? Was there anything in his oddity or peculiarity more than that he was simply a quiet, modest and reserved boy and man? Are there any indications of insanity in this? Why, it is a characteristic that belongs to many boys and men, whom you would not for a moment suspect of being insane.

This question also presumes that Mr. Giddings' father was insane. Has there been any testimony to prove to you that he was insane? I appeal to your recollection of the evidence. What was it Mr. Mosher? It was this: that nearly every witness that testified as to the insanity of Mr. Giddings' father, said that he was absent minded, and that it was thought that from business lossses and troubles, he was *about* to lose his mind; they did not say he *had* lost his mind. Mrs. Brouse, testified to that effect, that he was absent minded, and they *thought* that he was going to lose his mind. Well, it would be sufficient I think, when a man had a prospect of accumulating wealth, and business losses overtook him and he lost all he had to make any man somewhat absent minded.

But does that show that Mr. Gidding's father was insane? He did not have any hallucination; he did not have any delusion; he did not entertain any project that was not reasonable, nor did anything that was unreasonable. Many witnesses admit this.

The question reads, also, "that since that time defendant noticed," that is after defendant's wife had been to deceased's house, to nurse his sick child——"a greater estrangement of his wife's affections from him, and a growing dissatisfaction with her, to him." But what does the evidence

show? Does it not show that there was an estrangement of Mr. Giddings' wife from him, ever since the birth of the third child. He acknowledges that they had frequent disputes. That is common, I suppose. He acknowledges this and he told several credible witnessess this much. Mr. Giddings told several persons who testified on that stand, that he knew of his wife's infidelity ever since the birth ot the third child. Was there then no estrangement of the wife's affections from him and did Mr. Giddings know nothing of it up to the time she went to nurse the deceased's sick child? The evidence shows that this is untrue? But all these facts they consider essential to show that Mr. Giddings was emotionally insane at the time he committed the homicide.

It also reads: "her actions were unexplainable to the defendant." "He had no suspicion of her infidelity;" until she went away with Mr. Wiltshire. What does he mean in the letter to his brother, when he says: "By *observation*, I have come to the conclusion that my wife has been untrue to me." You have seen and heard Mr. Giddings testify. You know that he had the appearance of an intelligent man, and that he would know the full purport of the word "observation" when he used it in that letter to his brother. An intelligent man, as he is, could not use that word without knowing the meaning. He meant that he had seen Mr. Wiltshire and his wife in the act of adultery. That is what he means by "observation," Mr. Stevenson, and nothing less; and that is borne out by all the facts in this case.

Further it reads, "Being seen in Chillicothe after midnight, walking wildly up and down the pavement." Was he walking *wildly?* You remember at the close of Leonard Berg's testimony, that he said that he did not say anything but what a reasonable man, under the same circumstances would have said. He said he wanted to know where his wife and Mr. Wiltshire were. He said he did not know where they had stopped, and was looking for them. That was all the indication of wildness in his talk that night. That "wildness" is to prove that he was on the verge of insanity, then.

Another statement is, "That he took her and her goods to Chillicothe on said Monday, under the belief that she was going to Erie County to her mother." Why, the way she went away refutes that. She took more than her own goods. She took such a bulky article as a rocking chair; and he never inquired where she got the money she had. He knew that she had been in this city with Mr. Wiltshire a short time before; and yet he says he did not have any reason to suppose, nor did not suppose but what she was going to Erie County.

Again quoting "And on the 23d he wrote and sent the letter to his wife, which is in testimony." In that letter he says, "When your paramour casts you off, and all the world forsakes you, remember what I have told you. I will not take it back." What did he mean by that? The defense will say that he meant that he would take her back to his home, that he would receive her back into his family; that his love was so great for her, that even after she had been defiled by her paramour as heinous a crime as she could commit, he would receive her back. Does the language of that letter support this view? A little further on in this letter he says: "I have filed my petition for divorce. Whether you come back or not; whether you appear or not; I will get that divorce." Does not that show, conclusively, he intended to pursue that case to the end, that whether she defended or not. he intended to get a divorce? What he really meant by that expression was that "when your paramour casts you off, and all the world forsakes you remember what I have told you. I will not receive you back into my home."

Now, referring to the threats of Mr. Wiltshire, that "he would have her, or see whose hide would hold the most bullets, and that he was prepared to put them in as fast as anybody." Is there any evidence tending to show that

Mr. Wiltshire was armed with a deadly weapon, at the time he talked to those persons from Fayette County, or at the time the defendant fired the shots at the logs? Did Mr. Wiltshire have a weapon of *any* kind? Does Mr. Giddings say that he ever saw Mr Wiltshire have a weapon. Have they even proved that Mr. Wiltshire was known to carry a weapon? Was there any weapon found by these logs, after the occurrence; was there any weapon found on the person of Mr. Wiltshire when he was searched by the coroner? What reason had Mr. Giddings to think that he was armed? He says that he never heard of any threats made by Mr. Wiltshire, except from his wife, on her return from Washington C. H. Now if you are to believe the defendant above everybody and everything else; if you are to discard the direct and positively sworn testimony of credible witnesses, the reasonableness of the circumstances; if you are to believe Mr. Giddings in preference to all this; then I say, find him insane.

And again: "When Wiltshire struck off a little to the right of a direct line, in the cornfield, in the direction of some logs, under the shade of some trees, Giddings following a few feet in his rear"——this question presumes that Mr. Giddings was in his rear at that time, and that Mr. Wiltshire was leading the way————with which expression he here rose from the log and and threw his hand behind to his hip pocket." Then Mr. Wiltshire's hand remained in his hip pocket, if his hand was there before Mr. Giddings drew his revolver; and Mr. Wiltshire's hand was in his hip pocket while Mr. Giddings put his hand into his own pocket, drew out his revolver, raised the hammer and fired the first shot; and remained there all the time. If it did not, where was it? Did he draw a weapon?

This question also contains this: "Ben, you know Mary has come home now, and begged me to take her back, and forgive her; I have done so, on account of my children." Well, bear that in mind, gentlemen. Does he say that it was on account of his great love or "yearning?" He says: "I have done so on account of my *children*."

In another place the question reads: "after passing down the pike some distance, he was seized with fright, and wandered out of his direct road home, a considerable distance, over in a direction west of Massieville."

Now gentlemen, assuming that the facts in this case are exactly as stated in this hypothetical question; Dr. Morse says that the man was emotionally insane at the time he committed the act. But before you *can* believe that Dr. Morse's answer is true, you mnst believe that the facts stated in that hypothetical question, are the facts of this case; that defendant's father was insane; that Mr. Giddings inherited a hereditary taint; that his mind was excited and disturbed on account of his loss of sleep and hunger through this excessive sorrow, that he had no premeditation, and exhibited no motive. You must believe all this, before you can accept the answer of Dr. Morse, as being absolutely true. But if you do not believe these to be the facts, then the answer of Dr. Morse goes for nothing.

And if you believe as is stated in the hypothetical question put by the State; if you believe that Mr. Giddings' father was not an insane man; that the defendant did not inherit any hereditary taint; that he was not insane, nor did not possess any insane characteristics; and as fully stated in the State's question, then the testimony of Dr. Morse is, that he was a sane man. And we have put in our question just what we believed to be the facts in this case.

Was he insane up to the moment of the homicide? There is testimony showing that he had discovered his wife in the act of adultery with Mr. Wiltshire; that he had followed them into the brush wood; that he was moved to no emotion at those times, and that he did not form any intention to kill, never. Now if he could look upon the very act itself, and not exhibit any passion, or resentment, nor become ungovernably excited, I ask you whether such a cool, calm, collected man, could be so

suddenly excited and overcome, as to lose his reason, and shoot down a man upon his saying: "You be damned, I have come after your wife, and I intend to take her back, or kill you."

If Mr. Giddings had exhibited any emotion at the time he saw them in the act of adultery, if he had made any movement to strike down the adulterer at the time; then there would be some reason to suppose that he was excited to an ungovernable degree at the time of the killing. But for years he had known of his wife's infidelity with others. The very persons who had committed the adultery with his wife, were known to him; he treated them as friends; and never attempted to raise his hand against a single one of them.

Does not that show, gentlemen, that he entertained no affection for his wife, and does it not bear out the statement of Dr. Dewey, that when his children should arrive at a certain age, he intended to leave her? Only for the sake of the *children* did he endure her presence in his home and in his family. Only for the sake of having a housekeeper to look after his bodily comforts.

Now you may say, and there *is* nothing more disgusting, there is nothing more revolting, than that a man should be compelled to find a man and his wife in the act of adultery before he could slay the man and be guilty of no greater crime than manslaughter. It is disgusting to human feeling to think that he must discover the guilty performance; but the law is, nevertheless, gentlemen, that he must find them in the act; and even then if he slay the adulterer, he is guilty of manslaughter; and if he allow that time to pass by, and brooding over it, out of revenge, kill the adulterer, at a subsequent time, he is guilty of murder.

There will be a great many cases cited by the defense, and there will be eloquent argument on this aspect of the case. They may claim that the great majority of cases, if not all, were cases where the husband slew the adulterer of his wife, or where a brother slew the seducer of his sister; and that every prisoner who has been arraigned and tried for this crime has gone acquit.

A great many cases will be cited; the case of McFarland, of Jarbo, and others. In Jarbo's case the deceased had seduced the sister of the prisoner, the brother had sought the seducer, and with his sister on his arm at the time of the homicide, asked him what he intended to do about it. A reply was given which stung the brother, and he shot down the seducer on the instant.

Col. Gilmore.—Right there let me correct that history. At the time that he asked what he intended to do, the seducer made a motion to draw a pistol.

Mr. Bitzer.—I was coming to that.

Col. Gilmore.—I beg your pardon.

Mr. Bitzer.—But in that case, gentlemen, it was proven that at the time the brother fired the fatal shot, the seducer had drawn a pistol from his pocket, and held it in his hand in the act of firing, and that immediately after the homicide the pistol was found lying at his feet, on the pavement.

In the Sickles case there was greater provocation, gentlemen, than there was in this. In that case there was an immediate provocation, Phillip Barton Key, passing the house of Daniel Sickles at the time, and waving his handkerchief as a signal to Mrs. Sickles to meet him at a certain place, in the city of Washington, and Mr. Sickles stung to madness by that act, rushed down on the street and slew Mr. Key on the pavement in the twinkling of an eye. But there, the testimony also showed, that immediately after the homicide, a Derringer pistol with the ball recently discharged was found lying on the pavement; and the jury had a right to believe, that Mr. Key had drawn that Derringer and fired one shot, and had then helplessly dropped it upon the pavement. It was proven that Mr. Sickles had a revolver. During the whole transaction there were four shots fired, of which,

Daniel Sickles only fired three as was shown by the three empty chambers of his revolver.

In the Mannings case, a man found his wife in the act of adultery with another man, and in a transport of passion was killed by the husband, and yet the husband was found guilty of manslaughter.

In this case, the defendant did not kill Mr. Wiltshire in the act of adultery. He afterward pursued him; he premeditated upon killing him; he had a motive for killing him, and he killed him a long period after the act of adultery.

The laws against adultery in ancient times were very strict. In the Scriptures, for instance, it is said that among the Jews the punishment for adultery was death. The adulterer and the adulteress were both to be stoned to death; and various other punishments were prescribed among other nations for this crime, such as hanging, burning, the infliction of self punishment under compulsion. The laws against this crime were of the most rigid in ancient times. But the law against adultery in our State provides that the punishment is not to exceed three months imprisonment, and two hundred dollars fine.

Now stop and consider why it is that the law for the punishment of adultery at this day, is so different from similar laws in other times. Why is it that the punishment for adultery in ancient times, among many nations, was so rigorous, even to the point of death; and at this time is comparatively mild. The crime is not now even a felony but only a misdemeanor. I think I can see the reason of this. In the early ages woman was held to be an inferior being. She was thought to be incapable of exercising her own judgment unaided, and protecting her own chastity. But now who entertains such a thought? In our day woman stands the peer of man in many particulars, and in others far superior She stands the peer of man at this day in intelligence, and the superior in morality. She is considered as being perfectly competent to take care of herself and of her own chastity. It is not considered at this day, necessary for a man to stand with bowie knife or revolver in hand, to protect the chastity of his sister, his daughter or his wife. If the woman is incapable of protecting her own chastity, no man can protect her; because if she intends to defile herself, there is no deadly weapon placed in the hands of any guardian that can pervent it. Her own virtuous glance is the only weapon that can preserve her.

Can you say that because the Scriptures, and because the law of nations was so rigorous against adultery, our law should be the same? Would you say because it is declared in holy writ that the adulterer and the adulteress shall be stoned to death, that that law should exist at this time? If you did, you must say, on the same reasoning, that many other petty crimes that were punished with death in those times, should be similarly punished now.

Col. Gilmore.—They were not to be punished with death even under the Jewish law, without trial and conviction.

Mr. Bitzer.—I will speak of that. The language of Ezekiel, 18th chapter, 10th to 13th verses, inclusive is this: I simply quote this to show to you that petty crimes were punishable by death, beside adultery, at that time; and to point out to you how absurd it would be to argue, that because adultery was punishable by death at that time, it should be punished by death at this time. Now what crimes beside adultery were punished with death? The language of Ezekiel is: If he beget a son that is a robber, a shedder of blood, and that doeth the like to any one of these things, and that doeth not any of these duties, but even hath eaten upon the mountains, and defiled his neighbor's wife, hath oppressed the poor and needy, hath spoiled by violence, hath not restored the pledge, and hath lifted up his eyes to the idols, hath committed abomination, hath given forth upon usury, and hath taken increase: shall he then live? he shall not live: he hath done all these abominations; he shall surely die; his blood shall be upon him." The idolater, the usurer, the begetter of a robber, and even in one instance, a

man who gathered sticks on the Sabbath, mentioned in the New Testament, was punished with death. If adultery should be punished with death, at that time, so ought all of these small offenses upon the same reasoning. Mr. Giddings may have thought the punishment for the crime of the adulterer was inadequate; he may have thought that to punish Mr. Wiltshire by imprisonment for three months, and a fine of two hundred dollars, was wholly and absurdly inadequate; but, however much he may have thought the punishment inadequate, he had no right, gentlemen, to take the law into his own hands, to pursue Mr. Wiltshire, and shoot him down for that reason.

The punishment of Mr. Wiltshire was excessive. If he had been tried in this Court, and convicted for the crime of adultery, he could only have been punished in the manner I have mentioned, and as our statute prescribes. The law of our land does not say the adulterer shall be punished with death; and when Mr. Giddings made those mortal wounds he inflicted an excessive punishment.

But will he say, because society does not avenge him, because society does not right his wrongs, that he has a right to take the punishment into his own hands, and inflict it as he deems proper? Nothing but the death of the adulterer would satisfy the mind of the injured husband, and society would be shocked to inflict such a punishment for the commission of this crime; for a crime that he had only been equally guilty with another. Can you say that because there is no human law to gratify his vengeance, an injured husband has a right to kill; that he is remitted to a higher law above the human law; that he is simply an instrument in the hands of his Maker to accomplish His desire; in the language of Brady, in the Sickles case; that he had a right to take the life of the defiler of his bed?

Mr. Giddings when he became a member of society, and a citizen of this State, tacitly entered into a compact to abide by the laws of the State of Ohio. When he became a citizen of the State of Ohio, he as much as said "I will abide by the laws"; and after he had entered into that compact, he could not violate the law of the land, by committing murder, with impunity. Why a man might commit any crime, gentlemen, no difference how atrocious, it is, and plead as an excuse that to his mind no human law had provided a redress for his wrong, and that he had a right to revenge himself and to rise above the law.

When the crime of adultery is committed, when a man's wife is defiled, is it altogether because of the wiles and intrigues used by some one to effect it; or is it also because of some answering response in the breast of the wife to those wiles and intrigues. I know that it is monstrous to interfere with the marriage relation, because home, and family, and children, are all interfered with; but I also feel that the marital state can never be violated; that no man can disjoin husband and wife against the express divine command, without the willing assent of the woman on the other side.

There is not a married man on this jury, I have no doubt, but who experiences the comforts of home. You know what home life is. You know what it is to enter into its sacred precincts and enjoy pure happiness there. I know it is said the lecherous man takes his life into his own hands when he enters the family circle to deflower the wife, and I know it is said to be a natural impulse of man to be moved to strike the invader down; yet I also know that if the adulterer should enter your home and destroy your family and your happiness by defiling your wife, you would have no right to take the life of the man who had so irredeemably disgraced you.

Counsel for defense will tell you that he would scorn the man who would be so degraded, that he would not resist that indignity at the point of the knife, or the muzzle of the revolver. From the Cole's case I wish to read again what was said by the Judge in his charge at the close of the case touching upon this topic: "Another defense set up on this occasion is that Hiscock was the seducer of Cole's wife, and therefore justly liable to his vengeance. No doubt such a defense, if established, would strongly appeal

to your sympathies being regarded in some quarters as no more than a just vindication of marital rights, and the only efficient mode of protecting the purity of the marriage bed. But we are not here to administer sympa hy, but to execute justice; to carry into effect the laws of the land; to enforce its solemn maudates, and not to nullify or relax its positive commands by misplaced sympathy, or morbid clemency. If our duty is clear, we forswear ourselves if we do not perform it. I have taken a general oath faithfully to perform the duties of my office. You have taken a spe ial oath, well and truly to try, and true deliverance make, between the people of the State of New York and George W. Cole, and a true verdict render according to the evidence, so help you God. This duty we must discharge at whatever hazard; whether painful or agreeable, neither manhood nor honor, the restraints of conscience, nor the solemn mandates of the law, allow us to decline its performance or to hesitate at its execution. Many laws may not be in precise accordance with our views of policy, or even of strict justice, yet it would lead to the utmost confusion and injustice should we refuse to execute them. If we are dissatisfied, we should apply at the proper time to the proper form for their amendment, or seek to avert their excessive rigor by an appeal to executive clemency." In this case it is not for you to exercise clemency and sympathy. It is for the Governor of the State of Ohio. "Certainly, it is to be regretted, if further legal enactments could be of any avail to restrain the unholy passions and devilish arts of the seducer and adulterer, that they have not not heretofore been made. But the wisdom and efficiency of such enactments have been questioned. It is enough for us to know that we must administer the law as it is, and have no right to usurp legislative power, and apply to a past transaction, laws of our creation. The injustice and unconstitutionality of such a proceeding would be manifest, and the gravest objectionality of such a proceeding would be manifest, and the gravest objections to it exist. Let us content ourselves with administering the law as we find it in our own appointed sphere of duty. Then shall we have consciences void of offense toward all men, and the happy consciousness that in the spirit of our oaths, and in conformity with the obligations which rest upon us, we have, as faithful and law-abiding citizens, executed the laws of the land."

As to the right of the husband to slay the adulterer, he said: "But it is said that the prisoner was informed of facts tending to fix upon the deceased, this invasion of his marital rights, and that, oppressed by the crushing weight of such disclosure, he rushed to the vindication of his marriage bed, under a transport of passion which every honorable heart will justify, which the law will excuse if it does not applaud, and which jurors who appreciate the importance of maintaining the purity of the marriage relation can not fail to recognize and sustain. But neither is this the just nor the legal view of the case. It is only in the heat of passion—in the uncontrollable resentment occasioned by the discovery of his domestic dishonor, or by surprising the parties in the actual commission of the adulterous intercourse, or under the sudden influence of a state of circumstances almost equivalent to personal observation of such transaction, that the husband is permitted to be the summary avenger of his domestic wrongs. He is not at liberty, after his passions have had time to cool, and the tempest of excited feeling to subside, to stalk abroad, seek out the unconscious and unprepared victim of his resentment, and without the intervention of the forms of law or the judgement of his peers, become the the self-appointed avenger of his own wrongs or vindicator of the violated majesty of the law. The law must be left to maintain its own dignity and to enforce its own decress throught the constituted tribunals of its own creation, and has not in any just or legal sense commissioned the defendant to the discharge of the duties of this high office. In this case, the adulterer—if adulterer he was—was not detected by the husband in the actual commission of his crime, nor under circumstances from which its then very

recent perpetration, so far as the evidence discloses, could have been fairly inferred. The period of adultery—if adultery there was—was long since passed. The knowledge or information of commission had been communicated to the prisoner several days, at least two or three days before, and a sufficient time, in judgment of the law, had elapsed for the passions to cool, and for reason so far to regain her undisputed or real sway as to forbid individual vengeance, and to pronounce the act of premeditated killing—if such it was—the crime of murder. True it is, as I have already informed you, if, notwithstanding this lapse of time, the crushing weight of this domestic tragedy had driven the prisoner's mind to absolute distraction, and dethroned the reason of her husband, he is permitted to find immunity from punishment in the mental alienation with which he was thus overwhelmed. But if he had the possession of his senses, the exercise of his reason, and was in a situation to appreciate the quality of his acts, he stands responsible before the law for having unlawfully taken the life of his fellowman, and must abide the stern rigor with which she maintains her violated majesty. Neither, therefore, in the alleged adultery, for which the deceased was slain, because the adultery has not been proved, and would not have been a defense if it had been, considering the period of its alleged commission, nor in the crushing and overwhelming weight with which the evidence of his domestic dishonor and of the deceased as its alleged author, was brought home to the knowledge of the defendant, can the prisoner find exemption from the consequences of the homicide. He must find it, if he find it at all, in that dethronement of reason, if it actually occurred, which exempts every insane person, however great would otherwise be his crime, and however awful would otherwise be the attending circumstances, from conduct to which his mind never gave a willing and intelligent consent."

If either of you jurors were to retire from your seat here, return to your home and find your wife and your children murdered within the bounds of your household; and if you should then discover evidence that pointed positively in the direction of the murderer, and should you then seek out and shoot him down, the wretch who had murdered your family, you would not be justified under the law. If you deliberately and premeditately destroyed that murderer who had taken the life of your wife and your children, you are guilty of the crime of murder.

And is it to be supposed that there is a greater immunity to him who slays the person who is only guilty of an inferior offense by and with the consent of the person the slayer seeks to revenge. The killing the adulterer is not on a parallel with the killing of the robber who attempts by force to take from your person, your property, by which he may endanger your life. You have a right in the latter case to strike down the man who assaults you for your property; and a woman has a right to strike down a man who attempts to ravish her person, because she may well believe that her limb or her life is in imminent danger. The purport of our law is, that to justify you in taking life on the ground of self defense, you must believe that you are about to suffer some *grievous bodily harm*, or are in imminent danger of death. Bodily harm; not *mental suffering*, gentlemen. You must believe that you are about to suffer bodily harm, before you can take life.

The scriptures do not justify the killing of the adulterer, or even of the *ravisher* by the husband or *any* unauthorized person. The scriptures do not justify the man who pursues the ravisher and slays him after the act. You remember the story of Dinah, a beautiful jewish maiden, who went out to view the land. A prince of one of the neighboring Gentile tribes saw her; saw that she was beautiful, and fiendishly ravished her. Simeon and Levi were her brothers. When they heard that their sister Dinah had been ravished by the prince, they formed a resolution never to rest in peace until they had taken his life. They went out thirsting for vengeance; they found the prince, slew him and returned. Did it meet the approbation

of their old father, Jacob? Did he say they had done well in slaying him who had brought dishonor and death on his noble house. What did Jacob say years anon at the point of death, when he called his children around his bed to give them his curse, or his blessing? "Simeon and Levi are brethern. Instruments of cruelty are in their habitations. O, my soul come not thou into their secret; into their assembly, mine honor be not thou united, for in their anger they slew a man, and in their self-will they digged down a wall. Cursed be their anger, for it was fierce, and their wrath, for it was cruel."

Tamar was ravished by Ammon. Absalom, seeing his sister, after she was deflowered in sack-cloth and ashes, weeping for her lost chastity thirsted for revenge, and he pitilessly took the life of her seducer. He determined to take the life of the man who had ravished his sister. For two years he cherished the design, and at the end of that time by invitation all the brothers of Absalom were gathered together at a sheep-shearing, and at that pla·e and time, two years afterward, Absalom carried out his intention, he slew Ammon. What did Absalom do? Did he think, after he had done this cruel act, that he would be absolved from the commission of the crime, by the laws of his country? Did he think that he would receive the sanction of his father, David, the old King, for the slaying of the ravisher? No, gentlemen, after he had slain him he fled to a distant country and staid there for three years fearful of the wrath of his father and King and of his country's law.

If then the slaying of the ravisher; the man who defiles a woman against her will, is not justified by human or divine law; would the slaying of the adulterer be sanctioned by any law human or divine? Much less because he who committed the crime of rape, would be a more fragrant criminal than he only who committed the crime of adultery. And the punishment for rape is far beneath the death penalty.

But it might be asked, did not Absalom return and escape punishment? He staid in his asylum for three years, then returned, and his father, after two years more, received him, but it was only after King David had become reconciled for the loss of his son Ammon, that he dared to return and invade the precincts of his father's palace and trust himself to his father's love.

I ask counsel for the defense to show where in any civilized country, a weapon was placed in the hands of the husband to slay the adulterer by the sanction of law; I ask them to show this by any law, of any country, barbarous or civilized. They can not do it. On the contrary, in every civilized community, all the safe-guards that can be conceived of are and always have been thrown around life for its protection.

What do the scriptures among the earliest of written law say of the commission of murder? It says: "'He that smitheth a man so that he die, shall surely be put to death, and he that killeth any man, shall surely be put to death." "And if he smite a man with an instrument of iron, so that he die, he is a murderer. The murderer shall surely be put to death." "Whosoever sheddeth blood, by man shall his blood be shed."' The sanctity of human life has been recognized in every clime, and in every age, and we dare not take it with impunity.

It is a pity for the children of Mr. Giddings, that this cloud ever settled over this household. The foulest disgrace that could be conceived of has been heaped upon the heads of these little children. It is an indignity that has been heaped upon their father's head, that he will never forget, that he can never forget. Home is the place where children are to be reared under influences that will make them respectable citizens and good men; and if home be desolated, the father suffers a poigant anguish that can not be removed or allayed.

But at the time Mrs. Giddings returned home, did she come home a pure wife? Before she had ever seen Mr Wiltshire, was she a pure woman? Now from the lips of Mr. Giddings, before she had ever seen Mr. Wiltshire,

was she a pure woman? Were those children more disgraced after she knew him? Why, all the disgrace and infamy that could have been heaped upon that family, had been heaped upon it before Mr. Wiltshire had ever come upon the scene; and through the vile and impure purposes and feelings of his own wife was all the shame heaped upon every suffering head of this family that was heaped upon it. It is a pity that the children and the family were so disgraced as they were; but the mischief was done before the poor man who lies silent in his murdered bed knew the family, and Mr. Giddings knew this well.

HERE OCCURRED THE NOON RECESS.

As I said in the beginning, there are several ingredients in this indictment charging Mr. Giddings with the murder of Mr. Wiltshire, among which was, purpose, deliberation and premeditation, malice, and the killing. The killing has been admitted on the part of the defense; but as an excuse for that killing, they have said first; that at the time of the commission of the homicide, the defendant was insane; second, if he was not insane at that moment, that he committed it in self-defense.

As bearing on the question of provocation, gentlemen, I wish to read what was admitted by counsel for the defense, in the Sickles case. In this case there was no evidence tending to show that the wife of Mr. Sickles had ever been untrue to him, before she became intimate with Mr. Key. Mr. Key had rented a house in an obscure quarter of Washington City, where he had been in the habit of making assignations, and meeting Mrs. Sickles, for the purpose of furthering a criminal intimacy, and pursuing their adulterous practice. A few days prior to the killing, Mr. Sickles ascertained this fact; and one Sunday while he was suffering the mental anguish of having obtained information of his wife's infidelity, Mr. Key passed Mr. Sickles' residence, waving a white handkerchief, which was the signal for his meeting with Mrs. Sickles at this assignation house and on account of this outrageous provocation, Mr. Sickles rushed madly out of the house, and in a passion of excitement, killed Mr. Key, on the street. In reference to this Mr. Graham of counsel for Mr. Sickles, said: "If Mr. Sickles had thrown out a bait; if he had invited Mr. Key to that vicinity in order that he might go forth from his mansion, armed as he was represented to be, by the learned counsel for the prosecution, to the end that he might slay him, then there might be a feature of the case which might appall us. But there is no such evidence here. Mr. Key was in the neighborhood of Mr. Sickles' mansion, and following the bent of his own impious, wicked, and carnal heart. The very ferocity of this attack, as represented on the part of the prosecution, the very murderous course which they have tried to impute to him, precludes that. What was the state of mind that prompted him to the act, to accomplish the act? Mr. Sickles encounters Mr. Key without any expectation whatever. He meets him as casually as though he were meeting a stranger. The very ferocity of the attack by Mr. Sickles drove him on, against which it was impossible to oppose any resistance." There had been no conversation, of a friendly character, or otherwise, between Mr. Sickles and Mr. Key; not a word passed between them until they met face to face on the pavement, and in this case it was claimed that Mr. Sickles was controlled by an irresistible impulse.

If you find that Mr. Giddings was insane at the moment of the commission of the homicide, he ought to be acquitted; but if the evidence shows that it was only interposed for the purpose of acquittal then the plea of insanity ought not to avail, and he should be convicted.

And again, if he committed the homicide in self-defense, he should be acquitted. But if he committed it with deliberation and premeditation; if the jury believe that he led him out there for the purpose of committing that homicide, and that the story that he has told here upon the witness stand is not corroborated then the plea of self-defense should not avail him.

I do not want to transgress on the time of the Court, and jury, but I wish to read this hypothetical question presented to Dr. Hall, and Dr. Morse; as it contains what the prosecution claims were the facts. It is a recapitulation of what the State asserts.

"If it be true that the defendant had always borne a good character as a quiet and peaceable person up to the time of this homicide; but also true that having married in 1872 his present wife, he had discovered six or eight years ago that his wife was indifferent to him, and that she had been guilty of adultery, and that he consequently had lost his affection for her; that he had been told by her that she wished he would go away and stay away; that he had said of her that he wished she would get a divorce; that he would give any man $25 to swear to any lie that would secure such divorce; and if it be also true that in the latter part of June or the beginning of July last he suspected strongly that she was in the practice of adulterous intercourse with the deceased; that he watched his wife and Wiltshire, and saw them in the act of adultery on one or more occasions, and was close to them at the time of such act, without their knowledge, and neither did nor said anything upon such occasions; that he however brooded over the fact, principally upon the account of his children; that he drove his wife from his home to take refuge with her neighbors,"——Mr. Giddings admits that his wife charged him, in the presence of Mrs. Carter, with cruelty. He does not say that he denied that charge in the presence of Mr. Carter.

Mr. Sloane.—Oh, yes. He says he said to her, "Mary, how can you say that, when you know it is untrue?"

Mr. Bitzer.—I don't so understand it. One thing is certain, however, that he said she made that charge to Mr. Giddings in the presence of Mrs. Carter.——"that he drove his wife from his home to take refuge with her neighbors, where she remained two or three weeks, coming home in the day time and returning to Carter's at night; that during this period and subsequently, and up to that time of her return on August 2nd, the defendant was excited, sometimes sleepless; ate less than usual; worked less than usual, and was generally disturbed."——But you will remember, gentlemen, that for several days prior to the homicide, there is no testimony showing that Mr. Giddings had passed sleepless nights; there is no testimony showing but what he came to Chillicothe on August 5th refreshed in mind. He was not suffering on that Saturday morning from sleeplessness, and there is no evidence tending to show that.——"That in the latter part of June or very early in July he borrowed a pistol of Lyman Blair, with the intention and purpose to kill deceased; that he came to Chillicothe at various times hunting deceased, with the avowed purpose of killing him; that he attempted to have his wife arrested for larceny, and did begin proceedings for divorce; that he failed on any such occasion to meet deceased, and did not see deceased until on the 5th day of August, at about 2 o'clock in the afternoon; that defendant's wife had returned to him on the 2nd day of August from Washington C. H., having remained there with Wiltshire from the 19th day of July, the defendant knowing that his wife and Wiltshire were at Washington C. H. during that period of time; that he received his wife into his home again upon her return only for the sake of the children; that on August 5th, at about 2 o'clock p. m., defendant met deceased in an intoxicated condition in Adler's saloon on Paint street; that they shook hands in a friendly manner, drank together on the defendant's invitation; the deceased drinking whisky, and the defendant only beer, each drinking to the other's good health; that they left Adler's saloon together and proceeded in a direction away from their houses and to an unfrequented part of the city

and vicinity, a distance of about 300 yards to Struble's saloon, on Mulberry sireet, where they again drank together in a friendly manner, the deceased again drinking whisky and becoming intoxicated to the point of vomiting; the defendant drinking blackberry wine; that the defendant urged the deceased to haste in leaving the saloon, and proceeded to lead the way to the end of Mulberry street, passing through a thicket, assisting deceased across Honey Creek, thence through the newly plowed ground of a cornfield, defendant leading the way, to a thicket of brushwood near Paint Creek, on the south side of said cornfield, in a secluded place, remote from all roads or paths, where the deceased first seated himself upon a log and laid his hat thereon; that the defendant, having reached a point some twenty feet east of deceased, turned and walked to deceased, (on the right side), and instantly shot him through the head, from right to left, in a horizontal position, whereupon the deceased fell from the log upon his right side, and was again shot by defendant through the heart; that the defendant thereupon ran towards the Paint Creek bridge, in the mean time, on the way, concealing the pistol in his pocket, and, reaching the vicinity of the public road, dropped into a leisurely walk, and so passed persons whom he knew, until he reached the foot of the wooded hill south of the city; thence through the woods and over the hills, seeking the vicinity of his home in the evening, and remaining in hiding for several days." That is what the State considers to be a statement of what are the facts in this case, and upon this supposition this question was put to the Doctor; that if these were the facts in the case, what would be the state of the prisoner's mind at the time that he fired the shots, and Dr. Morse thought he did not exhibit any indications of insanity.

I wish now to refer to the case I spoke of this morning, the Manning case. A man must find the adulterer, and his wife, in the act and the killing must be instantaneous, when it will be reduced to manslaughter. The act must not have occurred long before the time of the killing, but it must be at the time to reduce it to manslaughter.

I referred this morning to scriptural authority simply to prove to you that there was no sanction by divine authority for the killing of the adulterer by the husband. I made the statement that I did not think there was any civilized nation in the world that has ever had a statute or a code of laws to that effect. The authority has never been delegated to any man, or any husband, to take the life of the adulterer.

Was Mrs. Giddings a woman so young that she was easily dissolved from her alllegiance to her husband? I will ask you whether she was so young that the marital vow had not yet impressed itself upon her? The mother of four children she is a woman whose age and condition, and circumstances should have been a protection from any of the wiles or intrigues of the adulterer; and she is the last woman whom a husband should seek to protect with a revolver. Experience and observation show that wives are capable of protecting themselves from all advances of the adulterer. But I will tell you where it is necessary to have an eye to the preservation of the chasity of the wife. It is the woman who not only yields to the intrigues and the wiles of the adulterer, but it is the woman who seeks the person with whom she may defile herself; it is the woman who not only is ready to meet the man with favor, but to make the very first advances; and such a woman's chastity can never be protected in any way. There is no way that you can devise to protect it.

History and fiction are full of noble instances where lecherous men have been defeated by the assaulted female alone. In one of Scott's novels, "Ivanhoe," there is mentioned a beautiful Jewess, Rebecca, who was by night captured by force by a Knight, carried and confined in a room high up in the tower of a strong castle. After her confinement a short time the Knight proceeded to her room, and there by all the arts that he could command, and all the wiles that he could bring to exercise against her, he tried to

induce her to surrender her chastity to him. After this failed, he used force. He endeavored by violence to make her yield to his request; and the maiden seeing her danger, stepped out on to the battlement, and to the very verge of the parapet, and there threatened that if he should advance one foot nearer, she would allow herself to be plunged into the tremendous depth below and her very form crushed out of all semblance of humanity. And we read in Roman history of a matron, who rather than surrender herself to the wiles of the lecherous Tarquin, plunged a dagger into her bosom.

These instances are not rare? Such chastity is found in hundreds of thousands of homes of the American citizen, and there is no seducer, who can entice the wife therein from the path of virtue. The prosecution argues this case from this standpoint, that the defendant's wife was not such a pure and virtuous woman that would cause him to feel the anguish and the anxiety, and the mental suffering that he says and pretends that he did. The chastity of this woman had been surrendered to other men long before Mr. Wiltshire was known to her; before the provocation offered by Mr. Wiltshire; and Mr. Giddings knew it. If Mrs. Giddings was a virtuous woman, and if Mr. Giddings believed in his heart that his wife was a pure woman, then there might be some reason to believe that he did realize and feel the mental anguish he says he did, but the facts belie the unfortunate man.

It has been said, in the course of this case by counsel for defendant, that the prosecution was seeking the blood of this defendant on technicalities; but I assure you gentlemen, that we seek the conviction of this defendant, Mr. Giddings, only upon the law and the evidence. And if you honestly believe from the law and the evidence, that Mr. Giddings is not guilty of this crime, or of any crime, I say to you that he should go acquit. But I also say that if you acquit him through sympathy, believeing that he goes from this court-room with the blood of Mr. Wiltshire unwashed from his hands, I say that you then violate your oath and you only are responsible. But I believe that you will do your duty.

In conclusion I will repeat what I said in the beginning: I ask you to listen to the argument that is presented by the prosecution and the defense, carefully, but at the same time that you are not held from your duty by any influence of the brilliant attorney for the defense, for I will admit to you, and you have had the evidence here, that Mr. Sloane is a powerful speaker. I will admit to you candidly, that he can make the wrong and worse appear the better reason. He is moved in this case by every noble impulse of man. He feels the responsibility of a life resting upon him. The life of the defendant is in his hands; and that will call out every power of his mind and soul. But on the part of the prosecution it is different. There is no sentiment, gentlemen of the jury, on the part of the prosecution except that society shall be vindicated. It is not a pleasure to be placed in the position that we are here. It places us in the attitude of seeking the life of a man. And with these remarks I will leave the case with you as far as this opening is concerned, believing that you will do your duty.

Judge A. B. Cole spoke as follows:

May it please the Court and Gentlemen of the Jury: You have been here now nearly two weeks giving undivided attention to this case. You were selected with great care, knowing the responsibility that would rest upon you as citizens of Ross county, to try one of the most important cases that has ever come into this Court or that will ever come into this Court. There never will in your day or mine, perhaps, a case come here to be tried and disposed of by a jury of twelve men, the verdict in which will have more far-reaching consequences than in this. If the Court please, it seems to me standing here as I do, that this is a time when everything should be banished from our minds except to know the law and desire to administer it clearly, fairly, just and impartially. As long as you sit there to preside in this Court (addressing Judge Minshall); as long as you may live I doubt, sir, whether you will ever have a more important duty to discharge than you have now or will have in administering the law in this case. Here stands the prisoner at the bar, Daniel Giddings, arraigned for the highest crime known to the law, treason only excepted; a case that involves the highest interest of this community——the rights of home, the rights of man, the rights of the family relation, everything is involved in this case that is worth living for. Every aspiration of the mind, every impulse of the heart should go out in this case to see what the law is and administer it fairly and justly. We don't ask the law here to be tempered with mercy; we ask a cool, calm, instruction in this case in a legal way, and I doubt not, sir, it will be your pleasure, as I know it will be your duty to administer the law in this case as becomes a wise, upright and honest Judge.

Now, sir, if the Court please, as was said in the opening of this case, we have two defenses. The first is self-defense, justifiable homicide. We plant ourselves on the solid foundation of self-defense in this case. We believe it will be maintained by the facts. We believe by administering the law as it is known to your Honor, and recognized in this State, the facts measured out here make a case of honest self-defense. We plant ourselves in this case upon that ground. That is one ground. The other issue we make is that not only were we fully justified in this case as a matter of self-defense, but we also maintain honestly, sincerely, that the defendant arraigned here was not responsible for that act by reason of emotional insanity; by reason of the fact that at that particular time, and on that particular occasion, he was not capable of knowing, and did not know right from wrong, and that he had no power over his will to restrain his acts?

Now, gentlemen of the jury, I have not got the indictment before me.

The Court.—Did you want it?

Judge Cole.—Yes, Your Honor, I would like to have it. (The indictment was here handed to Judge Cole.) There are two counts in this indictment or two charges. One is for shooting in the head, charging that "Daniel Giddings on or about the 5th day of August, 1882, purposely, deliberately, and maliciously shot and killed Benjamin Wiltshire." The second count is that at that time, in this county, he purposely, premeditatedly and maliciously shot and killed Benjamine Wiltshire; he shot him in the left breast, and produced a mortal wound, and from that he died. Now the statute is that "Whoever purposely, and deliberately, and of pre-

meditated malice kills another is guilty of murder; whoever purposely, and of premeditated malice deliberately kills another is guilty of murder and shall suffer death." Now, gentlemen of the jury, the prosecuting attorney argues this case upon the theory that this act was an act of deliberate and premeditated malice He claims that. They have launched the case for the State upon that ground, having cited, as they claim, evidence to show that this act was done by Daniel Giddings deliberately, coolly, purposely, without any justification whatever; and if so, it is an act of murder. That is the claim of the State The whole argument of the prosecutor has been on that line and that theory of the case; and I might say right here for myself that I am willing in this case, however much risk may be taken by me, however important it may be to this defendant, I am willing to say to you now, gentlemen, that we accept that issue as tendered. We deny that was an act of murder. We fully justify our conduct, and we are willing to say to you, gentlemen of the jury, the act of our client was either murder as claimed by the prosecutor, or it is justifiable homicide.

Now what is malice, if the Court please. I read from Wharton's Criminal Law, page 229: "Malice is a willful, premeditated design to do another an unlawful injury, whether such design be prompted by deliberate hatred or revenge, or with the hope of gain, or springs from the wantonness and depravity of a heart regardless of social duty and fatally bent on mischief." That is the old common law definition.

The Court.—It is pretty hard to improve on it.

Judge Cole.—Yes, sir; that is the definition of nearly all of the old common law writers, Hale, Russel, Foster, and all of them. Malice is the dictate of a wicked, depraved and malignant heart. It is not necessary that the malignity should be confined to the particular ill-will toward the person injured. It is evidence of an act which springs from a wicked and corrupt motive, attended by circumstances indicating a heart regardless of social duty and bent on mischief. Malice is said to be expressed where the cruel act is done with a studied and deliberate mind or settled and formed purpose. This kind of malice is generally evinced by the circumstances preceding and attending the transaction complained of, as by threats, menaces, former grudges, lying in wait, concerted schemes to do injury, or by an unusual degree of cruelty attending the act. Malice is implied where the killing is sudden without any or great provocation, and also where the act done necessarially shows a depraved heart and so forth. To constitute deliberate and premeditated malice the intention to do the injury must have been deliberated upon and the design to do it formed before the act was done, though it is not required that either should have been formed any considerable time before. It is supposed that the party by reflection understood what he was about to do, and intended to do it in order to do harm. If the person has actually formed the purpose maliciously to kill, and deliberated and premeditated upon it before the performance of the act, he is guilty of murder in the first degree. I also have Blackstone's definition of murder, 4th volume of Blackstone, page 193. He says: "We are next to consider the crime of deliberate willful murder, a crime at which human nature starts, and which is, I believe, punished almost universally, throughout the world, with death." The words of the Mosaic law; that "Whoso shedeth man's blood, by man shall his blood be shed;" emphatically prohibiting the pardon of murderers. "Moreover ye shall take no satisfaction for the life of a murder, which is guilty of death; but he shall surely be put to death. For the blood it defileth the land; and the land can not be cleansed of the blood that is shed therein but by the blood of him that shedeth," and therefore our law has provided one of the courts of prosecution wherein the king himself is excluded the power of pardoning murder. Murder is, therefore, thus defined or rather described by Edward Coke, "When a person of sound memory and discretion unlawfully killeth a reasonable creature or being, under the king's peace, either of malice aforethought, either

express or implied." The best way of examining the nature of this crime might be by considering the several branches of the definition. Now, if the Court please, we claim that this was a case of justifiable homicide, and I cite the 26th State Report, case of Marts vs. the State. "Homicide is justifiable on the ground of self-defense if the slayer in the careful and proper use of his faculties *bona fide* believes, and has reasonable ground to believe that he is in imminent danger of death or great bodily harm, and that his only means of escape from such danger was by taking the life of his assailant, although in fact he is mistaken as to existence or imminence of the danger." I also cite, if the Court please, on the same proposition Wharton's American Criminal Law, second volume, Sec. 1026, bottom of page 85 to Sec. 1028, bottom of page 98; and I will read a short paragraph or two in this connection:

"'When one who is without fault himself,' said Justice Bronson when the same case was in the Court of Errors, 'is attacked by another in such manner or under such circumstances as to furnish reasonable ground for apprehending a design to take away his life, or do him some great bodily harm, and there is reasonable ground for believing the danger imminent that such design will be accomplished, I think he may safely act upon appearances and kill the assailant, if that be necessary to avoid the apprehended danger; and the killing will be justifiable, although it may afterward turn out that the appearances were false, and there was in fact neither design to do him injury, nor danger that it would be done. He must decide at his peril upon the force of circumstances in which he is placed, for that is a matter which will be subject to judicial review. But he will not act at the peril of making that guilt if the appearances prove false, which would be innocence if they proved true. I can not better illustrate my meaning than by taking the case put by Judge, afterward Chief Justice, Parker, of Massachusetts, on the trial of Thomas O. Selfridge: 'A., in the peaceful pursuit of his affairs, sees B. walking rapidly towards him, with an outstretched arm, and a pistol in his hand, and using violent menaces against his life as he advances. Having approached near enough in the same attitude, A., who has a club in his hand, strikes B. over the head before or at the instant the pistol is discharged, and of the wound B. dies. It turns out that the pistol was loaded with powder only, and that the real design of B. was only to terrify A.' Upon this case the Judge inquires——'Will any reasonable man say that A. is more criminal than he would have been if there had been a ball in the pistol? Those who hold such doctrine must require that a man so attacked must, before he strikes the assailant, stop and ascertain how the pistol was loaded——a doctrine which would entirely take away the doctrine of self-defense; and when it is considered that the jury who tried the cause, and not the party killing, are to judge of the reasonable grounds of apprehension, no danger can be supposed to flow from this principle.' The Judge had before instructed the jury 'That when, from the nature of the attack, there is reasonable ground to believe that there is a design to destroy life, or commit any felony upon his person, the killing of the assailant will be excusable homicide, although it should afterwards appear that no felony was intended. To this doctrine I fully subscribe,' says Justice Bronson. A different rule would lay too heavy a burden on poor humanity. I have stated the case of Selfridge more fully because it is not only an authority in point, but it is one which the revisers professed to follow in framing our statute touching this question. I shall not stop to consider the common law distinctions between justifiable and excusable homicide, because our statute has placed killing in self-defense under the head of justifiable homicide. The Massachusetts case lays down no new doctrine. The same principle was acted on in Levett's case, recited by Justice Jones in Cook's case to the following effect: Levett was in bed with his wife asleep, in the night, when the servant ran to them in fear, and told them that thieves were breaking open the house. He arose suddenly and taking a drawn

rapier in his hand went down and was searching the entry for thieves, when his wife espying some one, whom she knew not, in the buttery, cried out to her husband in fear, 'Here they be that would do unto us.' Levett therefore hastily entered the buttery in the dark, not knowing who was there, and thrusting his rapier before him killed Frances Freeman, who was lawfully in the house and wholly without fault. On these facts, found by special verdict, the Court held that it was not even a case of manslaughter, and the defandant was wholly acquitted.

Now here the defendant acted upon information and appearances which were wholly false, and yet, as he had reasonable grounds for believing them true, he was held guiltless.

Foster says of this case: 'Possibly it might have been better to rule it manslaughter at common law, due circumspection not having been used.' I do not understand him as questioning the principle of the decision, but as only expressing a doubt whether the principle was properly applied. He calls it nothing more than a case of manslaughter, when, if a man may not act upon appearances, it was a plain case of murder. So far as I have observed, no other writer upon criminal law has questioned, in any degree, the decision in Levett's case, and most of them have fully approved it."

"So it has been frequently laid down that such fears should be reasonable to constitute a defense. But it is submitted that while this is undoubtedly true when such fears are voluntarily and consciously unreal, yet it is otherwise when the defendant honestly entertains them, though they may be in fact unfounded. In such case a morbid condition of brain or nerves is as admissible to prove the reality of such fears, as is derangement to prove the reality of such fears, as is derangement to prove the reality of an hallucination. In accordance with this principle, in a case tried in Philadelphia, in 1846, where the defendant, during the Kensington Irish and Native American riots, killed an innocent person under the alleged belief that she was one of a party seeking his life, the defense was permitted to set up extreme nervous excitement and tension, producing a belief in a constant conspiracy to take his life. This does not differ much from the ruling in Levett's case already noticed. 'The rule of law, founded on justice and reason, is that the guilt of the accused must depend upon the circumstances as they appear to him.'"

Though, gentlemen of the jury, it is a little tedious to read law, and sometimes not very interesting to the jury, as the court will give you the law, yet it is important sometimes also for the jury, as well as the court, to read the law of the case. Now what are the facts of this case? Here we have at the outset of this case told you what the defense was; we have told the State, the prosecutor for the State, what our defense was. From the beginning of this defense down to the present moment we have brought forward testimony showing the character of the prisoner at the bar. We have taken him from a small boy in Highland county, where he was born, and traced him from Highland county until he was fourteen. His father dying, he goes out to work to assist his mother and the family. Then we find after that he is in the army, and remains there for three years. During all this time he is a quiet, peaceable, gentle man; quiet in his deportment, kind in his disposition, doing no injury to any person, saying no harm of anybody; he is a quiet, peaceable, good citizen During his army life he was a quiet man and good soldier, peaceable in his nature. After he leaves the army he comes home and remains there awhile, still retaining all of his characteristics of a peaceable, quiet man. Then he goes up to Erie county in a business venture; one of his relations, perhaps, had invited him up there, and he becomes acquainted with this lady here that he has married. All of that time he is quiet, gentle, and peaceable in his disposition. He lives there four or five years, all the time remaining a quiet, good citizen. No person says aught against him. He has had no trouble with any person on the face of the earth from the time he was born until this difficulty occurs. Citizens

came from Erie county down here. We told the State at the outset to notify them what our defense was so there could be no excuse when we came in with our defense that they would not be fully prepared to disprove any particular allegations. We have not sought at any time from the beginning of this case to the present moment to cover up the character of this defendant; we have not sought to cover up the character of this act in any way; but, as I said, we notified the State at the beginning, when Mr. Sloane, my honorable colleague, stated the case. We threw the door wide open giving them an opportunity to come in. So, as I said, he maintained this peaceable, quiet character as a good citizen all the time he was up in Erie county. We brought down citizens from Erie county, five citizens, you saw them on the witness-stand there; you saw their deportment, heard what they said about Mr. Giddings during his life there; he was still a quiet, good citizen, honest, industrious, no fault to be found in him in any respect; no better citizen in Erie county than he was; there was no better citizen in Highland county than Daniel Giddings was while he was living there. Nobody has offered a word against his character. We have challenged them from the beginning to find aught against the defendant so far as character for peace, quiet good order, and good citizenship is concerned.

Mr. Bitzer.—Mr. Cole, when did you state that?

Judge Cole.—Stated it in the opening statement. Then as I say he lived in Erie county for five or six years still maintaining that quiet disposition and good character; leaves there, returns to Highland county. That, you remember, was stated by Mr. Sloane in the outset, notifying the State. They knew what we expected to prove then; that he had been living in Erie county Seven or eight days ago they knew of it. After returning from Erie county to Highland county he remained in Highland county for months, then he moves down here on a farm his mother provides for him. Now what is his character down here? Is not it good; is not it that he was quiet; is not it peaceable; is not he honest; is not he truthful; and is not he a good citizen during all those years? Nobody has said aught against him up to this time, and they say nothing against him now. Now it is for you, gentlemen, to consider this question. There has been no word of testimony offered against the character of Daniel Giddings for peace, quiet and good order, and good citizenship. His character is unimpeached and unassailable by anybody.

But on the other hand what is the character of the man that has been killed? I have no disposition to say aught to reflect upon his character or to wound the feelings of his friends. I would not do it at all if I could avoid it. I would not say aught that would grate upon the ears of his relatives or his friends, if he has any, if I could avoid it at all; but necessity and duty alike compel me to comment upon the testimony as it has been adduced here. What was his character down there in that neighborhood? Was he quiet, peaceable, and gentle? What was Ben Wiltshire's character as a citizen down in Massieville? Why we hear of him ten years since carrying a slung shot; we hear of his using that slung shot upon the head of a citizen down there, striking him and knocking him down; would have killed him probably if Mr. Hansel had not interfered. The testimony is that Charley Hansel found that slung shot that Ben Wiltshire had lost one time, picked it up in the room. Ben claims it, and he gives it back to him. That was several years ago. He was a quarrelsome man. Hansel testified to it. Several witnesses have testified the same thing: a quarrelsome, dangerous man; a violent man; a violater of the law. And not only that, the last witness that was put upon the stand by the defendant, Mr. Kelley, says that he had been threatening Dan Giddings. Did not he say that he was on top, talking in connection and with reference to this difficulty or this trouble between him and Mr. Giddings, in reference to Mr. Giddings' wife, declaring there to William Kelley that he was on top and he had control of that woman, he had the advantage of the husband. That was what was inferred,

and that is what he intended to say, and what he meant. He had control of Mr. Giddings' wife. He had complete control of her: more control of her than her husband; and he said he was prepared. And what else did he say: If Daniel Giddings fooled with him he would kill him. Was not that the testimony? That is the testimony here, and that is the declaration of the deceased within a month before he is killed, that he has control, or has the advantage of Dan Giddings; that he has control of his wife; more influence over her, in other words, than Mr. Giddings had; and if Dan Giddings fooled with him he would kill him. It is true that Mr. Giddings had said that he came up here to town once or twice looking for his wife, and that he intended to kill Ben Wiltshire. That was several weeks before she went away. But remember he says to Mr. Smart, if not to Squire Mick, that after thinking over the trouble that it would bring upon him, after thinking about his mother and his children, he thought better of it; he had concluded not to do it, and what is more, and what is better evidence of his conclusions just that very day, after he said he had concluded to have no more difficulty with him, he filed a petition for divorce. Do you want any more evidence than that, that he had abandoned and surrended his wife, intended to let Benjamin Wiltshire and her go and let the law take its course. He said he intended to do that, and as complete evidence of the fact, he files a petition for divorce that very day here in this court, alleging as the sole ground for divorce the adultery between her and Benjamin Wiltshire.

Now, if the Court please, I will read in that connection where express malice is proved by old grudges or threats and killing subsequent, it says: "Yet if a fresh provocation calculated to excite the passions, has intervened between the old grudge or threats, and the commission of the act, the law refers the killing to the new provocation and not to the old grudge or threats." So we claim, gentlemen of the jury, if the Court please, that if Dan Giddings at that time when he came up here, the 20th of July, had intended to kill Ben Wiltshire, yet if he abandoned that idea, and intended in good faith to let him go, then if a new provocation occurs, the act must be referred to the new provocation and not to the old grudge. So I say I don't care if he did threaten at that time to kill Benjamin Wiltshire; I don't care if he came up here twenty times before the filing of this petition for divorce, yet if he filed the petition for divorce in good faith, and intended to let him go, abandoned the idea of killing him, then if Ben Wiltshire gives a new provocation, the act must be referred to the new provocation and not to the old grudge, and death the consequence of it must be referred to the new provocation and not to the old grudge. Now is there a gentleman on that jury, that has any doubt in his mind that Dan Giddings when he came up here on the 20th of July last and filed that petition for divorce, intended then to surrender his wife and let her go? Did he not intend to do just as he told George Smart and Squire Mick he intended to do——let them go? He filed his petition for divorce; he didn't intend to do any harm to Ben Wiltshire; and if Ben Wiltshire had kept away from Dan Giddings, if Ben Wiltshire had let Dan Giddings alone, if Ben Wiltshire had made no threats against Dan Giddings, there would have been no harm done to him. He had submitted to all this insult, all this injury, all this degradation, submitted to all that and let him go. On the 20th of July he had abandoned all idea of doing him any violence whatever. Then Wiltshire goes up to Washington Court House, remains there with Mr. Giddings' wife a week or ten days. She comes back home and asks the husband to forgive her, pledging that she will do better in the future, she will stay with him, be a mother to the children, and they build up their home and live together. Right there he forgives her and surrenders all or any hatred that he may have had against her and takes her back to his home. He is notified by her at that time that Ben Wiltshire said that he would come down here and kill him, and he was thus put on his guard that he

would be assailed by Ben Wiltshire. Now ain't this all explainable? After she comes home on Wednesday he goes on Thursday evening and borrows a pistol. What for? Why to protect himself. Suppose any citizen had had his wife taken away by a libertine, a miserable scoundrel, and had been threatened by him, and he knew that his life was in danger and should go back to where he was or in that neighborhood with his wife to get those goods that she had taken off with her paramour, would it not be prudent, natural and proper that he should borrow a pistol, if he had none, or some weapon to protect himself. Remember he does not go back to Washington Court House without Mrs. Giddings. Mr. Giddings does not seek this man. He don't go out on the farm there to hunt him up and shoot him down, which would have been the natural impulse of almost any one. He don't care to kill him; he don't look after him; lets him go; goes up to Washington and brings the goods back with him and takes them home. The next morning he comes up here on legitimate business, to see Mr. Lindley in order to dispose of the place down there and move away and take his wife and children from this scene of disgrace, injury and wrong, and raise them up in some other locality where this shadow will not be overhanging them. Mr. Lindley told him that there were two or three places that he thought he could get for his farm. One place was down near Cincinnati; one place in Highland county, and the third I have forgotten the location. Mr. Lindley tells Mr Giddings that that very day. There is no denying that.

The State don't deny it. How did Dan Giddings know that this man was coming down here that day, or anybody know it? Do you suppose that he knew it? There is no evidence of it. He says he didn't know it; he could not have known it unless he had had the eye of omniscience. They don't claim that he knew it so far as evidence is concerned. There is nothing to indicate that Dan Giddings had any knowledge or suspicion even that Ben Wiltshire was coming down here on that fatal Saturday. He comes up here in an ordinary way, as an ordinary citizen, to see Mr. Lindley on legitimate business; and how natural was it that when he left that morning in a hurry to come up here he should forget to take that pistol out of his coat pocket. Is there a man on that jury that has not perhaps done something similar, having something in his pocket, going off for instance to market, or to the city somewhere and bringing something home in his pocket and forgetting it, and going out the next day on the farm somewhere and then discovering that he still has the package in his pocket. I venture there is not a man on this jury but has acted similarly. No damaging inference is to be drawn from that. He left the pistol in his pocket and comes up here to town; didn't think at all about Ben Wiltshire coming, nor of being within fifty miles of this place; goes on down to the depot towards home, gets his dinner; thinks he had better talk over the trade a little more; comes back to see Mr. Lindley; Mr. Lindley is not at his office; then he goes on down and steps into Adler's, and lo and behold this man is there. Aye, there is a Providence that rules over these things. Ben Wiltshire had run his race; he had injured this man long enough; he had trampled upon the rights of those children long enough; he had taken that woman away from her duty long enough; and the restraining powers of the Almighty were withdrawn from him and let him come down to Chillicothe and meet his fate! Dan Giddings meets him in the saloon there not thinking then of killing the man or having any trouble; hoping when he sees him he could keep him from coming down to dishonor his home again; thinking perhaps that Ben Wiltshire had enough heart left, that if he would talk to him kindly, earnestly, and plead with him, he would have enough decency left to abandon the woman after Dan had submitted to all of this humiliation. He talks with him. Ben says, "How are you, Dan?" "Will you take a drink?" Ben says, "I never refuse:"; steps up to the counter and takes a drink, a small drink. Isn't that the testimony here? Is not that the testimony of Adler? Is it the testimony of Dan Giddings any more than of Mr. Adler?

Did not Adler say he thought Ben Wiltshire was not drunk that day? I am only rehearsing this testimony as it fell from the lips of the witnesses. He says Ben was not drunk, and he took a small drink, "a gentleman drink," as he called it, I believe. After drinking he starts out; Dan says to him, "Ben, I want to talk with you." Ben says, "I want to talk with you." Ben starts on out. You remember that is Adler's testimony. Adler says Ben started out, because he was nearer the door of the saloon. He starts out ahead and Dan follows him. They go out on the street corner there. This is all as far as we know, until they are seen down at the next saloon. Now Dan says that when they got out there Ben says, "Let us go down to another saloon." "Yes, where will we go?" Ben says, "I know of one down here." Dan says he didn't know where the saloon was; he had never been at Struble's before. Ben says, "I know"; and it is in evidence here, I believe, that Ben Wiltshire was familiar with this town, perhaps knew every street and every saloon in it. Ben says, "I know where there is a saloon down here; let us go down and strike another saloon." Ben liked to strike saloons, I suppose. They went down to Struble's. He goes in there first. Aye, didn't Ben Wiltshire go into the saloon ahead of Dan Giddings? Didn't Ben Wiltshire call for the drinks there in that saloon? Did Dan Giddings have aught to do in taking him into that saloon? Is there any evidence here to that effect? None whatever. Take the evidence of the State, and the State has produced this evidence. Dan goes in there and Ben goes in there ahead, Ben calls for the drinks; remember that Ben drank whisky both times, small drinks, both times. Dan Giddings drank beer one time, and wine another time; and if there had been any getting drunk about it, the likelihood is that Dan Giddings would have been drunk quicker than Ben Wiltshire, because mixing drinks don't do; that is the truth about it. Ben Wiltshire up to that time had taken small drinks of whiskey; and when he drank his whisky he began to smell of some Limburger cheese——and vomited. Now have not every one of you perhaps seen men try to drink their glass of whisky two or three times, before they could get it down. Is there anything uncommon in that? Either from that or smelling the Limburger Ben Wiltshire's stomach gets a little sick, and he vomits there on the floor. Then did not Struble tell him to go out. Did not the German say that he was mad about him vomiting in there? Did not he want him to leave? It was time enough for them to go out when Ben Wiltshire had vomited over the floor, and insulted the German, and the German wanted him to go out and to go out in a hurry, and he leaves and goes out of there? Then he goes down Mulberry street. Who knew better about Mulberry street than Ben Wiltshire? Who was better acquainted down there than he? Dan Giddings wanted to go on home; comes down there to New street, and starts out home back toward Paint street to go down across the bridge, intending to go home that way; but Ben Wiltshire wants to go on down across the field and have a talk. He knew all about that location; wants to have a talk. It is nearer perhaps, or quite as near to go diagonally through the field down that way along the creek bank to the pike. They go down past the slaughter house; walked down through that little door, as you saw there in viewing the premises, down through that gate by the slaughter house down the hill. Dan throws a rail across that ravine and Ben throws a round pole. There they walk across that ravine and out through the field, sometimes one ahead, and sometimes the other; and I don't care whether it is true or not whether one stayed ahead all the time or whether one was ahead part of the time, then the other was ahead. That don't cut any figure in this case; because the evidence here by the State is that when they got over near the logs Ben Wiltshire was ahead. Was not Ben Wiltshire ahead at those logs when he got within fifteen feet or fifteen steps of the logs? Joseph Seeberger watched them from the slaughter house, and he says Ben Wiltshire was ahead then, and he saw Ben Wiltshire go and sit on the log, and Dan come

up behind him. That is the evidence of the State. There in the cornfield they passed this man McPickens. Now if Dan Giddings had wanted to kill him don't you know that he knew, or might have known, it was dangerous to do so there, with McPickens within a hundred yards, and this man at the slaughter house within a hundred and fifty yards. He had no thought, no intention, no dream at that time that any serious trouble was going to occur. But getting down there to that fatal spot then, Ben Wiltshire supposed as he had bullied Dan before, been a bully all his life, had used slung shots on men's heads before, he felt that he could bull-doze Dan Giddings and drive him from his wife. Then it was, that that bully, libertine and villian said to him, "Now, God damn you, what do you want of me? I have come from Washington Court House after this woman. Now what do you want? What do you want now?" What was Dan Giddings response? "Mary has come home. She has promised to be a better wife to me. For my sake, for the childrens' sake, and for God's sake Ben, let her alone. You have influence over her; you know you have. Keep away from my house. Let my wife alone, so that my children will not be disgraced any more, and I be brought into humiliation and contempt." What does Ben Wiltshire say? "You be damned. I have got as much right to that woman as you have; and God damn you, I will have her or kill you;" throwing his hand back to his hip. With Dan Giddings condition, nervous feelings wrought up, hearing this response, "God damn you, I have got as much right to her as you have, and will have her if I kill you, God damn you," he draws his pistol and fires. Then, he says, after that he knew nothing; he didn't know whether he fired once or twice, or how many times; had no knowledge of it; don't know how he got away from there; almost unconscious, until he gets nearly up to the bridge. Had not he a right at that time to shoot down Ben Wiltshire? Is there a man on that jury, after going through what Dan Giddings had gone through, after hearing of Ben Wiltshire's threatening to kill him, after he had taken his wife away, after Dan Giddings had implored him to let her alone, keep away from his wife, and then after Ben Wiltshire saying, "God damn you, I have as much right to her as you have, and I will have her or I will kill you." and putting his hand back as if to kill him, who would not have done as Dan Giddings did, and who would not have been perfectly justified in killing him? Now, gentlemen, there is a very remarkable thing in this case. Right here, (Counsel placing his hand on his hip pocket) who knows but Ben Wiltshire had a pistol there? Where are Ben Wiltshire's clothes? Where are his coat, vest and pants? The prosecutor has had them.

Mr. Bitzer.—We didn't think it was necessary.

Judge Cole.—You didn't think it was? I think it was necessary, the defense thinks it is necessary. I think you, gentlemen, (Counsel referring to the jury) will think it is necessary upon the part of the State. Ought not they to have been brought in here to let you see whether there was any pants pockets here, a hip pocket, worn by a revolver dangling about it; that coat would show if it had been worn through with an old revolver pointing through it. Oh, if they could have shown that there was no hip pocket there for a pistol to rest in, gentlemen mark it, the State would have had them here; if the clothes would have shown that he could not have carried a pistol in there, the vigilant counsel for the State would have had the clothes in here. The prosecutor, with his assistant, would have had them here. Now when we take into consideration the prosecutor and his assistant, the shrewd manipulator, Colonel Gilmore, they would have had the clothes in here for you to inspect if they had shown that he could not have had a pistol in his pants pocket. I say that is the inference to be drawn on the part of the defendant, and in behalf of the defense that these pants ought to be here and show if he had a pistol in his hip pocket. Nobody here; the coroner did not examine the hip pocket; no testimony has

been before you, as I understand, to show that the pocket was examined at all by anybody—the hip pocket.

Mr. Sloane.—He was lying so that they could not examine it,

Judge Cole.—Yes, he was lying so that they could not examine it. Nobody ever put his hand in there to see if he carried a revolver in the hip pocket, the very place tnat revolvers are being carried by these bullies and desperadoes, and there is nothing here to show that they ever examined that hip pocket. The pants are not here for you to inspect them.

Now I say Ben Wiltshire brought on this trouble for himself; he forced this difficulty; he menaced and threatened Dan Giddings; he threatened to take the life of Dan Giddings right there, and Dan Giddings was justified there and then in shooting him down. I don't care what was the feeling of Dan Giddings, or how his mind might have been; I don't care if Wiltshire had never seen Dan Giddings' wife; I don't care if he never defiled Dan Giddings' home. Dan Giddings was not compelled to wait there and be shot down like a dog. Now, if you please, I will read from the case of Bohannan against the Commonwealth. I find it in the 8th American Reports It is from the 8 Bush Kentucky Report, and is decided by Judge Lindsey. Gentlemen, I will read you this case: (Counsel here read extensively from the above case.)

So that is a very similar case to this. This man Cook had made an assault upon Bohannan before; had made threats against Bohannan. Bohannan at this time meets him and shoots him down, and the Court justifies it. So, I say here, Dan Giddings having been threatened by this man beforehand, that he would come down here and kill him, and Dan going down there with him in a peaceable way, perfectly peaceable, having no desire to do him any harm. Ben Wiltshire put himself in a menacing attitude, when he placed his hand back here to draw his pistol. Then whether he had a pistol or not Dan Giddings was not compelled to wait any longer. Why set up the claim here proposed by the State that Dan Giddings toled him down there, took him down there in cold blood, coolly, purposely, deliberately, knowing from the time he left home on Saturday morning that he would meet Ben Wiltshire here in town, that he would meet him at Adler's saloon; that he would take him down there by the thicket and there butcher him, as they term it, in cold blood. Is there any evidence to that effect? If Dan Giddings had wanted to kill Ben Wiltshire he had many opportunities to do it. He could have killed him out at Washington; he could have gone out there and shot him down; he could have killed him before he came down from Washington. If he had wanted to kill him, and do it coolly, and deliberately, he would have let him come down home, and there he could have killed him, could he not? If Dan Giddings had desired to kill him at all, he had many opportunities to kill him before he went away? If he had known that Wiltshire was coming here, he could have met him at the depot if he had wanted to shoot him down. He had no desire to kill the man; he had no intention of killing him; he had no purpose of killing him until the fatal moment when he felt himself in danger. Is it to be said that Dan Giddings is not justifiable? I put it to you gentlemen: Is there one of you on this jury who would have done otherwise if your life had been threatened by a desperado, and you had met him there and he had made an effort, and you believed from the circumstances and the character of the man, that he was about to shoot you down? Then take the character of Ben Wiltshire and what he had done before. Had not he taken this man's wife away from him? Had not he carried her off to Fayette county, and had not he made threats before coming down here to different people? Had not he been in the habit of carrying slung shots? Was not he a fighting, quarrelsome man? Is not that in evidence? Why the witnesses for the State, half of them here, say that when he was drinking he was quarrelsome. Did not Mr. Pricer say so—one of the best men down there at Massieville? Did not all those witnesses for the State, half of them at least or more, say that

he was a quarrelsome man; that if he was drinking, had any whisky in him at all, he was in the habit of quarreling, and was a dangerous man. That is what witnesses say. The very fact that he was in the habit of carrying a slungshot with him, that he took this woman away, showed that he was a dangerous man. What man is there now, who is not a desperado and ready for any kind of brutality, who will take a man's wife from him, carry her off and then come back again where the husband is, what man would do that that is not ready to meet death and to throw down the challenge to the husband, to defy society, and everything that is decent. The very fact that this man took this woman away and came back again, shows that he was a villain and dead to all sense of shame; if we had nothing else connected with this case. Dan Giddings knowing that, hearing of those threats, knowing of the character of the man, when he came down there and asked him to let his wife alone, and then met with the response he did, knew what was coming. He believed there and then, that this man intended to shoot him down, and he made the fatal shots. Now is there anything more to be said on that point? Are you not satisfied, gentlemen of the jury, that he was *perfectly justifiable;* are not you satisfied beyond any reasonable question? Saying nothing about this question of adultery; say nothing about taking his wife away, destroying his home, disgracing his children and disgracing his name; say nothing about them as if they had never had anything to do with this case, and I say he had a perfect right to shoot him down at that moment. What citizen is there here in this city that would submit to the treatment Dan Gidd ngs had received. Would any man in the jury box wait any longer if a man, a desperate character as Ben Wiltshire was during his life, should meet him in the street, on the highway, any place else alone and threaten him—had threatened him before and he knew it, and then would say, "God damn you, I will shoot you," and put his hand back that way, (Counsel indicating), and not fire? There is not a man in that jury box that would not have fired. The law does not ask you to wait any longer; does not ask you to retreat to the wall as the old law was. You have a right to stand on your rights of self-defense, the American doctrine of *free men* and if you are assaulted by a quarrelsome character, and have reasonable ground to fear and apprehend danger to life or great bodily harm, you have a right to shoot him.

Now what was Dan Giddings' condition of mind? You have got to take into consideration his temperament. You have got to take into consideration his bodily health, his being worn out with sleeplessness, worn out with disturbance of his feelings, his nervous system all racked. He could only judge them as a nervous man would judge, and that is all the law will ask him to do. All you have got to do is to take him in his mental condition there. You are not bound to measure Dan Giddings by a cool, quiet man; you have got to measure Dan Giddings' intellectual powers, and his ability to control his emotions, as you found him there that day, taking him in that condition there, knowing Wiltshire's character, knowing what this man had done to Giddings; with his feelings all wrought up, and his sleeplessness, and his feebleness, would not he be more likely to be thrown off his balance, and more likely to believe and have a right to believe this man was a dangerous, desperate man, than another man who was cool, and quiet, and never had been thus outraged? Then I say you have got to measure Dan Giddings power of restraint according to his condition of mind, and that is all you need do. And I say even one of you would have had a perfect right, if you had been assaulted as Dan Giddings was, to shoot and kill the man who would thus assault you.

I have taken more time on this proposition than I intended. If the Court please, I will cite here on this question of self-defense Parker's Criminal Reports, 5th Vol, page 413. "The question, I repeat, is, whether the prisoner had reasonable ground to believe himself in danger of great

bodily harm or loss of life, and not whether such danger actually exisited."

The Court.—I don't think there is any doubt about that.

Judge Cole.—So, gentlemen, it is not necessary to know that the danger should be real. As it has been said by Justice Clerk of the Court of Appeals, of New York, "The question, I repeat, is whether the prisoner had reasonable ground to believe himself in great danger of bodily harm or loss of life, and not whether such danger existed." That is the only question you have got to determine, whether he had reasonable ground to fear; whether, taking into consideration, his mind, his temperament, his nervous and prostrated condition, taking all that into consideration, whether he had reasonble ground to apprehend bodily harm from Ben Wiltshire. That is all you have got to determine. If you believe he had reasonable ground to apprehend great bodily harm or loss of life, he had a perfect right to shoot down Ben Wiltshire and kill him.

It would be a monstrous proposition if Giddings is to be notified that Wiltshire is coming down here from Washington to kill him, and afterwards meets him in a friendly way, willing to keep peace, to have no trouble——anxious to have no difficulty, not wanting to do any harm to Ben Wiltshire, and when Ben Wiltshire thus makes this assault and this threat, then that Dan Giddings had no right, and was not perfectly justified in using the means necessary to stop Ben Wiltshire's course. That is not the law of this land. You as good citizens are called upon here to decide this question, and it is for you to determine it. You men are sworn upon your oaths to decide this case and true deliverance make according to the evidence and the law as it shall be given you by the Court. You never have had, as I said in the beginning, a more important duty to perform than you have in this very case. This very question here is brought before you as citizens to determine what a man shall do under the circumstances Dan Giddings was placed in. Here he was; his family relations had been broken asunder; his wife had been taken away from him and debauched; he had lost sleep for weeks; had palpitation of the heart to start with, and constipation also to aggravate the difficulty, and his nervous organization of body combined. And then when that desperado, villian, libertine, and scoundrel met him down there to bull-doze him, he had a perfect right to kill him. I am arguing this case upon the law and the evidence. I have said nothing particularly about the other branch of the case, but am speaking now on the question of self-defense. Here a desperado, and libertine, who is in the habit of quarreling when he is intoxicated, a man who carries slungshot and pistols, a walking arsenal as it were, is threatening the life of Dan Giddings. I say that is the true theory of this case. Ben Wiltshire came down here on purpose to take Dan Giddings' life, or to take that woman. Did not he say so? Was not he warned? Was not he warned a month before this occurred by Mr. Kelly? Did not Mr. Kelly tell him he had better quit and leave her alone? Had not he responded to Mr. Kelly's admonition "I am on top; if Dan Giddings fools with me I will kill him." That was a month before, and showed that Ben Wiltshire had predetermined to take the life of Dan Giddings or have that woman; coolly, quietly, deliberated and determined; had come to that conclusion to have that woman or take Dan Giddings' life. Was not he warned up at Washington Court House that very morning? Did not Mr. DeWitt offer to give him $2 a day if he would stay there and work in the harvest field, pay him $2 a day——extra price for harvesting. Did not he say then to Mr. Dewitt that he was coming down here to whip Dan Giddings? Did not Mr. Smith, the hotel proprietor there, say to him, "You had better keep away." Did not he say to Mr. Smith, "I lied to you That was not my wife, Mr. Smith; but I am going down after her now; I will be back next Monday." Did not he say that? Did not he have a return ticket in his pocket to go back to Washington? Isn't that the fact brought in here by the State? He says, "Mr. Smith, I am going down to Chillicothe for that woman. I will be back Monday.

My hide will hold as many bullets as anybody's, and I am prepared to put them in." I have got the weapons here, and because he had he was prepared then. Coming down upon that desperate mission, do you suppose he was not prepared. Do you suppose when he started on a mission of that kind, saying he would come down here, and he was prepared to put the bullets in the hide of Dan Giddings, and his hide would hold as many balls as anybody elses, don't you believe he was prepared? Didn't he say he was prepared; didn't he say beforehand that he would kill Dan Giddings if he fooled with him? Did not he say he was coming down here to take away that women, and he was prepared to have bullets put into his hide, and he would put them into Dan Giddings? He knew what he was talking about. And when he had this talk did not these Washington Court House men say that he was not drunk? He was not drunk, Mr. DeWitt says, at all; was perfectly sober that morning when he talked that way. It was not the talk of bravado; it was not the talk of a man who is gasconading; it was not the idle talk of a man who did not intend to do anything; but he said that morning that he was coming down to take Mrs. Giddings back with him, aud he intended to do it if he had to kill Dan Giddings. He and Dan Giddings met there at Adler's saloon; they had some conversation, Adler says. He was cool then; he wanted to get Giddings and take him down into the field and bull-doze him, and then he could make Dan consent to anything. He could take him down there and say, "Now what do you want? I have come down after your wife; I am prepared, now, to shoot you; just you say a word Dan Giddings, I am here; I have come down here all the way from Washington and come prepared to take this woman, and I am going to take her back. I have just as good a right to her as you have, and I am going to take her back to Washington, and if you make any fuss about it, God damn you, I will kill you." That is what he intended to do. He didn't want to talk that way in the saloon, he thought that perhaps the citizens might interfere, and he desired to get Dan down here in a lonely, quiet, shady place, and then he could bull-doze him; nobody would hear it; and Ben was the larger man, a bully and desperate character, carrying slungshots and revolvers. There his desperate resolution was to be put into execution, and there the thunderbolt came that sent him to eternity——just what he deserved; as do all such villainous men. It is for you to say, gentlemen of the jury, whether you will convict Dan Giddings, that poor man that has been tormented, abused, and maltreated, and his family humiliated, and his home disgraced. Here he is. You are to sit upon him in judgment, to say whether he has committed murder or not. I am not afraid of you, gentlemen, saying anything of the kind, for you are citizens with humane feelings and manly hearts in you.

I have been too long in Ross county not to know that the citizens of this county and the citizens of Chillicothe have pride of character and respect for home and the family relations; have some respect for a man who will defend himself from the destroyer of his hearthstone. Why, gentlemen, Dan Giddings has been for thirty-nine years as good a citizen as ever was born in Ohio. He never violated the law in any respect. What man is there on that jury can say so much? Can any of you? Did you never violate the law in any respect; never have a fuss with a citizen; never have a difficulty with anybody in your life? Can you bring in seventy-five or a hundred citizens here from different parts of the State, unimpeached witnesses, to swear that you never have had any trouble with any man? We gave the prosecution an opportunity to go all over the State and search for testimony against Dan Giddings. Is there a man that has a purer character upon the top of God's green earth than Dan Giddings has shown himself to have had?——pure, upright, honest man, standing by his home and by his family to take care of his household, and all the citizens from near Wiltshire's home, the whole of them, give him a good character, every one of them; never violated the law down there; insulted nobody; always gentle

and always quiet, always peaceable, always honest, always law abiding. And do you suppose in this hour that Dan Giddings did honestly want to kill that man? Did not he have an opportunity before many times. He did not want to kill him; did not want to harm him. He came up here once or twice, when his passions were wrought up, his feelings overcome, and he said he thought he would have killed him, but when he began to think of his home and his family, his mother, and his three little boys that you have seen here, thought about all of them, then he said he abandoned all such idea of killing Ben Wiltshire. Do you suppose a man is going to be a criminal in a moment after thirty-nine years of such a life? A man who had been on the battle-field; who had marched with a musket on his shoulder; who had faced death in the smoke of battle; do you suppose that after going through all that, being peaceable, quiet, gentle and honest, do you suppose in a moment he would be a criminal, a murderer? Nothing of the kind. Don't you know that something desperate goaded him on; and it has been a matter that he could not avoid; and he was in danger of losing his own life by the hand of a desperate and dangerous man, without assuming, gentlemen, to pass upon that issue; without saying one solitary word about this subsequent issue. I ask you to consider whether Dan Giddings is not entitled to go free. I don't care what Colonel Gilmore says in regard to the matter. He can say nothing that can shake the evidence in this case; he can say nothing showing, in my opinion, that the question of self-defense is not a proper one in this case, and that Dan Giddings had not a perfect right to defend himself as he did, and had a perfect right to shoot Ben Wiltshire. I don't care if the question of insanity were not in this case; I don't care whether it is in this case or out of it. And I don't believe there is a citizen in the county of Ross, who has not malice in his heart, who is not of malevolent disposition, but would say, "Dan Giddings, you are entitled to go acquit. You are perfectly justified before God and man, and before the law of your country in taking the life of Ben Wiltshire. You could not have done otherwise. This man invaded your home and threatened your life." And his whole conduct indicated the desperate character of the man. He was a quarrelsome man. He had threatened the life of this man a month before. The morning before he was killed he was reported to have said to a man that he would see whose hide would hold the most bullets. Then, I say, taking all that into consideration, have you the least doubt about the honest defense Dan Giddings is making; that he had a perfect right to shoot down this man who had treated him in that way, and who at the time was threatening him? Did not Dan Giddings believe, and did not he have a right to believe, that Ben Wiltshire would shoot and kill him there at that fatal spot? Here the man goes in there ahead of Dan Giddings and sits down coolly on this log. There is the swagger peculiar to the bully. "Now what have you got to say, by God? Now, Dan Giddings, what have you got to say?" The bully, the swaggerer, the desperado; and he has a pistol in his pocket, come back to take your wife, disgrace your children, rob your children of a mother, however vile she may have been, invading your home the second time, a man of such a desperate mind as that, was not he a murderer at heart? Was not Ben Wiltshire ready to do anything outrageous and diabolical when he came back here that morning? Do you suppose after making all of those boasts up there at Washington Court House, that he intended to go back there without that woman? Suppose he had met Mr. DeWitt to whom he had made those threats, after he got back there; suppose he had met Mr. Smith without that woman. They would have said, "Ben, where is the woman? You went down there intending to put bullets in the hide of Dan Giddings. You said you were going to shoot him and intended to have the woman. Where is the woman?" Aye, he did not make those as idle threats. He went down expecting to take that woman or kill Dan Giddings if necessary. He would not have gone back and faced the Fayette county people without that

woman. He told them she was not his wife, but he had a right to her, and he was going to have her, and he was going down for that purpose, and he intended io take her if he had to take the life of Dan Giddings. I say that Dan Giddings had a perfect right to believe, and did believe, and he would have been an idiot if he had not believed Wiltshire intended then and there to kill him. If a man come into your house and take your wife from you, and threatened to kill you beforehand if you made any fuss about it, or said anything about it; traveled thirty miles to take your wife away from you again when she came back home; saying to parties that he would see whose hide would hold the most bulletts, whether yours or his; then he meets you and says, "By God I have come back, and I am going to have her if I have to kill you"; would not you be an idiot if you did not believe that he would kill you? What man is there who would not have believed it, and would not have had a perfect right to believe it? No man upon God's green earth but would believe it; and there is no man that would not have a perfect right to believe it and be justified in so believing. And we have it from Ben Wiltshire's own lips that when he came down here he was prepared then to put these bullets in. We have it from his own lips that he said if Dan Giddings were to fool with him he would kill him. We have it from his own lips that he was coming down here after this woman. We have it from his own lips, and from men who are not interested in this case at all ——Mr. Smith had no interest in this case; Mr. DeWitt had no interest in this case, Mr. Kelly had no interest in this case——and they have testified to threats that he made to them before coming down here which corroborate the statement that Dan Giddings makes as to what occurred down at the logs.

If the Court please and gentlemen of the jury, I perhaps in an ordinary case would feel like offering you an apology and this Court for consuming so much time. It is not done, I assure you, for the purpose of consuming time. It is done though with a sincere purpose to enlighten your minds upon this important question that you have to settle. Nobody else has got to dispose of this case now but you I have my duty to perform and you have yours. I tried on yesterday to present the facts as they are in this case, all the facts; I have tried to go over the facts as they were, and to read the law to you in the presence of the Court to let you understand what I claim this case to be and the law governing it. I have tried to do it with a sincere purpose and motive, and if I have consumed time and said anything that should not have been said, I hope you will forgive me. If I have made any mistake anywhere that Dan Giddings will pass it by, and I hope and trust that his friends may pass by any errors, if any shall have been made; I hope this community will pass it by, because I know as well as I know anything, I know as well as I know I am standing before you this moment, that I never can forgive myself if I have failed to do my duty, and my whole duty, in this case. And this is my apology, if I shall have consumed or do consume more time than you, gentlemen of the jury, or Your Honor shall think is proper. I am not speaking for the benefit of anybody except for the benefit of your judgment and the cause I represent. I am not speaking to the crowded multitude here to day; I am not speaking to this community. This case is of too much importance. Human life is at stake; human existence is in your hands; and I would be ashamed of myself if I were to have any other motive, than to protect the interests of the prisoner at the bar. I have said that I believed that this was a case, a clearly marked and developed, clearly defined case of self-defense. I said that I believed that Dan Giddings has as clear and unqualified a case of self-defense as any man ever had in a Court of Justice. I told you why I thought so; I told you why I believed every one of you thought so, do think so now, and will think so when you retire to your room to consider of your verdict, and will deliver it in accordance with that belief. What are the facts? I want you to bear that in mind that all the way through this case, the honorable pros-

ecutor places it on the sole ground of the highest crime known to the law, treason excepted, and that in presenting it he has chosen to call it a case of murder. He does not argue any other question; he does not seek to argue any other question, except to call the crime murder in the first degree; that Dan Giddings purposely, willfully, deliberately and premeditatedly committed a murder; willfully, premeditatedly and maliciously killed Ben Wiltshire If he did, if he deliberetely, purposely and maliciously killed him, it comes within the definition of murder. Did he purposely; did he deliberately do that? Did he deliberately kill? Did he do it with malice aforethought? Did he premeditate upon it? Do you think so? Do any of you think so—think that he had a formed design to kill Benjamin Wiltshire? When did he form that design? When, tell me? You go into that jury room and weigh the evidence, and then answer to your God when this case goes to you, when did he form that design to kill him? The prosecutor says he did; the prosecutor would try to make you believe that he formed the design that morning; that when he left home he knew Ben Wiltshire was coming to town here, and he intended to kill him; that he had foul murder in his heart to do a devilish act; that he knew that morning, and knew it the day before, that Ben Wiltshire was coming to town and knew that he intended to take his life that morning. Do you think so? Where is the evidence of it? He could not have known it unless he had the eye of omniscience. It is a matter of impossibility for him to have known it. There is no evidence here whatever that he knew Ben Wiltshire was coming down that day or any other particular day. There was nobody who pretended to say so. And yet the prosecutor says that Dan Giddings purposely, premeditatedly, coolly, willfully, maliciously took him down there to kill him. And it will be argued to you that he must have known of it when he started from home with the pistol in his pocket. Is there any testimony here to that effect; any evidence whatever? Did not he explain it on the very reasonable principle that has occurred to you on many occasions where you have had a package, as I said before. This man thought more about getting away from that loathsome place than he did about Ben Wiltshire. He desired to take his little family and get away from there. That is what he thought about. Could he have thought about anything else, except to take himself away from that loathsome place, Massieville, where he had suffered all the horrors of hell? He did not think about Ben Wiltshire; he did not think about him in the sense of having anything to do with him; but he thought about his family that morning. He had brought his wife down from Washington the night before. After he had brought their goods home that were away, his whole soul was filled with the idea of getting his little place disposed of by the real estate agent. He thought he would see him; and it would have been a matter of the greatest wonder to my mind if he had thought about the pistol or anything else. It is natural that he should have left the pistol in his pocket. And when he came up here and saw Mr. Lindley, starting on the way home after talking with him, still anxious to make no mistake, he thought he would be sure if there was any possibility of selling the little place, and he thought he would go back to town and see Mr. Lindley and see if there was any chance to dispose of it. He went back and endeavored to see him but he was not in his office. Although Dan Giddings sat on that stand there charged with this high crime his story is straightforward; his story is consistent and full of truth; and the more you rub it, and the more you pull it, and the more you work it over the brighter the truth will shine. The more you talk to Dan Giddings the brighter the truth becomes. Every word that fell from his lips had truth at the bottom of it, and truth at the top of it, and surrounded all over with the truth, and every sentence that came from his lips was full of truth. Where anything might appear against him it came forward just the same as if it were for him. Did you notice it? Did you ever hear any man on trial before where

his life was at stake who more than he, "Hewed up to the line, let the chips fall where they may," as the saying is? He did not waver or vary an iota from the line of truth, honesty and integrity.

And now, with this branch of the case, so far as self-defense is concerned, I am done. I say now, that Dan Giddings was perfectly justified. He felt that he was in imminent peril of life and limb there, and he had a right to feel so. Everyone of you would have felt so, leaving out this question of adultery, and of everything else.

EMOTIONAL INSANITY.

Now gentlemen, if the Court please, it seems to me it is not a difficult thing to define—understand what is—sanity; a sane condition of the mind; it is not very difficult to do that, perhaps, because that is the normal condition of man; men are generally sane. And I may say that with some care, I have tried to find a definition for sanity. I find a great many definitions; also definitions of insanity. It is very difficult to define what is insanity. Perhaps it is not at all definable; never will be, any more than you could define the soul, or locate the "Better Land." You can define sanity, and I think perhaps this definition here, by Chief Justice Edmonds, in his Select Cases, Vol. 1, p. 35, is as good as I could find as to what sanity is. He defines a sane man to be: "First, one whose senses bear truthful evidence. That is, when they see anything they describe it accurately; Second, Whose understanding is capable of receiving that evidence; Third, Whose reason can reach proper conclusions from the truthful evidence which is received; Fourth, Whose will can guide the thought that is obtained; Fifth, Whose moral sense can tell the right and wrong of that thought; Sixth, And whose act can, at his own pleasure, be in conformity with the action of these qualities All these unite to constitute sanity; and the absence of them makes insanity."

Now, we can tell pretty well what sanity is, but when we come to insanity, what is insanity? There's the rub. "Whose will can guide the thought that is obtained," he says; "whose moral sense can tell the right or wrong growing out of those thoughts; whose reason can reach proper conclusions from the truthful evidence that is received, whose understanding is capable of receiving that evidence, whose senses can bear truthful evidence, and whose act can, at his own pleasure, be in conformity with the action of all these qualities"; and it takes all of these to form a sane mind.

Now what is insanity? I read from Taylor's Medical Jurisprudence, page 729: Medical definitions. "The terms insanity, lunacy, unsoundness of mind, mental derangement, madness, mental alienation, and abberation have been indifferently applied to those states of disordered mind in which a person loses the power of regulating his actions and conduct according to the ordinary rules of society. In all of these cases of real insanity, the intellect is more or less affected. Hence the term, "Intellectual insanity. In a medical sense this implies a deviation of the mental faculties from an assumed normal, healthy standard. In an insane person there may be no bodily disease, but his language and habits are changed. The reasoning power which he may have enjoyed in common with others, is lost, or perverted and he is no longer fitted to discharge those duties which his social position demands. Further, from perversion of reason, he may show a disposition to commit acts which may injure his own life and the lives of those around him. It is at this period that the law interferes for his own protection and for that of society. Many attempts have been made by psychologists to define insanity but the definitions hitherto given are so imperfect that it would be difficult to find one which includes all who are insane and

excludes all who are sane. This difficulty is fully accounted for by the fact that mental disorder varies in its degree as well in its character; and the shades of disordered intellect in the early stages are so blended as to be scarcely distinguishable from a state of sanity." Then he says, "It is this twilight condition of the mind when it is fluctuating between sanity and insanity which no definition can comprise, especially as the mind differs in its powers and manifestations in most persons, and it is difficult therefore to fix upon a standard by which a fair standard can be made. The vulgar notion of insanity is that it consists in an entire deprivation of reason and consciousness; but the slightest acquaintance with the insane proves that they are not only perfectly conscious of their actions in general, but that they reason upon their feelings and impressions. The late Dr. Abercrombie oonsidered insanity to consist in the loss of the faculty of attention, the power by which we are capable of judging, controlling, arresting, or fixing the current of our thoughts. Dr. Conolly regards it as a disorder of the power of comparison, or judgment; and Professor Marc as a loss of the faculty of volition; "or law," "so that in the latter point of view, the acts of the insane are involuntary and dependent upon more or less which they can not control." Dr Bucknill says, "Insanity therefore may be defined as a condition of the mind in which a false action of the conception, or judgment, a defective power of the will, or an uncontrollable violence of the emotions and instincts have, severally or conjointly, been produced by disease." Now there is much wisdom in this definition and it is a correct conception of the insane mind. I am astonished at the courts. How ignorant the judges have been in years gone by; how little they knew about the questions of the mind. They knew but little more in this respect than common laymen. That is the truth about it—and I speak with all deference. I feel ashamed for the judiciary standing here as a lawyer, after reading over all of these cases of insanity and homicidal mania, to know the courts have charged the jury that if the person was ever capable of knowing right from wrong that he would be amendable to the law, making the knowledge of right from wrong the sole test. Why take three-fifths of the lunatics in the Central Asylum at Columbus, and I venture that they know right from wrong as well as I do, or anybody else. It would illuminate some of those judges' minds if they could have gone through the wards of some of those asylums and looked at the immates and studied the question before they had given their decisions and disquisitions with learnedness appareutly; looked at those insane people in the asylums to see whether they could judge right from wrong; whether they would flee from harm; whether they would do an injury, see whether they know when a thing is wrong. Why there is not one of those perhaps, that have been sent to the asylum, having committed homicide, that didn't know it was wrong. And they dreaded it and tried to keep from committing the homicide. They prayed against it; they fought against it; they were horrified at the idea; they knew it was wrong. Those people who are sent to the lunatic asylums, know right from wrong just as well as people whom we call sane. And if those judges who have laid down that test could have gone to those asylums and studied the questions of the mind, I think they would have laid down a different rule to guide the administration of justice. I am perfectly astonished to think how they could ever come to such conclusions and have given such judicial tests. In the case of Farrer vs. The State, (2d Ohio State), Judge Corwin says, "The power of self-control, free agency, is said to be quite as essential to criminal accountability as to the power to distinguish between right and wrong." Did not he hit the nail on the head? Corwin had some reputation for having common sense. He says, "And I have no doubt that every correct definition of sanity, either expressly or by necessary construction must suppose freedom of will to avoid the wrong, no less than power to distinguish between right and wrong. And in this very case I can see many reasons why it would have

been proper to say this much to the jury, in simpler words. But no special instruction was used; so that the court did not deny expressly such a qualification of this rule. The power of self-control, free agency, is said to be quite as essential to criminal accountability as the power to distinguish between right and wrong."

I now read, if the Court please, from Beck's Medical Jurisprudence; he says, "Where it has guided the administration of law"--that is the question whether, or not he knew right from wrong, where that has guided the administration of law—"the result has been in some cases the perpetration on the scaffold of judicial murder." That is what Beck says and that is what I say and that is what every man who has read the law will say. This very test of knowing right from wrong has hung more people, more men who have been convicted under it, ten to one, than ever it acquitted. He says of the judicial test in former years, that if the party who committed the homicide, knew right from wrong merely, he should be held responsible, "Where it has guided the administration of law, the result has been, in some cases the perpetration on the scaffold, of judicial murder. First in order of time, and first in its display of judicial ferocity." That is pretty severe aint it?—"judicial ferocity?" Ferocity! A judge who is ferocious; fierce; "judicial ferocity." Dr. Beck has characterized that test as "judicial ferocity."

I will if your Honor please, read to the jury the case of Bellingham: In this Bellingham case, a mob appeared outside, howling, "Persecute him; hang him; if he knew right from wrong, hang him." "On Monday, May 11, 1811, Mr. Spencer Percival, then Prime Minister of England, was shot in the lobby of the House of Commons, by a man named Bellingham, who had no personal feeling against that most amiable gentleman, but was incited to this miserable homicide by the insane notion that, in this way, and in this way only, he could bring before the public certain claims which he supposed he had against the government. In reply to the frantic cries of the bystanders, "Where is the rascal that fired?" he calmly said, "I am that unfortunate man." That is what Bellingham said, "I am that unfortunate man." "On his trial Bellingham's counsel claimed that he was insane; and, fortified by strong affidavits, besought of the Court for only such brief delay as would be necessary to bring from Liverpool and elsewhere abundant evidence——London and Liverpool; just delay long enough to bring abundant evidence from Liverpool to London, and the attorney said that he would show there to the Court that this man was an insane man; just long enough, merely, for the sake of justice and right, let us delay this case merely long enough to bring these witnesses, and I will put in undoubted and honorable evidence, evidence that no man will or can question, and no judge can question, if he is an honest judge, no juror can question if he have a spark of honesty and honor in him. Let us wait, just, perhaps, three or four days in those times, and we can bring the evidence from Liverpool that will show conclusively that this man is an insane man;—"bring from Liverpool and elsewhere abundant evidence, from parties who had known him from childhood, that Bellingham was and had for a long time been insane. This brief delay was opposed by the then attorney general, Sir Vicary Gibbs,—oh! wasn't he a bloody butcher? Was not Gibbs a butcher, the Prosecutor of the Crown, and prosecuting a case with ferocity, such ferocity as would characterize a ferocious butcher—"This brief delay was opposed by the then attorney general, Sir Vicary Gibbs, who insisted that it was clearly a contrivance to delay the administration of justice, to impose upon the Court a false belief." *To impose upon the Court a false belief!* "Sir James Mansfield refused to grant the delay asked for. The trial proceeded; the attorney general, fortified, as he said, by the sages of the law"——Were not those judges wise? Did not, they know a great deal of the pathology of the mind! "The trial proceeded; the attorney general, fortified, as he said, by the sages of the law, declared that

"a man may be deranged in his mind, not having intellect sufficient to conduct the common affairs of life, yet he is answerable to the law for his criminal acts, if he is capable of distinguishing right from wrong." That was a sage lawyer; a sage judge; wise gentlemen in those days! "Bellingham, when called upon to speak for himself, made a long, rambling harangue, setting forth his claims against the government, and the manner in which justice (as he said) had been denied him. In justification of the homicide, he said that the clerk had, in dismissing him, told him that "now he was at full liberty to take such measures as he thought proper for redress." This, Bellingham insisted, was a *carte blanche* from the government, and gave him the right to do what he pleased. He repudiated, in express terms, the idea of being insane, and thanked the attorney general for objecting to that plea." Thanked the attorney general for not letting them bring witnesses from Liverpool to London to show his insanity! thanked the attorney general; thanked the Court, for saying that if a man knew right from wrong he was responsible! "The whole speech is plainly that of a mad man, and ought of itself to have convinced the Court of Bellingham's insanity. Aren't you astonished, now, at that Court? "The judge duly confirmed the law as laid down by the attorney general. Now, was not he a wise judge? "Bellingham was found guilty and hanged." *His crime, commitment,*"——just listen here!—*His crime, commitment, trial, and execution, occupied*"—how long do you think, from the day that poor Bellingham, insane, from the evidence, committed that crime to the day of his execution? Oh, how long? how long was it? *Just one week! Not as long,* gentlemen of the jury, as we have been trying this case; not as long as you have been sitting on this cause! That Court, that jury, that judge, that attorney general, the government of England, tried, condemned, and hanged that poor fellow that anybody should have known was an insane man—and they did not give him or his attorneys the time or opportunity to investigate the matter and prove his insanity. To show the condition of mind of this poor wretch, when about to satisfy the ferocity of the law, I take the following statement from Blackwood's Magazine for 1850, p. 564: "A military officer present at the execution of Bellingham, and very near the scaffold, told us that he distinctly recollects Bellingham, while standing on the scaffold, elevating one hand, as if to ascertain whether it were raining, and saying to the chaplain, in a calm and natural manner, *I think we shall have rain to-day.*" Standing on the brink of eternity, calm, quiet, peaceful; no thought of what was surrounding him; no thought of the past; no thought, perhaps, scarcely, of the future, and very little of the present, except he says, "I think we will perhaps have rain to-day." *drop!* —he was in eternity.

Then take another case, the case of Laurance. "N. Laurance had been arrested for a petty theft, and taken to the police-station, where the inspector, an utter stranger to Laurance, was standing with his back to the prisoner, talking to some friends. Laurence suddenly seized a poker and struck the inspector a violent blow on the head, which speedily proved fatal. The prisoner admitted that he had no motive for the act, and would have struck anyone who had been standing there at the time; he said he was glad he had done it, and hoped the inspector would die, as he wished to be hanged." Now, here this judicial murder business comes in. Here the man had no feeling or thought harbored against this party. He struck him with a poker and killed him, and said he wished he would die, because he, himself, wished to be hanged. "It appeared on the trial, that there was no possible cause of quarrel between the parties, but that the prisoner seemed to be actuated by some sudden impulse, for which not the slightest reason could be assigned. This man was hanged. Compare this case with that of Touchet, and can anyone doubt that if Touchet was rightly acquitted, Laurence was most wrongfully murdered?" Touchet was acquitted. "Thomas Bowler was tried for murder, at the Old Bailey, July 2d, 1812.

The killing being admitted, the defence was insanity. It was proved by unimpeached testimony that the prisoner had, about a year before, an attack of epilepsy of great severity, and had ever since been greatly changed in conduct and conversation. Mr. Washburton, superintendent of a lunatic asylum, swore that he had no doubt of the prisoner's insanity. To place the matter beyond doubt, a commission of lunacy, by which, a short time before, the prisoner was declared insane, was produced. Yet all in vain." All in vain, if he knew right from wrong, and knew it was wrong, no difference how his impulses and emotions might be worked upon, how his nerves may have given way; if he knew right from wrong, and was impelled by an insane impulse, the wildest impulse that ever pulsated through the brain and nerves of any mortal man, the Court held him responsible! "The judge charged, as usual, that if the prisoner was capable of distinguishing right from wrong, he was responsible to the law. The jury found Bowler guilty, though, the report adds, *with some difficulty!*" Why, they did have a *little* difficulty in convicting that poor fellow! I wonder why? He must have shown something extraordinary. They did convict him, however, and they executed him. They did it because the judge charged that if he knew right from wrong, no difference how he was controlled by any impulse of his being, how his nerve centers may have given way, how he may have been overcome by shock; no difference how it was, if he knew right from wrong he must be hanged, and this authority does say that they did hang him, but there was *a little difficulty* about the matter. Now, Dr. Beck says, "I here close my remarks on the third proposition." The third proposition was that judicial murders had been committed often, often, often; more than ten men had been acquitted on that test of knowing right from wrong. Then he says, "Can it be doubted that in all its force and in all its apparent harshness the proposition is true, that where this right and wrong test has controlled the administration of the law, the result has been the perpetration upon the scaffold of most cruel murders? Will anyone say that the reckless haste that denied to poor Bellingham the few days necessary to establish his defence was aught less than murderous?"——judicial murder? And he says, also, "Was the partiality that sent Laurence to the gallows, while Ross Touchet was spared, anything but murderous? Above all,"—— and he puts in better language than I can possibly command, the reason. I read this part of it, which is the comment of Dr. Beck:——"Above all, was the hanging of Thomas Bowler, after he had been, upon due legal investigation, declared insane, and as insane deprived of the control of his property, aught but murder? To this sad list of legal murders, the jurisprudence of our own country has, since the publication of the last edition of Beck, made a fearful addition. Our own judiciary, gentlemen, have been doing a little of this kind of business. But our judges and lawyers are getting enlightened on this question, and are taking a broader and more humane view of this question of the mind He says, "Patrick Maude, the new victim, was born in Ireland, received a rudimentary education, worked in a chemical factory, came to this country, got employment in the chemical works in Newark, New Jersey; married, took to drinking, at times to excess, began to act wildly, took up the notion that there was a conspiracy against him to which his wife was a party, made an attack on her, was arrested, tried, acquitted as insane, and sent to the insane asylum at Trenton, whence he soon after escaped, returned to Newark, and deliberately shot his sister, firing two pistols into her breast." That was a man in our country. "He was arrested and brought to trial; during its progress he constantly, and with great vehemence, repudiated his counsel, and all idea of his being insane; raved of 'an inquisition held on his death by a Catholic priest and others who were in a conspiracy to destroy him. 'The Inquisition was a *Spanish Inquisition*,' 'contrary to the constitution,' and the like.' Medical evidence was introduced. Dr. Dougherty 'considered his present condition of mind the same as when he was sent to the asylum.' Dr. J. H.

Clark considers Maude insane. Dr. Buttolph, physician to the State Asylum, testified to Maude's extreme violence while at the asylum when 'the conspiracy' was mentioned. 'Thinks Maude's case a monomania.' Proof was given that Maude had illusions; heard the voices of the conspirators in the cell above him: heard them talking and planning, etc., etc. On the legal test of knowing right from wrong he was found guilty. On the scaffold his monomaniacal ravings continued; and, to crown the whole, on post-mortem examination, thickening and opacity of the arachnoid, sub-arachnoid effusion, adhesion of that membrane to the dura mater, and a small fibrous tumor attached to the latter membrane were found." The brain was affected, as the post mortem examination showed, and showed conclusively, just as those doctors who had been called on the question of insanity everyone of them testified on that trial, and that was brought to the attention of the Court and jury, and yet the Court said that if he knew right from wrong he was responsible, and that jury convicted him, and the officer executed him. Now, he says, "To this case I dare to apply the language of an eloquent Englishmen: 'Never,' said Sir Wm. Drummond, 'was there a fouler murder against the law than the murder of this man by the law.'"

He says further: "Robert Dean was a young man of weak intellect and strong animal passions. He became warmly attached to a female superior in station to himself, and was rejected. This caused ungovernable feelings of revenge, and he determined on her murder. He had, at the same time, some religious ideas, and it occurred to him that by putting this woman to death h would send an unprepared sinner into eternity. But the impulse to shed blood had taken irrisistible possession of him. There was a child of which he was very fond and had often caressed, who he concluded had fewer sins to answer for, and this he determined should be the victim. He murdered it and then gave himself up to justice. He was tried, condemned, and executed in the county of Surrey, (England,) in 1819. 'The act, itself a sufficient proof of insanity, was strengthened by insane notions and actions, and absolute raving even on the scaffold.'"

I might go on here. I am afraid of wearying you; but I might go on here for hours and hours and hours and hours, I could take up this whole day in citing just such cases of judicial murder, of clear, well-defined, completely marked cases of insanity, where the parties were as crazy as a lunatic could be, and yet, by this test of right and wrong, were executed, both in England and in this country, under the behest of a howling mob without and ignorant judges within.

Here was another case. Louis Papavoine was attacked in the same way, with an insane impulse to kill, and they executed him. "It also appeared on the trial that the father of Papavoine had been subject to attacks of mania during his lifetime, and that he was generally a morose, melancholy man." This man was executed. His father had insanity in his composition. This gentleman had hereditary taint, as was described and proved, and yet, he knew right from wrong, and knew it was wrong at the time, and felt it was wrong to commit the homicide, and tried to desist from it, but could not do so, and it was so proven; but yet, under that test he was executed.

Now, I think that will do on the question of the test of right and wrong. You see that test would hang many people who are insane. Two-thirds, perhaps, of all the persons who are confined in our lunatic asylums might be executed on just such a test as that, at least, those who are not perfectly demented. Go to the Central Asylum, Dayton Asylum, or any of those asylums, and visit the patients in them. I wish you gentlemen could just go in a body now; I wish you could be marched in a body to the Central Asylum at Columbus, and walk in and see the ladies sitting around in their cheerful rooms, everything in order, some of them playing pianos as elegantly as any lady ever played a piano, executing difficult music, and yet insane. See some of the men sitting or walking, reading newspapers; they

will talk to you as intelligently, perhaps, as any person could, on different questions; but, standing looking at them, or talking with them, unless you allude, perhaps, to their particular delusion, they are as sane apparently as anybody on the face of earth. It would astonish you; perfectly astonish any person who has never seen them. It is atonishing to think that men who have minds and judgments and hearts have not tried to investigate this question and give a better judicial test than has characterized the judges on the bench in years gone by. Because, I say, go into these asyiums, any of them, in Ohio, or in New York, Massachusetts, or Pennsylvania, or anywhere, and you find those people there to all appearances sane. Converse with them, unless it be on their special delusion, and they are just as sane, apparently, as any persons you ever conversed with. Some of the greatest poets that ever lived or ever wrote, (on certain questions) were as insane as any lunatic in Ohio. Some of the parties who commit these homicides are driven forward by an insane impulse that is irrisistible and uncontrollable. Yet, if you take out the question of the will-power, free moral agency, and power to control the will they are to be held responsible.

Now, if the Court please, there is a great deal of law on this question, in the first volume of Bishop's Criminal Law, in the chapter commencing with page 468; and I will read, with the permission of the Court, to the jury, what Judge Bishop says. Speaking of the want of mental capacity, he says: "A person may have arrived at mature years, and still, from causes temporary or permanent, natural or supervening, be destitute either of the intellectual or of the moral capacity necessary to the exercise of that criminal intent without which we have seen no offense can exist. The real question, in all cases, is, Was there the criminal intent? The party accused may reply, No, I was mentally incapable of entertaining it. The reply is usually termed "a plea of insanity": the word "insanity" being here employed in its larger sense, as including idiocy, and lunacy, and all other kindred forms of mental infirmity."

While I was reading on that question of the right and wrong test, I might have read there, and given you the history of the Freeman case. Freeman was a colored man in New York that was convicted there of homicide, on that old test. Secretary Seward was a young lawyer at that time, and he defended him Mr. Seward was conscious, at least he felt couscious that the colored man was insane. The man was poor, as poor as Lazarus. He could not count thirty. He counted up to twenty, and that was as far as he could go. It was shown that he did not have as much mind as a child of ten years ordinarily should. It was shown, and the physicians who had made study of the question, testified that he was perfectly incapable of knowing right from wrong; almost demented. Seward defended him. They convicted him. The case was reversed and came back to the Court for a second trial, after a long series of years in jail, the man died before he was put on his trial the second time. Seward fought the case for three or four years. A post mortem examination was held on the body of this poor man, and there it was demonstrated that his mind was all uprooted, brain disordered, and ganglionic centers all injured. It was demonstrated by the physician that nobody could have doubted it if he could have looked into the inside of the man's head. But yet, they applied that test to him, and at one time the jury convicted him, and only the persistence of Governor Seward, who was afterwards exalted to the high position of Secretary of State of the United States government, under Mr. Lincoln's administration, prevented his execution. I say, if it had not been for William H. Seward, that poor man would have paid the penalty; would have hanged, under the judicial test. They brought it down to him, even. But Mr. Seward saved the poor man's neck. And Judge Bishop, in commenting on that case, says, speaking of experts, "Indeed, at the trial those particular medical witnesses who had such experience in insanity as to render their testimony of special value, were clear in the opinion that

the prisoner was insane. Hence he may conclude that medical men are unsafe experts in questions of insanity, except where, in addition to their medical reading they have had considerable practical experience with the insane." You must not only have reading, but you need medical experience with insane people to see the workings of the mind, and how it is operated upon. He says, also, "It is now believed that a man may act without the concurrence of a responsible will, though he is not raving, though he knows what he is about, and lays and executes plans with great shrewdness and sagacity." Don't you know that yourself? Don't you know that many insane persons can lay plans and execute them as shrewdly and with as much sagacity as a sane man? The very fact that his mind is in that condition, that his soul is thrown into one idea, as it were, enables him to execute it with more care and greater shrewdness than a man who has not that unbalanced mind. So, Mr. Bishop says, "It is now believed that a man may act without the concurrence of a reponsible will, though he is not raving, though he knows what he is about, and lays and executes plans with great shrewdness and sagacity." He says, "Theorists, reasoning from the assumption that the mind is a unit, or that every separate part receives support from every other, and that so all the parts constitute together one harmonious whole, have supposed, and perhaps truly, that when one faculty is organically deficient or is impaired, or impelled into unnatural action by disease, the mind suffers. But, admitting that that is so, still the general derangement may not in all cases be sufficient to fall within the cognizance of the law, which does not notice small things. And therefore judicial decisions have proceeded on the idea that monomania is a reality in science; in other words, that a person may be insane and irresponsible concerning one subject, and at the same time sane and responsible concerning another. They have proceeded, also, upon the opinion that general insanity may be intermittent, rendering the sufferer responsible for his acts at one period of time, and irresponsible at another period.

Mr. Bishop says on page 266, Sec. 474, 1st Vol.: "The labors of writers on insanity have been exhausted in attempts to find some test of ready application, to determine when the person is to be deemed insane and when not, in reference to his responsibility for crime. And the judges less informed on that subject than almost all other subjects of legal science, have struggled under the inherent embarassment of the question." I should think so, as all those decisions given here in years gone by, and those decisions in England, clearly indicate.

He says that "The judges are less informed on this subject than almost all other subjects of legal science have struggled under the inherent embarrassment of the question itself, under the influence of erroneous notions in the community and under the failures of counsel and witness that appeared necessary to present the real points of inquiry." Yes, I guess so. It has not been alone that the judges and counsel have been at fault, but many times it has been by reason of the prejudices of the community that the prisoner could not obtain a fair hearing of the question of mental alienation. Look at Dan Giddings as he was. That is the test; not before, and not after, but at that time, what was his condition of mind, what was the condition of his nervous organization at that particular time. Bishop says look at it, and I say look at it, and the Court will say, look at it, and common sense and humanity will say look at it at that particular time. And, to ascertain the condition of the mind at that particular moment, we may inquire into its condition both before and after. That is, to ascertain, at the time of the transaction, the mind of that man, you want to look at the evidence before, and look at the evidence after; take both; take all, and say, at that particular juncture, when this homicide was committed, what was the condition of the mind of Dan Giddings. Take into consideration the evidence of his condition before, and condition afterwards, taking all the facts in the case, and determine from all the evidence in the case

whether at that particular time he had volitional power and ability to restrain himself, and know right from wrong at that particular moment. I say that this evidence shows conclusively that his mind was dethroned and will power gone ; and the unbroken statements of these eminent gentlemen, and men of science, men of learning, and men of education, who have given this particular case and this particular question in this case careful study, say that they have no doubt that at that particular time he was irresponsible, upon the hypothetical case submitted by my friend and colleage, Mr Sloane. And I ask you, gentlemen of the jury, in the case Mr. Sloane put, was or was it not in accordance with the evidence in this case? Is there a fact left out? Is there one left out in our buestion that we put to the experts? Read all of them over——I have not got time to go over it; it would take me too long. But I say, in putting this question to you we were fair, and we were honest. We had due regard for the evidence in this case, every fact in it, every material fact in it; we left out none. We ask you to look at Dan Giddings, from the time he was a boy, until he was a man; his disposition; his quiet nature; while he was up in Erie county, when he was married there; when he came back to Highland county, when he came down to Ross county, while he staid in Ross county before this homicide was committed; take all these facts; take the fact of his sleeplessness; his anxiety of mind; his condition of body; his writing this letter to his wife, and to his brother Arthur; take the fact of writing the letter to his wife after abandoning her, not abandoning her, in the sense of wishing her to go, but in the sense of having to give her up; and with great regret letting her go. Can you doubt for a moment Dan Giddings was insane at the time he fired the fatal shot? With all this, seeing all this, seeing the drift of his mind; not the mind of an ordinary man, and you know it; not the temperament of a man of an ordinary temperament; not the feeling of a man of ordinary feeling. Taking the testimony in this case, of his mother——and do you doubt her testimony, any of you? Does one of you doubt what the good old lady says is true? "He wept of nights; his mind was on her." "Sometimes he felt like giving her up; sometimes he says he could not give her up;" he says, "Mother, this thing is killing me;" he says, "I have buried one child, but that is nothing." O, have any of you ever buried a child? I would hope that you have not; I hope that the shadow has never darkened your doors; I hope that the angel of death has never passed his wing over your throshold; I hope the shadow has never entered your house. If it has, then I know what you felt. Dan Giddings says, "I have buried a little child once, one of my boys, and that was nothing;" and I say if that was nothing, what must have been his feelings as a father? No death could have been worse; no death, I say, could have been worse to him, then, if he loved his child as some men love their children. You would gladly go to the grave yourself, rather than see your boy go there. You would go as a bride goes to the marriage feast; you would go as the lover goes to see the one he adores; you would go to the grave as gladly and cheerfully as ever a martyr went to the stake. But as Dan Giddings says, "that was nothing;" and it was nothing in comparison with what he had suffered. He had suffered. He had suffered death in a thousand forms here; he had suffered dishonor ; he thought of his children, of his home, of his mother, of his brother, and he thought of his relations, perhaps some of them who are present; and he thought of all of them, and it brought him to the full measure of his agony, and he says that is nothing. This woman has been taken away from him——I can not understand it——Sometimes, gentlemen, he would be willing he said, to forbear and let her go. But you have got to take into consideration the condition of the man's mind, and the condition of his body. In order to ascertain the condition of his body, and of his nervous powers. And what was his condition? Why, he says, "O, mother this was nothing, the death of this child." He could not bear the idea of

giving her up. He had held on to her with the very grip of despair, sometimes letting her go; his heart wrapped up in this woman——and I do not know why; I can't tell why some men love some women; I have no idea why it is so. It is strange, and it is unaccountable, this kind of love. No man knows how it is, or why it is. You can't tell, perhaps, why your wives love you. You look at yourself, you look at your infirmities, and look at your hateful dispositions, perhaps, and when you look them all over, perhaps you are amazed. Yet there is something good in almost every man; there is something good in every woman. And I say, I can not tell why Dan Giddings loved this woman, and loves her to-day. There is something indescribable, undefinable, about the matter. But it has been demonstrated here that he does love her, and must love her yet. The honorable gentle- who is assisting the prosecution may comment severely upon this poor deluded woman, he may use stri tures against Dan Giddings for taking her back, but has anybody else ever done the like? After his wife had dishonored his bed, broken her vows, dishonored marital relation; did any other man forgive his wife and take her back? Why, as has been commented on by the prosecutor in this very case, Gen. Dan Sickles did this very thing in 1859, in the city of Washington; and after he had killed; and justly, and properly, killed Phillip Barton Key, the seducer of his wife, the destroyer of his happiness; yet we see Dan Sickles afterwards marching to the front at Antietam and commanding a brigade there on that memorable field; and lost his limb there for the indissoluble union of these States in the war of the rebellion, and afterward was made Minister to France, representing this nation, even. Dan Sickles while he was a member of the congress of the United States, from New York, shot down Phillip Parton Key, and he afterward took his wife back, and why did he do it? Because he said he could not help it, he could not help but love the woman. So Dan Giddings says she came back to him, and penitently asked him to take her home and she would try and do better, and when he could come home he would see his boys there, they would speak about their mother, beg him, with tears in their eyes, to bring mother back. The little boys that sit there, three of them, nestled around the mother that afternoon with tears in their eyes, and their arms around her neck, and there and then implored the father to forgive the mother and bring her home, let her come home. She came back on her knees, as it were, she came as it were to the altar, and pentitently she bowed, and asked the husband that she had wronged, to take her back for the love she bore her children. She had repented of her sin, and she would be a mother to the children, she would try as near as she could, to be a wife to him, as far as she could fullfill that duty. There and then he yielded; and I put it to you gentlemen, if your wife had done as she had what would you have done? Perhaps you think now that you would not have done as Dan Giddings did; but didn't Dan Giddings at least do right? I do not know whether he did or not; I can not say. I do not say he did; I do not say he did not. But I say a greater man than Dan Giddings is; at least a man of higher social influence, a man of greater intellectual powers, a man of national distinction, did the like in the city of Washington, and I remember well, that he wrote a long, long, long letter in justification of his course; and I have been trying——if the Court please, and will permit—— I have been trying for two weeks to get hold of that letter, to read it to you, gentlemen of the jury, and try, at least, to comment on it, and if I did not comment on it, try to make it a part of the argument in this case; and I do wish that you could see that letter, and read it. I wish that the prosecuting attorney, and Col. Gilmore could read that letter, and that if Col. Gilmore dares, dares, dares to assail Dan Giddings for taking his wife back, let him answer Dan Sickles's letter. When Dan Sickles felt justified in taking his wife back home, and placed it upon the ground of his love that he could not restrain, and for the love that he bore his daughter, he put it on that ground, when Dan Sickles caused the estrangement of his best friends on account of

taking his wife back. I say Dan Sickles perhaps did right. If he did not do right, he did what he could not help, and his wife was ever faithful to him afterward, and they went on together hand in hand. It won't do for you or me to say that we would not have done this thing that Dan Giddings did when he took his wife back. We do not know what we would do. If we had unalterable, unchageable, never dying love for a woman, then we could answer. How many men, honorable in paths of life, business men, perhaps that you know, men that perhaps I know, citizens that we are acquainted with perhaps, have let their affections go out after women whose virtue has been soiled, and publicly known to be. They could not help it. They take them from the dens of iniquity, many of them, and we find them living afterwards happy and contented.

I say this thing of love is unaccountable, and no man need say what he would do until the alternative has been placed before him to do or not to do; then he can tell, or perhaps his actions will tell, but no man can tell what he will do, until he has been tested. Then I say take this man's condition of mind and body at the time this act was committed, and before, when this woman came back home; and it seems to me that it is hard to tell what he ought to have done, under the circumstances. May be not hard to tell what he ought to have done under the circumstances, but it is hard to tell what we would have done under like circumstances; and we should not judge too harshly of the man, especially if he had been worried weeks before about his wife, and when she came back home, and he not expecting her back as I apprehend, but looking out happened to see her coming in, and there she stood with her handkerchief up to her face, there she was weeping, there she stood, and there the children came around her, then was a critical moment, when he says; "Come back home."; she says in broken tones, "I will come back home, if you will let me, and I will behave myself;" "I want to come back home, Dan. I know I have been foul, I know I have done wrong, I know I have done this thing without any justification or excuse. I know I am not fit to live." Then was he not justified in taking her back? And I say when she came back home there, and he took his wife back, then they had cemented the union again, they were going to live together again. Then it was that he submitted to the foulest wrong known among men; for the man could endure almost everything for the love of his children, and for the unyielding attachment that he had for that woman; and he surrendered and bid her come back home. And then after all that struggle, who but a brute would come in and interfere again and take her from this man, Giddings? what would you say of him if he did? Then, I say, taking that into consideration, taking into consideration the hereditary taint in Dan's family ——I have not got time to read here from Beck; or Ray; or Maudsley; or Bucknill; or Tuke; I have not got time to read from these eminent authorities that are here, in regard to this man's insanity; but I say that when he took his wife back, he was then on the border line of insanity——why the evidence here is, that Dan Giddings resembled his father in complexion, in his features, resembled him in his air, his looks, having his eyes, his voice, his make-up; similar to his father, his quiet gentle nature like his father, which has been testified to by many, many, many witnesses, and by the mother, who knows better than all others; testified to here days and days before this trial closed. If it was not true, the State had ample time to bring witnesses from Highland county to disprove every fact we have named, or anything in regard to this case, every fact connected with Dan Giddings; the State has had ample time to prove, or disprove the truth of our declarations both as to his character before this and the character of his father; whether his father died demented, or not; whether his father was insane before his death. But the physicians here and the alienists, establish in that connection that the son is more likely to resemble his father in regard to matters of the mind than the mother. It is a physiological fact. So these eminent authorities say——men who have given this attention and have

investigated the matter, kept elaborate statistics and determined these questions. So I say that Daniel Giddings was like his father and had hereditary taint of insanity. His father was insane; business matters shattered his mind. His father never had one-tenth of the trouble, perhaps that this poor man had; not one-tenth or one-hundredth part. Why I tell you if a thing of that kind would happen to any of you gentlemen you would go distracted. Let a man invade your home and take away your wife, degrade her, dishonor your children, then say what will be the character of your mind and condition of your body? Let any man on that jury say——and now you have got to say; you cannot evade it. It is legitimate here for you to determine just what effect you think it would have on any man's mind. This is a case about which the people of this county are looking to see what this jury will say; what is your estimate of the marriage vow, what is your estimate of home; what is your estimate of the love of a father for his children; what is your estimate of the value that you place upon your name and that of your kindred; what is the estimate you place upon your standing in society; what is the view you take of a man who will invade your home and strike down your wife and disgrace your children; what is your estimate, gentleman of the jury, of a man of that kind? What effect do you think it would have on a man's mind and on his nerves? What effect would it have on him if a man that had done that thing would come at him and say, "I will take your wife away again," after he had forgiven her; or, "Damn you I will shoot you"? I ask you what do you say would be a man's condition? Could Dan Giddings have done otherwise than he did? In the first place was not he perfectly justified in doing what he did? If he had any mind, I say if he had a cool balanced mind, Dan Giddings had a perfect right there and then to shoot down that villian. If he had any mind he would have been perfectly justified in shooting him through the heart. Dan Giddings would have been an idiot if he had not killed that infernal libertine; when Ben Wiltshire came thirty miles to take his wife away, and said when he came down here that he would see whose hide would hold the most bullets, and that he was prepared to put the bullets in——I say when this man made that demonstration, Giddings knowing that he was going to shoot him, that if Dan Giddings had not killed him then, he would have been an idiot. A gibbering idiot should have killed him. And I say if Dan Giddings had enough mind he was justified in killing him and if he had not sufficient mind, still he is excusable if he was all worked up, tortured with his feelings——tried to repress his feelings for the sake of home, for the sake of his mother that he loves, for the sake of his children, and his will power being overcome. Dan Giddings, before this thing occurred, perhaps, was restraining himself all the while, and said he had thought about killing him along in July, but when he thought of his mother, and when he thought of his home, and of his little boys. (Counsel here addressing the prisoner.) And you, poor Dan Giddings, what a terrible sorrow it would bring upon you, and what a wrong and injury and pain would be brought into your family, as has been brought in in consequence of the homicide, in consequence of the just and noble act you did, notwithstanding all that, you abandoned your homicidal ideas.——Now, gentlemen of the jury, I say after abandoning it all, when this man came down, Dan Giddings, still willing to be peaceable, wanting to try to get him away——I say when he went down there to that log, this man undertaking to shoot Dan Giddings, indicating his purpose to do it, that Dan Gidding's mind must have given way, and if it didn't give way he had a perfect right to shoot him. It was enough to make his mind give way. And if he had wanted to kill him, as I have said before, he could have done it; if he had wanted to kill him all he need to have done, was to have gone on home and let him come down there. He could have killed him there with impunity.

But they bring in a lot of witnesses here against Dan Giddings. Remember now, the State has prosecuted this case with all the ferocity, all the

bitterness, all the ingenuity, all the power that is capable of being presented by Col. Gilmore and Mr. Bitzer. They have lacked for nothing; they have hesitated at nothing they could do that the law would permit them to do. They have been industrious in this case, hunting up witnesses. Erie county has been explored; Fayette county has been explored and hunted over; Ross county has been searched over and over and over by the State. Everything has been done in this case in order to work a conviction of Dan Giddings. I don't think there could be any reasonable mind that has heard this case from the beginning to the ending, but will say after hearing all the evidence, "Dan Giddings you are perfectly justified in doing it" Anybody would say it. There is not one man who can see and hear and know, that would not do it. And if there should be any doubt in your minds as to his perfect and complete justification for it—any doubt whether he is sane or not; that is if you think he was perfectly sane if you think he was not perfectly justified in doing it then I think you can have no doubt that we have shown by a preponderance of evidence that his mind was unbalanced. And you can have no doubt about that; none whatever. What does Dr. Kennedy say? Dr. Kennedy is a gentleman of seventy years of age—pretty near seventy-two Fifty years he has been in the practice. For twenty years he has devoted his entire time, almost, to the investigation of mental diseases, and more than twenty years his wife has been so unfortunate as to have been necessarily confined in an asylum. And he has made the subject a study for twenty years. Who is much better qualified than Dr. Kennedy——an authority quoted in Great Britian and in Germany for his wisdom and for his correct and accurate notions and ideas on this question of insanity: a man, perhaps not second to any man in America to-day. That old gentleman, a most reserved, quiet, unobstrusive old man that sat there, second to no man in America on this question of insanity, emotional, or otherwise. He says that taking this hypothetical case that there is no question about his mind being unhinged; must have been. Dr. Morse is qualified as an expert. They cannot deny it. They put him on the stand, didn't they? Didn't they endorse Dr. Morse clear through? They endorsed him. Why they put him on the stand——the only witness they did put upon the stand who pretends to have known anything about insanity. The hypothetical case of the prosecution is put to him. He says that it don't indicate anything; the question didn't indidate anything; it did't indicate a fact in this case and he says that the question didn't indicate anything. But the prosecutor says "supposing after the man was down that he shot him again; what would that indicate?" Dr. Morse says, "Why, it would indicate insanity, perhaps, more than anything else, because if he was perfectly sane he would not have shot him more than once."

If, as the State claims, he shot him through the head first, if he had been a sane man, he would have known that when a man is shot through the head that is the end of him. He would think, "That is the finishing of the miserable creature; the destroyer of my home, the debaucher of the chastity of this community, a man who has disgraced his father and mother and his relations; a man who had no more shame than to take this woman to his father's house and there continue his improper relations with her; a man who had no more shame than to take her to his sister's house, his brother-in-law's house,—where poor Dan Giddings went after her,—and keep her there unrighteously—unlawfully keep her there. A man that would do that I say would indicate by that conduct the kind of a man he was. So you see, taking this whole thing into consideration, what Dr. Kennedy says; what Dr. Moore says about it--that if he had done that and shot him the second time after he was down, Dr. Moore says that would be more indications of insanity than otherwise. What does Dr. Miller say? I am talking about the testimony from a medical estimate, as well as all other estimates. You know Dr. Miller as well as I do. He has been connected with our infirmary for a number of years past, where he has been brought into contact with

insane patients and has had opportunities of judging. And before you comes Dr. Trimble, a gentleman who has graduated at Jefferson College, Philadelphia, a thorough scholar; an educated man; a man who for five, or six years, or more, has devoted his special attention to this question of insanity and pathology of the mind. He says under that hypothetical case put by Mr. Sloane, that this man was unquestionably insane at that time. "Well, suppose that he knew, after he got away from there, enough to secrete himself; would that indicate anything?" "No, that is no indication that he was not insane then. Not at all; no indication that his mind was not unbalanced. That would mean that he had no control over his emotional nature. It broke down and gave way for that particular time. And Dr. Trimble says that the fact that he may have concealed himself an hour afterwards, was no indication in the world that he was not insane at that moment and irresponsible. And he says from that hypothetical case he has no doubt at that particular time Dan Giddings was insane. So says Dr. Kennedy; so says Dr. Morse. Now what does Dr. Miller say? They tried to lug in here the fact that Dan Giddings took his wife back. What effect does that have? What do you say? After reading the hypothetical case to him, "What is the condition of that man's mind, sane or insane? responsible or irresponsible? any control over his emotional nature, or not?" "No, he had not. Perfectly irresponsible, I am satisfied." Dr. Miller says, "I examined his person, observed his features and his head, and all about him pretty particularly—his face, the contour of his head—and I am satisfied there is a functional derangement there that sooner or later will show itself to the uneducated mind." Didn't Dr. Miller say so? He was asked, "Why do you think so?" He says, "Because I have held post mortem examinations over just such men, after they went to their fathers, and it was demonstrated that they had functional derangement. Their minds were disordered and brains injured; and I am satisfied that he was irresponsible at that time." What did he say about his taking his wife back? Dr. Miller says, "It is one of the greatest evidences, one of the most powerful evidences to my mind that he was deranged, or unbalanced. That very fact is an indication of the unbalanced, unsteady, irresolute mind—unstable.

Now, gentlemen of the jury, I have occupied more of your time than I expected, a good deal more, and I would have been glad if I could have done my duty without having had to speak in this case. I have felt, and I feel now, my inability to present the case as it deserves to be presented. I trust you will say to Dan Giddings, "Go acquit back to your home justified. If you didn't do that in self-defense, we are satisfied that your emotional nature was overcome, that your mind was unbalanced; that you could not help from shooting down the destroyer of your home, when you plead with him and entreated him to let your wife alone, and not rob your children of their mother again." I say when I speak of this case, I feel the full measure of my responsibility, knowing that you twelve gentlemen have Dan Giddings' life in your hands—because this case is presented to you just in that aspect; the prosecutor has put it to you in that shape; made the issue here square—argued nothing else. So we accept the issue. Justify and acquit Dan Giddings, or say to Dan Giddings. "We care nothing for home. We are willing that a libertine may invade the home of our neighbors—at least we say that a libertine has a right under the law to come into our homes and despoil our idols, rob us of our wives, dishonor our children, and we will go back into the community, out into this county and say by our verdict that "we justify, or if we do not justify Ben Wiltshire, we excuse him, and we convict Dan Giddings for doing what he ought to have done and what society demands." I say it ought to be the law of this land whenever a man invades your home, dishonors your wife and disgraces your children, that the very first time you see him you should have the legal right to shoot him down like a dog. And I say it seems to me if I had been in his position, if I had an armory around me, if I had had a thousand revolv rs, with a thou-

sand bullets, I would have put them all, all, into the hide of Ben Wiltshire right there and then. I would have been shooting him until now, if it had been me. You would have been shooting him until now, perhaps, if you had not been disgraced as Dan was, because if you had been dishonored as that poor man was and is and has been dishonored you would have had no reason left. You would have been wild; you would have been a maniac; you would have been full of frenzy, perhaps all the days of your life. Law nor order nor anything else could have restrained your power. You could not have restrained your power yourself. Ben Wiltshire had come back the second time to dishonor this man's family, to dishonor his children and his home. And when you think of that, gentlemen of the jury, think of your homes; think of your mothers; think of your children; think of your relatives. Think of these things when you think of the name of "Giddings." ——Think of old Joshua R. Giddings! Think of old Joshua R. Giddings, Elbridge Butler, from whom Daniel Giddings is descended. Think of the old man who stood up for the colored race in the halls of Congress before you and I were born. Here now, is Giddings on the stand before you. You have his life in your hands, Elbridge Butler. When you think of Dan Giddings think, I appeal to you, think of Joshua R. Giddings, and when you think of Joshua R. Giddings, Oh, for God's sake! think of your race and what Joshua Giddings helped to do for your race. Then, gentlemen, think of your homes, think of your firesides; think of your mothers; think of your wives; think of your children; think of your honor: think of your hearthstones; think of life; think of death; think of heaven; think of hell, where libertines ought to be, and then say what will you do with Dan Giddings in this tremendous hour of his life.

Gentlemen of the jury, I have said all now, I think I can or should say. There has never been an hour since Dan Giddings told me his tale, how he had been wrought upon, how he had been affected, how he had been insulted, how he had wept and mourned about this thing—there has never been an hour from that day to this that I have not stood by him. He says, "I want you to help me now." I said I would do it, and do it to the best of my ability. And if I have done aught for him in this hour of his peril and his trial, if I have done aught to protect the family and the home, if I have done aught to cement the family circle, if I have done aught to protect the character of this community, if I have done aught to defend the man who defends his home, if I have done aught to help protect the man who protects his children, if I have done aught to condemn the man who has invaded the home and broken down the family altar—if I have done aught in this case to condemn him, then I am amply satisfied. If, on the other hand, I have done aught to injure this case, or injure Dan Giddings, or injure this cause, I hope that Dan Giddings will forgive me; I hope that his friends will forgive me; I hope that the community will forgive me. But I know as I live and my heart pulsates and my mind goes out to know anything, I know I never will forgive myself.

I thank you, gentlemen, for your patient attention, and I hope and trust and believe that when you retire to decide this case you will let Dan Giddings go acquit and thereby vindicate him, vindicate the wife, vindicate the mother, help build up the family altar and family hearthstone, and you will strike a blow at libertinism and debauchery on the part of those who seek to destroy the home, or the wife, or the sister, or the daughter, or the marital relations in this county and in this land. For this case is looked to, not only by the citizens of this county, but many citizens of this State are now looking here to see what a Ross county jury will do in this case where this man has invaded this home. Will you do differently from what they have done in every other case in every country where a like question has been disposed of? Why, I remember now—it has just come to my mind—where a man in the county of Lawrence, not more than ten years ago, in the city of Ironton—a case right in point. Lizzie McQuigg, the daughter of a poor

widow lady, had a brother John, who shot and killed Presley Barker, (a young man of respectable family and standing in that city) for the seduction of his sister Lizzie, and he was indicted for murder in the first degree, and prosecuted with all the power that money could command, two celebrated criminal lawyers assisting the prosecutor.

I was there that night when the twelve men returned their verdict into the court. I remember it as well as if it were but yesterday. John was sitting by his attorneys there at the table. The court house was crowded; the gallery was full; the judge was on the bench; the prosecutors were there, and the citizens were all on tiptoe with expectation. And when the jury had come in one by one and the clerk read the verdict, "We, the jury impannelled, sworn, &c., find the defendant not guilty," such a shout went up from the citizens of Ironton and the citizens of Lawrence county as would seem to make the rafters of the court house bend. So I say you should so decide this case. Because they decided in favor of law; in favor of justice; in favor of home; in favor of mother; in favor of daughter; in favor of sister; in favor of the honor of the home. Will you do likewise, and say that Dan Giddings shall go acquit? So that you can return to your homes and to your families, can go back to your wives and your sisters and look them in the face and say, "We have done our duty and done it well. And we have told the libertines, if there are auy more in the county of Ross to beware; for they will get no sympathy from a jury of Ross county."

Court then took a recess till 1:30 p. m.

Ulric Sloane spoke as follows:

May it please your Honor, and you, gentlemen of the jury: I doubt not that it is a source of pleasure and congratulation to yourselves, and I feel to congratulate you, that you are nearing the close of labors that have doubtless been to you, during this long trial, quite tedious, and often wearisome; and the near approach of the close of which must occasion you some sensation of relief.

Upon the part of the defense we desire to express, and I have no doubt that I express the feelings, also, of my brethren on the other side, our thanks for what has been, indeed, clearly noticeable, your patient and unwearied attention to all the evidence that was introduced here during the course of the trial. We, of counsel for the defense, have much to congratulate ourselves upon; the defendant has much. I, for my part, congratulate myself on my good fortune in having the valuable services of my noble colleage in this case. Not living in this county, it would have been greatly inconvenient for me to attend to the accumulation of the facts, and the search for and collation of the testimony introduced upon behalf of the defendant. That labor was done, and well done, by my colleague. And one of the grateful memories that shall abide with me in the future will be that no pleasanter association, professionally, has ever been mine in the fourteen or fifteen years of my professional life. We have to congratulate ourselves, in this defense, upon the fact that our case is laid before a jury of this man's peers; before his fellow citizens; before Americans and Ohioans; before men who recognize what is the sacred character of the father, the solemn duty and responsibility of this occasion; and that they are not here merely to pronounce a formal verdict, but to exercise that higher duty incumbent upon them, and that higher privilege which is theirs, to by that verdict protect the home and family and fireside. We have to congratulate ourselves, also, that a large hearted and large brained, and a profound jurist presides over these deliberations.

In the opening of this case by the Prosecutor, (which opening permit me to say—and I would feel faulty in my duty did I not take this occasion to so say—was entirely worthy of him, and creditable to him; and was not marked with much of the vindictiveness, or eager desire for conviction which is too often the habit, of an official prosecutor; which unenviable task I suppose he has left to be performed by the Reverend William E. Gilmore.) whether of his own inclination, or purpose I know not, he assumed the fact that my professional position was that of a criminal lawyer alone. However high and honorable that position may be in my profession, permit me here, in the outset, to disclaim it. I suppose in the course of my professional career that I have tried and been engaged in fifty civil cases, where I have been engaged in one criminal case. I suppose the same is true of Col. Gilmore and the other gentlemen engaged in this cause.

Another thing I say to you here, and I want you to start with me upon that basis, gentlemen, that I seek to be heard not for myself, but for the cause I represent. I have no objection to my fellow-attorneys in this case, plucking all the laurels they may, and wreathing them around their brows. I seek none. I shall be satisfied when I shall have done all that is incumbent upon me to do, and that I shall have power or opportunity to do, in

this case. I shall be satisfied when I shall have done, with the consciousness of duty performed to my client, of duty performed to this Court, of duty performed to you, my country, and my God. This is no affectation of modesty. The man who is placed in the situation that either my honora ble colleague or myself, is here, with the life or the liberty, the honor, the character, the future happiness and prosperity of this poor man, depending in a great measure on his faithful and best efforts, should feel the responsibility resting on him to such an extent, that he will be impelled to move only by an honest desire to get from your hands and from your hearts and from your minds the verdict of his acquittal, honestly believing him entitled to it, and will not wander away into the paths of fancy merely to pluck laurels for his own brow. I am not here, let me say to the gentleman who may be called upon to close this case, seeking to win laurels here for ulterior purposes, whatever impression he or anyone else may have undertaken to create upon the public streets as to my position in this court room. I am here in the performance of the highest functions, of the highest duties that may become a man. I am here feeling that I am not alone interested in the defense of the defendant in this case. I am here where a man seldom gets to be in his profession; seldom has opportunity to be; as defending the home and the fireside; as defending and seeking to render inviolate and inviolable the marriage relation, the father's duty, and the children's right. I say, I desire to be heard for the cause I represent. If, through the kindness of my Creator, I may possess certain powers which will enable me to present this case in a way, even to the extent and in the manner that the Honorable Prosecutor was so kind, or so flattering, as to say I would, I shall not use those powers during the whole course of what I shall have to say, to win from you an unrighteous verdict; but I shall ask you to hear me simply for *what* I say, If I miss-state, or state too strongly, or understate, any of the testimony that may have been given in this case, it is your duty to correct me. You are here the arbiters of the questions that are presented in this case; it is for you to determine them. You sit here under your oaths to "true deliverance make between the State of Ohio and the prisoner at the bar." We, of whichever side we may be, are necessarily and naturally biased by our feelings in this case. I shall ask, then, that if I shall state anything too strongly, if I state anything improperly or untruely, if I shall understate any portion of this testimony, or make any misapplication of the law that the Court has given or will give, or that I conceive he will give to you, it is your duty to correct me. But, on the contrary, gentlemen of the jury, intending as I do, to ask at your hands, without fear of denial, a verdict of acquittal of this man, I shall seek and hope to furnish you with reasons of the most unbending character and indisputable truth upon which you may base that verdict. If I do not; if I leave to you, in the course of this case, one honest, reasonable doubt that a kind-hearted, merciful and just man should entertain upon the whole of this testimony, I ask you to reject the demand, and refuse the prayer that I make that this man may go hence acquit without day. But if, on the contrary, gentlemen, all that I shall urge to you, if the statements of the testimony that I make, if the application of the rules of law that I shall apply to that testimony, be true, be sustained by the Court, be sustained by the testimony as you heard it and as you have taken it into your minds, I ask that what I shall say be regarded, not because *I* say it, not because I appear here as the champion of this man's cause, but it because it is the *truth*, and upon which *truth* must this cause be decided.

He needs not, to my mind, gentlemen, this poor man, were he unfriended and alone, needs not the voice of eloquence, needs not the honeyed phrase of speech to plead his cause. That cause pleads for itself. In his behalf here plead powers that my tongue can not exercise, in his behalf comes up the plea of all humanity; in his behalf comes a plea from the thousands and millions of firesides and of homes that dot the hillsides and valleys in

this land; for him come up to you, laid on the altar of your duty, as the sacrifices with which he seeks to propitiate your verdict, pleading for him, as they shall hereafter plead for him in "Heaven's high chancery." the ruined home, the broken heart, the disgraced husband, the almost orphaned children, and the violated rights of society, and humanity. These "plead like angels, trumpet-tongued" against this man's conviction.

This is a case of more than ordinary interest. Not merely that the defendant is charged with murder in the first degree; but because of the unusual circumstances attending and preceding the killing; and because of what I conceive to be the more than ordinary duties incumbent on you in this trial. For I desire to impress upon you in the outset the fact that in taking the oath under the solemn sanction of which you sit, and entering upon the discharge of your duties as jurors, you are not expected nor required to divest yourselves of the common instincts and sentiments of humanity. Indeed I claim it to be your bounden duty to retain them. The institution of trial by jury was founded upon that consideration. The jurors were to be brought from the vicinage, and originally they were chosen because of their knowledge of the facts and the parties, and decided the cause upon their own knowledge. A man had the right not only to be tried by his peers, but by his friends and neighbors. This right was held so valuable to freemen that a solemn confirmation of it, in the form of the Great Charter, was forced from King John by the threatening swords of the Barons. History teaches us that the right of such trial was conceived to be one of the firmest bulwarks of English liberty. And why? Because when Tyranny or Power sought, through the forms of law, to strike at a citizen and deprive him of life, liberty or property, he could interpose as a shield twelve of his neighbors, men who knew him, men whose interests, and passions and feelings were such as his. While advancing civilization, legislation and jurisprudence have removed the requirement of knowledge of the facts to be tried as one of the qualifications of the juror, requiring that he should have no knowledge of them, and should decide upon the testimony of witnesses, and not upon knowledge of his own, yet, it has not said to the juror that he must come into the jury box, to act and move like an automaton, without feeling, without sympathy, without soul. No! You are to come here feeling as all just and good men should feel, hating wrong, loving right, with sorrow and sympathy for suffering, with sacred regard for the family relation, which forms the very basis of society, and with determination to protect it. Attempt has been made by counsel for the State here, to apply the rigid and inhuman rules of the King's Bench. They would, if they could, remove from out their way the great obstacle of human sympathy. They would have this Court forget and this jury forget if they could, the great tenderness the law now has for human life and liberty, and individual right, and apply here some of the brutal practices and principles of those old Molochs of the common law, whose court rooms were typically as bloody as a butcher's shambles and who might have, like Tamerlane, his throne builded for themselves judgment seats of human skulls. No, gentlemen, we have a more humane and enlightened jurisprudence now. You are no less men that you are jurors; you are to be no less kind hearted and humane men that you are jurors. You are to regard no less the purity of woman, the virtue of the wife, the honor of the husband, the good name of the children, and the sacredness of the home circle, that you are now jurors. You did not leave them at home when you came here. You brought them with you. Where else on God's earth ought these sooner to be recognized more fully and more speedily protected and vindicated than here in this Temple dedicated to justice? Then is yours here a solemn and momentous duty. You are here to "*true* deliverance make." Not merely to determine this defendants plea of "not guilty" by your verdict, but you are here as members of society, as members of this great commonwealth, interested in its present and in its future welfare, to guard its honor and the honor of its

people, to decide that which shall protect the inviolability of the marriage bed, to decide that which shall say to the libertine, "Beware;" aye, by your verdict to raise, around the home and the fireside and the family, a wall, over which if the ruthless libertine step, he steps to instant and dishonorble death!

Now, gentlemen, with so much of opening, let us proceed to a discussion of the case. In contemplation of law, you sit here to-day just as free from opinion as the moment you were sworn. That, I say, is, in contemplation of law, the fact. We know enough of human nature to know that it is a mental impossibility. You are told to strive to keep your minds free from opinions, conclusions, or impressions, and honestly, no doubt, you do strive to, but it is not within the power of men to prevent certain impressions, upon certain features and facts of the case reaching their minds. And it may be you will think that the work I shall do unnecessary; but bear with me, and recollect, that you can, but in a manner feel, and that in a feeble manner, what is the sense of responsibility and degree of solicitude and anxiety felt by one who stands in the position of either myself or my colleague here. No harm can come to these gentlemen here; (referring to Counsel for the State); very little harm can come to the welfare of community if this man were to go acquit, and be free to return home to the bosom of his family. But what must be *our* sensations, if, when we have performed our labor here, the verdict of this jury has consigned this man to an untimely and dishonorable death? What must be our feelings if, in the night watches, and in our daily walks, the thought should come to our minds, for one moment, that we had done aught that we should not have done, or had left undone something we should have done in this case for our client; something which might have produced a different result had we been careful enough, studious enough in the performance of our duty to have seen it and presented it. We can only feel at last that we have done all we could, and one life has ended for all of us. When we shall be called upon to cross the "dark valley of the shadow of death," the best supporter that we may have during that hour will be the simple consciousness of duty performed.

I want you to start out, then, first, in following me in this discussion, with the direct injunction and command of the Savior upon earth, when questioned with reference to divorcement and marriage, that "These twain are now one flesh. Whom God hath joined together let no man,"—*let no man, under the peril of God's vengeance*,—"put asunder."

I have said to you that I shall endeavor to give you reasons, sufficient reasons, all-powerful and indisputable, upon which to base the verdict of acquital we seek at your hands. I shall ask you, then, even though at times it may be wearisome to you;—and I know, by the close attention you have given to the testimony in this case, and to the arguments that have preceded me, that you will,—to follow me through each step of this argument, that you may see, when it is concluded, whether or not it does not furnish to you indisputable grounds upon which to render this verdict of acquittal that I seek; for that, gentlemen, *is* what I seek. We say to you, *now, in the outset*,—and we meet the Prosecutor here,—this is a case of murder in the first degree or nothing. *Hang this man or acquit him.* We say to you boldly, *hang him or acquit him.* Let there be no compromise here. One of the ruses of the prosecution often is to indict a man for murder in the first degree, so that he may not be admitted to bail, confine him in a cell where he cannot render the assistance he could outside, to his Counsel, in the preparation of his defence, and then say to the jury in the end, "Oh, we don't seek nor expect a conviction of murder in the first degree, but we ask you to compromise on a verdict of manslaughter." Yes; ask you to compromise this man's rights, to palter with your oaths and consciences, and stultify yourselves by an illogical verdict, and say, "While we do not consider him

guilty of this charge, we can meet on a compromise and bring in a verdict of manslaughter."

It will be the duty of his Honor, who will not vary in his performance of that duty, to instruct you that you have the power, if you you think the evidence will warrant it, to convict of either murder in the second degree, manslaughter, or even assault and battery, these minor offenses being, under our law, included in the major offense of murder in the first degree which is charged in the indictment. But I say to you, under the testimony in this case,—while I shall discuss to you the features of all these degrees,—that such a verdict would be illogical; would be self-stultification. We want no compromise on these. If this man killed Benjamin Wiltshire, he killed him of deliberate and premeditated malice, or he killed him justifiably, and we say that he killed him justifiably, in executing upon Wiltshire the direct vengeance of Almighty God, who chose him as his blind instrument.

Now then, the prisoner has been indicted on two counts, each charging the crime of murder in the first degree. It is proper for you, in the outset of your investigation, to ascertain what are the constituent elements of that crime. I propose, in the first place,—and I want you to follow me while I do so,—to discuss this case simply upon the testimony of the prosecution, leaving out of it entirely all evidence that we may have introduced, or that the after-circumstances of the case brought to your minds, indicative of a provocation or a motive for the commission of the homicide by the defendant, depending entirely upon such proof of provocation or motive or of intent as the prosecution, in its opening of the case and its introduction of the testimony put in. Our statute is,—and I will not read you all the section, because it applies to a condition of facts that are not existent in this case at all. I mean by that, murder in the commission of rape, or arson, or by lying in wait; but by leaving out that intermediate clause, our statute reads that "Whoever purposely and of deliberate and premeditated malice kills another is guilty of murder in the first degree, and shall suffer death." There are five constituent elements in this crime, each of which must be found by you to exist before you can find the crime charged to have been committed. And to enable you to find the existence of them, you must be satisfied by the State, by the testimony of the State, beyond a reasonable doubt, that each and every one of these constituent elements of the crime does exist. You can not, without a disregard of your duty here, find that this crime of murder in the first degree has been committed, when the State has not shown you beyond a doubt that *all* of these elements exist. If any one of them be absent, the crime is absent. If they fail to prove beyond a reasonable doubt the existence of any one, you may not find the crime to exist.

The first element is, intent to kill; the second, malice; third, deliberation; fourth, premeditation; and last, or fifth, the physical act of killing. You will find that, by the reading of our statute, it is, "Whoever purposely and of deliberate and premeditated malice kills another." Our statute reads wrongly, to my mind, and does not present really what the courts have defined to constitute murder in the first degree; for the attributes or predicates of deliberation and premeditation do not apply to malice, according to the decisions of the courts, at all, your Honor, but apply to the intent. One of the earliest cases that we notice, the case against Turner, in Wright's Reports, page 20, is to that effect; and wherever the deliberation and the premeditation are spoken of and sought to be defined by the courts at all, they are made applicable to the mental condition of intent, and not to malice. So that the statute, as construed by the courts, should read, "Whoever maliciously and of deliberate and premeditated intent kills another is guilty of the crime of murder in the first degree, and shall suffer death." So that you will find, in the association of these elements, that deliberation and premeditation are a necessary relation, a necessary affinity to that mental

condition, which is an absolute necessity in this case, of an intent to kill. Therefore, gentlemen, while I have stated to you in the outset that one of the constituent elements of this crime is intention to kill, a simple intention to kill is not sufficient to constitute one of the ingredients of the crime of murder in the first degree. The intention to kill may be existent in other and different offenses; but there must be a higher and greater degree, and that is, that that intention to kill must have been deliberated upon beforehand, must have been premeditated, and not be the outcome and result of a sudden provocation. Now then, I desire to say, in that connection, that these words have a meaning; a natural meaning that the lexicographers recognize, and that our courts can not take away. It is often the habit (I am glad to say, that with the Judge who presides over this case it has never been), for judges, in the use of loose and inaccurate language, to say to the jury that from an act committed with a deadly weapon the law presumes an intent to kill, and that premeditation, the mental act of premeditation and deliberation, may be formed in an instant, as quick as thought. That is not the case. Nor is it the law of Ohio. You may, from the use of a deadly weapon, you are at liberty to and may, if the facts concur in enabling you to do so, draw the inference, or presume as a matter of fact, the intention to kill; but the law raises no such presumption, and makes no such presumption, at all. The law merely *permits you* to draw such an inference from the fact the crime was committed with a deadly weapon, but it does *not* arbitrarily, or by its own operation, presume an intent to kill. And what I have said here with reference to intent to kill, also applies to the ingredient of malice. Now then, Webster defines,—and without turning to the book,—Webster defines "to deliberate," the verb, "to weigh in the mind; to consider and examine the reasons for or against a certain measure or course; to estimate the weight or force of argument, or the probable consequences of a measure in order to a choice or decision; to pause and consider." The statement sometimes made by judges to juries, that the mental act of deliberation and premeditation may be accomplished in a moment, so swift as thought, is improper, and has been so held by our Supreme Court. I refer your Honor to the case of Shoemaker against the State, which decides that the law fixes no period of time for deliberation and premeditation to take place in. That the jury from all the facts must ascertain that it did take place before they can find that murder in the first degree was committed; but no law lays it down, and no court has a right to say to a jury that it does take place, or that it can take place in a moment of time, but only that it must exist beforehand, and that the law lays down no particular space or period of time during which those mental acts of deliberation and premeditation will take place. "To pause and consider." Can you conceive of the natural signification of the words pausing and considering? The very conjunction of the two words shows that it is a mental act requiring time to develop, and that it can not be done on the instant; that it can not be done as quick as thought, but that it requires time and reflection; the mental act of reflection must exist, and you must have found it to exist. You can not say, because under sudden provocation or sudden excitement, a man commits an act which is made a criminal act by the laws of his country, that he has paused and considered the act. You must find that he did; you must find that the act was the result of the deliberation; was the result of the pausing and considering, and that *that* was what he was pausing and considering about, whether or not he should kill, and determining, in that consideration, that he would kill. That is what is meant by a deliberate intention. The adjective, "deliberate," which is the form of speech used in the statute, means "formed with deliberation; not sudden nor rash;" the very opposite of that idea. The very force of the words, their very termination and their natural meaning, as laid down by Webster, and as you will comprehend, if you understand it, is that the act shall not be sudden nor rash, but shall be fully considered upon, and the right or wrong of it, the bene-

fit to be derived from it, the advantage to be derived from it, or the disadvantage that would flow from it be considered by the person committing the act, and that having considered and deliberated upon it, he then, after that deliberation, and as the result of that deliberation, forms the determination to kill. That must exist. The word "premeditate," in ordinary minds, has usually been conceived to mean a mental act applied to the criminal intent of long duration, and requiring more reflection than the word "deliberation." To my mind, as I understand the distinction between the two words, it does not; but the element of deliberation, which forms a necessary and integral part of the crime of murder in the first degree, requires a degree and state of mental reflection greater, perhaps, than premeditation. But I care not which you take. Both of them, whether they be different mental acts, whether the one requires more time, *ex vi termini*, I care not for the purpose of this discussion. Both must exist. You can not, with the element of deliberation alone, have it murder in the first degree. Both must co-exist. You must find that the intent was not only deliberate, but that it pre-existed, and that both the elements of deliberation and premeditation gave quality to the intent which was exercised in the killing of the human being. The verb "to premeditate" means, according to Webster, "To think on and revolve in the mind beforehand." The very word, by itself, shows that: "Pre-meditate;" to meditate beforehand; to contrive. Webster gives it that way: "To contrive and design previously." The participial adjective "premeditated," which is the word used in the statute, in the definition of the crime, means "Previously considered or meditated; previously contrived, designed, or intended; willfully." I have already referred, your honor, to the language in the case of Shoemaker against she State, and with which I know your honor to be familiar,and I desire only to mention it now; that the law does not undertake to say, and the Court has no right to say, that any particular space of time is laid down by the law in which deliberation and premeditation may take place, because the law can not do it; the law can not do it. The will and the mind are impalpable things; as impalpable as air. The law can not, by a rule, say that the minds of any two of you will operate exactly alike in a certain given time, will go through the same mental operation, will go through the same reflections, and will, in a certain given amount of time, arrive at the same determination or conclusion. Each man is to be judged and considered by himself. Each man's mind, under all the circumstances which surround him at the time of the commission of the act with which he is charged, is to be judged by himself and measured by himself; not judged by another, or measured with another. As well might I say that you and Mr. Mosher (two of the jurors) would, under the same conditions and circumstances, and in the same moment of time, have reached the same mental conclusion, having performed the same mental operation. Who can say it? None but Almighty God. It does not dwell with, and is not one of the gifts of God to us. The Almighty has not invested man with the power to say that these acts of deliberation and premeditation may be the same in each one, and may be executed and performed in the same time by each man. These must exist or the crime of murder does not exist; it has no existence in law, it has no existence in reason, it has no existence in the nature of things and of human acts and transactions, at all, unless these two elements exist. In the old common law the intention to kill was not an element of the crime of murder; and therefore these two mental acts I speak of were applied to malice, which, under the construction the courts gave it, implied or included in itself the intention.

Now, as to the physical act. Usually, or often, in cases of homicide, the thing to be determined is whether or not the defendant *did* commit the physical act of killing, and, of course, then, as to the crime, it becomes a very important consideration for the jury to determine whether or not he be guilty of the physical act of killing. That you are not called upon to exer-

cise any trouble to ascertain here, because, by the statements by counsel in the opening here it is admitted that the cause of the man's death was a bullet fired from the pistol in the hands of the defendant in this case. You have, however, to determine whether or not there exist in this case those ingredients, which go to constitute and make up the crime with which this man is charged. There is no difference in the two counts in the indictment, except this: The first count charges murder in the first degree occasioned by the ball through the head; the second count charges murder in the first degree, and charges the fatal ball to have been the one that went through the body. It matters not. A man can not be convicted twice, and can not hang twice, if you find him guilty of murder in the first degree. If you find the facts to warrant you in the belief that all of these elements did exist as to either or both counts, he would be guilty of murder in the first degree.

Murder in the second degree differs from murder in the first degree simply in the absence of the two elements of deliberation and premeditation. It was thought by our law-makers that when a man cruelly and maliciously and with deliberate and premeditated design, takes the life of another, it shall be murder in the first degree, and that he shall suffer death; have denominated such an act murder in the first degree, and provided for it the punishment of death.

They have defined another and a different degree of homicide, which they call murder in the second degree, which includes the intention to kill, as in murder in the first degree, as an essential ingredient of the offense; but it is not coupled with deliberation and premeditation. If you find that intention to kill to have existed, by proof offered on the part of the State, or by a just inference drawn from the manner of the killing, as you may ascertain it from the proof, then comes, as antecedent to that, this all-important ingredient, not only in murder in the first degree, but murder in the second degree, the ingredient of malice.

Manslaughter, under our statute, has been said by our courts to be simply the manslaughter which existed at common law. It, however, is an absurdity to say so; because, in the case of Montgomery against the State, our Supreme Court has decided that manslaughter may exist where the intention to kill is present; and Judge Brinkerhoff, in Nichols against the State, has decided that manslaughter may exist and malice be present; and yet if both exist, of course it would be murder in the second degree. Now then, what manslaughter is a Philadelphia lawyer could hardly tell under the decisions of Ohio. They have endeavored to get at it with some degree of certainty, and it is, any killing which is not justifiable or excusable; any killing which does not amount to such a degree of homicide as either murder in the first or murder in the second degree. Malice may or may not be present in it, according to one of our decisions; and intention to kill may be present, or may not be present in it. If both are present, it then ceases to be manslaughter, and is the higher degree of homicide—murder in the second degree. If both are absent, it will still be manslaughter, and it may still be manslaughter if either be there and the other be absent. It is any killing not justifiable or excusable, which does not amount, by reason of its surrounding circumstances, to such a degree of criminal homicide as murder in the second degree or murder in the first degree, and may well be defined simply to be an unlawful killing of a human being; I believe, the very exact language of our statute now; leaving the two elements which constitute it, the unlawfulness and the physical act.

Now, I desire to go over these fundamental principles, gentlemen, and I hope you will bear with me, if you may think it tedious. They are all-important to be set before you and well fixed in your minds, as constituting these different degrees of homicide. For, while I claim to you, and have said to you, while I shall continue to do so, and shall so present this testimony, when I come to it, to you, as to show there is but one issue here,—

whether or not the defeneant is guilty of murder in the first degree, or not guilty, the duty of the Court, however, will be such that he will tell you that you may, if you see fit, and if you think the testimony warrants you in so doing, return a verdict of one of the other minor degrees of homicide, or even of assault and battery. It is necessary for me, then in making this claim that I seek to make, and which I seek to impress upon you, and will further seek to impress upon you, that this killing is murder in the first degree or nothing, to define to you what are these different degrees of homicide, and in proof of what I shall claim, that these minor degrees of homicide are not made out by the testimony, at all.

Now then, as to the distinguishing characteristics of murder. We have, as I have shown you, three degrees of criminal homicide under our statute, —Murder in the first and second degree and manslaughter. At the common law, from which we derive all our principles of criminal jurisprudence, there were but two degrees of criminal homicide,—murder, and manslaughter. Murder is defined by Blackstone—I may not quote it exactly—as "the killing by a reasonable being of another person, in the King's peace, willfully and of malice aforethought;" which "malice aforethought" has been construed by the courts, from time immemorial, to be what the courts of our State have construed to be, under our statute, in defining the offense, the mental acts of premeditation and deliberation. So that I may, during the course of the argument, use "malice aforethought," or "malice prepense," which were the terms used at common law, which include the existence and necessity for the existence of these two ingredients found in our statute, of deliberation and premeditation. But I say there was no "intent to kill" in the crime of murder at common law. The distinguishing characteristics of murder at common law were the existence of malice and free agency. And in this case you have no higher duty to perform, there is no one thing that you necessarily should take more pains to understand, and that perfectly, than what constitutes, in legal language, and in legal construction, and in legal application, malice. His Honor took the pains, in a remark to Judge Cole, to say that one of the old common law definitions our modern jurists had not at all been able to improve upon. I have simply taken from Justice Foster, as one of the greatest writers recognized among lawyers upon the subject of criminal law, a definition and explanation of malice, which has been adopted by all writers on criminal jurisprudence. "Malice, in this instance," he uses the words "in this instance" as applicable to homicide or murder; "malice, in this instance, meaneth that the fact," that is, the homicide, "hath been attended with such circumstances as are the ordinary symptoms of a wicked, depraved, malignant spirit." Now, gentlemen, let us pause for a moment right there. I now come to what I have said. This malice must exist in every murder in the first or second degree. Malice may exist, superadded to other elements, in the crime of manslaughter. Malice, then, is the all-essential, and the all-important legal ingredient that is to be made out by the State here beyond a reasonable doubt to you before either murder in the first or second degree can at all be established here before you. But, as I say, their whole claim in this case, as I shall show you after a while, from their hypothetical question, their whole theory of this case, is that this was murder in the first degree or nothing. I want you to consider, and consider carefully, what this element of malice is. Now then, it is when the testimony on the part of the State shows you that the killing was done under such circumstances, by such means, and in such a way, as indicate the ordinary symptoms—and by "symptoms" I don't want you to understand what Dr. Hall testified, "perverted structures," either;—of a wicked, depraved, malignant spirit. Pause right here, and, as this definition of the term "malice" sinks into your minds, survey Dan Giddings' life; look upon the picture of him that was presented here by those who have known him from childhood to manhood, and through the different phases of his career as a man, and say whether or

not there exists in that whole career one element, one fact, or one incident, from which you can collect or gather a belief that any act of his could be surrounded by such qualities as the "ordinary symptoms of a wicked, depraved, malignant spirit?" Tell me where, during the whole course of that career, you can trace in one particular of his life, in one circumstance that you have drawn from his history, the existence in him of a malignant, depraved, wanton, willful spirit? But let us quote further from the same author: "In the case of an appeal of death, which was anciently the ordinary method of prosecution, the term *malice* is not, as I remember, made use of as descriptive of the offense of murder in contradistinction to simple felonious homicide. The precedents charge, that the fact was done *nequiter* and *in felonia*, which fully taketh in the legal sense of the word *malice*. The words *per malitiam*," by malice, "and *malitiose*," maliciously, "our oldest writers do indeed frequently use in some cases; and they constantly mean an action flowing from a wicked and corrupt motive, a thing done *malo animo*," of a bad and a depraved mind, "*mala conscientia*," with a wicked heart and conscience, "as they express themselves."

Now, as you view this case, when you enter the jury-room, or as you sit here, let all the incidents of this man's life pass in panoramic view before your mind's eye, and tell me whether you see in them the evidences of a wicked or a depraved heart, or a depraved mind, or anything which would indicate a wicked or corrupt motive.

Following the same author: "The legislature hath likewise frequently used the terms 'malice' and 'maliciously' in the same general sense, as denoting" what? "As denoting a wicked, perverse, and incorrigible disposition. And I believe most, if not all, the cases which, in our books are ranged under the head of *implied malice*, will, if carefully adverted to, be found to turn upon this single point," now follow me again closely, "that the fact hath been attended with such circumstances as carry in them the plain indications of a heart regardless of social duty and fatally bent upon mischief."

Now, these circumstances which surrounded the party, and out of which you are to draw the intention, are not the circumstances merely attendant upon the fact; it is not merely the fact that he used a deadly weapon, and not merely the fact that a human being has been sacrificed; but the circumstances from which you are to draw these *indicia* of a depraved, corrupt, malignant spirit and heart are *all* the circumstances of the case. And for this reason, and as determining the character of the crime, and as determining its degree, this testimony of the good character of the defendant, the whole history of his life, was permitted to be put in evidence before you; for that reason, and also to determine the character of the crime, is the testimony as to the bad character of the deceased admissible in evidence; to show whether or not all the circumstances that surrounded its commission were such as furnished you indisputably the *indicia* of a bad, wicked, depraved heart and spirit, and an evil conscience.

Now then, let us see. And, about malice, I will say to the Court that the same rule which your Honor has recognized with reference to intent, that there is no presumption of law, that it exists; that from certain circumstances there is no presumption of law that the malice exists, but that the jury are permitted, by the law, to infer from the existence of certain circumstances that malice exists, but the law does not make any arbitrary presumption of malice. The State must prove malice. I have, in the course of defining the crime of murder in the second degree, gone over the question of manslaughter. It will be my duty, after a while, in the course of my argument, to go back to those elements of provocation which, at common law, were conceived to reduce the homicide, if criminal, from murder to manslaughter; for that which did reduce it was provocation; "sufficient provocation," to use the language of the law-writers. What that sufficient provocation is, under the rule which the courts lay down, it is your duty to

determine, from the evidence. And I am glad to have seen that the Court has deemed it his duty to charge you with reference to that, and in regard to cooling time, that that is a matter for the jury. It is the duty of the Court to determine what the law is, but it is the province of the jury to determine the degree of the crime, and as to whether or not cooling time had intervened; whether or not he had been theretofore aroused to passion by some wrong or provocation put upon him by another; whether or not that subsided in the meantime, whether it dwelt in the heart an hour or two days, is a question of fact, as much as the question whether you have five fingers is a question of fact, to be determined by the jury, it being their province to determine what are the facts in the case. Passing hastily over the matter of manslaughter and this cooling time recognized by the law, (to which I shall call your attention after a while), I want to return, now, to what I said in the outset I would do,—the discussion of this case from the testimony as shown by the State, itself.

Now let me ask of you, as far as you can, gentlemen, to discard from your considerations and from your mental operations, at this time the testimony that was produced here upon the part of the defendant. Let us look simply into this case as presented on the part of the State, and let us see whether or not what they claim—the crime of murder in the first degree—exists. They prove that on the 5th of August, Benjamin Wiltshire came into the saloon of Andrew Adler. They have not shown where he came from. Yes; as testimony that should have preceded that, they show that he had come down on a train which gets to this depot at about 12 o'clock, or shortly after; between 12 and 1. Mr. White testified that the train was somewhere about half an hour behind time, I think, and that it was in the neighborhood of one o'clock when Wiltshire got off the train and came up town. And they prove that he went into Adler's saloon; whether he went direct from the depot to Adler's saloon I don't know; I suppose so, and it is reasonably presumable, upon the testimony offered, if we take into consideration the time that the circumstances and testimony all show this act of homicide must have been committed, the time at which Adler fixes him at his saloon, and the time when he must have come to the depot on that train. That he went from the depot, then, to Adler's saloon. Now mark you, there are no inferences here against the prisoner. In discussing this question bear that in mind. He is surrounded by a panoply of presumed innocence before you. The law says to you, gentlemen of the jury, that he sits there innocent; the law says you must look upon him as innocent; that that is your duty, and your sworn duty, to look upon him as innocent, and hold him innocent, even at this time, and until the last moment, when the last word shall fall from the lips of his Honor in this case and you enter into your jury room. *That* he can not be deprived of. The law has surrounded him and his very existence with it as with a wall of marble, and he shall have that up to the very moment you enter that jury room to determine his fate then upon all the testimony that has been adduced before you. Now then, there is no inference here. You must not let your minds be drawn away by inferences in this case, except such as the Court will tell yeu are legally deducible, or as you have a right to draw from certain facts proven. Now then, no testimony on the part of the State, and I make that assertion boldly, shows—and the Prosecutor was wonderfully unfair, perhaps inadvertently, (because the argument of the Prosecutor, in the opening of this case, has been characterized with so much fairness that when I see an exception which looks disingenuous upon his part, *in this case*, I attribute it to inadvertance, and not to intention), in stating so to you here, in the outset, that this man Giddings lay around that depot looking for Wiltshire, and that he saw Wiltshire pass out and go up into Adler's saloon. Well now, Mr. Bitzer had no right to say that. Where, and upon what testimony is that based?

Mr. Bitzer.—I believe I stated, Mr. Sloane, that it was an inference.

Mr. Sloane.—Perhaps your intention was that. You stated it boldly. But I take your correction, that your intention was that it was an inference or claim you made upon the testimony. Why, what inference should be drawn upon this? What right has the Prosecutor, or anybody else? No more right than you, and certainly, in the performance of the solemn duty devolving upon you, you would not draw any inference or come to any conclusions that are not warranted by the testimony. There does not exist, however, one iota of tes imony upon which to base that assumption. Is that the way a man is to be tried who is placed by the grand jury at the foot of an indictment, charged with a crime like this? Is he to be tried, or is he to be judged upon inferences and assumptions for which there exists no basis of testimony at all? I ask each one of you here, where, in the whole field of this testimony, where in the whole range of it, is there one fact from which the inference is at all legitimately, or even remotely, deducible that Daniel Giddings lay around that depot looking, waiting, seeking for Benjamin Wiltshire and that he saw him as he passed from the depot and went to Adler's saloon? Do you know one such bit of testimony? Can you point to one iota of testimony in this case which furnishes the basis for that assumption? Can any of you? Then that must be entirely out of the way; then it must be discarded as one of the disingenuous arguments—that may be too hard; I will say, "inadvertent." But, as he says he did use it, and claims it a just inference, I will say that inferences are to drawn only from proven facts. When not so done, they are not inferences, they are not conclusions; they are *arbitrary suspicions.* And the law does not authorize you, gentlemen of the jury, to judge one of your fellowmen upon arbitrary suspicions which you may choose to harbor in your minds. Conclusions and inferences which may be acted upon are such as are drawn from testimony; from facts that are proven and exist in the case.

We will still take the testimony of the State, which shows next that Giddings entered Adler's saloon. Mr. Wiltshire was in there; he has not yet drunk any there. I am not even taking into consideration what the proof is of how he came from Washington, leaving that to another phase of this case. I want you to see what the prosecution have made out; what kind of a case they have made; whether or not the offense charged in their indictment, murder in the first degree, they have established at all by the testimony. And I say to you I am at a loss to conceive how a grand jury ever indicted him for that offense upon testimony which would not have been sufficient to have caused him to be held by a magistrate for murder in the first degree, unless by the stress brought to bear and the advice given by the legal adviser of the grand jury, that it should be murder in the first degree. I am at a loss to know how they found any such bill. But I ask you further to follow me through the testimony, simply that put in by the State at the outset. Mr. Wiltshire comes into that saloon and stands near the end of the counter looking at persons playing billiards. That is the testimony of Mr. Adler. He had not drunk anything up to that time. The first that is seen of Daniel Giddings, according to the testimony of the State, is that he stepped into that saloon; that he walked up to the bar; that he ordered a glass of beer; that the two men met and saw each other. I am not taking Giddings' testimony for it, but Adler's. That they spoke to each other, which first he don't know; that Giddings asked him to drink with him; that Wiltshire assented; that Giddings took a glass of beer, and Wiltshire took a small glass of whisky, a "gentleman drink," I believe was the language of Adler. That then they had some talk which he paid no attention to, and don't know what occurred, and that Wiltshire, being nearest the door, and I want you to bear that testimony in miud, because I want to show to you where this prosecution has not dealt honestly with this jury, and I will show you, after a while, that they have not dealt honestly with the witnesses for the State; and I will show you this that you

may judge of the honesty or dishonesty, the fairness or unfairness of that course. But that is neither here nor there. I have not come to that point of the discussion yet; I only want in passing to point it out to you. But that is one of the matters to which I shall desire to call your attention when I come to it, and I ask you to bear it in mind as I go along. Wiltshire stood nearest the door, or at that part of the bar between Giddings and the door. That is the testimony of Adler, but he don't know which said to go out, or whether anybody did; but, at any rate, they started out together, Wiltshire going out first, being nearest the door. Now, there is no evidence in that to show that there seemed to be ill-will. They seemed to be kind, seemed to be pleasant toward each other, and they drank together, and there seems to have been a clinking of glasses together, and a wishing of good luck, or good health, there at that time In that act do you see any ill-will? In that act do you see malice? In that act do you see any evidence of determination or desire to do wrong? This act can have no meaning of that kind unless you connect it with some future act, some future state of circumstance which shows that it had an ulterior meaning; which shows that it was, in some way, connected with the more essential act that afterward took place. As well might you say, if you were to happen to see any two gentlemen here clinking glasses and drinking together in any saloon or drinking place in this town, that one had evil designs upon the other; as well might you say that one was premeditating the death of the other, and that that act was indicative of determination to take his life. On such flimsy pretenses as that is the conviction of this man to be sought? On such flimsy ground as that is a jury of twelve men to be asked to sacrifice, not on the altar of justice, but on the altar of vengeance, another life? We know nothing of that conversation that occurred there, from the State.

But the State assumes here another inference without any basis of facts under heaven for the assumption at all. The State assumes that Giddings led Wiltshire down to the next stopping place; to use the language of the Prosecutor, he "toled" him down there. You remember the words; that he "toled" him down there. Now, gentlemen, was that fair? I will again say that it may, perhaps, have been an inadvertent remark upon the part of the Prosecutor. Was it fair to have drawn it—call it an inference if you will—to have drawn the inference that he had "toled" him down there, when, not only are there no facts presented by the State upon which to base such an assumption, or from which to draw such an inference, but the very facts which are proven afterward, by the State, *themselves* rebut and negative any such inference or assumption. And I want to call attention to that. Where are they next seen? The last seen of them, prior to their being at the saloon of Struble's, is going out of the door at Adler's, and with Wiltshire leading the way. Where are they next seen? Entering Struble's saloon. Who enters first? Now, we have the testimony of Noah Clark and the testimony of Frank Struble, the keeper of the saloon, himself, as to who entered first. If Giddings was toling him down there, why did not they prove that? Why, the language of their hypothetical case which I will call your attention to after a while, is that he took him into Struble's saloon to get him drunk. That was one of the hypotheses. Was there one witness on the stand who testified that the took him into Struble's saloon to get him drunk? Now, what right have men here, representing the State, to seek thus to impose upon the minds of twelve men who have the solemn duty to perform of making a true deliverance between the State of Ohio and the prisoner who may stand before them at the foot of an indictment? The State's own testimony showed the fact that their relations were still friendly, to all appearances; that Wiltshire led the way into that saloon; that Wiltshire walked up to the counter. Clark, the colored boy, testifies to that, Struble testifies to it; both agree. Neither have any interest at all in this matter. They both entered into that saloon, Wiltshire leading the way; Wiltshire called for the drinks, Mr. Clark thinks; he says he is not

certain about that. Struble, however, to whom the call was made, and who would know better than anybody else, he waiting on them, says that Wiltshire called for the drinks; asked for whisky himself, took a small drink, and the defendant asked for and took a glass of blackberry wine. That the testimony shows. The only difference between them about what occurred in there is this: Mr. Clark's recollection is that before Wiltshire took the whisky he smelled of the cheese and vomited. Mr. Struble's recollection is that he took his drink of liquor and then smelled of the Limberger cheese and it made him vomit. And you know that if a man is a good German, he thinks there is nothing like Limberger cheese, and he don't like to see it slandered; but if he is like most men in this world, then Limbergerger cheese will make him vomit quicker than a dose of lobelia. (Laughter.) But also at that time, as to which called for the drinks, the testimony of both Clark and Struble is that Wiltshire both called for and paid for the drinks. How is Dan Giddings getting Ben Wiltshire drunk and Wiltshire calling for the liquor and paying for it? After this vomiting Mr. Struble says that he said to him, "Here; you move now; you get out of here; that's enough of that;" and that Giddings then says to him, "Come on; you better get out of here." That is Struble's statement of what occurred there. Is there anything unnatural in that, in the whole of the occurrences there? In fact, Clark thinks—and I suppose the vomiting made the boy think so more than anything else—that Wiltshire was drunk, but he also thinks that Giddings was drunk; that both were under the influence of liquor at that time; one as much as the other. The young man may have concluded so from the fact that he vomited, and from the fact of their taking a drink of liquor. The boy, in his testimony, appears honest in his intention, but his judgment seems to be entirely at fault as to whether he was drunk or intoxicated at all. Now we have got them to this point. A short distance south was another street, New street, by which they could return to Paint street, and thence down across the railroad and across the bridge to the Massieville pike, to Massieville. That evidently was the objective point of both. It was the objective point, at least, of Daniel Giddings. Now, we have got no testimony of any talk about the best way, or anything of that kind. We don't know, from the testimony for the State, whether Dan Giddings was familiar with that territory or that portion of town, or not, or that he had ever been there before; but they do prove that Ben Wiltshire was, and that he had lived on a farm right near there, that he had lived in this community for a great many years; while Giddings had only lived down in the neighborhood of Massieville about four years; that Wiltshire was in the habit of lying around Chillicothe drunk. And Pickens, himself, testifies that Wiltshire worked on a farm right close to that very cornfield. Then *he* was no doubt perfectly familiar with that part of town, and familiar with the cornfield, and familiar with the lay of the land down there; but there is not one iota of testimony in this case tending to show that Daniel Giddings had any acquaintance with that part of town, or knew of any saloon in the neighborhood of that portion of town, or had ever visited any saloon in that neighborhood, or ever had been down there; or showing that he was ever in the neighborhood of that cornfield, or showing that he had any knowledge of the logs. But I will show you by the testimony of the State that Ben Wiltshire did know of the existence of those logs lying in the shady place; for the ground was all beaten down around them, showing that people were in the habit of being there in the shade; and does not Pickens say that the ground was beaten by feet? It won't be claimed on the part of the State that the ground beaten was so beaten by Ben Wiltshire and Giddings. That presupposes that that had been a loafing place for boys and men, who had beaten the ground down in front of the log. It is also in testimony by another witness on the part of the State, as well as Pickens, that those logs were both worn on the top, as if used to sit on. There is evidence of that there, and you gentlemen, when you

went down there, may have observed that; but it is sure, however, that that did appear there at the time, but considerable time has elapsed since this affair occurred, and the appearance they bear now might not be evidence as to the character they bore then.

Now, up to that time where do you trace one bit of ill-will? Where do you trace one evidence of malice? Where do you trace one evidence of a desire upon the part of Dan Giddings to do violence to Benjamin Wiltshire? Upon the other hand, gentlemen, does not that evidence, if it warrants one conclusion, warrant another? Is it not just as safe and proper, and just as legitimate and logical, to draw the inference from that portion of the testimony that Ben Wiltshire wanted to kill Dan Giddings as that Dan Giddings wanted to kill Ben Wiltshire? Will it not as well support the one hypothesis as the other? And of what avail is it to establish either one or the other? It can have no more effect for the establishment of the one than for the establishment of the other.

Well, they go on down and cross the railroad at New street, which, I am told, runs right along there by the railroad. By whom are they next seen? By the witness Joseph Seeberger. Where does he see them? His eye first falls on them up about a frame house which he described as standing "this side," that is, the side next to Seeberger, from the railroad; standing beyond the railroad and New street; so that, from that, when he first saw them they had gotten across the railroad and gotten across New street, and were going on down Mulberry street. At and for some time after the time he first saw them, my recollection is, and you will correct me if I am mistaker, they were, to all appearances, walking together. When they came down and passed him he was standing between the house that he says was a distance of about 85 feet from the door of the slaughterhouse, and the door of the slaughterhouse, on the pavement. When they passed him they were out in the middle of the road, at a distance of about ten feet from him, as he thinks, and then Ben Wiltshire was leading the way; that Wiltshire went through the gap in the fence, or over the fence, whichever way he did go, first, and they went down the hill to the creek together; that when they got there he saw Giddings, the defendant throw a rail across this little slough. I don't know what its condition was when you were down there the other day, but certainly you know, or those of you who live here, at least, that at that time there was hardly water enough there to sail a boy's paper boat. There may have been more at the time you went down; I don't know anything about that, for I did not go down that evening, myself; but Seeberger claims that Dan Giddings threw a rail over. And now, I am not going to claim that Seeberger was a very intelligent observer of what occurred there, or made a very intelligent statement, or that he saw, from where he stood, what he testifies. The boy was dull and stupid, but I have no doubt he was endeavoring, in his way, to tell the truth about the transaction. Now let us stop there. There is no testimony of Wiltshire putting a pole across, or anything of that kind. It is, and always has seemed to me, doubtful whether or not, standing the way Seeberger says he stood, from my knowledge of the ground down there, he could have seen to the point where they crossed Honey creek. The declivity is, if I recollect, going down there after you leave the street, very steep. But that is mere opinion from my recollection of it; and you have all gone down there and looked over it, and you went down there for the purpose of forming your opinion as to the credibility of witnesses stating certain facts, aided by your observation of the points and of men. That he did see them cross it I am inclined to think, but I am of the opinion that he could not standing where he did; but I think that he must have moved from the position which he occupied at first. But I am not saying he did not see them go across. Now, take it up to that time, is there anything in the testimony from which the inference as claimed by the prosecution can be drawn, that he was "toling him down there?" Wiltshire was the man who was in the

lead when they passed Joe Seeberger and when they passed down that little hill and through the brushwood and came to Honey Creek he was still in the lead, but there they both came up together, of course. Dan Giddings picked up a piece of rail, or piece of wood, whatever it was, and threw it across the creek, but where is the testimony to show that he assisted him in crossing. I want you to examine carefully all the testimony for the State as to this. Joseph Seeberger is the only one who saw them cross, and Pickens saw them after they had crossed and had entered the cornfield. Where is there any testimony that Dan Giddings assisted the drunken man Wiltshire across Honey creek? I know that is here in this hypothetical question which they put to the medical witnesses, that Daniel Giddings, the defendant, "assisted Benjamin Wiltshire, who was in an intoxicated condition, across Honey creek;" but where is there a bit of testimony to that effect? There is none; and Counsel for the prosecution must believe that you gentlemen are fools, to suppose, when you have heard all the testimony, that you are to be influenced by any such statement or declaration by men seeking blood here, injected into their hypothetical question.

Now, up to that moment of time what was there in it, what is there in it, gentlemen, to lead you to form any conclusion or deduce any inference that there was any evil intent or motive upon the part of one or the other? Go back in the testimony, now, and again follow them from Alder's to Struble's, and from Struble's to Honey creek, and I assert that if the testimony is susceptible of proving ill-will and formed determination of one against the other, it is also susceptible and capable of proving ill-will of the other against the one. Now, that is where I am coming. I want you to bear that in mind, that I ask you to follow me, and adopt what I say here only in so far as it comports and accords with your recollection of the testimony, and your knowledge of this matter, without any arbitrary inference. But if the reasons shall agree with the facts, and with the presumptions which are clearly deducible from facts proven in this case, and which you believe to be the facts, then it is your duty to accept them, not because I say it, but because they exist here in the very nature and history of the case.

Now then, the assumption of the State is, that this is a case of murder in the first degree; that the commission of the act had its source in a wicked and malignant heart and formed determination to take the life of Wiltshire, with motives either of revenge, or of hatred, having all the horrible elements of murder, such as characterize the act of the highwayman, who waylays and kills for money, or the Thug who garrotes in the city streets at night; or the man who has long harbored in his breast a desire to kill, and has laid in wait, and has seduced and enticed his victim into a place where the crime may be unseen, and where for some time the evidences leading to its detection may be lost or impaired. We naturally always associate with our notions of murder, ideas blood-curdling and horrible. The devilish plot long brooded on; every plan laid; the instruments of death made ready; the victim enticed into a place of fancied security; a secret place where no human eye can see the fatal stroke, and where no human ear can hear the sound of shot, or struggle, or the chance cry of fear or agony of the doomed one; every step taken to elude detection; every circumstance arranged to start a false scent, if the crime shall be discovered, and the sleuth-hounds of the law seek to start the murderer from his concealment. Are any of these features here present? Let us see.

Now mark you, Giddings left Struble's saloon in company with Wiltshire, and he knew Struble and Clark would remember that fact if Wiltshire were soon thereafter found dead. There was one thing occurred there which would tend to impress it on their minds, and that was the fact of Wiltshire's taking sick and vomiting in the saloon. Giddings knew that Joseph Seeberger saw them pass together, as the testimony for the State shows; and Pickens saw them pass within ten steps of him,—about thirty feet—after they crossed Honey creek, and thought of speaking to them, and he said

Wiltshire kind of turned around and stopped, like as if he was going to speak to him, because they both saw him. Here was a man who saw them and who knew one of them, and who would have seen anything unusual about them. I suppose it was unusual for two men to cross that field, with no highway, no thoroughfare from one point to another. Two men crossing a cornfield, and the one of them was deliberately leading the other to that spot, knowing that he was within a short distance of one man who had just seen them together, and within 200 feet of another one who had also seen them together, leading him there to deliberately murder him. Why, gentlemen, in the name of reason, men's acts that you are called upon to look at and judge are to be judged by you in the light of your own reason and observation, and what that reason and observation has taught you to be the common springs of action with most men. You are not to believe that which is out of the common current of men's actions, because claimed by the State, unless they can properly support that claim by overwhelming evidence, when it is entirely contrary to your known observation and experiences of men. Look at it: Right after these two men had passed two other men who had seen them, and they knew it, this one should deliberately walk up and shoot down the other man sitting upon the log, and kill him, he himself living within a few miles of Chillicothe and of the place where the deed was done, and he then going out on to the public thoroughfare, the pike, walking past dwelling houses, and past people who knew him, meeting Mrs. LeBeau, walking right down the pike that he had traversed time and again during the period that he had lived there, taking no steps beforehand, using no means beforehand to conceal the act of killing and coolly murder! It is monstrous to suppose it! Are you to set aside, at the instance and request of the State, and banish as for naught, everything that your own experience and observation in life has taught you as being the springs to action, common to nearly all men? Why, that very fact itself, gentlemen, if the proposition of the State be true, that he deliberately, in the face of those people, toled Benjamin Wiltshire down to this place and shot him, furnishes the strongest evidence that the man was crazy. Why, there can be no belief that this was the case.

The gentlemen seek to derive importance for this case by charging in this indictment "murder in the first degree." For that to exist you must ascertain from the testimony of the State, beyond a reasonable doubt, that the killing—for it is admitted that Daniel Giddings killed Benjamin Wiltshire—was done with deliberate and premeditated malice; done with a deliberate and premeditated design to cause the death of the deceased. Now, then, where have they shown it? Does the killing itself prove it? Why, no. The farthest the courts have ever gone is to say that the killing being proven, the presumption of murder in the second degree arises; but I say that is no law; I say that is a violation of every principle of jurisprudence and every principle of human right; a violation of the fundamental principle of jurisprudence that a man is surrounded with the presumption of his innocence until a jury has sat upon his case. I say, the furthest the courts have ever gone is to say that the presumption of the law is of murder in the second degree, from the mere fact of killing. What, in God Almighty's name, have they proven here, upon the part of the State, any more or further than simply that Daniel Giddings killed Benjamin Wiltshire. Give us any one of those facts which preceded it, any one of those circumstances which surrounded it, or attended the commission of it, *one* of them that establishes at all the fact of any premeditation or deliberation, but the very contrary, until they come to one statement. Now, what is that one statement? And when I come to that, I want to call attention to the instruction which has been asked of the Court, and I am satisfied he will give.

Now then, it is in proof that on the 20th day of July, being Thursday, the defendant, Daniel Giddings, was in Chillicothe; that he went to the office of 'Squire Mick; that he stated to 'Squire Mick that his wife had gone off with

Ben Wiltshire, to Washington Court House, and that she had taken with her certain goods which did not belong to her—goods of the children; that he didn't care for or want her, but he wanted a warrant for her arrest, to get the goods, thinking that to be the means, and was informed by 'Squire Mick that that would not lie, but that a writ of replevin would, and that he would have to go to Washington Court House to institute that suit in replevin. In the course of that conversation he states, in the presence of Mr. Smart, that this man had been committing adultery with his wife, he had found out, here in Chillicothe, before their going away to Washington Court House, and that he had come to Chillicothe on one or two occasions with the intention to kill Wiltshire, but after coming here, and reflecting upon what might be the condition of his children if he did, that they might not only be left motherless and dishonored in the world, but, being taken hold of, as he would, by the strong arm of the law, they would hav been left fatherless, wholly orphans; that that impressed itself upon his mind, and he determined to refrain from doing violence. He had done that; and there is no true-hearted man on this jury, there is no man who loves his wife, there is no man who treasures the memory of his mother, there is no man upon that jury who recognizes the holy ties of fatherhood, who does not believe him justified in killing the seducer of his wife, the destroyer of his home when he did, and I do not believe there is a man of you who would not have regarded him as justified even if he had put his first intentions to kill him into execution. And the same conversation occurs afterward with Mr. Smart, in which he tells him again that he came here on one or two occasions with the intentien of killing Wiltshire who, he believed, had enticed his wife away from him and his house up here, and had brought her almost to the level of a common prostitute in this town; but afterwards, as he said, he thought better of it, and, on account of his children, concluded not to do so; as I said to you in the outset, sinking the husband in the father, he sought to bury the disgrace and shame and dishonor that had come to his own self. He was willing to let that sting continue to rankle in his heart, remembering that he had another and higher duty to perform by remaining as the protector and guardian of those whom he had aided in bringing into this world; remembering that, as their father, he was, under God's injunction, required to take care of and protect them. He restrained the natural instincts, the natural burning desire to do justice—*for it would have been doing justice, and God's justice*—upon the man who had done this great wrong to him, he repressed that in the interest of his duties as a citizen and to his family, and of the great duties as father. These threats, then, that they prove, are coupled, and coupled necessarily, with another fact. They have proved no pistol in his possession at that time at all. I don't know. I think Dan Giddings had a pistol. He ought to have had one, or a knife, or a butcher's cleaver, or an ax, there with him, so that he might have cut the brute into a thousand pieces. But they have not proven that. They simply prove that a month before he got a pistol from Lyman Blair and returned it in a few days. Where is there any testimony that he retained that pistol, or had it in his possession during all of this month after. They never find that pistol in his possession again until he goes to Lyman Blair and gets it the evening before he started for Washington Court House. Just about two weeks after this time that he had the talk with 'Squire Mick and with George Smart, if you recollect, he got a pistol from Lyman Blair on Thursday evening before he went to Washington, which was after his wife came home, after she had been in Fayette county for two weeks, and the conversation occurred in which she informed him of Wiltshire's threats against him; and he got it, as he says, to protect himself when he and his wife went to Washington after the goods. But there is no proof that he came up here at any time prepared to execute the threat he made. This repression and restraining of whatever intention he may have had of killing, showed that he had abandoned that idea; and it also showed—and you have got to take all the circumstances

together—that in this man's breast the love of children transcended the instinct to transgress the law of God and man. His regard for his duties as a citizen and father overcame the natural desire which arose within him, as he recollected the great injury done him by Benjamin Wiltshire, to wreak vengeance upon this man, a just vengeance though it might have been.

Now then, I want to show this fact, for the reason that nothing whatever which precedes this killing, that the State has shown you, indicates to you any design or anything from which you have any right legitimately or justly to draw a conclusion of any premeditated or deliberate design, out of malice, to take the life of this deceased, Benjamin Wiltshire. Not at all. Then what follows necessarily? If the antecedent fact, if the circumstances of that day immediately preceding the commission of the homicide, gentlemen, don't lead your minds indisputably, necessarily—for it must do that; it must do it, without a doubt, or a "shadow of turning;" there must be no doubt in your minds—to the belief that this was murder in the first degree; that he enticed him down there to kill him; that he started from Adler's, or from Struble's intending to kill him, then what follows? I answer: *That something must have taken place at the logs to produce the killing.*

It is in testimony that he had come, at one time, to a determination to take vengeance on Benjamin Wiltshire, but also that that determination had been abandoned. Is one part of the testimony to be taken and another not? Is the State to assume that one part of the testimony of George Smart and 'Squire Mick, that at one time he had formed the intention to kill, is to be taken, and that the other portion of the same testimony, that he had abandoned that intention, is to be ignored? That you are to regard the one and disregard the other? By what blood-rule of evidence is the State here to ask you to believe only one part of what Giddings told George Smart and 'Squire Mick, and reject the other? If the declaration is sufficient to make you believe he did intend to kill, it is also sufficient to make you believe that he had abandoned that intent, for the reasons he stated to 'Squire Mick and Mr. Smart. And then again I repeat this leads necessarily to what? That something must have occurred down there which caused him to do it! Doesn't it? If it be true that those antecedent circumstances, prior to the homicide, furnish you no evidence, no reasonable and no satisfactory evidence that he went down there for the purpose of doing violence to Wiltshire, then your minds are *necessarily* led to the conclusion that something must have occurred there to produce the act. Now, bear it in mind as we go along: If the State has not satisfied you beyond a reasonable doubt that the circumstances antecedent to the killing show a premiditated design to take the life of the deceased, that he took him down there, or, to use the Prosecutor's language, "toled him down there" in the bottom for the purpose of killing him, if they do not show that, they show the very reverse of that—the want of premeditation and design—don't they? The conclususion follows, as necessarily as night follows day, that something must have occurred down there where no eye but God's saw them and their acts; that something must have occurred there which produced an act of the character of this act. The act itself is no indication of a desire or intent or purpose to commit it, on the part of a man of the character of which we have shown this man to be. You can not put this killing, then, upon the previous malice, if you find that a provocation has intervened between the previous malice and the commission of the act. And for that reason I have asked this instruction to be given you by his Honor:

"If you find from the evidence that the defendant bore malice against the deceased antecedent to the killing, but also find that a fresh provocation occurred immediately preceding the killing, there is no presumption of law that the killing was done by reason of such antecedent malice or grudge; and to enable you to attribute the act to such old grudge or antecedent malice, the State must satisfy you beyond a reasonable doubt of the fact that the killing was upon such antecedent malice, and not because of the fresh provocation."

Now, I say to you with all confidence that the Court will give you that. I have asked of him a list of instructions, and he will indicate to you, when he comes to charge you, which of them he has given. But I say, now, with all confidence, that the judge will give this in his charge.

Now suppose this the whole case—and it is all the case for the State, except the *post mortem* examination and the position of the wounds that the Doctors testified to and there was nothing else? And when I say "nothing else," I mean for you not to take into consideration the former wrong that Giddings said had been done him by Wiltshire, going off with his wife; simply to take into consideration the threat they have proven, in connection with the case on the part of the State, and I ask, under the eye of God, under the sanction of your oath, under the sanction of what you believe to be your simple duty to this man and to the State and to yourselves and to community, could you say that this homicide was *not* the result of a provocation there at the time? Would you say, in the exercise of your judgment, I mean in the exercises of your judgment as jurors, if that had been all the case presented to you, and I was arguing say, it in behalf of the defendant upon that whole case, could you and would you say that this testimony on the part of the State proved to you beyond a reasonable doubt, that of deliberate and premeditated malice and intention to kill, Daniel Giddings did do that act which it is provon and admitted he did do? Would you, upon that state of facts, say he was guilty of murder in the first degree as I have defined it to you, and as the Court will afterwards define it to you? Can you say, upon that testimony for the State that he was guilty of the highest crime known, to the law, for which punishment is death? Upon the testimony, I say, recognizing your duty, recognizing that you could not find him guilty unless every element of that crime be proven to be present beyond a reasonable doubt, I say, upon that evidence, and upon your oaths and consciences, can you lay your hands upon your hearts and pronounce the verdict of "guilty of murder in the first degree," upon the case as made out by the State? Oh, in my own consciousness of right here, in my own firm conviction that I have stated this testimony fairly and fully, and that it is all the State can claim for it, I feel satisfied that your answer would be "No."

SELF-DEFENSE.

I propose now, gentlemen, to argue this case in the very line that my colleague has so well and ably argued. I don't feel that it is incumbent upon me, for your conviction of the truth of our claim, that I should argue it again, but, for fear that there might be something left unsaid by him, or that I might be able to present it in some clearer light, or to some mind that perhaps had not grasped before the principles upon which we ask this acquittal here, my belief in my necessary duty to my client would prevent me from not argueing fully as I think I may, and can, this case to you.

I have said to you, when a man is found dead, and it is either admitted or proven that a certain other one, the defendant in the case, has done that killing, the law, by some queer operation of legal argumentation that I never have been able to understand or to justify holds the killing to be at least murder in the second degree; but I am not here to kick against the pricks; I am here simply to take the law as I find it, making such application of it to these facts as I can; but I never have been able to understand why, if there is a presumption of innocence surrounding the defendant from the time of his indictment until proven guilty, the burden of proof should ever shift for him to prove anything in his defense. It, nevertheless, has been laid down that when that killing is justified or sought to be excused, the burden of showing such justification or excuse devolves upon the defendant.

Now then, following the order of argument adopted by my colleague, I am going to first urge to you the defense we first interposed, that of killing in self-defense, known as justifiable homicide, on the ground of self-defense. Here the law of the State of Ohio is well defined, thank God, at last. For a long time, to use the language of Judge Reed, "The Courts continued to hobble on the crutches of precedent," and the stream of blood that flowed from the judgment halls, of the Molochs of the common law and of the King's bench, had borne down through the years, into our jurisprudence certain doctrines of human right and an application of human laws which were brutal; but which an advancing civilization has stricken down, and established clearer, higher, better, nobler, purer principles by which men's actions are to be judged At common law, even though pursuing your usual and "lawful occasions," going about the usual performance of your own business, if you were assaulted, assaulted fiercely by some man, you still had to "flee to the wall;" you had to run as far as you could, and you had to turn tail, like a dog. and play coward. This was the rule which for a long time guided all the courts, but which has been forever swept away. In our day, unless a man provokes a quarrel which ends in an assault upon him, in which assault he kills, he has only to prove that great bodily harm or loss of life threatened him. And why is this so? Human law never conferred on Daniel Giddings, never conferred on any one of you, and never conferred on me, the right of self-defense; self-preservation; and human law never having conferred it upon us, can not take it from us. The law of of self-defense is founded in nature. God Almighty indued us with the right, clothed us with the right to take the life of another who seeks to inflict upon us either great bodily harm or loss of life. Nor must that be actually our situation. The rule goes even further and says that it need only be apparent danger. If the slayer, at the time he inflicts the fatal wound, reasonably and honestly believed that he was in danger, in imminent danger of either loss of life or of suffering great bodily harm from the deceased, he is justified in killing even though he did so intentionally.

So far I have sought to show you that the fact that the testimony of the State had failed to establish, not only beyond a reasonable doubt, but by any reasonable preponderance of the evidence, the crime of murder in the first degree. The homicide is admitted—the killing, in other words. The physical act is admitted to have been done by the defendant in this case, and, under the law, it devolves upon him to establish to you, not beyond a reasonable doubt, but by a fair preponderance of the evidence, the grounds upon which he excuses or justifies that homicide. These are two: The first, that it was done in self-defense, in the necessary defense of himself from imminent danger, real or apprehended, of suffering loss of life or great bodidy harm from the deceased.

Now then, I had come to that point in my argument where I asked you if the reflection did not necessarily force itself upon your minds, did not clearly and irresistibly force itself upon your minds that something must have occurred at those logs, at the scene of the homicide, to bring it about; that nothing in the case whatever, up to that point, indicated a previous intention upon Giddings' part to do the act of violence which was there done; and that the presumption arises from all those facts, and from the want of evidence tending to establish the formed intention to do the killing, fairly and legitimately, and necessarily arises, that something must have occurred there which induced or provoked the killing. We say that there was a state of circumstances that caused the defendant to kill in the necessary defense of his person. And that necessity need not be real An honest belief of the necessity upon the part of the defendant is the foundation of the right of self-defense at law. Now then, as I said to you incidentally before, so now I say to you carefully, there are but two witnesses to that transaction, Daniel Giddings and Benjamin Wiltshire. But one lived, and he is the defendant in this case. The law has made him a competent witness, and he has testified before you.

Now then, is that testimony to be believed? He sits here at the foot of an indictment; he sits here under the dark shadow of an alleged crime; he sits here with his fate in your hands; he sits here impelled by the strongest of impelling motives that ever man had, to commit purjury, it is true, and these facts, with his great, his paramount interest in this case, the fact that that testimony is given for his own exculpation, that he here seeks acquittal, on these grounds, at your hands, from the terrible charge, the awful charge of the crime of murder in the first degree is to be considered by you and weighed by you in considering and weighing his testimony. We have no desire to ask you to take that out of the summing up that you shall give to his testimony to ascertain what weight you shall allow it. But there are also other considerations which are in testimony here, and which you should bear in mind and weigh as reflecting on the credibility of his testimony. Our defense of self-defense rests not alone upon his testimony. While it is an important and a large factor in the proof of that defense of self-defense, there is other testimony in this case which amply warrants you in believing that the killing was done in self-defense. I shall carefully call your attention to it in course of what I shall have to say. Daniel Giddings goes on this witness-stand; he testifies to you under this cloud that I have mentioned, under this great temptation that you must necessarily believe he or any other man would have to testify unfairly for the purpose of his own exculpation and salvation of his own life. No man ever had more powerful motives; none hardly ever will. *Shall he be believed?* You will take into consideration the whole of the circumstances in this case reflecting upon the truth of his story. You will take into consideration what manner of man he is; you will look at the whole history of his past life and see whether or not you can trace in any one phase of it, any one moment of time during that whole life, any evidence that he was or is likely to be a willful and corrupt perjurer; and if during that whole time you have found him bearing a character for integrity, for peace and gentleness, and as a law-abiding and a good citizen, if during that time there has been found no man to lay any blame at the door of Daniel Giddings, that should weigh all-powerfully with you in ascertaining whether or not his testimony in this particular is to be believed. But not only that corroboration surrounds it, gentlemen, but there was about him here in the surroundings a corroboration to which I have already called your attention which makes it almost an inevitable fact to your minds that he must have killed there under an apparent necessity for doing so. And therefore, taking the former good character of the man, the life that he has led as it has already been portrayed here by witnesses, and witnesses who have known him from childhood up to the present time, and it should weigh heavily in favor of his credibility. Oh, what is a good character worth? What is a life of uprightness and integrity such as this man has been shown to have lived, worth, if it avails him not in the hour of his direst need, if it aids him not in a time like this, to furnish to you a corroboration of his testimony, or at least a strong probability that he tells the truth, even though under such a charge or even though, as in this case, he is surrounded by the strong temptation and motive to palter with his oath? What inducement is held out to one to lead a worthy life if *his* former character, if *his* uprightness among men, as shown here furnish *him* no defense against this suspicion, this strong suspicion against his word arising from the terrible and powerful motive he has to tell an untruth here?

Now, it is urged that the expression used to Ben Wiltshire, by Giddings in Adler's saloon, of "Ben I want to have a talk with you," as well as his request to him at the logs, as testified by Giddings, is wholly unnatural, and hence incredible. Bear in mind that now I am discussing *all* the testimony in the case, not confining myself to the case of the State. The proof of these expressions, as I have already said, depends on the testimony of the defendant himself. If you find from all the circumstances of the case, as developed by the testimony, that just such, or substantially such expressions

were likely to have been used by Giddings, that likelihood furnishes such corroboration of his testimony, that he should be believed. In his saying to him at Adler's "Ben, I want to have a talk with you," and the conversation and occurrence at the logs, preceding the shooting, strained, unnatural, unlikely. Let us see. "Ben I want to have a talk with you?" Was this not the natural outcome of what had happened? Had he not abandoned all purpose to do violence? And had he not done so impelled by the force of paternal love? For these poor children he was content to relinquish his desire to avenge himself by the death of the defiler of his bed, content to bear his shame in silence and in sorrow. Nay, more, he had taken *her* back and forgiven the past. Aye! She who had sinned against him as only a wife can sin against a husband, whether in the repentance brought about by that letter, or what, I care not, had come and thrown herself at his feet and begged of him forgiveness, and he had forgiven. And I care not what may be said, I have yet to learn, either of God or of man, that such forgiveness is wrong. I know, that the world, for over eighteen centuries, has known the grandest words that ever rung down the corridors of time were those that fell from the dying Savior on the cross, "Father, forgive them, for they know not what they do." And when He turned, and in that grand, Godly language of forgiveness, spoke the assurance to the dying malefactor at his side, "This day shalt thou be with me in Paradise." If there be one distinguishing feature which furnishes a grand prerogative to the teachings of Christ over that of the moral philosophers and other religious teachers of earth, it is that of forgiveness of those who wronged us. And, whom did he forgive? *Whom did he forgive?* She who had joined hand in hand with him in their early and hopeful youth to wage the battle of life together; she who was the mother of those little ones, who came to their nest; she who had helped him make home a place of peace and joy. For, gentlemen, this poor man had once known the quiet joys of home, had once tasted their sweetness. He had once experienced to the full, what Byron has, in one of his most beautiful passages, so well described:

'Tis sweet to hear the honest watch-dog's bark
Bay deep-mouthed welcome as we draw near home!
'Tis sweet to know there is an eye will mark
Our coming, and grow brighter when we come.

How sad and gloomy his sensations returning at night from his search for her during those days when doubt was torturing him, before she had left for Fayette County.

"He entered in his house—his home no more,
For without hearts there is no home; and felt
The solitude of passing his own door
Without a welcome."

He went, as he told Leonard Berg, night after night, crushed and broken-hearted to meet his three little children as they ran, clasping his knees, crying in agony, crying for their absent mother. She was gone as a wife; her character as a wife was lost to him. But the reflection that she was the mother of those who had sprung from his loins, of those children now without that mother's tenderness and care, clambering around his knees with tears in their eyes, begging and pleading for that mother, made him exercise the divine virtue of forgiveness and receive her back. Is it hard for us to then believe, after all this agony, after all these troubles, after this sorrow and shame, after receiving the erring wife and mother back, that he hoped, hoped as any man might, if there was still left in Benjamin Wiltshire's breast one spark of manhood, if it could still be said that he retained even the image of his Maker, if in his nature there remained one instinct common to our humanity, that if he should go and say to him that he had bowed his head with humiliation, that he had forgiven the great wrong that he had done him, on account of his helpless and motherless and sorrowing children that he had taken her back into his home and into his bos-

om, and beg of him no further to exercise the malign influence that he had over that wife's life, beg of him, *beg of him*, I say, to leave her alone, and leave his domestic peace and happiness undisturbed, he would yield without hesitation to such entreaty? Oh! gentlemen, it is easy for us to understand how this man who had repressed his natural instincts before to take revenge upon Benjamin Wiltshire and kill could do this! Why, gentlemen, they would have you believe here in this case—you will recollect the testimony to which I refer—they would have you believe that this man, Daniel Giddings, in the darkness of night, in the loneliness of far-off woods, in the deep shade of brushwood, and under the timber, when no man's eye was upon him, when even his victim, Benjamin Wiltshire, and his paramour, his wife, were not cognizant of his presence within ten feet of them, while they lay in the condition that has been described, could then, at such time, refrain from killing the destroyer of his home; yes! to stand and gaze on his very shame, stand in the very presence of the perpetration of the outrage and not kill the adulterer, and yet that it is impossible for him to have met him in the saloon, after his wife had returned to his home, after he had forgiven her and she had made the promise of reformation, after she had resumed her duties as mother, to take care of his children, that it was impossible, after all this, for him to meet this man Wiltshire, and go with him and ask him to desist from the wrong. And there is the same consistency in all their reasoning to this jury, and upon which they ask this man's conviction. And they say that the man Dan Giddings had not spirit enough in his soul, that he had not music enough in his soul to have used those expressions he says he did there at the logs; that, after his wife had returned to her home under the circumstances she had, he could not possibly come and beseech that man to interfere no more with his domestic peace and the happiness and welfare of his children. They would have you believe that. Take the two theories of the case, and examine and see which is the correct one. In their hypothetical case, you will recollect, they leave out all testimony as to his saying to Wiltshire that he wanted to have a talk with him, and Wiltshire going down there and what he did say then and there; that is entirely left out of their hypothetical question.

Well now, then, don't all these facts and circumstances, his receiving his wife back even after he had applied for a divorce, his sending his letter in which there is clearly a covert request for her to come back, indicate something? *Why*, if he had cast her away forever, *why*, if he had banished her from his heart and his mind, *why*, if he had determined that the separation should be final and she was never more to cross the threshold of his house and assume the duties of wife and mother again, why did he plead with her, in the closing part of that letter, to write to him, she the adulteress, she who had defiled his bed and dishonored his name? How could such a man as they would have you believe him to be, even, under the circumstances, after having filed his petition for divorce, plead with this woman who had brought such trouble and disgrace and shame to him and his, to write him a line, in the language that appears in the very closing sentences of that letter?

Now then, if his story that he tells here from the very outset in this case is corroborated by his good character and his previous life; the improbability that a man who had borne such would commit perjury, against the probability that he would commit it under the great temptation that he has here; if you find his story corroborated by other testimony in this case of persons who are necessarily linked with it, but who could have had no part or parcel in producing or bringing it about, then I say his story must be believed. If his statement here is powerfully corroborated by its naturalness, by its probability, that must aid you in the belief that he tells you a truthful story. If you find that the other testimony not only corroborates it but renders it probable that just such a thing did happen as he declares did, then he is to be

believed in this case; because this must have something upon which it is based, from necessity, as the two statements are so closely intertwined.

Well, they say, if these men had wanted to talk together about his wife they would not have walked clear down the street there, they would not have walked clear across that field and he have said nothing to him about it. Oh, gentlemen, let us see. Let us see whether it is improbable; or let us see if it comports with our knowledge of human nature. To all of us, at one time or other in life, doubtless there has been a time when we were called upon to impart some dread information to another, or to take some important step which required the assent of another, and whose assent we wished to obtain, we have approached it with extreme reluctance, may be with fear and trembling. And reluctantly did Daniel Giddings enter upon this task. He hoped, *he hoped* that Benjamin Wiltshire was not dead to all shame. He hoped that Benjamin Wiltshire had not lost all manly instincts and manly sentiments. He hoped that far down in his heart there dwelt some wish that his happiness might be restored to him; and that the moral depravity which insisted upon a degradation of his name and the violation of his home and the destruction of his happiness should not be eternal in Ben Wiltshire's breast. He went from that saloon to those logs. He went there, his mind all filled with doubts and fears,—

"Those phantom shapes which haunt and blight the earth,"—

reluctant to approach the question which was his all; on the answer to which perchance depended the knowledge whether or not in the future his paths were to be paths of peace: whether or not, in the future, his domestic happiness was to be undisturbed, or whether or not this man was to put into execution, or attempt to put into execution, the threats he had made at Washington Court House, to take this woman again away from him, deprive his children again of a mother, deprive him of a wife, and place dishonor on his brow. So, there is nothing unnatural in that. And their conversation, perhaps, was broken, as he states. Now, let us see where he is confirmed. Pickens, you will recollect, testifies that when they passed him Wiltshire turned and looked towards him like as if he was going to speak to him. Dan says that Wiltshire says "That is Sam" somebody, not recognizing Pickens, and halted for a moment as if he was going to speak to him. That is when Dan thinks, if he was any ahead at all, that he got ahead. Now, Pickens does not say that Giddings led the way. He says that one was a little ahead of the other at the time he looked upon them. He had to turn, mark you, and plow back, slowly, as a man would plow, and when he had turned they had passed him and were within a few steps of him and about 100 yards from the log. He had then to plow back a distance of about 200 yards. He had first to turn his horse and then plow back slowly, perhaps not as fast as, I don't think as fast as men would walk across a field if they were not plowing. And he got clear to the other end of the row, 200 yards, before he heard the shot. Now, here were two other men, not following a plow, but walking across there. Now let us see where the corroboration comes in. This man Seeberger testified. Of course he puts the time on it also. He says that after they passed Honey Creek, he thought, from the point that he first saw them, after he went to this hole in the door of the slaughter-house, where the board in the door was off, —because it is not to be supposed that he saw them all the time from the time they crossed Honey Creek, because there was a space there when Joseph Seeberger did not see them. His last recollection of seeing them is just as they crossed Honey creek. He then went into the slaughter house. Of course, then, during the time that he was going into the slaughter house and until he came to the point where he could look through the door, they must have passed over a certain portion of ground,—he thought that Giddings was a little ahead; that as they walked along, when they got to some distance from the logs, Benjamin Wiltshire turned off in a catercornered direction to the logs, that Giddings went on a few steps on down and then cut across, going to where Wiltshire had sat down on the logs. Now, up to this time there is a clear corroboration

of Daniel Giddings, isn't there? Now, let us see. I want to call your attention to some other points. If there be any necessary link wanting in the chain of evidence with which the State seeks to establish their claim that Daniel Giddings premeditatedly and of deliberate malice, toled this man down there to his death, if there be any necessary and legitimate link entirely wanting, their case fails. Now then, when Daniel Giddings was placed upon the stand he told you he knew nothing about that part of the city; he did not know Struble's saloon being down there at all. By the way, in their hypothetical case they call the street between Alder's saloon and Struble's saloon an unfrequented part of the city. I will call your attention to that when I reach the other phase of this case. Now, Seeberger gives the direction in which they started off when they were going directly across the field, which, if they had kept straight south, would have taken them past and to the east of those bushes and logs, right to the creek. Now, who turned off? and what would it indicate? *Did Dan Giddings turn off?* No; it was Ben Wiltshire. Is there one thing in all that journey down to the logs that will afford you the shadow of a belief that Giddings toled him down there? And Giddings' testimony on this point is confirmed by that of Seeberger. It was Ben Wiltshire who proposed that they should go down there in the shade to talk. It was Ben Wiltshire who had traveled that ground over many times. It was Ben Wiltshire who found the logs. Ben Wiltshire was the man who knew those logs were there; and Ben Wiltshire was the man who first went to them, and sat down. Is not that so? Now, did he take him to the logs to kill him? The testimony all goes to show that Dan Giddings didn't know of the logs. Seeberger testifies that Wiltshire struck off from the line in which they were going, and went to those logs. And that is confirmation of the fact stronger than "proof of holy writ," that what Dan Giddings testified to is true, that Ben Wiltshire led the way there, and not Dan Giddings. He starts and goes over to this log. They are within a few feet of each other; the defendant is about two feet and a half from Wiltshire,—I think Mr. Kemmerle testified,—and I believe he stated he measured it,—that the distance was about two feet and a half between the large log and small log. Dan says he went up. Just about the time he got up—Seeberger, you remember, says he was about fifteen feet behind Wiltshire at the time Wiltshire sat on the log, which would make about five steps which Giddings would have to walk to reach the log. The testimony of Giddings is, that Wiltshire threw his hat down, bent forward, and said, "Now, by God, say what you have got to say to me." And he says that he may have had his foot on the front log; he is not certain. But Wiltshire sitting on the near log, with only two feet and a half between them, they were very close together, and either one could touch the other with the hand, almost, could not they? Their proximity is as great as you can well conceive without their being right against each other. Then the words were spoken.

Now let us see if these words depend, if what occurs between these two men depends for its proof upon the probability, or improbability of Daniel Giddings' story alone. I grant you his testimony should be received with great caution; but if other facts and circumstances in evidence in this case show that what Daniel Giddings says was said, was *likely* to have been said then that is the best corroboration of it.

Now let us see what was said: "Ben, you know Mary has come home now; she has asked my forgiveness, and promises reformation, promises to do right, to love me as a husband, and to do her duty as a mother, and to do wrong no more, and she won't if you leave her alone. I have forgiven her; but you know you have great influence over her. If you will leave her alone she will keep her promise, and I beg of you, for God's sake, for my sake, and my children's sake, to stay away from my home; don't interfere further with my wife."

Gentlemen, what must have been the character of the man upon whom that appeal had no effect, upon whose heart it produced no impression, and

from whose lips in response thereto came the brutal and inhuman answer which did?

Now there is no question of the probability that Dan Giddings could have put the question that he did to that man, and it simply stated what was true, didn't it? And there can be no question about the probability of the question. But the main thing for you to determine the probability of is whether or not it, Wiltshire's answer and his subsequent action, as stated by Giddings did occur. Now let us see where I say that corroboration is: A month before, *a month before*, while this man Wiltshire had enticed Dan Giddings' wife away, when this brute—for I say his whole actions show him to have been that, having very little of manly characteristics in him at all, seemingly utterly morally depraved, I don't care who may have testified about him, the facts in this case show it, I don't care who may say that as far as they saw him picking raspberries, or doing work on the farm, he bore a character for peace and gentleness. I don't care who may come in here and swear they did not hear anything against him. That may be all true. But we have it in evidence that he carried a slungshot, and that he used it on an unarmed and inoffensive man, that he came from behind the stove and struck him with it as he was going out of the grocery, having his hand on the door-knob, and saying nothing to him. And we have it in testimony also that he was a brutal, inhuman, violent and vicious man; that he followed that unarmed man and struck him when he was going away with his back toward him; and as far as the testimony shows, it was done without provocation therefor. He steps up behind him from behind the stove and strikes him with a billy and knocks him down on the floor. That fact shows the character of the man against all the testimony of what people did not see. And it will be observed that nearly all the witnesses who testified as to Ben Wiltshire's character being that of a peaceable quiet man, were his relatives either by marriage or blood. To be sure they called some witnesses such as the old man Brown, and his wife, and the good young minister, Rev. William Seabrook. Mr. and Mrs. Brown had been there a long time, but the minister only a short time, and reallly knew nothing about Wiltshire's reputation, and had only a slight knowledge of him personally, as he said, knowing him only about as he did most of the people there who were not members of his church. These witnesses did not testify as to what had been his violent acts before, but only whether anybody had said anything before about him. But we contend that his acts of violence show best what his character was in that respect.

Now, let us see. Not content with having dishonored this man, not content with having done him one of the most grievous wrongs he possibly could have done him, not content with having robbed his home of a mother, not content of having rifled that home of the dearest gift those children had, their dear—if she was weak and erring—mother, not content with having defiled this man's bed, not content with having stamped disgrace and shame upon his brow, *he brutally boasts of it.* We find him a month before this, calling at that livery stable yard in Massieville when William Kelley said to him, "You better let that woman alone or you will get shot," and he replied, "By God, I am on top now." Yes, he had supplanted Daniel Giddings in the affections of his wife; he had even obtained such an unholy power over that woman that he could take her away from her home and from her children and from her holiest ties and duties on earth; and then he *boasts of that*, and claims to be "*on top now*," and "*if Dan Giddings fools with me, I will shoot him.*" Oh, yes, he *was* on top! He had violated this poor man's rights, he had dishonored and disgraced him, and he had broken up his home, he had brought misery and shame and dishonor and humiliation and sorrow to him and his family, and yet he *boasts* of it, and says that if that man *dare* defend his own rights, and if that man *dare* attempts to protect the rights of his children and his wife, whom he has taken a solemn oath to cherish and protect, and for the discharge of which obligation he is account-

able not only to man but to God, *he will shoot him like a dog!* And that is the delectable gentleman for whose life this man's life is to be sacrificed; upon whose dishonored and unworthy grave this man is to be offered a sacrifice, at your hands, and upon whose unholy remains this man's life-blood must be sprinkled as a peace-offering, and by your verdict! God forbid that, in this age, and in this land where individual liberty is cherished, where home is prized, where manly rights and manly duties are regarded, this thing should be wrought out, and at the hands of any twelve men in Ross County; that this man's life should be offered a sacrifice to the manes of any such brute as was Ben Wiltshire; that the old law of an eye for an eye, and a tooth for a tooth, must still hold sway; that no city of refuge can be found at the hands of twelve of Ross County's citizens from the vengeance of the man-slayer!

Had we no other testimony but that one threat, gentlemen, the knowledge of which was conveyed to him, does it not furnish to your mind, does it not furnish to any reasonable thinking mind evidence of the probability that the very answer Dan Giddings says was made to him, Ben Wiltshire did make? Was it not in keeping with his character? Was it not in keeping with what he said to Kelley? Was it not in keeping with what he had said to them all? Had not he acted the part of the bold adulterer? Had not he taken away another man's wife, even taking her to the house of his father and finally taking her to and remaining for several days at the house of his brother-in-law, Scott Finley's, they harboring there this man's wife that he had stolen from her own home and her own children for the purpose of an infamous adultery, and they knew it. Now I say, gentlemen, without going any further to show you corroboration of that fact, that the answer that Dan Giddings swears that man made to him there, and the action that he took, as Dan Giddings testifies to it, is corroborated by its probability. I say, that all the history of this case, the bold manner of Ben Wiltshire's action, and this threat that he had made to Mr. Kelley clearly, gentlemen, furnishes strong evidence of the likelihood of his making the very answer, and acting as Dan Giddings says he did. But you are not confined to that corroboration alone. There is testimony that shows not only a strong probability, but almost proves that what Dan Giddings says he said there in answer to his pleading was what he in reality did say. We have him, in the first place, going to Mr. Dewitt, in Fayette County, where he had taken Giddings' wife, where he was at work, and saying to him that he wanted his wages, and he tells Mr. DeWitt, that he wants his money, that he is going home. The question was put here by me. Q. "Well, what did he say, if anything, with reference to Mrs. Giddings or Mr. Giddings? A. Well, he then up and said that if he come in contact with Giddings, very likely they would have it up and down. Q. Did he say anything with reference to Mrs. Giddings? A. Not to me." Why did he expect that if he met Giddings they would have it up and down? He knew, according to the claim of the State, that Daniel Giddings knew he had dishonored him and defiled his bed sometime before they ever went to Washington Court House. Was the mere elopement to Washington Court House all that created in Dan Giddings' mind a desire to do him violence? Was that all that would oprate to bring about altercation between the two men? Was that all? Why no. Why did he say to Mr. DeWitt that he expected that they would have it up and down? Simply because he was going down there for the very purpose of interfering further with his domestic relations; simply because this woman whom he had stolen away had gone back to her duty, and her home, and her husband, and had been received, and he was going down there to again perpetrate a far greater wrong than he had before; to again take her away. I say the testimony of Hamer DeWitt shows that fact and goes to corroborate the truth of Dan Giddings' story as to the answer made to him by this man Wiltshire. Mark you, this all occurs just before he starts away from where he had engaged for work during the whole harvest, and had been promised

a special amount of money for staying through the whole harvest. Now, in Anderson DeWitt's testimony, not stopping to read it all over, the following occurs: "Well, he said he wanted some money, and I had promised him if he would stay through the harvest I would give him an extra fee of two dollars. Said I, 'I must retain these two dollars; I will give that to you according to my promise.' There was two dollars more of his wages coming to him. He said, 'Give it to me, I will be back Monday.'" You will remember the testimony of the coroner, and of one or two of the policemen, that on his person was found a return ticket to Washington Court House; that he had bought a ticket down here, having a return coupon attached. "I whispered to him, and, said I 'You are going for trouble.'" You see, they had found out that he had brought this woman up there, and found out that he had run off with another man's wife, and he had passed her off as his own, and Mr. DeWitt had found out that Daniel Giddings's wife had gone home to him, and Wiltshire knew that, because they had come up there and gone to the house and got the trunk; and when they came home that evening from his work he discovered the fact that that woman who had been gone in this way for two weeks, had resumed her home duties. So you can not base Wiltshire's coming to Chillicothe, on that day, upon the assumption that he came for the purpose of seeing his mother, or for the purpose of attending to some other business. Because when he came home Friday night from his work, he found that Mrs. Giddings had gone home with her husband, and that they had become reconciled. Possibly there had been rumors in that family that she was not a pure woman before this. But now his victim was once more restored to her proper place in life, and had become again identified with the tender ties that centered around that fireside and become a mother to those children who so greatly needed the care of a mother. The very fact of that reconciliation, and of this state of affairs which had been brought about, the wife gone back to her husband, and received there, stirred up all the brutal elements of that man's nature, and he determined to go down, as he did go there next day, for the purpose of taking that wife away again. Oh tell me, tell me if there exists in this or any civilized land any rule, or principle of law, or justice that will prevent a man from intervening for the protection of his family, and if need be, from killing the man who comes with the declared purpose to take his wife away from him, and to destroy his household, and repeat that which he had done, and which had brought such great unhappiness, sorrow, and disgrace?

"I whispered to him, and, said I, 'You are going for trouble.' Said he, 'I have got to have that woman.'" Do you say, then, that what I have said, is not a legitimate conclusion to be drawn from all that is here proven? "I have got to have that woman, and I will have her here Monday; I will be at your house. If I don't, I will get away with that man, whether I fetch her or not."

Who testifies to this; Dan Giddings? No, sir; some of the best men in Fayette County. One of the largest and best farmers up there, in that community, testifies that he said he must have that woman; "I am going down to take her away from that man; I will be here Monday with her, but whether I get her or not, I will get away with that man." Not content with the desire to come down and again deprive that man of a housewife, and those children of a mother, and again render desolate, that home, again shatter on his humble hearthstone, his household gods until they lie broken all around him, and he left standing amid the wreck; not content with that determination to take her back again and commit that great wrong, he even threatens that whether he gets her or not, he will get away with Dan Giddings. Now, what is that indicative of? Why, that talk joined to those antecedent facts occurring on that day immediately before the killing, starting with Adler's saloon—which it is claimed by the Prosecutor show premeditation and malice on Giddings' show a greater probability part that Benjamin Wilt-

shire "toled" Dan Giddings down there to *kill him*, than that Dan Giddings did Benjamin Wiltshire. Now is not that so? Considering all the probabilities, and considering that one set of circumstances hinges necessarily upon another, and attaches itself to another, does not this testimony show *far more* clearly, and *far more* forcibly, and irrevocably, the correctness of the conclusion that Ben Wiltshire took that man down there to be able unseen, to do violence upon him, rather than that Dan Giddings took him there to be unseen, and to do violence upon Ben Wiltshire? But are we left alone to that? I am discussing the question of the probability of Ben Wiltshire doing, and saying what Dan Giddings says he did. Nothing in human affairs, hardly, is susceptible of mathematical demonstration. All that jurors can arrive at, all that human testimony will produce, at the best is moral certitude; all our judgments and conclusions upon which we act are in the main, made up from probabilities; conclusions drawn from the conjunction of one fact or circumstance with another. These facts, and these threats show conclusively that it was extremely probable, almost certain, that Ben Wiltshire would say just what Dan Giddings says he said.

What does he say he is coming down here for? To take this woman away again, and if he don't take her, to kill him. Didn't he say to Dan Giddings, "I have got as much right to her as you have, and I have come to take her away with me, and will do it, or kill you, or shoot you?" What was he saying to Dan Giddings? What does Dan Giddings testify that he said to him, but simply what he had said he would do when he left Washington Court House? I think his coming back here was for the purpose of putting into effect, putting into execution, his threat. Was he prepared to do it? Let us go further and see.

You will recall that when he first went to Washington he went to the house kept by a man by the name of Smith, and passed this woman off as his wife. Well, I see this thing in Mr. DeWitt's testimony--yes, I forgot; here is another potent fact; Mr. DeWitt testifies, "I will be back Monday; I will get away with that man whether I fetch her or not. *He can't have her.*" That is, Giddings can't have her. "I advised him to stop right there, and go somewhere else. He said, 'Just let me alone, and give me the money;" and I then walked up to the office and got some money and paid him.

Now Mr. Smith, the hotel keeper, where he put up first when they went there, testified to this: "Q. By Mr. Sloane:—On the morning of the 5th of August, the day on which Wiltshire was killed, did you see Wiltshire, and have any talk with him? A. Yes sir. Q. Please state what it was? A. He came up between eight and nine o'clock, I won't say positive; well, it was from seven to nine, and I expect it was between eight and nine, I don't know exactly about that, but about that time, and took breakfast again. He says, 'Mr. Smith, I suppose you know I lied about that women being my wife?' I said, 'Yes, I found that out.' 'Well,' he says, 'Now I am going back after her again'." Isn't that just what he told Dan Giddings? "I have come down here to take her away with me again, and, by God, I will do it if I have to kill you." Mr. Smith testifies further, that Wiltshire said to him, "I allow to whip him anyhow. He don't treat her well, (or,) don't provide for her well', either one, I won't say exactly the language. I told him it was none of his business; it was for his and her folks; he better keep away; he will get shot, or might get killed, fooling around that way. 'Says he, 'My hide will hold as many bullets as anybody's hide will, and I am prepared to put them in.' That is all I know of it."

Then, in the cross-examination, Colonel Gilmore asked: "The expression was, that his, Wiltshire's hide would hold as many bulletts? A. Yes sir. Q. And that he was prepared to have them put in, or, to put them in? A. No, that he was prepared to put them in. That was just the exact language." He was prepared to put them in! Was that so? Gentlemen, he came down here for some purpose, didn't he? Has the State shown any other? Have they attempted to show any other? Was it two or three weeks after this

woman came back home, and assumed her natural, and proper functions? No, it was within a day or two afterwards. She came home on Wednesday, and he comes down on Saturday, and the very next day after they had been up there to bring her goods away, the next day after she had assumed the duties in her husband's household, after she had undertaken to again be a wife to him, and had undertaken to again be a mother to those children, and had undertaken to take up again, the broken thread of her existence, and endeavor, perhaps, in the future, to live down the dishonor of her wrong doings. Oh, my God! Forgiveness! Is a wife no more than a mere thing in the world, who, because perchance she may have gone wrong in this act, must be cast forth into the common whirlpool of prostitution? Must she be left to be swallowed up by fate, and borne down, down, down in the sink-hole of iniquity, as so many unfortunate women have been, as if her sin were past all forgiveness! No, fiend that he was, his heart on fire from hell, with every bitter, burning passion aflame, and his human nature rendered brutal, he had come to again exert his baneful influence over this wife whom he had taken from this man once before, this woman whom he had robbed of her virtue, this woman whom he had taken away from her children, robbing them of the protection that she had given as mother; he had come back, after this man's life had resumed something, at least of its old tenor, something of the quiet and peace that he might expect from the return to his fireside of the mother of his children, even if he could never look upon her as his wife. This brute was stung by the thought that happiness, or if not happiness, at least that peace had been restored to the bosom of this man's family and, perhaps, in his own bosom, and it had prompted him to come down here and finish, if he could, his work of evil, and complete his long chapter of wrong to this man by not only of depriving him of his wife again, not only of pressing dishonor upon his brow again, not only of rendering motherless these children again, but of rendering them fatherless also, by taking away his life, to gratify his unholy passions and desires.

Now, gentleman, can you say, *can you say*, can you let the gentleman who will close this case for the prosecution, impress you with the belief that Daniel Giddings is not to be believed in his story of the actions and words of Benjamin Wiltshire at the moment Dan Giddings fired this shot, simply because he is defendant in this case, when you see all these elements of probability, this corroboration of Dan Gidding's testimony, which surround him? Can you say it is not true? Or do you say it *is?* Was the doing as he says Ben Wiltshire did and said, *other* than what he had just before *threatened* to say or do? That he had *come down on that very day, threatening* to say, and do? For, mark you, but six hours or more had passed since the threat had passed his lips. *He came down for no other purpose; he had no other purpose in view.*

By the way, the prosecutor, in his opening, seemed to proceed upon the hypothesis that adultery acts as a justification of homicide. I think it ought to be the law; I think it ought to be made so by statute; and I know pretty well that jurors in this country will make it so anyhow, upon some just pretext, or other. But he spoke of the killing of Key by Sickles. I don't know whether he meant to say that General Sickles was justified in killing Philip Barton Key, under the circumstances that he did or not. I see a marked parallel between the two cases. Philip Barton Key, was District Attorney for the District of Columbia, and Daniel Sickles was then a member of Congress from New York. And let me say, gentlemen, because of the fact that Daniel Sickles stood high in the councils of his country, and that he, perhaps, was well off in this world's goods, that he stood more boldly out in the eyes of men, and was surrounded by greater social privileges and distinctions, let it not be said in a court of justice under our free institutions, for God Almighty's sake, that those facts which justified him in killing the seducer of his wife, the destroyer of his household peace, shall not surround, and protect, and justify this poor man, even though he walks the humblest

paths of life, and wears the rags of poverty. Let it not be said that there is truth in the saying,

> "Plate sin with gold, and the strong lance of justice harmless breaks.
> Clothe it in rags, a pigmy straw may pierce it."

Let not your verdict here be another record of any claim of that kind, that they who are poor, and perhaps friendless, who are not upon the pinnacle of fame, who do not stand high in the eyes of men, and are not surrounded by many of the social advantages of life, but are poor, and walk its humble paths, are not to be protected in their marital rights, and that the love of wife, and the honor of self are not to be protected by their hand where the law does not sufficiently protect them. As I said before, on another occasion, so again I say now, he feels, in his humble position, no less keenly than Dan Sickles felt.

> "The poor beetle which we tread upon
> In corporal sufferance feels a pang as great
> As when a giant dies."

There are many seem to think there was justification for the killing by Daniel Sickles because it was virtually in the act of adultery; that he saw this man in the act of enticing his wife away to the adulterous bed. You will remember, that Key had hired a house in one of the low quarters of the city of Washington, where this woman was wont to tramp through mud and slime to the bed of their adultery; that he was in the habit of enticing her away by passing by the monument in the square in front of Daniel Sickles' house, and slightly waving his handkerchief, before the windows. On the day of the killing, Sunday, Key passed Sickles' house and waved his handkerchief, the usual signal for an assignation. Sickles had learned, previously, by the confession of his wife, of the adulterous relations Key sustained with his wife, and therefore knew what the handkerchief-waving signified. He immediately rushed down stairs, and started out the door, was stopped by some of his friends who sought to induce him to remain in the house. He broke from them ran out, and across the intervening square, rushed up to Key and exclaimed: "Key, you scoundrel, you have dishonored my home; you must die!" He then drew a pistol from his overcoat pocket and fired at Key, the ball striking him in the groin. Key then grappled with Sickles, but they soon became separated and Key ran. Sickles followed, fired the second shot which passed through the body near the heart, fired again, the ball striking near the second wound, and Key fell. Sickles then ceased firing and went back to his house, and shortly afterwards delivered himself up to the proper authorities. This, in brief, is a history of the Sickles killing.

Now, let us see where the parallel between the two cases exists. Wiltshire had been in the habit of enticing this wife away to his father's and Finley's for adultery. When does this man shoot the adulterer? When he makes the threat that he is going to take his wife away from him, even if he has to take his life, and the man makes a motion with his hand as if to put into execution that threat. Tell me where is the difference? The one seeking to entice the wife from her home for the purpose of adultery; the other attempting to accomplish the same object by force. He had come down from Washington Court House with the determination to do it, even at the expense of taking this man's life.

Now, thus far, in my discussion of the matter of self-defence I have confined myself chiefly to those facts developed in the case which we call corroborative testimony of the defendant, as to what took place at the log. There were very many corroborations of that testimony which, during the course of my argument I may think to call attention to. Now, however, I desire to call your attention to the legal principles as established by the Supreme Court of Ohio with reference to the right of self-defence, asking you to bear in mind, in the first instance, what I have already stated relative to self-defence as one founded in nature, given us of God, and not conferred

by human laws, and incapable of being taken away from us by human laws; a principle imbedded, by Nature, not only in man, but which permeates the whole animal creation. In the words of Mrs. Bailey:

"The smallest worm, being trodden on, will turn;
And doves will peck in safeguard of their brood."

I have also stated to you how limited the right of self-defence had been by the ancient common law, and how that advancing civilization had very much modified those limitations and extended the legal right. There are two predicaments of facts to consider, or from which the jury may determine the right of a man to take the life of another in defense of his own person. The Court will state these to you in his general charge, I doubt not, fully. If I seek a quarrel with another, if I bring on an altercation with you, I being the first assailant originally bringing on the difficulty, so that you, in the height of passion excited by the provocation which I extend to you, make an assault upon me, then I am required by the law to flee; to flee to an apparent place of safety, at least, even though *then*, I may, if the danger is clearly evident of loss of life, take the life of the assailant; but my duty is, to retreat from the conflict that I have brought on myself with you, to retire as far as absolute safety, or apparent safety of myself will permit. I am not invested in the outset with the right of self-defense, then, by the law, because I am the original aggressor, and have brought the difficulty on myself under which I claim the necessity for taking human life. But if I have not brought that difficulty on myself, if I have not provoked the altercation in which I claim the necessity arose, then I am not required, under the law of Ohio, to flee at all; I am not required to act upon real danger; the danger may not be real at all, it may only be apparent. I have requested his Honor to give you, in special charge, certain instructions which I deem, embody the law of self-defense in this State. And by past experience with his Honor upon this matter of self-defense, having had occasion to defend several cases before him, I feel sure he will give you in charge, in this language, these special instructions which I have prayed for:

"If the defendant, Giddings, at the time he fired the shot, or shots which are mentioned in the indictment, did honestly believe he was in imminent danger of loss of life or of suffering great bodily harm from the deceased, Benjamin Wiltshire, and if he had at the time no other means of averting the said danger, or honestly believed that he had not, than, shooting as it is alleged he did shoot, he was in law justified in so shooting, even though he shot with the intent then and thereby to take the life of Benjamin Wiltshire."

That, I say to you, I feel confident the Court will charge you. Now then, you can see very clearly from that statement of law that the defendant himself is to be the judge of the imminence of that danger. You are not, in other words, as jurors, to substitute yourselves for the defendant and determine what you might have done under the same circumstances He is to be the judge of the necessity, in his own belief, and its reasonableness to him, not to you, under all the apparent circumstances which surrounded the killing. The law, when that is the case, is embodied in a subsequent instruction which I have prayed for, and which I am also sure the Court will give you in charge. It is as follows:

"As to the danger mentioned in the preceding instruction," the one I have just read to you, "and the necessity of the shooting mentioned therein, the defendant, under the law, was himself required and permitted to judge; nobody else *could* judge for him; but the law did not require him to judge *infallibly*, nor as you, in the same circumstances, might have judged. The law only requires him to judge *honestly*. And in such case the law does not, with nicety and severity, judge of his judgment, nor require of *you* to so judge of it. The law does not measure nicely, the degree of force which may be employed by a person situated, as in the preceding instruction, it is supposed the defendant may have been; and if, in the situation supposed in the said instruction, the defendant employed more force than was strictly necessary, or resorted to means which may not have been strictly necessary, he is not responsible for so doing, unless such force, or such means were

so disproportionate to the requirements of the occasion, as to show *wantonness*, or *revenge*, or a *malicious* purpose to injure the deceased. So, too, the law does not measure and compare *nicely* the respective fighting skill and physical abilities of the parties, nor does it require *you* to do so. If the disparity was such as that the defendant *might* honestly have believed, and *did*, in fact, honestly believe, that he could not, except by the use of the means he employed, avert the said danger, or arrest or stop the said personal abuse, the law justifies him in the employment of such means."

I also stated to you that the danger need not be real, but only apparent. As, for instance, you see a man who you believe has enmity towards you, rushing suddenly down the street with a pistol in his hand, and you kill him, and he may be smaller than you, you may have been able to crush him down with one blow of your arm, but you draw a pistol, or strike him with a club and kill him, or run a knife into him and kill him, although you find his pistol was not loaded, you are justified. The law does not require you to wait until you hear the report of that pistol, or see the flash of its fire; it does not require you to wait, before you take the defense of yourself into your own hands, to ascertain whether or not he has in his hands a deadly weapon; the law permits you to act upon appearances and to kill before you shall stand off and wait to see whether or not the danger is real. The danger need not be real. It is sufficient if it was only apparent, and the defendant honestly believed it was real, and the shot was fired, and the person killed in the belief that he could only avert by shooting as he did. It is of course, to be presupposed that he was a man of ordinary firmness, and the indications were such as would lead a man of ordinary firmness to believe that it was real; but this man, according to the previous instruction, is to be judged from what he is, what you find him, from the evidence, to have been morally, mentally, physically, with his nervous condition, at the time, not as you, sitting here, in the exercise of calm judgment, reviewing the facts that have gone by, not under the excitement of that moment as that man was, not as you deem you might have done under the circumstances; but whether or not it was apparently real to him; whether or not he honestly believed that he was in danger of either loss of life, or suffering great bodily harm. Look at him physically, morally, mentally, as he was as a man, surrounded by all the circumstances that surrounded him at that time. By that, is he to be judged?

Now apply these principles to this case. Take the fact that there had been communicated to him, a threat that this man proposed to kill him. Take into consideration the words that fell from Ben Wiltshire's lip that have been proven, with the accompanying act, and deny if you can that Giddings did not have good, yea, abundant reason to apprehend loss of life or bodily harm.

Now I am content, at this point, to leave this question of self-defense, under these charges that I say the Court will give you. I don't think—and I speak calmly and deliberately—I don't think there can be any reasoning, or reasonable man upon this jury but would have acted just as Daniel Giddings did in the same situation, and surrounded by the same circumstances—the wrong already done, the fact that he had been almost cowed by the bold effrontery of this man, the fact that threats had been communicated to him, and the additional fact that this man had come down from Washington Court House that morning with the express purpose of committing an outrage upon his rights, and upon the rights of humanity, and of the community, and that he coupled this threat to it, that in the execution of his purpose, that in the effecting of the object for which he came here, to take away this man's wife and these children's mother, if necessary to enable him to succeed he would "get away with Giddings," he would take his life, and that he was prepared to put as many bullets in as anybody.

It will be argued to you, however, by the able gentleman who will close this argument upon the part of the State, to whom there is no reply, and whose statements and whose arguments, if they be overdrawn, or if untruly

stated,—and when I say "untruly," I don't mean to be understood as saying he would willfully and deliberately do so, but that, in the heat of argument, he may, as we all may, improperly and unduly overstate some of the testimony,—can not be corrected by us, that there was no apparent danger because there was no real danger; that the testimony does not disclose that Benjamin Wiltshire was armed. Well, let us see about that. What is the inference I draw? for it is an inference only of value as being legitimately supported by the testimony. I draw the inference, then, that Ben Wiltshire *was* armed; and I propose to show to you and state to you why I so believe. You will recollect, in the first place, that Wiltshire's corpse was first seen by Mr. Pickens, who looked at it for a moment, and went away. You will recollect, from the testimony of Dr Denig and others, that shortly afterwards as these men were around that place, they were surrounded by other persons who came there, the usual motley crowd which assembles on such occasions. You will recollect that the hip pockets were not examined,—the very place where a man would be likely to carry a pistol,—by anyone who examined the body. Dr. Denig stated to you that they could not get at the hip pockets in the way the man was lying. Now may he not have drawn his pistol, and being shot before he could use it, may he not, by an involuntary muscular motion, thrown it out in that mass of drift and corn-stocks, where it might be concealed for years, or have even dropped it where it could be seen, and where it may have been seen and picked up by some of those persons down there, and no report made of that fact. The cupidity of some one might very easily tempt to concealment of the discovery. But I believe that I am correct in the claim that he had a pistol, because we have the testimony of Mr. Smith that he, himself, said that he was prepared to put bullets in. Was that an unmeaning statement? He was warned that he was in danger from Dan Giddings; he was told by these men that he was going for trouble and going perhaps to death, and he himself said that he cared not for that; his hide would hold as many bullets as anybody's, and he was prepared to put them in as fast. What was that preparation? How could he put bullets in with anything but a pistol? And yet he stated to Smith that he was prepared to do it, a man who has no interest in this case, no interest in mis-stating the language of the deceased, at all. And another thing, leaving that hypothesis for the time: He was surrounded by persons there, as I stated before. The proper officers, together with five men, carried him diagonally across that cornfield to the crossing. I don't suppose they carried him face downward; I don't know. They carried him in some way. How easy for that pistol to drop from that hip pocket, probably being pulled out a portion of the way, in his efforts which are described by the defendant. And another thing: They did not have his hip pockets examined at the depot. We don't find them examined by any of the men who carried that body across that cornfield. And the next place we find him is, laid out in the house of Scott Finley, his brother-in-law, and surrounded by his relatives. How strong the temptation here for them to examine and take from the body of that man and secrete any evidence that he was prepared to do violence! I say to you that the right of this man to kill, and our defense of self-defense is complete without proving he was armed, does not rest upon the fact that there was real danger. Whether real danger existed or not, or whether Ben Wiltshire was armed or not, he had a right to act upon appearances, and kill. He was not required by the law to stand and wait to see whether Wiltshire did draw out a pistol. *His* death might have been the consequence if he had.

Another thing: If he was in the habit we have shown him to have been in, of carrying concealed weapons, such as a slungshot, for instance, and of using it in the cowardly and assassin-like manner we have proved he did on an unoffending man at one time, which fact was known to Giddings perhaps, then there was greater reason for apprehension of danger on Giddings' part, and greater probability that Wiltshire was then armed.

But there is other evidence which, if we could have had it, would proba-

ably bear on the question of whether he carried concealed weapons or not; because a pistol hung where the hip pocket is would be apt to wear a hole or two in that portion of his pantaloons, or give evidence of some kind or other that weapons were carried there. I am unable to understand, I am at a loss to understand,—it may be an inadvertance upon the part of these gentlemen, but in all the cases of homicide that I have ever tried, and I have tried several, this is the first in which the clothes that were on the body of the deceased, at the time he was killed, which would give *indicia* of where the ball struck, which would show whether or not powder-burn was upon them, for the purpose of ascertaining the closeness of the two parties, were withheld. All of these evidences are usually before the jury, and they have a right to them, that they may draw such conclusions as they choose from them, and ascertain from them anything they can. I recollect that in the Link case—and his Honor will remember the incident which occurred,—through an oversight upon the part of us for the defendant, after all the clothes were introduced in testimony, (there the extent of the bleeding was a matter of some importance, and reflected upon certain phases of the case which it would take me too long to tell you now,) I forgot a part of the evidence as to how his shirt became so bloody, it was absolutely covered with blood, from top to bottom, so very bloody that Major Blackburn, who was for the prosecution, waving it before the eyes of the jury in his closing argument, was almost tragic in its effect. I knew the fact, but had absolutely forgotten, in the vast amount of testimony we put in there, to prove it, that that shirt had been dipped in the bloody bucket of water with which the body was washed. The question turned up on whether or not the aorta, the great blood vessel, if cut, would produce that much bleeding from Samuel Pavey, or whether there would be any great bleeding; and they wanted to show that there was intense external bleeding. It became important for us to somehow get to the jury the fact that the shirt was absolutely not saturated with blood from Samuel Pavey, and that there was no blood hardly around the wound, as reflecting upon the relative positions of the parties at the time of the shooting. Having first had counsel agree which was the undershirt belonging to Samuel Pavey. And, with the leave of the Court, it was sent to the jury, and there being no blood on the undershirt, showed that there was not a bit of blood, to speak of, around the location of the wound, and that the blood on the outside shirt got there otherwise. Now, in that case, those very facts seemed to be exceedingly important for the jury. So here, it strikes me as exceedingly important and very remarkable that counsel for defendant have not yet seen any article of this clothing. They will answer, "We might have demanded it, if it was right that it should go to this jury." But we say it was not our place. We had a right to use the inference that might be drawn from this non-production by the State before the jury.

Col. Gilmore:—The clothes were not in our possession. You had the same right to ask them from the Sheriff, if you had desired, as we had.

Mr. Sloane:—The clothes and everything else on the part of the deceased, that would furnish evidence in the case are in the possession of the prosecution, and in law they are in the possession of the Prosecuting Attorney. Is it the duty of the State, I ask, in God Almighty's name, and of the officers of the State, of the Prosecuting Attorney in the case, to exclude or keep from you any evidence which might throw light on the transaction? Is it an act of justice? Is it an act of right? Still, if my friend Colonel Gilmore, if a man of his position and standing at the bar in this community, in a prosecution for the State, simply and solely to gain a conviction, simply to obtain a verdict from the jury, withholds any of the testimony, that has any bearing on this transaction, it is the duty of the Prosecutor to condemn that course, and rebuke that course when it is shown that they had in their possession that testimony which might reflect light upon the case. In this very Sickles case it was attempted to force the prosecution to put on the

stand certain witnesses, that the defendant might have the benefit of the knowledge of those witnesses by the cross-examination of them.

Mr. Bitzer:—Did that succeed?

Mr Sloane:—No, sir; that did not, simply because of the fact that it was cumulative, and the Court said that he had no power to force the prosecution to do that; if they withheld evidence that was in their possession, that was simply a question for the jury. So I think in this case this is a case that rests with the jury. Now understand me it may be that it was an inadvertance on the part of these gentleman; it may be that they thought it would not avail to establish the likelihood of anything about this case; but they are not the judges in this case; you are the judges of this, and you are entitled to see those clothes and to see what was upon them. So far as the testimony has developed, they have not shown whether there was an inside pocket here in which he could carry a pistol, they have not shown whether there was a hip pocket in which he could carry a pistol, or any other pocket which might have given evidence as to whether or not he did carry upon his person any dangerous weapon. Now then this omission raises a presumption against them. That is the law. I read from Judge Starkey's work on evidence under the head of "Moral Presumptions." He lays down this to be the rule:

"The conduct of a party in omitting to produce that evidence in elucidation of the subject matter in dispute, which is within his power, and which rests peculiarly within his own knowledge, frequently affords occasion for presumption against him, since it raises a strong suspicion that such evidence, if adduced, would operate to his prejudice. So forcible is the nature of this presumption, that the law founds upon it a most important elementary rule."

So much for that.

Now there is another thing will be said to you here too; it will be claimed, no doubt, by the gentleman who will follow, and who can not be answered, that our defenses are inconsistent. That we claim the man was in the condition of transitoria mania; that he was insane at the time. Ordinarily, self-defense requires that he exercise a belief, that he exercise a reasoning; belief must exist to authorize the defense of self-defense. And, gentlemen, nothing is truer. We offer you these two alternatives; either the one or the other. If it was the one, it justifies the homicide, if you find it to exist; the other excuses if you find it to exist; and you have the two. Either alternative you may find to have existed without the existence of the other. for you are the sole judge of these facts. But you may find both to exist, and neither is inconsistent with the other. Strike an insane man, and will he not strike back? Spit upon him, and will he not spurn it? Does he not apprehend danger as well as the sane one? Let him be walking upon a railroad track and will not he get out of the road of the locomotive, unless he has an insane impulse to throw himself under its wheels? Talk on some other subject than the particular one of his delusion, and the mad man will reason as well as you or I. Take the man in delirium tremens, and he converses with you on any other subject than his case as well as you or I, and you bring a case to him and he will reason as correctly as you; but try to convince him that he hasn't real live snakes in his boots and you fail. And so it is recognized by Dr. Ray that he can apprehend danger, will see danger, and will flee, and can get out of the road of it, and will reason and resist, and protect himself from it as much as a sane man will.

Now, gentlemen, I desire to come to the second defense. I spoke last night of the seeming assumption by the Prosecutor that we justify here upon the ground of adultery; that the proof of the adultery was for the purpose of showing that justification. Now, under the existing state of the law, as we understand it, and find it, we do not, and have not to this Court, claimed that. We believe, however, although restricted by arbitrary laws, as it is, that it is a natural right. We don't say to you, because it would be idle for us to say to you, that you are to receive it as justification, and say that any

man might kill, under those circumstances. We offer the evidence of it to you that you may find that it operated upon the mind to produce a certain condition of that mind, and is also offered in evidence to you for the purpose of reflecting upon and showing the status of those two men, their relations to each other, and what was probable, or improbable as to the stories in this case, and as to how and in what manner and under what circumstances the homicide was committed. But the principle and doctrine has been defined, and since the Prosecutor has spoken of it and treated it as a defense, in justification I will speak of it. It has been claimed to be a justification in more eloquent terms than I can command. Secretary Stanton, the great Secretary of War, and one perhaps to whom, more than anyone else, are we indebted for bringing us safely through the trying ordeal through which we a few years since passed, when engaged in the defense of Daniel Sickles, laid down the proposition that it was a defense, and he put it on plain, broad grounds. That the right was denied by the Court we don't deny, ourselves, here. We know that it was permitted to be proven, by the Court, simply for the purpose of reflecting upon the condition of Daniel Sickles' mind, as showing that it produced temporary insanity. Not as a General, and as a member of Congress afterwards as you know, and one of the leading generals in this country, the man whose division stood, when the destinies of this nation hung trembling in the balance, when, at Gettysburg, the corps of Longstreet was hurled upon him, and when, had the Union army suffered defeat, it would have been the death-blow to this nation. That man who had once stood in the criminal dock for the killing of the seducer of his wife, that man to whom a jury of twelve men, like you, had said that he might go hence acquit and free and vindicated, that man afterwards gave his arm and stood a bulwark of defense to save the life of this nation. I say he at last was a good man, and served in distinguished positions his country. He offered his life a sacrifice for its safety, for the safety and security of your homes and your rights, and attained to great military glory in that position. But he deserves no more credit from a grateful country than the defendant here who trod in the ranks and offered himself a sacrifice—for it was all to him, his life—in the defense of those same rights.

Now, then, we have this, and one of the earliest decided cases upon the question, which is Manning's case. It was claimed by Mr Brady at the Sickles trial, to be tantamount to an acquittal; and so it is. And I shall endeavor to state to you why it is tantamount to an acquittal. The case, if your Honor please, is found reported pretty fully in three of the old English reports—1st Raymond, 212, 1st Ventris. 353, and 2nd Kebble, 829. The sketch of the case as I have it is from Raymond. "John Manning,"—and this was centuries ago, gentlemen, almost in the dawn of English jurisprudence—"was indicted for killing a man, and upon 'not guilty' pleaded, the jury at the Assizes found that the said Manning found the person killed committing adultery with his wife, in the very act, and it was resolved by the whole Court that this was manslaughter, and Manning took the clergy at the bar, and was burned in the hand, after the Court directed the executioner to burn him gently, because there could be no greater provocation than his." Now then, as I said, it was claimed that this was tantamount to an acquittal. And I shall state what was the practice of the English criminal jurisprudence. In the first place, juries were not permitted to determine the whole question, but simply found what was called the "special verdict;" found the facts to be; stated what the facts were that they found in their special verdict; then the Court, the judges, sitting upon those facts, determined what was the act, and the degree of it, and the punishment that should be meted out to it. The jury, after reporting this state of findings, finding that he killed the man, first finding him in adultery with his wife, the first right granted him by the court was that he should have the clergy at the bar. Now, it is necessary for me to state what that was. In the earlier years of English jurisprudence but few men knew how to read and write. The knowledge of letters was confined

almost entirely to the church and to the clerks and clergy, as they were called, and they always had the benefit of that fact, and could not be convicted or punished for certain crimes. Afterwards this right of benefit of the clergy was extended to such of the laity as could read or write, and they had the right of clergy, as real clerks and clergymen had, but they could only have that right once, and to indicate the fact that he had had that right the law required that the public executioner should burn him upon that part of the right thumb—(indicating), so as to be evidence to other courts and tribunals before which he might come for trial that he had once had the benefit of clergy, and could not, in the future, have it.

Now then, there was a punishment for manslaughter of so many years imprisonment, or by transportation. That punishment was not inflicted here, as you see Manning had the benefit of clergy at the bar; and the Court, considering the greatness of the provocation, simply let him go, with the injunction to the public executioner to place upon the thumb the burn-mark, which would indicate that he had been admitted to the benefit of clergy. Now, I say to you, upon the facts in the case, considered in the light of the institutions at that time, that the judgment against Manning was tantamount to an acquittal.

But it will be argued, as it was argued in the Sickles case, and as it has been argued in other cases, that the law only permits a person finding the man in the act to kill. My God, gentlemen; *in the act of adultery!* Only a single point! A mere fleeting thing! By no means! By no means under heaven! It may be continuous; may be going on through days and days, through weeks and weeks, and months and months. The man's happiness is no less destroyod, the wrong just as much done to him. Upon what ground, what basis? Upon the transport of passion that the man was in; that infirmity which the law regards, that he killed upon the first transport of passion in finding himself thus dishonored. Why, sir, can the transport of passion be any more if you should return home and find your wife actually in the act of adultery, violating the most sacred human right that you possessed, can the transport be any more than if you were to be told, and furnished with the most indubitable evidence that a year, or a month, or a week since, this act had been done, and many times repeated? What is it? Is it the mere *sight* of his dishonor which raises the transport of the passion, or is it the *knowledge* of his dishonor?

"Finding," then, is not used in this case, in the sense of "seeing," as I understand it, under the common law. Take the case of Sickles; take the case of Gen. Cole, and I shall call attention to that after a while, another brave soldier in his country's cause. Gen. Cole was in Albany, New York, attending to business. Hiscock was a member of the Legislature. Cole learned that when he had been absent in the army Hiscock had seduced and debauched his wife. When Cole received information of it, he walked deliberately into Stanwix Hall, where Hiscock sat, and shot him down like a dog; sent him to a deserved death, a deserved fate.

The defendant has a right to be protected in his marital rights. When you enter into society and become a member of it, part and parcel of it, you make a compact with society to surrender to society, for society's well being, certain of your natural, your individual and inalienable rights. You surrender them to society in consideration of the pledge that society makes to you that you shall be protected in every right that you enjoy. and one of those chief rights that you enjoy is the marital right; the inviolability of the marriage bed; the inviolability of the love and honor of your wife; the inviolability of your children, and their protection; the inviolability and sacredness of your home and your fireside. That is the right that society has guaranteed; but in this case they have furnished no protection for the wife. Provided we can convict a man charged with adultery we must prove before a jury that it was an open notorious connection; and then what is the punishment meted out? Gentlemen, I don't want to take time to turn

to the statute. If I mis-state it the Court will correct me. What is the punishment? Why, it may be a dollar fine and a day's imprisonment! The extent is, $200 of a fine and three months imprisonment! Oh, all-para mount sum to the wounded heart of a dishonored man, isn't it?

There is another remedy: That is, if the man has stolen into his house and has deliberately robbed him of his domestic peace and of his honor, he can sue him for damages; and the laws of this country would seem to indicate that there is to be a scale of prices established by juries that the adulterer shall pay. The common brothel in your town fixes one scale when the man enters it, and the jury fixing another when the man enters a peaceful household, and robs it of its purity and happiness! Shall it be said, in this country and in this State, that that is to be the only remedy, that the only protection which society affords? No! Therefore the legislature, perhaps very wisely, have left it to the common sense and the common instincts of mankind to say what shall be the fate of the adulterer when the wronged husband takes him in his hands.

Do you remember one thing that occurred in this case? Do you remember this letter? After this man had finally brought his mind to the point that the best way was to banish her from his heart forever, that he would endeavor to plod on through life carrying that weight of misery and shame and sorrow, and endeavor to be all that he could to his children, endeavor to bring them up properly and let them enter upon their course in life and fulfill their appointed purposes, he could not, even then, as his mother has told you, and Mrs. Carter has told you, and as Mrs. Blair has told you, rid this woman from his mind. And we find, as further evidence of that, and that his mind was in this condition of which Dr. Trimble speaks, he writes this letter, in which he bemoans her condition, and sorrows for her, and pities her, calls her a misguided child, a poor ignorant thing who has been lead astray by the seductions of an artful adulterer, and he warns her, and warns her in tones that must have sunk deep into her heart, which must have sown the seed which brought the rich fruitage of her repentance, which brought her back to the duties of her home and the care of her children. That must have, I say. entered deeply into her heart to have brought about the result that it did. I am reminded by that very fact of the argument of Mr. Stanton to the Court in the Sickles case, which I desire to read to you. He is speaking about this fact, that the one great wrong is done. There is another that yet may be stopped, and that is, that the wife may be swept away into common prostitution. And he says: "When a man has obtained such a power over another man's wife that he can not only entice her from her husband's house, but separate her from her child for the purpose of guilt, it shows that by some means he has acquired such an unholy mastery over that woman's body and soul, that there is no chance of saving her while he lives, and the only hope of her salvation is that God's swift vengeance shall overtake him. The sacred glow of well-placed domestic affection, no one knows better than each of you, grows brighter and brighter as years advance, and the faithful couple whose hands were joined in holy wedlock in the morning of youth find their hearts drawn closer to each other as they descend the hill of life to sleep together at its foot. But lawless love is short-lived as it is criminal; and the neighbor's wife, so hotly pursued, by trampling down every human feeling and Divine law, is speedily supplanted by the object of some fresher lust, and then the wretched victim is sure to be cast off into common prostitution, and swept through a miserable life and a horrible death to the gates of hell, unless a husband's arm shall save her. "Who, seeing this," says Secretary Stanton, "Would not exclaim to the unhappy husband, hasten, hasten, hasten! to save the mother of your child, although she be lost as a wife, rescue her from the horrid adulterer; and may the Lord, who watches over the home and the family, guide the bullet and direct the stroke!" And so say I. May the omnipotent God, who has created the family, who has made it what it is, who makes it the

substratum of all social life, and around which every legal right and every natural right must cluster, may that God, that omnipotent and that good God, who watches over and protects the home and the family, "guide the bullet and direct the stroke!"

SECOND DEFENSE.

And now, gentlemen, I desire to come to the question of the second defense made in this case—the defense of emotional insanity. We say that this man, at the time he fired the fatal shot, was mentally incapable, by reason of over-wrought emotion or the result of the sudden shock which came to him by the unexpected answer of the deceased, of discriminating between right and wrong, or of having or exercising will-restraint or control over his acts with reference to Wiltshire. And, in the course of what I shall say to you with reference to it, I shall read to you certain special charges which I have requested of his Honor, and which I feel sure will be given to you at the final charge. It may be proper and meet for me, in the outset, however, to present to you a few considerations as to the history of the plea of insanity. One of the earliest recorded cases we have where the test was applied by the courts was in the case of Arnold, in 1723, for shooting at Lord Onslow. The defense of insanity was interposed and the test laid down then by Judge Tracy, which, thanks be to God, to the credit of our jurisprudence and our civilization, has been swept away forever, was that you must find there was a total and permanent deprivation of understanding or memory; that it made him, in other words, as a wild beast; and it has been known in the books as the "wild beast theory," of insanity. The common notion of insanity is that of a raving maniac, or the man who knows nothing, and is uncontrollable. And yet, as Judge Cole pointed out to you and told you, you might walk through ward after ward of our lunatic asylums, and they will tell you that those people there, who look well and are well-behaved as you or any gentlemen here, are persons who would be responsible for no act they committed, and yet such people as those, the majority of persons who fill our asylums, would, at that time, by the test laid down by Judge Tracy, have been sent to the gallows, for homicide, disregarding that principle of the law that a man can not be convicted unless his mind is convicted also of the offense charged against him, that he must have entered into it with his mind, able to know and to conceive of the enormity of the offense with which he is charged.

For the purpose of application, insanity, by the medical jurisprudence writers, has been divided into total intellectual insanity, and partial intellectual insanity, total emotional insanity and partial emotional insanity, which is but another name or another form of impulsive insanity, known as *transitoria mania*.

Now, I desire, in the first place, that you shall understand the definition of Dr. Buchnell of what sanity is and what insanity is, because it is the best definition known, and by it, to a great extent, this defendant is to be judged. Sanity Dr. Buchnell defines to be "that condition of mind in which the emotions and instincts"—and in that connection I would like to call your attention to the charge that I have asked of the Court, in which it recognizes the doctrine that insanity may exist from disturbance of the emotional faculties as well as the intellectual—"that condition of the mind in which the emotions and instincts are all in such a state of subordination to the will that the latter can direct and control their manifestations; in which, moreover, the intellectual faculties are capable of submitting to the will sound reasons for those actions. Such co-ordinate actions of the faculties is termed 'sanity.' The condition in which that is lost is termed 'insanity,' or 'derangement,' or 'alienation,' or 'unsoundness,' all terms that refer to the

deprivation of the power of the will to so direct. In this definition of insanity there are three terms: The subjected emotions, and the controlling intellect, and the middle term of free will."

Insanity he defines to be "a condition of the mind in which there is a false action, or a suspension of judgment, and a defective power of the will"—which all these physicians swear was the case here—"or an uncontrollable violence of the emotions or instincts, having separately or conjointly been produced by disease."

I have stated to you what was the first test made in English jurisprudence. The next case of which we have any knowledge concerning its trial, was the Hadfield case, tried in 1800, where there is any decision, as I know of, that establishes a principle of law, and where Lord Erskine argued carefully all the authorities on the existence of delusional insanity. In that case Hadfield, as you recollect, desired death, but, under certain religious beliefs that he had, did not desire to commit suicide. He knew that to attempt the life of the king was treason, the punishment of which was inevitable death. He reasoned everything out, prepared his pistols and loaded them. He knew that on a certain night King George was going to be in the Drury Lane Theater, and he went to the theater and took a position in full range of where the king was sitting, and while there fired at the king, declared his act, avowed it, saying he knew his life was forfeited, and that he did the act for that reason. Lord Erskine's able defense secured his acquittal, and yet there can hardly be any doubt that he knew the act was wrong and did it because it was wrong. Yet he was clearely insane, and remained in Bethlem Hospital for years, unmistakeably insane. The next case where a test was applied, if I recollect right, was the case of Bellingham, who was judicially murdered, in which the Judges laid down the doctrine of right and wrong in the abstract, that is, that the man was sane, and should be punished for the act, if he was capable of distinguishing between right and wrong in the abstract. Why, you can hardly find an insane person in the asylums that is not able to do that. It is only as to certain things and upon certain occasions and under certain circumstances that the intellect loses its power of discrimination between right and wrong, legal or moral right and wrong. McNaughton's case was one in which the claim of emotional insanity was set up. McNaughton was acquitted, and there was a great deal of excitement arising about it in England, and the House of Lords, some of whom are known as "Law Lords," the House of Lords submitted certain questions to the judges, as to what constituted the test of insanity. One of the answers of the judges, to this question, went further in establishing the doctrine of discrimination between right and wrong than did the Bellingham case. Those answers were given in 1843. One was, "To establish the defense upon the ground of insanity it must be clearly proved"—and at that time "clearly proved" meant, beyond a reasonable doubt, which is not the case at all now under our jurisprudence—"it must be clearly proved that at the time he committed the act the person was laboring under such a defect of reason, from a disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that he was doing what was wrong." Now, you see how much further they advance the doctrine there. They make the knowledge of right and wrong, not in the abstract, but as applying directly to the act with which the person is charged, whether or not he had reason and intellectual power sufficient at that time and under those circumstances to know the nature and guilt of the act he was about to commit, and whether he did know he was doing wrong in the doing of it. They carried the Bellingham doctrine a great deal further, and you will see they left out an important factor in this element—and which I have embodied in the special charges, which I think the Court will give you—and that is, that sufficient will-power shall be present to enable him to resist the inclination or the desire to do the criminal act. If it were not so it would be, in effect, a charge by the Court, if will-power were

left out, to the jury, that, "although you believe the defendant, in killing the deceased, did that which he had no power in the world to refrain from doing, yet he was criminally responsible if, at the time of committing the act he was capable of knowing right from wrong." I am glad to be able to say that such doctrine has, more or less, in the last century, to the credit of our jurisprudence and advancing civilization, disappeared, and exists no longer.

Then another thing that is engrafted by later jurisprudence is that this peirod of loss of discrimination between right and wrong shall exist at the moment of the commission of the offense, not that it shall be a permanency, not that it shall exist for any definite length of time at all, but you must find that it existed at the time of the commission of the offense, and with reference to the person upon whom the offense was committed; and that at the time; and I will ask you to follow me in your recollection as to that portion of the expert testimony that was put upon the stand as to the question of insanity. I presented to the witneses a hypothetical question which we thought covered all of the material facts in the case. Col. Gilmore, whose chief feats in this case have been his interposing of as many technical objections as he possibly could, as if he hoped to deprive the defendant here on trial for his life, of every right the law allowed him—

Col. Gilmore:—Pshaw!

Mr. Sloane:—Oh, you need not "pshaw!" The prosecutor in the case need not be a butcher. I don't know that any law nor any interest of community requires that every little technicality should be seized on by the prosecution to convict. I wish I had time to read John Graham's speech in the McFarland case. He reasons in that case that the duty of the prosecution is to seek simply to have the law applied, and not for the interposition of every technical objection, that they may deprive the defendant of his life. For your benefit I am willing you should hear the whole argument of the case as it is.

I propose to show you hear the fairness of the prosecution. In the first instance I propose to show how the record presents two or three things that have occurred in the prosecution of this case, in order that you may determine whether or not it has been prosecuted fairly or unfairly. As soon as I presented or read the hypothetical question to Dr. Trimble, who was the first medical witness placed upon the stand,—and I will say, in parenthesis, in this connection, that I don't think I was on my feet speaking to the Court, during the whole case, fifteen minutes altogether—Col. Gilmore was on his feet in a moment, and objected to the hypothetical question. Now, let me here read what he said at that time, and what the Court said at that time, and what I said. I had called his attention to the hypothetical question at that time,—and I now submit to you whether that was a fair or unfair one, –and was seeking to have an opinion given by him to this jury, not upon a part, but upon the whole of this case, when the following occurred:

Col. Gilmore:—"Wait, Doctor. The question, as I suppose, has not been submitted to the Court before being asked."

Mr. Sloane:—"No, I don't know that it has to be."

Col. Gilmore:—"I don't know that it has to be, either; but it has not been submitted to counsel on the other side until about the time it was to be asked, when, at my request, it was handed to me, but before I could read a page or half a page it was asked for by counsel, and was handed to him and asked without our having an opportunity to read it."

Mr. Sloane:—"It has been here all day, and it is an oversight only that you have not seen it."

Col. Gilmore:—"Our point is this: The hypothetical question, so called, covers some—how many pages? eight or ten? I should judge, ten or more pages constitutes, or is constituted of a rehearsal of the full testimony upon the part of the defendant, after percolating through my friend Sloane's mind, and being clothed largely with his verbiage, that was never used by the witnesses whom the question purports to follow in the narrative." Well, we will

see about whether that was done when we come to discuss that; we will see whether that statement as made to the Court is true or not, when we come to discuss the question. We will see whether it percolated through my mind, and was clothed largely with my verbiage, and whether no such facts had been disclosed by the witnesses. "That must have struck the Court in the reading of that question. Outside and above and beyond anything in that question, however, it is noticeable that the question contains narrative that in no sense or way"—I wish you to bear in mind all this, because, however Col. Gilmore may feel, we think that the hypothetical question did, in every sense and in every way, bear upon and contain in its statements facts which reflect upon the question of sanity or insanity. He says:—"It is noticeable that the question contains narrative that in no sense or way could reflect upon or affect the question of insanity; that it omits carefully—that it omits, I won't say 'carefully,'"—at this point there is a brief return of the recollection of his ancient piety,—"that it omits largely the testimony that has been elicited from his own witnesses that reflects upon the question of insanity, as well as other points in the case. Now, I don't want to consume the time of the Court"—it didn't appear that he had during the whole course of the trial,—"but I respectfully submit that it is not entirely optional with the Counsel who desires to draft a hypothetical question of this kind, that he should stuff it with anything and everything that may suit his fancy, but that the question, under the supervision of the Court, must be in correspondence with the facts proved, and that part of the case, especially that is supposed to reflect upon the question of sanity or insanity. I submit that this question I have not had opportunity for examining, and know nothing of it except as it has been read to the doctor on the stand, and that it is not of that character that it should be, and is highly objectionable in many of its features I have not alluded to.

The Court:—"You object, then, to the question being asked or offered?"

Col. Gilmore:—"I object to the question as put."

I will not stop to read my argument in answer to the objection.

The Court:—"In putting these hypothetical cases, I have my own experience at the bar and on the bench, and that of some of the leading practitioners of the bar, and my recollection about the law is,—and about this my recollection is that it is about accurate,—that the party putting the case assumes for himself, and, out of regard for the rule applicable to a hypothetical case, he will put it, and he should, if he expects it to have any weight with the jury, as nearly in accordance with the facts as he can possibly make it. The rule is this: He puts his case, (and he puts it at his own hazard) and if he puts it too strongly, he is the party that loses by it; that he may put the case as he thinks the evidence will warrant him in putting it, and then he is entitled to have the opinion of the medical expert upon the case as he puts it. Then it devolves upon him, by the evidence adduced, to substantially establish that case as put, and if he does not do so substantially, the hypothetical case is of little or no weight with the jury. Then the opposite side has the right to introduce testimony of what is called "infirmative facts" as to this question, that is, facts which will tend to infirm the hypothesis. Now, it is true that in these hypothetical cases Counsel don't always confine themselves to the statements of the witnesses. It is somewhat after the matter of drawing a petition. Your client comes to your office and states to you in his own way what he conceives to be the facts in his case, and it then becomes the duty of the pleader to put it into technical and approved language. If Counsel has undertaken to color the hypothetical case,—I am not assuming here to say that it is done; I don't say he has; but I will say it is not the duty nor is it required of the party to use the exact language."—You will remember that one of the statements made by Col. Gilmore at that time was that I put the word "yearning" in the question.—"He is to state the case as he thinks the evidence will warrant him in stating it, and if he fails in that, he fails with the jury. So that while many things might be inserted not actually necessary

but would be true, still that is not an objection to the question, but of course it will have to be weighed, under the instructions given by the Court, by the jury. The question can be answered."

My question was then answered, as you remember. And I propose, now, to submit these two questions to you, under the test laid down by Judge Minshall. Now, gentlemen, I will make the statement, in the first place, that there are fourteen untrue statements in the State's hypothetical case, and they will be gone over one by one. There are fourteen untrue statements.

1. The first one is, "that having married, in 1872, his present wife, he had discovered, six or eight years ago, that his wife was indifferent to him, and that she had been guilty of adultery, and that he consequently lost his affection for her, and had frequent altercations with her." Now, gentlemen, let us see whether there is any truth in that, in the world, as indicated by the testimony. They put two witnesses upon the stand,——who, I shall come to speak about after a while, and in another connection,——who testified that he said that she had gone off with another man, about the time his third child was born, up in Erie County. Now then, you will be told by the Court, and it is the fact, that this evidence of his declaration is not given to prove the fact, because that fact can make no difference, nor cut any figure in this case. It is only given for the purpose, and that testimony is only competent and admitted for the purpose of reflecting upon the condition of this man's mind during that particular time. This question does not state that at a certain time, or during a certain time, he made such a statement, which the State would have the right to assume, upon certain of the testimony here, but they state it in their hypothetical question as a fact, which can not be accepted as a proven fact, even if it were true; not as a statement that proved the fact, but as reflecting upon his condition of mind. Now, let us see how true that is. We had five witnesses here upon the stand,—let us see the fairness of the State about the matter, and I want you to bear me out a little,—who lived in his neighborhood, who knew him ever since, nearly, he had been married, knew him the last five or six years before he moved down here, during which time, as a matter of course, this third child must have been born, for he is not six years old now, or a little over that. They testified that he lived there in the neighborhood, and they knew him. We had no right to prove this wife's character at that time, for that is not in controversy in this case. It was not permitted of us to inquire after that. If they proposed to make any such inquiry, we gave them an opportunity, because you remember that I asked each one of those three men and two ladies if they, at this time, during this time, knew his wife well. They are respectable people. They gave evidence upon the stand that showed you that they were in the habit of visiting this woman whom the State undertakes to claim, in its hypothetical case, had been in the commission of wanton adultery. Is that your experience, that women, such ladies as your wives and your sisters, are in the habit of visiting a woman who has been living in open and notorious adultery? That fact of itself belies the statement that any such thing as that occurred or existed there. And that, coupled with the fact that the defendant himself testifies that no such thing existed at all; that the only time she left home there she was gone eight or ten days, part of that time being at the house of one of the witnesses here, Mr. Fox, who was put on the stand, and the rest of the time at her mother and father's house. Here those witnesses were. The prosecution gave us no intimation of any claim or statement of this kind, and after they had testified to the character of this defendant here, the men anxious to get back to their avocations, the women having children at home, we let them leave, and let them go away to their far-off homes in Erie County, and we hadn't them here in rebuttal to put upon the stand and testify to these facts. But I say that the testimony that was given here on that point was not for the purpose of proving the existence of the fact, at all, but simply to prove

that he said so as indicative of the condition of his mind. "That his wife was indifferent to him, and that he consequently lost his affection for her, and had frequent altercations with her." Now, Dan Giddings testifies that that portion of it is true to a certain extent, that they had tiffs, but when does that occur? One he testifies to occurring up there, some little difficulty that they had up there, and then he relates that there were little altercations, little difficulties that occur between husband and wife, that I suppose we all know do occur in the course of our lives; we are not infallible; we are all fallible. There are very few that go through life without some little difficulties. But when was there any discovery of his loss of affection for her? These things show none of his loss of affection for her; because his acts speak louder than statements. Those acts show that he had affection for the woman even after the dishonor that came upon him; yes, strange as it may seem to us, even after all that occurred, he clung to her and yearned after her, notwithstanding his effort to banish her from his mind and heart, and when she returned it is in testimony that he did take her back home, to his bosom, to again be his wife. And when does she show any estrangement from him? Mrs Blair and Mrs. Carter, who were near neighbors, had no suspicion of it at all until after she had gone on an errand of mercy to Ben Wiltshire's house to nurse his sick child.

The Prosecutor took occasion here to cite the adultery of Ammon and Tamar. I am going to read that to you, gentlemen, as it may not be so familiar to you as to my clerical friend, Brother Gilmore.

But I believe I can state the story much shorter than reading it. Tamar was the sister of Absalom and of Ammon. She was the daughter of David. They were all the children of David. Ammon was siezed with a lustful desire for his sister Tamar. And there was a scoundrel by the name of Jonadab who was a friend of his, who told him he need not get lean over it, and how he could accomplish his purpose; to play sick, and ask his father, the King David, to let his sister Tamar be sent to him to provide meat for him, to dress his meat. She came, and she made dough and kneaded it and made cakes for him, and was about to bear them out for him but he ordered the attendants that were around him to leave the room, and then besought her to bring them into his chamber, and there he forced her. Absalom killed him, and his father forgave him. Absalom waited two years and had a sheep-shearing down at his house, and invited Ammon and the other sons of David over to that sheep-shearing, and when there, and Ammon's heart was full of wine, he ordered his hands to lay hold of Ammon and slay him, and they did. Absalom did flee far away and remained for two or three years, and was permitted by the King to return, and was taken back into the King's heart, for he soon lost his grief over the death of Ammon, who had committed this outrage, and this crime. There is a parallel between the case of Tamar and this case. He sought her ruin; he sought to undermine the foundations of her virtue, and he accomplished it at a moment when she was on a mission of charity and kindness. The first step taken by this man Wiltshire, according to the testimony in this case, to seduce, and to estrange from this man the affections of his wife, was when she, in the tenderness of her heart, had gone to his house on an errand of charity, nursing his sick child. From that moment, Ben Wiltshire's visits to Mr. Gidding's house became more frequent. According to the testimony of Mrs. Carter, from that moment, this defendant would come home from his work to find that he had been there in his absence; from that moment, this woman became dissatisfied with her home, from that very moment, I say, she became estranged from her husband; and there is nothing here to dispute that testimony at all. That is where there was a loss of affection, but not that there was a loss of affection during all those many years as stated in their hypothetical question.

2. The next is, "That he said of her, that he wished she would get a divorce; that he would give any man twenty-five dollars to swear to any lie that would secure such divorce." It is not put it in here in this hypothetical

question, nor was it necessary to so put in, that the statement was made in a jesting manner. These people all lived in that neighborhood, and had any trouble happened, how apparent it would have been, and if so, these things could not be concealed; there would be proof here to show you that fact.

The woman who Bill Wiltshire says was present and heard the talk is conveniently sick, and absent. Gentlemen, it is right for Wiltshire to be interested in the prosecution which seeks to punish a man who would kill his brother. But we judge something by human physiognomy; and God help Bill Wiltshire if ever he is put on trial before a jury of his countrymen, with that phiz he carries around! Now Dan says he may have said something of that kind. I forget whether he denied the fact about the twenty-five dollars. He says that he might have said, jestingly, something of the kind. How easy for this man to say, that in his opinion, the man was not jesting, that he was not joking. The brother of the deceased jokes back, he tells an incident occurred away back in last May, and states that in that conversation, the defendant said that he would give twenty-five dollars for any man to swear to any lie that would secure a divorce. Do you notice one thing about that, gentlemen? Did you notice one thing in that statement? and that is, that that woman had nothing upon which she could get a divorce from Dan Giddings: that there would have to be a lie sworn to obtain it; that Dan Giddings had so performed his marital duty, that he had so done everything that the laws of God and man required him to do with reference to his wife, had been so true and faithful to her, and had so provided for her, that it would require some one to swear to a lie in order for her to get a divorce. Had he been guilty of driving her from his house, as the statement is made in this case, had he refused to support her, or had he been guilty of violence or cruelty to her, this Court would have granted her a divorce from Dan Giddings without any swearing to a lie. And this question comes to that point, for its shows that Dan Giddings had done no wrong to her, it shows that no follies on his part, or improper conduct toward his wife furnished any means to her for procuring a divorce, unless a lie was sworn to. If Dan Giddings had wanted a divorce, he could have asked for, and obtained a divorce from that woman after she had led the life of adultery, and the life of crime, and wronged him as they seek, in the statements in the hypothetical case, to make out. How easy for Dan Giddings to have gotten a divorce. Why should he have laid upon his soul, the sin of subornation of perjury, when, according to their statements in their hypothetical case, he was armed with complete means for obtaining a divorce from her. One of the things that shows whether a man has made a certain statement or not, is that which shows whether or not there was a probable reason for the man to have made that statement. They seek to make it appear that his wife was indifferent to him, and had been guilty of adultery, and that he had lost his affection for her, and therefore that this taking of her away by Wiltshire could not have affected him greatly, because he had no affection for her. They were permitted to offer evidence with that object in view, and for that purpose it is legitimate. And what was the effect of it? It was to show, by the mouth of this brother of the deceased, that Dan Giddings had lost his affection for his wife, that he cared no more for her as a wife, and wanted to get rid of her. Well, I say to you, if what was stated was true, in the forepart of this question, that she had been committing adultery all the time, and if it was a fact that she had been running around with Lyman Blair, as stated during the time the revival meeting was going on there, for those purposes, it strikes me as a little queer; it is a little bit strange for me to believe, gentlemen. I don't profess to any piety, or to any particularly at all. I only wish that I might better fulfill my duty to my Maker by being and acting in obedience to his laws in this life than I have heretofore done, but it has been my experience to know what is the character of such meetings, and I doubt not some of you also

know the character of them. Is it possible; do you believe that at moments when the passion of the Savior is being preached, when his great life is being set forth, and the atonement that he made for man's sin is being held up continuously to mankind, and when the punishment for sin and wrong doing is being ever presented in its most fearful forms to the mind of man, that then, under circumstances like that, a woman, or a man either, walks off into crime, and into criminal adultery? Is it to be believed that after the services of God, the services of His altar, when the human soul, I don't care how hardened it may be, is filled with the peaceful presence of God's words, and when human hearts are wrought up to a sense of their terrible and undone condition, and their better nature appealed to, that after a season spent in the sanctuary, where men and women are taking upon themselves holy vows, that a woman thus wrought upon will turn from that place and at once engage in so beastly a kind of sin? Who does not believe that if Dan Giddings knew of that at this time, if he had wanted to get rid of his wife he had not abundant means for easily obtaining a divorce, and to have procured witnesses for that purpose without suborning them to commit perjury? You are to look into the reasonableness of such statements, and the interests of the witness in making them. I say that the relations that existed between this man and his wife utterly belie the statement, and stamp Bill Wiltshire as having put upon that conversation a construction utterly at variance with the facts.

Now I want to call your attention to the next statement:

3. "That he watched his wife and Wiltshire and saw them in the act of adultery on one or more occasions, and was close to them at the time of such act, without their knowledge."

I want to call your attention to this in the light of the instruction that I have asked the Court, and which I am satisfied will be given:

"It is my duty to instruct you that you will receive all testimony as to verbal admission, of any kind, of the defendant, with great caution. For it frequently happens that the witness, by unintentionally altering"—or *intentionally* altering, might have been added—"for it frequently happens that the witness, by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the party actually did say, or, the memory of the witness may be at fault, or he may not have correctly understood the statement. This is so much in accordance with the experience of Courts, that they have come to consider it the most unreliable of human testimony, and have made it a constant practice to call the attention of juries to the fact, and caution them to be careful in weighing such testimony."

Now I want to give you an instance of it that occurred upon this stand. Dr. Dewey was put upon the stand, and he has been sitting right here at the back of the Prosecutor all the time. His wife is an own cousin of Ben Wiltshire. I didn't care to cross-examine him any further than that, but I wish to show the falsehood of the statement. When his wife was put upon the stand I cross-examined her. Now, there was no modesty, mock, or real, about that woman on that stand. She would not look this jury in the face; her eyes were never raised; and with the repeated injunctions to her that she should look at the jury and state her story, she would not do it. I have a right to state that fact. The eye speaks truth more than the mouth, and indicates what is goi g on in the heart, and what is going on in the mind better than any of the features on man's face. You had a right to look into those eyes and ascertain from her, whether or not they gave corroboration to the words of her mouth, but she would not permit you. And I am calling attention to all this fact to show you how utterly different a statement may be repeated than was intended, and convey an impression so utterly different and foreign to that intended to be conveyed by the person who made it. I said to her, "Now, Mrs. Dewey, what did Dan say about this? Did he say that he now knew that Ben Wiltshire and she had been committing adultery, and that she had committed adultery with Ben Wiltshire for a long time, or, did he say that for a long time he knew that

she had?" What was the answer? I could not get her to answer for a long while. What was her answer finally? That she didn't see the difference. That is just the trouble in these conversations, that they don't see the difference But you see it, and see what a very great difference it makes in that statement, and particularly where there exists a motive or desire to color the statement. One word changed in a sentence, changes the entire meaning of it. Dan Giddings testifies that he said to Mr. Smart that he had been told since she had gone, or that persons had told him, since she had gone off to Washington Court House, tha she had been in the habit of committing adultery with other persons, but he did'nt believe it. That is Mr. Smart's testimony in this case. Now what was Mr. Carter's statement to him? He had told him that she would go out at night and meet Ben Wiltshire, who would come there and wait outside the house for her. The point with Mrs. Dewey was whether or not she did not know the difference in the character of those two statements. She failed to distinguish between the expression; I have been told that she has been committing adultery with different men for a long time; or I know she has. And this may be unintentionally done by a witness; but here is the suspicion of motive; the suspicion that it may have been done purposely. But, I say again, that does not prove the fact. It proves simply a statement of his in connection with and reflecting upon the condition of his mind at that time. In other words, to show, as they had a right to show, and as the Court told them, whether or not he had lost his affection for his wife. Now let us go on a little further on this very same matter, and I want to discuss this and get at the right, and then go on properly with the case Now if Dan Giddings said it, Dan Giddings lied, didn't he? Don't the facts all warrant me in saying that to you. Dr. Dewey says Dan said it himself, and Mrs. Dewey says Mrs. Brouse said that before Dan came in, finishing up the conversation as Dan came in, it being interrupted by Mr. Giddings' entrance; but the only portion of it that fastens itself upon their minds is the statement by Dan. How strange that the other portion of that conversation does not fasten upon their minds with the same perspicuity, the same matter of detail. Mr. Dewey says it was Dan who said that about his wife going off, and Mrs. Dewey says it was Mrs. Brouse. Let us see. Mrs. Brouse was a witness on this stand. With her son's life trembling in the balance there is a strong motive for her testifying, falsely; but you had no trouble in looking in that woman's eyes, and could readily read on her face the lines that sorrow has traced there.

"She had known sorrow. He had walked with her,
Oft supped, and broke with her the ashen crust;
And in the dead leaves still she heard the stir
Of his dark mantle trailing in the dust."

But with this great sorrow weighing down upon her, when she knows that hanging in the balance of your judgment is the life of her son, and he, the image of his father whom she had loved in his early life, and who had impressed himself upon his mind and features, this son who was, perhaps more particularly dear to her than the other who does not bear that impress, yet, laboring under this terrible temptation to, perhaps, step aside a little bit from the straightforward path of truth, we know, gentlemen, even under that terrible shadow, even under the fearfulul strain that she had to undergo, she looked you in the eye; *she looked you in the eye!* She did not turn and twist and cringe like a whipped puppy that had been detected in the commission of some crime, but she delivered her statement honestly, and she looked you in the eyes too; and when Colonel Gilmore asked her if her son had not said that his wife had gone off with another man, what was her answer? "Oh no sir, he could not have said that, he could not have told that, for it was not trne." She had no difficulty in looking his Honor in the face, or you, or the Counsel on cross-examination, and she didn't try to turn her face, as if she didn't know that if she hid her eyes from you, the very

windows through which you may look upon a person's soul, that she could not hide that from the eye of the allseeing God. They testified that Dan Giddings had said that Mrs. Giddings had gone off with Mrs. Blair's grandfather to a station called Londonderry, where some scandal arose, and the old man was locked up in a room, and among other things, they endeavored to make it appear plausible to the jury, and to clinch it by saying that he was comparatively a young man, just past middle age? Colonel Gilmore saw how utterly ridiculous it was to suppose that an old man, in the presence of his daughter, he tottering down the further side of the hill of life, an old man eighty-three years of age, bowed with the weight of years, should be guilty of an escapade like that, with a young woman. He saw that, and tried to clinch it by getting his witness to say that he was a man about middle age, or a liitle past middle age. They have tried to make you believe that Dan Giddings had said that that old man, eighty-three years of age, had gone off, and in company with his own daughter who had sprung from his loins, for such a purpose with this woman. If that were true that Dan Giddings had so stated, it would show the very unsound condition that the man's mind was in at that time, if he could believe any such thing. And it shows also, the desperate strait in which the State finds itself in this case when they will employ such means to endeavor to wrench from the jury a verdict of conviction of this man. I know that the fire of life often is not lost at the age of eighty-three, but when a man has got along to that time of life, he will not be likely to engage in an escapade of this kind, and certainly will not do so in the presence and association of his own daughter. These are straws which are an indication whether or not the testimony of these parties who are relatives of the deceased, is to be believed.

Here is another one from the testimony of this man Kleindinst. I wish I had his picture! That man came on this stand deliberately to lie; and what title conscience was left in him, caused him to halt on the threshhold; *caused him to halt on the threshhold!* Had he any difficulty of speech? Did he have any difficulty about stating what he proposed to tell over, when he got started? And yet he hesitated and halted; *halted!* HALTED! and trembled; hestitated, as Macbeth did with the drawn dagger over Duncan's sleeping form. What little of conscience was left in the man, that man found merely in some impermanent and impalpable principle that runs through all life, caused him to hesitate, tremblingly hesitate, before he entered upon the commission of that crime here that he sought to commit upon this stand. You saw it; saw the trembling emotion! Was it the hesitation of emotion? Was it the hesitation of fear with that man who is the champion of infidelity in his neighborhood, who proposed to discuss it here? He said he would discuss what? Discuss the existence of a God, and his want of belief in anything but an impalpable and indefinite principle permeating through life. There are men, and good men, men whose word is held above reproach, who don't believe, or who hesitate to believe in the Christian doctrine taught of the creation of the world, of the existence of a personal God, of an over-ruling Providence, supervising all the affairs of life, over-ruling men's action and directing them, and punishing the wrong and rewarding the right both here and hereafter; but they do not take the ultra position that this man does in that respect. He says that the dying example which Christ gave upon the cross is ridiculous; that there can be no "swinging away" as he calls it "from the gallows into heaven." And yet, we have that very thing attested in what I stated to you yesterday, in the fact taught us by the last words and acts of the dying Savior, of forgiveness, praying for forgiveness for his murderers, in the last agonies of death, and saying to the dying malefactor on the cross, whose soul was about to pass into eternity, that he should be, that day, in Paradise with Him. He sets himself up against those teachings that have been believed in by the majority of men for over eighteen centuries; those teachings which, when we come to the verge of the dark valley we can tie to; that

have made your mothers, and mine, walk through life feeling that they were sustained and upheld by that very belief in the existence of an omnipotent, all-seeing, ever-present and over-ruling God He wanted to discuss it! I suppose he is the great discusser of it; that he is, like many others who would undermine the belief of centuries, and the feeling of reliance upon a higher and better Power, discussing it in the highways and byways, poisoning the minds of young children, filling them with doubt until they are unable to bow before the shrine their fathers bow before, or believe in the sustaining, upholding principle of life, and the rewarding of right doing and the punishing of wrong doing that flows from the belief in an eternal, omnipotent and omnipresent God. Now you see how easy for that man to have had a conversation of a similar character with Dan Giddings, and to have made it entirely different, if he desired to do so, and he is a man who would desire that, by leaving out some word which would change the whole sense or meaning, or by interposing some word which would change the whole sense or meaning.

Now I want to come to the next one:

4. "That he drove his wife from his home to take refuge with her neighbors."

Now, gentlemen, where is the proof of that? Tell me where is there a bit of proof that he did that?

Col. Gilmore.—That refers to the time she went to the Carters.

Mr. Sloane.—Sir, there is plenty of testimony, testimony by the defendant himself, that she went to the Carters. She went to Wiltshire's and was there about three days, and went to the Carters' and stayed there at night and came over home in the daytime, but where is there any testimony that he drove her from home? This language here is, "That he drove his wife from his home to take refuge with her neighbors." Is there any truth in that? Dan Giddings' testimony on that point is undisputed. They have the members of the old man Wiltshire's family; could not they dispute him, if that was true? And Mr. and Mrs. Carter, could not they dispute him if that was true? The testimony is that he went over to Wiltshire's and besought her to come home, and that he went over to Carter's twice and begged her to come home, and she would make this kind of charges against him; that he was unkind, and he would say to her, "Mary, how can you say these things that you know are not so?" And when she was at Scott Finley's he called there and tried to get her to come back. And on the night that he saw Leonard Berg, he was asking him if he had seen his wife, and told him that he had come seaching for her. Is that the kind of a man that would drive his wife from his home to take refuge among neighbors? And yet that is stated as a fact proven by the testimony here, and upon which the State has based its hypothetical question. Where is that language derived from? No place under heaven! We all know enough of human nature to know that when a man or woman steps aside from right, the common instinct of our natures is to strive to lay the blame on others. We are always prone to lay the faults and troubles we bring upon ourselves upon somebody else, in the attempt to shield ourselves. So that instinct of human nature leads us, when at fault, when, having done wrong, we find ourselves in an unfortunate position, to endeavor to trace it to some other source. Hence it would be but natural that that woman should have said this to him; but we find his testimony corroborated by his neighbors, and also by his actions, which speak louder than all words that can be employed, that day after day he was wild and crazy in his yearning and hopes and efforts to bring that woman back to her children; to save her; *to save her!* Yes sir, in God's name let it be said, and let it be inscribed in letters of gold upon the humble stone that shall be reared over Dan Giddings' grave, that he forgave the wrongs done him, that he forgave the shame and the dishonor that had been placed upon his own brow and upon the brows of his children, that he forgave all the ingratitude and received back and rescued from the horrible life of prostitution the wife

who had started out with him hand in hand in the morning of life! Let it be recorded by you; it is recorded in heaven, in letters of living light, in the recording angel's book, that, with a Christlike forgiveness, he forgave her all the wrongs he had suffered, and that day after day, and night after night he sorrowingly desired and sought to bring her back to her home and to paths of right and righteousness.

5. The next one is "That in the latter part of June or very early in July he borrowed a pistol of Lyman Blair with the intent and purpose to kill deceased."

Now, do you see how that is put? Do you notice the authority for that? and is that true? Lyman Blair testifies that about four or five weeks before he borrowed a pistol, but returned it very shortly afterwards. Where is there any statement on the part of Lyman Blair, where is there any on the part of Dan Giddings, where is there a bit of evidence in this case, that he borrowed it with the intent and purpose to shoot Ben Wiltshire! But, gentlemen, I say that it is an inference that they try to employ, that he got it to kill Ben Wiltshire, which is without foundation. Dan Giddings says that he went there and talked to him about borrowing it, but didn't borrow it. But whether he borrowed it or not, is it not true, coupled with the fact of his own declaration of his abandonment of his intent to do violence to Ben Wiltshire, and the other fact that he did go after it again on the Thursday evening before he went to Washington Court House, that the pistol must have been brought back or put back into the hands of the original owner before that time. I wonder through whose brain that "percolated!" I wonder whose verbiage clothed that idea! I wonder who set forth that inference! Because it is, to my mind, but an inference that is embodied in the proposition included in this hypothetical case.

6. Next, "That he received his wife back on her return from Washington *only* on account of his children."

To a certain extent that statement is very much borne out by the statement in our own, where we simply say that, in consideration of his children he took her back. But what wonder? But does not his mother testify that after she came there, and even after he had sued for a divorce, and she had advised him to let her go now that she was gone, his mind was running after her all the time, and that he would cry when speaking of her. You have the testimony of Mrs. Blair that he would come in from his work at any time, not only during the breakfast hour and noon hour, but at any time, and that constantly his mind was running on the subject of his wife, and he would hardly talk about anything else, and would cry when she would mention her name. What is to be said? I can't understand it. To most of us her acts would have brought hatred where before had dwelt the love of a husband for his wife, the mother of his children. There was no hatred in his bosom. We find that, after all, Daniel Sickles, high as he stood, proud-spirited as he was, we find that even after he had stood in the felon's dock, after a jury of men had passed upon his case, after the whole case had been gone over bitterly and with vengeance, as it was, by the Prosecuting Attorney in that case, that even after that, and after he had been separated from her, and had lived apart from her for a long time after the killing, he took her back to his bosom, on account of his little daughter. Dan Giddings had not killed this man when he took his wife back to his bosom. He killed him after he had received her back, and after she had returned and resumed the duties of her household as wife and mother, and after the man who had first seduced her away from her family and from his affections and from his house, was coming back and again threatening to take her away from under the shade of that roof-tree. If Daniel Sickles was to be justified by the world,—and who will cease to justify him,—that he took back the mother of his child and sought to save her from the pit of ruin into which she must have finally gone down but for his interposition, what must be said of Daniel

Giddings, who did what he did in the endeavor to prevent his children from being again deprived of a mother.

7. The next untrue statement to which I wish to call your attention is, "That on August 5th he met deceased in Adler's saloon in an intoxicated condition." Where did he become intoxicated? The train leaves Washington, I believe they stated to you here, at about 9 o'clock. It was a little behind that morning, I believe Mr. DeWitt states between 8 and 9 o'clock. He took breakfast at Mr. Smith's, and was sober at that time; came in from the farm, and was sober; perhaps could have gotten nothing to drink out at the farm. Mr Smith thinks he was perfectly sober, as does Mr. DeWitt, he having talked with them. He could hardly have gotten anything to drink on the way down on the train from Washington, I don't suppose. They haven't proved that he touched a drop up to the time that Dan saw him. There is no evidence that Ben Wiltshire had one drop of intoxicants up to that time when we find that Dan Giddings saw him. I appeal to the gentlemen upon the other side to show to the contrary if they can. The testimony shows that he must have gone directly from the depot to the saloon at Adler's, and Adler says that he had taken nothing until Dan Giddings came in there. But I will tell you the proof of it. Dan Giddings states that he was in liquor some; that he hardly ever saw Ben Wiltshire in his life when he was not somewhat under the influence of liquor, and that he thought on that day he was somewhat under the influence of it. But he may have purchased a bottle at Washington Court House and drank it on the train. Mr. White, in his testimony stated that he thought he was drunk, because he saw him shrug up his shouldors when he walked. I thought that when a man was intoxicated there was a kind of a loosening of the shoulders, instead of shrugging them up. So you must weigh that testimony for what you think it is worth.

8. "That Struble's saloon, and the way thither was an unfrequented part of the city." Now, gentlemen, on what do they base that statement? that the way from Adler's saloon, down Paint street here, to Struble's saloon, almost any way that they could have gone, is an unfrequented part of the city. Is that true? And if so and Dan Giddings' mind was intent upon killing Ben Wiltshire, why, in the name of reason, did he not kill him in that unfrequented place? If that statement is true, no eye would have seen him if he had shot him down upon the pavement in that place. But instead of that, after going into that saloon, and seeing two or three men there, and after passing out of that and passing Seeberger, and afterwards passing Pickens in the cornfield, thus affording the very means for identification, he kills. But that is not an unfrequented part of the city, if I know anything about it; but you, having passed over the ground, can judge whether it is or not.

9. "That the deceased, at Struble's saloon, become intoxicated to the point of vomiting."

Well now, we will see about that. From all that has been told about Ben Wiltshire here, I am rather inclined to think there was not whisky enough in Chillicothe to make him vomit. [Laughter.] From all that this case has developed as to his habits in regard to drinking, whisky was no stranger to his stomach, and not very likely to turn it. And yet this assumes that his vomiting there that day was the result of intense intoxication; was the result of drinking, and not the result of smelling the Limberger cheese. I don't know whether any of you have ever smelled that article unless you are fond of Dutch foods, as I must confess I am. But, Ben smelled it, and he might have been a little weak in the stomach hence the result.

10. The next proposition is, "That the defendant urged the deceased to haste in leaving Struble's saloon."

Now, where is that? What is the object of putting that in that question? Why, to show you that he was hurrying Ben Wiltshire off, hurrying him down

to the place where he was to make him his victim; where he was to butcher him. That is the idea that they seek to inculcate, that he was endeavoring to do that; that that was his purpose and his object. Why, is there any testimony to authorize that? On the contrary, Struble says that it was only after he had ordered Wiltshire to move. There may have been haste about it. He may, after he had vomited upon the man's floor, after making it reek with filth, when the little German got mad, and told him to "Moof.; ket out of that now: there was enough of that," there may have been a little inclination to get out, and Dan may have said, "Let's go, Ben; don't make a hog pen of the place." But does that bear the construction that they have put upon it here, that he urged Wiltshire to haste? Not at all.

11. "That the defendant led the way from Struble's to the end of Mulberry street."

Is there any testimony to that effect here? My recollection of Seeberger's statement is that they passed him within about ten feet, and that Wiltshire led the way. I think I am not mistaken about that. And yet they assume in this question that Giddings led the way. And all the circumstances of their going there show that Dan Giddings was utterly unacquainted with that portion of town, and that Ben Wiltshire knew just where these logs and this shade were down on the banks of Paint Creek that they could go to.

12 Now here is another: "That he assisted deceased across Honey Creek."

Did you see him pick Ben up and lift him over there? Is there any testimony in this case that he took him by the arm and assisted him over there? Is there any testimony of that kind, gentlemen? Is there any fairness in that statement put in this hypothetical case? Where is there one bit of testimony that Dan Giddings assisted Wiltshire across Honey Creek? If they mean merely that he threw a rail over that they both could walk over on, if he did so, would it be a fair construction for you to put upon it, or on his testimony, that he assisted Ben Wiltshire over there? Now, is that a fair way to state the proposition?

13. "That defendant led the way all the time across the cornfield."

Now, that is not true, according to Seeberger. And Mr. Pickens says that he thinks that at the time they passed him, for the distance that he looked at them, he did not look at them for the whole distance, Giddings was a little ahead, but only a very little, not more than either one or two men might be ahead if they were walking along the ground or street together; he didn't know exactly; only a step or two ahead of him. And Seeberger says that afterward Wiltshire was 10 or 15, or 20 feet ahead.

14. "That defendant having reached a point some twenty feet east of the deceased, turned and walked to the deceased on the right side and instantly shot him through the head from right to left in a horizontal position, whereupon the deceased fell from the log upon his right side and was again shot by defendant through the heart."

Now, where is there any testimony of that, gentlemen? I suppose that Brother Gilmore will say to wait; but my Brother Bitzer has very kindly said, with reference to some of his own statements that these are inferences that the State has drawn, founded upon the testimony. And I suppose you are to convict this man upon the inferences of the State. Now let us see this statement in which Seeberger describes the manner of Dan's turning off from the direct line which would take them to the east of those logs. Suppose you and I were walking along, our minds intent upon the same thing, and we were walking along in a straight line, and you suddenly diverged, and I may take two or three steps ahead before I notice that divergance. Then I turn and follow you. That is the way Seeberger says Dan Giddings did. And they say then Wiltshire sat down, and that the defendant walked up to him and deliberately fired, shooting him through the head from right to left, that he then fell from the log upon his right side, and thereupon he shot him

through the heart while he was lying down. Now, they will say that was all inference; for the Lord knows it is not fact shown by the testimony. I suppose that they would have you understand from that statement that Ben Wiltshire went deliberately and sat down on that log, and that Dan Giddings, twenty feet from him, took out his pistol and walks up. Ben sees him coming, and lets Dan stick the pistol right up to his head, close enough to burn his face with powder, and kill him, and he never make a move to avoid it. Now, gentlemen, is not that a *reductio ad absurdum?* because the pistol must have been within from 8 to 10 inches of his face to have put that burn of powder there. That statement shows its own absurdity. But they put that proposition in here for the purpose of showing premeditation and coolness, and the physician heard it They asked his opinion about it in that form, and in the face of the fact that it would clash with the testimony given here by Dr. Lash. Now, what was that? Now, let me ask you how could this ball, let him be down on his right side, and this man standing over him, according to their hypothesis, (Counsel illustrating), have gone as it did? It would have gone out this way somewhere, would it not? And yet Dr. Lash says that it entered about right here, (indicating), striking the rib, which caused it to deflect downwards, coming out about that way. (Counsel still illustrating). Then, if it had come out it would have made its exit about the 10th dorsal vertebra, there near the spine; but that if it had not struck the rib near the sternum here, which caused its deflection, it would have gone almost straight through; simply being that much lower, where it would have come out of the body than where it entered as would be occasioned simply by deflection of the ball passing through the substances in the body, and being nearly opposite the point where it entered. He must have been lying flat on his back for that man to have done that. And yet this question puts it that he fell over on his right side and that he deliberately fired a shot through his body here. (Indicating.) Is there any fairness in that? Well, they put Dr. Hall on the witness stand; a "Daniel come to judgment." I don't know whether I ought to say anything about that poor devil, after the performance and exhibition he made of himself on the stand here. The Court thought my cross examination of him cruelty to animals, and came to his rescue. But here he was, utterly ignorant of the common principles of mental pathology. I asked this man Dr. Hall for a definition of a symptom, and he said it was "a perverted function." And he could not state the difference between the incipient symptoms of insanity and the characteristics of insanity. And they put him on this stand for what purpose? To swear away the life of this man. By such instruments, by *such* instruments, are the prosecution to ask for the conviction of this man? But you saw the character of the witness in that examination. If I had had him on the stand half an hour longer, and if he had not been rescued from my hands by the Court, he would not have been able to tell the initials of his name. He was asked by the Prosecutor for a definition of transitoria mania, and what did he he tell you? What did he tell you? Why, the man did not know anything. He knows nothing about insanity. He don't know as much about it as any of the lawyers in this case. He was asked what transitoria mania was, and he said it was loss of sleep, loss of appetite, it was being worried out, and having trouble, it was hereditary disposition to insanity; and that was transitoria mania. I made him swear, and he did swear, after a while, that those things were simply evidences or symptoms which would be found in or show a predisposing cause to any form of insanity; they were simply the symptoms of insanity or oncoming insanity; they were not the insanity itself.

Transitoria mania as defined by Dr. Jarvis, and as defined by nearly all the authorties, is, "A form of mental disorder which suddenly appears in persons previously sound, or not supposed to be unsound in mind, having a short duration, and suddenly disappearing." He had no idea what defini-

tions were. He called a sympton "a perverted function;" did not have sense enough to say that a sympton was an indication of a diseased structure, or some abnormal condition of it. I asked him to define what insanity was, and his definition was, "when a fellow was not sane." I asked him what the condition of insanity was, and he thought it was when a man's mind was in an abnormal condition. He was simply repeating the question after me. When is a man's mind in an abnormal condition? What is an abnormal condition of the mind? That, gentlemen, is just one of those instances where some fellow without any substratum of knowledge at all, sought to purchase a little cheap notoriety, and only, after he gets up here, finds himself in the position of a sprat disporting among whales, or attempting to. So his testimony goes for naught. It amounts to nothing. Well, we put Dr. Morse upon the stand. What did Dr. Morse tell you when the State put their hypothetical case to him? Said he, "There is nothing in that to show that he was insane at the time, and nothing to show that he was sane. The statement, the question as you put it to me would be perfectly consistent with sanity or insanity. It would not show that he was not perfectly sane at the time, or that he was not insane."

These facts which I claim to be untrue statements in this question of the State's are facts which have very little to do with the question of insanity at all, as reflecting upon the condition of this man's mind, or his previous state, and can be left out or left in and reflect very little upon that question. Now I want to show you those things which do bear upon it, and upon which physicians make up their judgment. I want to show you that there was nothing there to show either sanity or insanity, and they have carefully excluded from their question those things upon which physicians are able to make up their judgment whether or not there exists an abnormal condition of the mind.

I am now going to call your attention, and show you that in their statement of the case there are forty-two facts proven in this case, clearly proven in this case, or directly inferable from the proof in this case, that there are forty-two facts, nearly every one of which reflect upon or make up part and parcel of the sum of the case upon which medical witnesses are asked to pass their opinion as to the sanity or insanity of the person, that are not included in the State's question.

1. The first we have, is, The oddities or eccentricities or peculiarities of the prisoner which were observable in him as boy, youth, man and soldier?

Now then, we frequently speak of men's "eccentricities." To the ordinary mind but little weight is perhaps attached to them. To the medical mind, in making up the diagnosis of the case, in making up an opinion as to the mental condition of the man, they are much. For eccentricities, as the venerable Dr. Kennedy put it, have about the same relation to insanity as varioloid has to small-pox Now Dr. Maudsley, in his work on "Responsibility," says of eccentricity,

"Those who devote themselves specially to the study or treatment of insanity are sometimes charged, not always unjustly, with the disposition to confound eccentricity with insanity, and to detect disease where persons not so biased fail to perceive anything abnormal. Eccentricity is certainly not always insanity, but there can be no question that it is often the outcome of insane temperament, and may approach very near to or actually pass into insanity. Without making too much of peculiarities of thought, feeling and conduct, that may be consistent with perfect sanity, there are facts to be borne in mind if the true interpretation of them is sought. In the first place, it will be observed that in families some members of which have displayed decided insanity, other members have been eccentric; secondly, *eccentricity*, after lasting for a time as such, has culminated in insanity; thirdly, monomaniacs who are known to be insane on certain subjects are often eccentric in their whole conduct; and lastly, persons who have been decidedly insane, having labored under one of the recognized forms of mental derangement, often remain eccentric during life after their reputed recovery."

Now then, during childhood or boyhood, or youth, or manhood, the

evidences of peculiarity, and eccentricity, whether or not insanity itself, they form part, and parcel of the whole case made up by the physician in determining whether or not there was any evidence of an insane temperament, or neurosis which may culminate, by reason of some great mental shock, or some great grief or trouble, in insanity. There is a vast border land between sanity and insanity, in the wide penumbra of whose shade many of us walk without knowing it. And as has been said by witnesses here, and as is laid down by the authorities, there is no well defined line of demarkation, but sanity shades imperceptibly into insanity. And these peculiarities of his boyhood, and youth, this oddness that has been testified to by the witnesses furnish important indications to the physician in arriving at his opinion. Then, also, are to be considered, in this connection, the color of the eyes, and whether or not he had a Roman nose, and high cheek-bones, and other prominent features. In fact, the whole appearance of the man is to enter into the consideration. These are not insanity, but all these things are to be taken into consideration by the medical witness in giving an opinion whether or not, hereditary insanity having been shown before, there existed in this man an insane temperament which simply awaited some great trouble or shock to produce an explosion which dethroned the mind for the time being.

2. The next thing is, The insanity of his father.

Now, that is not put in there. And yet you have heard it here laid down, and you will find it stated by Dr. Trimble, by Dr. Morse, by Dr. Kennedy, and by Dr. Miller, that the hereditary taint is one of the strongest evidences of an insane temperament, an insane neurosis; of a tendency, in other words, to become insane under circumstances where a perfectly sound person would not. Dr. Maudsley, in speaking of hereditary taint, says:

"A son of insane parents carries in his organization a distinctly greater liability to develope insanity under ordinary conditions of life than the son of perfectly sane parents."

We learn from books and from persons who have traveled and made the matter a subject of study, that our asylums are full of persons who have become insane from grief, from trouble, from sorrow, some from great joy, some from fright. What was the condition of affairs in this case? This man, the father of the defendent in this case, had suddenly lost all. He wandered around at late hours of the night for the purpose and in the endeavor to borrow money, going to men that he knew, must have known, were not in the condition to loan money. Mr. Long states, himself, that at a time when he could not have raised $50, he had come at 11 o'lock at night and called him up out of bed and asked for a loan of some $300. We find that this thing culminated in a state of complete melancholy, one of the worst forms of mental alienation; that he sat by his fireside and brooded; that whereas before he was a man gentle in disposition, he now became irritable in disposition; a man who had, before, spoken and behaved kindly towards his wife, he now lifted his hand, in anger, as if to strike, still retaining mental power enough to restrain himself from the commission of the act, and from doing violence; but finally growing moodier and moodier, from the effect of his loss and the overpowering weight of his trouble, he took down in his bed, and soon became unconscious, and remained so for three weeks, and finally died, without there being any evidence of any physical disease or any particular form of sickness at all. What brings on the trouble in the case of this defendant? What produces the condition, the utterly disturbed and perturbed condition of this defendant's mind? What but trouble, the over-weening, over-powering trouble of his wife's infidelity and her wrong-doing, and the great wrong done him by Wiltshire, and the rendering motherless of his children. This state of affairs wrought upon him, producing sleeplessness,—which is a prominent element in the causation of insanity,—producing loss of appetite, producing incoherency, inabil-

ity to attend to his ordinary avocations, inconstancy of action. Now, all of that is not stated in the question of the State at all.

3. Another thing they did not put into the question, and which, be it to our discredit, too, was neglected upon my part, in this case, to call out, but the Court himself seeing the importance of it, inquired of the witness, Mrs. Brouse, as to the fact of the resemblance of this boy to his father, and that testimony disclosed the fact that Dan had his father's size and shape, color of his hair and eyes, his complexion, his manners, his general appearance, his habits of life and habits of thought, and voice. That was called out in showing the resemblance of this man to his father, and thereby a very much greater likelihood that he should have inherited from the father those latent mental diseases which, under the same overpowering influences, the same grief or trouble, same great mental shock, may explode and cause the dethronement of the reasoning powers. Alienists lay down the fact that the previous education of the man has much to do with it. That is, I don't know what importance the medical man, in making up his estimate, places upon it, but he wants to know the fact, and that is the reason the Court permitted it to be introduced in the testimony. He would not have permitted it to be introduced if it had not had some relatian to the case.

4. The Court has permitted the proof of the education of this boy, how he spent six or seven years in a country school, which was all the education that he got, for the reason that it has been shown that insanity occurs with a great deal more frequency, for some reason, in our advanced civilization than it did in the earlier and more primitive state of civilization.

5. And for the same reason the character of his pursuits in life were permitted to be proven.

But none of these were taken into account in the question of the State.

6. Another point omitted in their question is the fact of his having served in the army. This is recognized as a matter of importance both by the legal profession and by physicians, in the question of a tendency to insanity.

7. His attachment to and love for his wife and yearning for her even with full knowledge of the fact that she had dishonored his bed. That was not set out in their question. These facts show that that man had not banished the love of his wife from his heart, notwithstanding what he had suffered. I want to call your attention to one thing. You all have the common instincts of our common humanity. We all know that there have come times in our lives, from boyhood up, when a man or a boy with whom we have had friendly relations, has ceased to stand in that position toward us, something has occurred to break them off; trouble has come. We think he has done us some wrong, and we are always happy to find and believe and state anything we can hear of against him. Where they would not have found belief before, now we accept them. Now, there are statements of what he had been told of his wife's infidelity, and in which he was bound to believe. These statements come often, we know, when men are under a feeling of depression, and they harbor the statement made of the wrong against the person that he never had before, at all. And all of these facts speak louder than his words to show the continuing attachment for his wife that he had.

8. Now, another thing is left entirely out of this question, and that is, That from the time the wife of this prisoner spent several days at Wiltshire's nursing his sick child, the prisoner noticed her growing estrangement from him, and dissatisfaction with her home. It is true that is a statement of Mr. Giddings, but I think there can be no doubt of its truthfulness. That is for you to determine under the rules of which I have already spoken. You have also the testimony of Mrs. Blair and Mrs. Carter, who had known her from the time of their coming here, and in the four or five years she lived down there where they have been they had not known of any act of infidelity of hers until after the time she went to Wiltshire's, no estrangement from

her husband and no dissatisfaction with her home. But grant that she may have been a ruined woman, may have strayed from the path of virtue, may have done wrong to her husband when they lived in Erie county, but yet one can believe that they came here for the purpose of reformation. It is true that she was connected with the church—I don't know whether she was a member or not—down there. She was visited by her neighbors, and she visited with them; and this Mrs. Dewey went there as a visiting committee in some of the church enterprises They were good enough to recognize her as neighbors before she went on this errand of mercy to Wiltshire's house, when this estrangement commenced; but after that she became dissatisfied with her home and surroundings. I say, grant that, that she may have been ruined up in Erie County, he still held to her as his wife, and the Court has stated from the bench, in ruling upon the question, that his marital rights were still sacred. No man had a right to invade them; no man had a right to entice her to ruin; because even the vilest wretch who walks the streets is protected from the same wrong; no man dare trespass upon his rights. If a man's marriage rights and obligations are invaded, or if his wife be taken from him, it has interfered with the peace which existed between him and his wife.

9. That after this last event (that is, the event at Wiltshire's) Wiltshire's visits became more frequent to the house where before that time he had been but a casual visitor. And there we have not only Dan Giddings' testimony, but we have the testimony of Mrs. Carter. And Dan would come home and find that Wiltshire had been at the house while he was away at work. There is where Mrs. Carter and Mrs. Blair came to get their names mixed up with this case. His visits became more frequent. He followed up the attempts at seduction which he had undertaken at the time when she was on that act of charity. He then invades the privacy of this man's family; he enters his castle; comes into it for the purpose of undermining and sapping the foundation of the loyalty of the wife to her husband, and of the mother to her children.

10. That when she first left she went to Wiltshire's house, the latter part of June or the first of July. That is left out entirely. And this is important to you, because it reflects upon the question of his insanity, from the fact that, says Dr. Trimble, this vacillation of his, his wanting to get rid of her one minute and then to take her back the next, when he had found out that she had dishonored him, and when she was off at her seducer's house, his going to induce her to come back, all this, says Dr. Trimble, is one of the strongest evidences of his being in an insane condition. And Dr. Miller says that if he had been a man of any decision of character he would have killed Ben Wiltshire long before.

11. That he went and begged her to come home when she was there. This is included in and covered by what I have just said on the last point.

12. That when she was staying at Carter's, he, Carter, told him she would meet Wiltshire at night, and spoke of his suspicions. That is omitted.

13. Dan then tried to disbelieve that there was anything wrong, but still such suspicions forced themselves upon his mind. That testimony is all left out in their question, and yet that reflects upon the condition of this man's mind. There is the first thing arousing his suspicion of her guilt that is communicated to him, according to this testimony, by Mr. Carter stating his belief that their relations were improper, that Wiltshire came there at night and waited outside his house, and that she would go out to meet him.

14. That she went to Scott Finley's. That is not stated in their question. There is no doubt but that she was there.

15. That he went there twice and besought her to come home. They did not attempt to disprove that. If it were not true, they had Scott Finley here, and they could have disproven it. And that they omit.

16. That he learned she was in Chillicothe with Wiltshire, and that they stayed at a hotel at night. That is entirely left out.

17. His vacillation and incoherence of manner and speech during all this time, is another point entirely omitted. The very fact that he did not go to the hotel and kill him then, the fact that his mind was in that perturbed state that he would come here determined to kill him and then go away without doing it, change his mind, vacillate, is one of the strongest evidences of insanity. But that the State leaves out of the question they propound to the physicians, the very thing, gentlemen, that clearly indicated the condition of the man's mind; which showed whether or not he was steady and stable, or unstable and vacillating as the winds.

18. The extent and character of his emotional excitement, trouble, weeping; his mind continually running on his wife, even after his troubles; his inability to work, his inability to sleep; his continuing to talk about her to his mother and his different neighbors, is entirely left out of that question. They merely state it in a mild manner, that he was much troubled.

19. His actions and conversation with Leonard Berg, on the street. You remember Leonard Berg testified that he saw him walking up and down the street after midnight, in an agitated condition, and he opened a conversation with Mr. Berg, who was a perfect stranger to him, on the subject of his wife, and poured out his whole sorrows, and told him he was hunting for his wife, who was at some house in town with Wiltshire, and wanting him to assist him in finding her. And this is entirely left out of their question. It is an important point as bearing on his insanity. Not an expert put upon the stand but says the fact of the outbursts of weeping that Dan Giddings indulged in after he heard of his wife's infidelity, his walking up and down bewailing his fate, his inability to sleep, are among the strongest evidences of the unbalanced condition of his mind. Here this man was in this condition for weeks, according to the testimony. And it is for the jury to say, in their capacity as husbands and brothers, whether or not such a condition of facts, such an overpowering trouble pouring in on a man's mind, would not unsettle his whole emotional and mental condition, and render him liable to yield and to do anything under a sudden provocation. This was strongly pressed on the trial of Sickles. And the jury in the Dan Sickles case acquitted him justly; and it was left entirely to the judgment of the jury, no medical evidence being introduced.

20. His relenting of his purpose to kill Wiltshire, is another point omitted. It is in evidence here that he told persons that he purposed to kill Wiltshire, and came to town on two or three occasions for that purpose. George Smart says he told him so, but also that he had relented, and had determined finally to refrain from doing violence, and to endeavor to take up the broken thread of his existence, and to go on through life and do his duty as a man; thus showing his vacillation of mind, his perturbed condition of mind, which did not remain fixed for any time, on any purpose.

21. His consent for his wife to go to her parents, and his actions in reference thereto. The Prosecutor says something about the small amount of money with which she started to go, being about $15, as insufficient to meet her expenses. Let us see. It is about 150 miles to Erie county, and I believe railroad fare is three cents a mile; so she had plenty of money to take her from Chillicothe to Erie county. His consent for her to go there was given. One would suppose that after what he had learned he would be only too glad to know she was going up to her mother's, hoping that there, under tht influences of the mother, whose influence is doubtless always for the best, hoping that under her influences she might be won back from her unholy passion for that man Wiltshire, and that she would come back and resume her duties at home.

22. The letter to his brother Arthur, of July 21st, in which at that time he tells him of his filing his petition for divorce, and his having given up and abandoned her. That was written on the 21st, mind you, on the day right following the one on which he had learned of the elopement with the adulterer and seducer, the vile wretch who, under the guise oi friendship, had entered

his house to there work out the hellish purpose of the destruction of his peace and happiness.

23. That on the 23rd of July, when the notice of the petition for divorce was to be served on his wife, he inserts a letter to her, which plainly indicates an intention, under cover of the service of that paper upon her, to induce that wife to come back to his bosom and his home. One day he discards her and endeavors to banish her from his mind; the next he is imploring her to come home! What does that show; a man stable, or unstable? Unstable as water.

24. Her repentance, the manner of her return home, the reconciliation and forgivness, and the communicated threat; is another important point omitted. That letter had brought forth in her the rich fruit of repentance, and she turned her steps toward the home she had deserted, as toward the gate of Paradise, and there she stood, hardly knowing whether or not she might enter. Dan stood by the door, and seeing her, said, "Hello, who is that." There she stood, her handkerchief over her eyes, the tears streaming down her face, with the sense of her unworthiness in her mind, all covered with sin as with a garment as she was, her mind all filled with uncertainty now as to whether or not she was to be taken back by that husband whom she had so greatly wronged, whether or not she was to be permitted to press again to her bosom those children whom she had disgraced, and over and above all, whether she would be spurned from that house and sent out into the world to sooner or later sink into the horrible pool of prostitution. There she stood with that great doubt upon her, and with a feeling of her shame and guilt upon her, and the remembrance of the wrong and suffering she had brought to him. The fact was before her that he had sued for a divorce, and had endeavored to believe that their separation was final, that he had discarded her forever. But she was still the mother and wife. The children were clinging to her garments and calling her "mother," with no conception of the stain of unholy adultery that was upon her. He relented, and, on her solemn promise that henceforth she would be to him a faithful and loving wife, and a kind, affectionate and dutiful mother to her children, he received her back to his heart and his home. And at this time, in the presence of this boy Arthur, she told him of the threat against his life made by Ben Wiltshire. None of this was stated in the State's hypothectical case. That was important to have been presented to the physicians upon the stand, to give them the whole range of the testimony, upon which to form an opinion of the perverted condition of this man's mind at that time.

25 His yearning for her even after her elopement, and wanting to go after her, but being prevented by his mother. You will remember that one of Col. Gilmore's greatest objections to our hypothetical question was the use of the word "yearning." Now, the word "yearning" expresses what? The condition of his mind. You have had the testimony of Mrs. Blair and Mrs. Carter that he was always talking about her, wanting her, crying about her, even after the elopement. You have the testimony, also, of Mrs. Brouse, that every morning nearly he wanted to go after her, but that she kept him from it.

26. His conclusion to give her up on filing his petition for divorce, but his inability to do so. All of this is not stated in their question.

27. His going to Washington Court House on Friday for her goods. That is not stated at all. And, on that trip, knowing that Wiltshire had represented her as his wife, he permitted, for the purpose of hiding her shame, his wife to pass him off as her brother.

28. His borrowing the pistol the evening before, for the purpose of protection, in view of the threat that had been communicated to him by his wife. They state the fact of his borrowing a pistol a month before, but do not state the fact of his giving it back shortly afterwards, and that he did not have it again for two weeks after Ben Wiltshire and his wife had gone to Washington, and until the evening before he went with his wife for the

goods, to Washington Court House, when, fearing Wiltshire might undertake to execute his threat if he should meet him there, he again got it for the purpose of protecting himself should the necessity arise. All this affords indication of the man's mental condition.

29. The next is. The object and purpose of his coming to Chillicothe on the Saturday following, and his attending to certain business here. They just simply pass over all of that testimony of Mr. Lindley, as to the purpose of his coming here. But they call attention to the fact that George Smart said he told him he had come up here several times with the determination to kill Benjamin Wiltshire. And I want to call your attention to one thing right here There was one thing which we called out which they unquestionably did not know. They did not know anything of his having purchased any cartridges here on that day. Dan Giddings himself voluntarily stated that fact as being a portion of his business here that day. He had promised Lyman Blair, when he borrowed the pistol, that he would return him some cartridges with it when he returned it. Now, the fact of his purchasing the cartridges that day was a matter that they did not call out, and evidently knew nothing about. Dan Giddings stated that voluntarily. It was a matter which was locked up in his breast, and if he had chosen he could have kept it there, and the prosecution would have been none the wiser on account of its having occurred; and he was not bound to disclose it, because it was the part of the prosecution to have proved it.

30. The purpose of Wiltshire in coming to Chillicothe on that day, and the threats he made before coming. Not one word is said of that, at all. But you have the testimony on that very important point, and it is for you to determine the object of his coming at that time, taken in the light of his threats and statements to prominent citizens of Washington just prior to his leaving to come here. You are the judges of that fact. But that is excluded from the hypothetical question submitted by the State.

31. Defendant's accidental meeting with Wiltshire on Saturday. They don't state that. But the claim on the part of the prosecution is that he laid around waiting for the deceased, and saw him go to that saloon; but there is no evidence of that, and there is good evidence that such was not the case, but that the meeting was purely accidental.

32. His accidental possession of the pistol at that time. We have shown by the testimony that he borrowed it for entirely another purpose, that of protection for himself, when he went to Washington for the goods, and that on his return from that trip he took off his coat and hung it up with the pistol in the pocket, and that in the hurry of getting off to Chillicothe on that Saturday morning the fact of it's being there escaped his mind until after he was on the way. That is entirely ignored in their hypothetical question.

33 His request to talk to Wiltshire, and the object of it. The reason that Dan states for wanting to talk to him is entirely left out of their question.

34. The fact that Wiltshire proposed the trip they took, and the fact of their stopping at Struble's saloon, and then going to the cornfield. I have argued that point, and shown by the evidence, in another portion of the defence, that Wiltshire, and not the defendant, as claimed by the State, led the way; that Giddings was wholly unacquainted with that part of town, while Wiltshire was perfectly familiar with it.

35. The ignorance of defendant as to the locality. That is not referred to at all, but is in testimony.

36. The expresion of defendant to deceased in leaving Struble's saloon.

37. Their passing so close to Seeberger at the foot of Mulberry street.

38. Their passing and seeing Pickens, and the conversation at that time.

39. The casting of the pole across Honey Creek, by Wiltshire.

40. The whole conversation and positions at the logs, as told by Giddings. That is a very important point, as reflecting upon the shock to his mental constitution, and upon which is based his condition of temporary insanity,

and his inability to control his actions, or to judge of the right or wrong, at that time. That is left entirely out of the question as put by the prosecution.

41. His voluntary surrender of himself, is entirely left out.

42. And the other facts upon which the Doctors base their opinion, among which are, heart disease, and constipation. These are 42 facts not embodied in their question, each one of which directly bears on the question of sanity. Not one of them is stated in their hypothetical question.

Now, I will endeavor to go over briefly and show you their bearing upon the question of insanity, and ask you to look at the whole basis of the case, upon which the witnesses have testified, that presented facts which operated upon the mind of the defendant, and show the changed condition, the perverted condition of his mind, which utterly exclude their question under the rule laid down by the Court; and also their presence in the hypothetical question submitted by the defence; in order that the jury, who are the judges, may be informed upon these matters.

In the course of my argument I have called your attention to the fact that we have prayed of the Court certain special instructions which I fully expect him to give in charge to you in this case. And, desiring to occupy no further of your time than necessary, I think that it may be well to read them at this time. They are as follows:

In this, as in all other criminal cases, the defendant is presumed to be innocent, until he is proven guilty.

If, upon a consideration of all the evidence, you find a reasonable doubt of the guilt of the defendant, you should give him the benefit of such doubt, and acquit.

The defendant has placed his previous reputation and character, as to being a man of peace and quiet, in evidence. If you find, gentlemen, that previous to this difficulty, he sustained a good reputation for peace and quiet, you will weigh it in his favor, for what you, in your honest judgments, may think it is worth. Where the question to be determined by you, may be close, it should be sufficient to turn the scale in his favor.

You will bear in mind that neither a preponderance of evidence, nor any weight of preponderant evidence, is sufficient to authorize a conviction of defendant, but the evidence on the part of the State must be sufficient to generate a full belief of the guilt of the party charged, to the exclusion of all reasonable doubt.

There is no presumption of malice in this case, if any proof of alleviation, excuse, or justification, arise out of the evidence for the prosecution.

The existence of malice is not presumable in this case, if on any rational theory consistent with all the evidence the homicide was either justifiable, or excusable, or manslaughter.

It is for the jury to say what was the state of the prisoner's mind as to the capacity to decide upon the criminality of the particular act in question, the homicide, at the moment it occurred, and what was the condition of the parties respectively as to being armed or not at the same moment. These are open questions for the jury, as are any other questions which may arise upon the consideration of the evidence. the whole of which is to be taken into view by the jury.

The law does not require that the insanity which absolves from crime should exist for any definite period, but only that it exists at the moment when the act occurred with which the accused stands charged.

If from the whole evidence, the jury believe that Daniel Giddings committed the act, but at the time of doing so was under the influence of a diseased mind, and was really unconscious that he was committing a crime, he is not in law guilty.

If the jury believe that from any predisposing cause the prisoner's mind was impaired, and at the time of killing Wiltshire he became or was mentally incapable of governing himself in reference to Wiltshire as the debaucher of his wife, and, at the time of his committing said act, was, by reason of such cause, unconscious that he was committing a crime as to said Wiltshire, he is not guilty of any offense whatever.

If, at the time the prisoner committed the act charged upon him, he had appealed to the deceased (who he believed had theretofore seduced his wife and enticed her to elope with him, from which elopement she had returned and taken up her residence again with the defendant) to promise him to not come about his (defendant's) home and interfere further with his wife, he, the defendant, fully expecting that the deceased would regard his appeal and make the promise requested, and on the contrary the deceased said he had as much right to the defend-

ant's wife as he, the defendant, had, and that he would have her or kill the defendant, and the prisoner was, by reason of such disappointment and such answer, coupled with previous mental trouble, anxiety and grief, arising from a belief of the deceased's connection with the prisoner's real or fancied domestic troubles, thrown into a state of mind in which he was deprived of his memory and understanding so as to be unaware of the nature, character and consequence of the act he committed, or to be unable to discriminate between right and wrong in reference to that particular act, at the very time of its commission, he i entitled to an acquittal. Provided the jury find that the incapacity for distinguishing right from wrong resulted from the mental disease and not from a fit of passion.

The jury have the right from their own knowledge of human nature, and the tendencies of the human mind, in addition to, and in confirmation of, the evidence of experts, to say how far the causes relied upon to establish irresponsibility on the part of the defendant at the time of the commission of his act, were adequate or sufficient to produce insanity, and did cause that result.

If the jury believe from the whole evidence that at the very time of the commission of the act alleged against him, from causes operating for a considerable length of time beforehand, or recently, or suddenly occurring, the defendant was mentally unconscious of the nature of the act in which he was engaged, unable at the time of committing the act to judge whether that act was right or wrong, and did not know at the time that it was an offense against the laws of God and man, and was not free to forbear, or to do the act, he was and is legally irresponsible for it, and should be acquitted.

If the defendant was deprived of his reason at the time the act alleged against him was committed, resulting either from a settled and well-established mental alienation, or from the pressure and over-powering weight of circumstances occurring at the time, he is legally irresponsible for what he did, and should be acquitted.

In order to constitute a crime a man must have memory and intelligence to know that the act he is about to commit is wrong; to remember and understand that if he commits the act he will be subject to punishment; and reason and will to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act, and the immunity from punishment he will secure by abstaining from it. If, on the other hand, he have not intelligence and capacity enough to have a criminal intent and purpose, and if his emotional or intellectual faculties are so deficient that he has not sufficient will, conscience, or controlling mental power, or if, through the overwhelming violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent, and is not punishable for his acts.

You will bear in mind that the law holds no one responsible for his act, when his mind was so diseased at the time of his act as to be without reason, conscience and will, and where from such causes the party accused was an involuntary instrument of such a disease, and incapable of refraining from the commission of the act.

If the proof shows that the mind of the accused was in a diseased and unsound state, the question will be whether the disease existed to so high a degree, that, for the time being, it overwhelmed the reason, conscience and judgment; and whether the prisoner, in committing the homicide, acted from an irresistible and uncontrollable impulse; if so, then the act was not the act of a free agent, but the involuntary act of the body without the concurrence of a mind directing it.

If you are satisfied from the evidence that when the prisoner committed the act charged against him he was laboring under insanity, or such an estrangement of mind as left him without discretion to discern the right or wrong of that act, or unconscious that it was wrong, a state of mind in which, at the time of the deed, he was not free to forbear to do the act, he is not responsible, and should be acquitted.

I instruct you that in order that the prisoner may be punishable by law for the homicide in question, (if you find he committed it), he must, at the time of the commission of it, have had sufficient memory, intelligence, reason and will, to enable him to distinguish between right and wrong in regard to this particular act, to know and understand that it will be wrong and that he will deserve punishment by committing it, and sufficient mental power to control the sudden impulses of his disordered mind (if yon find it to have been disordered); but it is incumbent upon the defense to establish these facts by a fair preponderance of evidence.

Even if you find the defendant made threats to kill the deceased in conversations occurring antecedent to the homicide, nevertheless, if the homicide was

perpetrated by the defendant while in a state of insanity, it would still exempt him from legal responsibility.

Under any circumstances the jury must find that the threats and act in question were the result of a sane mind.

Even if the evidence of the insanity of the defendant should leave it in doubt as to whether he was insane at the time of the commission of the alleged act, if it also leaves in doubt his sanity at that time he is entitled to an acquittal.

The law presumes all men sane, and that therefore throws upon the defendant the burden of proving that the criminal act, or, what would otherwise be criminal, was done in a moment of insanity. But the law recognizes, and the Court has recognized here by the instruction that he has given you, the existence of that state of insanity known as "emotional," or "transitory"; and your judgment as to the man must all be brought down to the exact moment of the time that the act was committed. Was he a responsible being at that time? Was his mind, when this sudden shock was given him, in a condition to have exercised its faculties of choice to do or not to do the thing? And even if that were so, and you find that so, was the man irresistibly impelled to the commission of the act? Had he will-power and mental power sufficient to have refrained from the commission of the act under the circumstances? If you find that he did not have this overcoming power, by the fair preponderance of the evidence, the Court will tell you that it is your duty to acquit.

Now, what does this fair preponderance mean? It means simply bringing the evidence of insanity up to that point that it rebuts or offsets the presumption of sanity. The rule of law is well settled that the condition of insanity being proven then the burden changes, and it is the duty of the State to show that the act was not committed while suffering from that condition; and even then you must be clearly satisfied as to his sanity at that moment before you can convict. If you have doubt upon the whole of this testimony, if we have failed, upon the part of the defense, to show his insanity, if the state of the testimony is such that, while you may have some doubt as to his insanity, it still leaves you in doubt as to the prisoner's sanity at the time, it is your duty to acquit.

Now then, what do we rely upon? I have gone over what we relied upon; that is, the condition of the mind. We have had upon the stand four physicians, men of character, men who have given the matter some consideration, who say unequivocally and without doubt that they believe that the man, when he fired the shot, was not in a condition of mind that he could refrain from doing it; that he was without the will-power or intellectual power to enable him to refrain from doing it. Now, I think the Court will tell you, in confirmation of this evidence of the experts, that you have a right to take into consideration and bring to your aid to assist you in judging of this case, your own experience with mankind, your own knowledge of what would necessarily be the effect of the answer Wiltshire made, under the then existing circumstances, upon the mind of any husband whose wife had been stolen from him; that you might have the right to take into consideration your own experience, and judge what effect that would necessarily have upon the mind of most any husband placed under such circumstances as the defendant in this case was placed. And if, upon the whole of this evidence as presented by the defendant, you find proof of insanity to that degree that it leaves you in doubt of his sanity at the moment of the commission of the act, it is your duty to acquit.

I don't care to go over all the facts, as I think you understand them. You know what wrought up his mind, and that he was upon the verge of insanity; that he had been almost without sleep for a long time; that he would go to others and talk over this matter, weeping and crying, and under the influence of strong emotion consequent upon the conduct of this brute who had so dishonored him and broke up his domestic relations; that he was in a perverted condition of mind, showing that there was a change going on in his nervous organization, which would not leave him in a sane con-

dition at all; that the man in his then condition was more apt than the man without such previous mental disturbances, upon a sudden mental shock, such as it has been shown he sustained, to be thrown off his balance, or to have his reason utterly dethroned, leaving him utterly powerless to do anything else than he did do. And here I want to call your attention to the answer given by one of the witnesses in the Pierce case. The Pierce case was this: Pierce was a young man about thirty years of age. He was born and reared in Lockport, N. Y. During the war of the Rebellion he served, like the defendant, in the Union army. Shortly after the close of the war he went to Chicago and into the employ of the large wholesale firm of Field, Leiter & Co., where he soon rose to a responsible position. He had an only sister to whom he was warmly attached. His parents were infirm and he was the stay of the family. His sister became acquainted with Wm. Bullock, who attended the same church of which she was a member. Under the guise of religion he won the girl's heart, promised her honorable marriage and seduced her. When her condition of pregnancy was discovered young Pierce was sent for. He came. He met Bullock at his parent's house. He implored him to marry his sister and repair, in so much, the great wrong he had done. Bullock plead want of means, his mother's objections, and other excuses. He went so far as to make the infamous proposal that the girl should send away and abandon secretly the child when it was born and then he would marry her. These conferences continued for some days, during which young Pierce was in a very perturbed condition of mind, restless, sleepless, and anguish-worn. On the evening of March 11, 1871, after dark, Pierce and Bullock left Pierce's house, where a conference had been being held to endeavor to get Bullock to marry the girl, but without avail. They passed along the street together, Pierce earnestly beseeching him to marry his sister, Bullock still making excuses. When they came near the corner of the street at the Exchauge Bank, Pierce said to him that he would have to return to Chicago the following morning, and that he didn't like to leave affairs in the condition they were; that the thought of it would entirely unfit him for business. He then besought him again to marry his sister when Bullock answered: "I'll see you in hell first." Thereupon Pierce drew his revolver and commenced firing, Bullock ran across the street Pierce following and continuing shooting until he fired five shots. Bullock fell about thirteen rods from where the first shot was fired, with two or three bullet holes in him from which he died. Here we have in many respects a parallel case with this. Pierce, his whole mental and emotional being perturbed by anxiety and shame, was just in that condition that any sudden shock would entirely obliterate the mental power for a time, or place it in temporary subordination to the emotional.

That shock came in the answer of Bullock to him that he would see him in hell first, when Pierce still hoped he would answer him favorably. So with Giddings: He hoped, nay more, expected that Wiltshire would yield to his entreaty, that he would no more invade his home and steal away the wife and mother. The brutal and unexpected reply was the match to the gunpowder; was that sudden shock, which alienists say, will dethrone reason, and render for a time the person insane. Pierce was tried, and was vigorously and ably prosecuted. The defense was the same we interpose for this wronged man—transitoria mania.

The jury acquitted him and the Niagara County Court House shook with the cheers of commendation of their verdict. There is a portion of the medical expert testimony in that case I wish to read to you.

The hypothetical question (presenting substantially the facts I have just stated) leaving out the expression "Go to Hell," was put to Dr. McCollum, and the question asked by Mr. Lanning, the leading counsel for the defense, under those circumstances,

"What in your opinion, was the condition of his mind at the time of the shooting?

A. I think he had no mind at all.

Q. What was the state of the mind of the prisoner at the time of the shooting under the same conditions, except that the deceased instead of offering to shake hands at parting, the prisoner asked the deceased to marry his sister, upon which the deceased told him to "Go to Hell"; with these variations what would you say was his mind at the time of the shooting?

A. I think the shock was so great that he didn't know anything.

Q. I wish to call your attention after this, from all the evidence given in this case, taking into account the moral and religious character of the prisoner, the fact that hereditary insanity exists in his family, taking into account the temperament of his mother and his own, taking into account the grief under which he was laboring, his affection for his sister, wouldn't it be probable that the power of his will was suspended, and that the accused was in the condition described by the authorities as transitoria mania?

A. I should think it was mania, sir.

Q. I wish you to state the principle from which you draw your conclusion?

A. His excitement at the finishing of conversation with Bullock—he had a little hope that Bullock would do what was right, and upon the reply that he made, to "Go to Hell," it was a shock that produced mania; I have no doubt of it whatever; if he had had no gun he might have stood there benumbed and gone off crazy."

So here Giddings had hope Wiltshire would do right and would yield to his entreaty, and his brutal answer as shown by the testimony "was a shock that produced mania."

Other eminent physicians testified in this Pierce case substantially as did Dr. McCollum, and as have the eminent physicians testified in this case: the venerable Dr. Kennedy with twenty years special study of mental pathology and considerable experience as an expert—you will some of you remember Dr. Kennedy was one of the prominent experts on the trial of Buford for shooting Judge Elliott in Kentucky;—Dr. Morse with his long experience in the care and treatment of the insane in the leading public and private asylums of the State. Dr. Trimble with his clear analytic powers, and his ready and right reasons for his conclusions, and Dr. Miller, who adds to a long experience his personal knowledge and observation of the defendant himself.

There is, as I have said a striking parallel, between the Pierce case and this, and I wish each of you could read the entire report.

The history of this country is full of such trials and in no case has a man been convicted by a jury of his countrymen for slaying the seducer of his sister or daughter or the debaucher of his wife.

Take the case of Daniel Sickles. That case we have gone over. Will gentlemen say that the country has been flooded with danger by the acquittal of Daniel Sickles? Has society been any worse for it? Did they turn out upon society a man who afterwards became an enemy to it? No! We have seen him fighting your battles on bloody battle-fields; we have seen him facing the bayonets of the rebels in behalf of our liberties. And we have seen him afterwards in honor, representing this nation in a foreign country. But you will be talked to, you will be told there is something higher than individual interests; that the interests of society are higher; that we simply turn out, or make an excuse to turn out upon society common depredators and common criminals. Drive that from you, and let not any such idea as that drive out, beat down, and utterly destroy in your minds those instincts which are implanted in you by God. They must not be taken away from you by the arbitrary rules of law.

Take the Mary Harris case, which comes next. The Mary Harris case was simply this: She slew her own would-be seducer and destroyer, and was acquitted. All honor to American juries that will vindicate and safely keep the poor girl who seeks to and does avenge her own wrongs.

Take Jarboe's case, which has been spoken of. That was another case of a brother shooting the seducer of his sister.

Take the McFarland case, which I need not go over now. In that case the same instructions which we have prayed for here, were given. And in that

case the Prosecutor was assisted by Judge Noah Davis, an able lawyer; and the jury acquitted on the ground of emotional insanity.

Take the Burroughs case, in New York, where the man was acquitted for the killing of the seducer of his wife.

The Rogers case, in Massachusetts, where he killed the warden of the penitentiary, is another case where emotional insanity was recognized by the Court, Chief Justice Shaw presiding.

Take the Farman-Ward case, in Michigan. The deceased had seduced the defendant's sister, and he shot him down like a dog, on the streets of the city, and the jury found a verdict of acquittal, and the plea was that he was under such a state of excitement that his mental and emotional faculties were not under his control.

Take the Newland-Evans case, in Indiana, prosecuted by the famous criminal lawyer, Major Gordon. The man killed was the seducer of the slayer's daughter, who was a physician. He literally hacked the seducer to pieces with a dissecting knife; yet the jury acquitted him.

The Cole case, the Hyde case, and many more I might mention, are strong examples.

Now, the law does not throw protection enough around the family, because it does not protect your wives and daughters from the wiles of the seducer and adulterer sufficiently; but God Almighty has put it into the hearts and minds of brave men, and into the hearts of intelligent jurors, to see to it that they protect the sanctity of home, that they protect the inviolability of the marriage-bed. They will see to it that they protect the wife and the sister from the wiles and intrigues of the seducer and adulterer. The God-given instincts of our natures command it, and will continue to command it as long as man remains, and as long as God leaves him in his own image.

And now, gentlemen, there is much I may have left unsaid. It may be that I have said too much. I spoke to you of the necessary feeling of responsibility that one must have. I draw now to the close; but I desire to impress upon you, in the outset, this fact, before I close, that you are to be addressed in the close of this case by counsel eloquent and able; one who will do, as it is perhaps his duty and his right to do, everything that he may legitimately to endeavor to induce you to the belief that the testimony and circumstances of this case show this to have been a willful homicide. Remember, however, as his words fall upon your ears, as his arguments fall upon your minds, to scan every bit of it closely, and see whether or not they be fully authorized by the testimony in this case. Remember that he goes unanswered; that the last word that shall fall in behalf of this prisoner shall have fallen when I close. Remember that he remains unanswered. There is no reply. There is no power brought here to show what may be fallacies of argument, if fallacies there be; to show what may be sophisms, if sophisms they may be. I will do him the credit to say that I believe he desires to argue this case fully and to argue it fairly, as he understands it; but I also know that those engaged both in the prosecution and in the defense of a case are liable to be biased, naturally, and may be led to make statements in too strong language, at times.

I will, here, before I conclude, caution you as to one other thing, and that is, that the law surrounds this man with the presumption of innocence from the very start; that you are not permitted to take that away. But if the testimony, as presented upon the part of the State here shall show you beyond any doubt, beyond a shadow of cavil, that every element necessary to constitute the crime is present, remember this: No harm can come to society if this man go free. It is a good deal better for the country's credit and for society that no man be convicted, but that the righteous verdict of twelve men, his fellow citizens, shall have said, "not guilty." And I will believe that the past history of this man, with the only creature that lived in the world who has ever disturbed his mind and disturbed his domestic peace gone, and gone forever, with no existing cause to produce in him insane acts,

I believe, that the history of this man's life, and surrounded with the character of that life as we have proven it to you, the kindness, peace, and gentleness that have characterized it, are a sufficient guarantee that this man would go back to a true and upright walk as a true citizen, to a full and faithful discharge of the duties of husband, father, and citizen in this community. But if you shall convict this man, and if, in the future, during the years that I pray the good God may allot to each one of you, there shall creep upon your minds the belief that you have done wrong, there is no redress for it; there is no recalling the act. That simple word "guilty" that you will have pronounced as twelve jurors, can never be unsaid. It hurls a soul into eternity. It brings a fellow citizen to a dishonored grave, or consigns him to incarceration where God's bright sunlight never reaches to cheer him; where the green grass never brings kindly pleasure to his eyes; where home, and wife, and children, can not gladden him with their presence; where dishonor must be stamped upon him forever; from whence he may never walk out again a brave man, with upright form, to face his fellows; and for what! For the simple fact that a man had maddened him; for the simple fact that a scoundrel had stolen into his peaceful home and had seduced and dishonored his wife! Who made this man mad? Did he do it himself? Was it his own wrong-doing? Was it by his having violated the rules of life? Had he been a drunkard and libertine himself until he had brought upon himself the aberration of his intellectual faculties? Is that the cause? Who made him in this irresponsible condition? Who brought that great change about in this man, and brought him into that condition that he took the law into his own hands; that he became the instrument of divine vengeance in executing upon that fiend in human shape the punishment he so richly deserved? Benjamin Wiltshire did it! Drunkenness is no excuse for crime. If a morally and legally responsible man voluntarily puts himself into a condition which renders him unconscious of the nature of his acts, it is no excuse for the crime he may commit, *if he voluntarily put himself in that condition.* But suppose, sir, that you had taken this man and deliberately reviled him, and with the intention deliberately to do him harm, and you bring him into that condition in which some act or word of yours suddenly throws him off his balance, and destroys for the moment his will-power, and even his consciousness of the act he is performing, and he kills you, the law would not hold him responsible, because the fact of his being in that condition was the result of your act or acts. And now, let me ask again, Who made this man mad? Who put him into this disturbed condition which perverted his mind? Who brought upon him all this sorrow and this shame and this ignominy? Ben Wiltshire, the man who lies in his grave to-day, and where, peace be to his ashes, and where, may God's mercy reach him!

And now, gentlemen, I say, if you disregard this doubt: if you put into execution the doctrine that Christ came into earth to set aside, of blood for blood, when He preached the doctrine of forgiveness, if you want to set aside this doctrine, and send this man to his grave, deprive these children of a father, deprive this mother of a son, there may be in your future life, grave cause for regret; there may come into your hearts, as you sit in your home circles and look into the happy faces of your loving wife and children, a regretful thought that will never down, that you may have, even though unintentionally, and in what you regarded as the performance of your duty, done a great wrong. In the night watches the thought may come to you; in the daily walk it may stalk beside you like a phantom, that perhaps you might have exercised more mercy and forgiveness in the administration of justice; that it would have been better to have erred on the side of mercy, where reparation could easily have been made, than to have done that which, if you had committed an error, you could never undo; when the word "guilty" has passed your lips never to be recalled, when an ignominious death shall have ended all power to recall it forever. Gentlemen, this can

not be. I have no fear of it. I rest my faith in men; men in the image of their God; men endowed with every manly instinct, and with warm hearts.

The holy Christmas-tide is nearly on us. Shall the only recollection of the holy Savior's birth, the birth of him who came down and suffered under His Father's rod that the sins of unholy man might be forgiven, and that mercy might be shown him by the Creator; shall the only remembrancer of the birthday of the new era of the sin-stricken soul of man be passed by these children in the recollection that there father is lying under the doom of death, and that by your verdict? Or shall it happen to them that that father, on that Christmas day, shall lie incarcerated in a murderer's cell at Columbus, there to remain through all the years to come of his life; that no father's hand shall be lifted for their support or protection, or to guide them through the perilous paths of life in the future; that his voice shall not teach them which shall be the course to pursue for the right and for the better. Shall it be that when the little stockings are hung up for the Christmas gifts there shall be there no father's hand to fill them with the tokens of a parent's love, which shall render their little hearts glad, and symbolize the love of that Savior whose birth the day commemorates, or will you gladden their hearts with a Christmas gift of twelve ballots with the words "not guilty" thereon? Oh, let your verdict be a grand stride forward in the onward march of true justice and righteous judgment, and one that shall bring a glad remembrance of Christ's coming upon earth to these poor, desolate children and to this heart-broken mother.

Col. Wm. E. Gilmore, of Counsel for the State, spoke as follows:

With the permission of the Court, gentlemen of the jury, I congratulate you that at last you are drawing towards the close of this long—and at least for one of counsel for the State—trying trial. And gentlemen, notwithstanding all that has been said by both of counsel for defense; notwithstanding the fantasms that have haunted their brains, and driven them wild about the efforts that I shall make to convict this man; I probably can promise you that I will close anything that I have to say, before the Court adjourns again.

One can not tell, under such circumstances as I am now placed, exactly what limits he can impose upon himself, but for aught I know now, and for aught I feel now, I will probably close the argument of the case to-day.

Notwithstanding some features that have developed on the discussion of this case, I suppose that it is not improper for me to pay a tribute of admiration—honest admiration; heart-felt admiration—to the intellectual character of the defense that has been made. In thoroughness of preparation, and in ability in carrying out and using the preparation that has been so carefully made; I have never seen the defense in this case excelled here, or elsewhere. I say this at the close of the case; and as an honest tribute to the intellectuality of gentlemen upon the other side. There is no object, and *can* be no object now, on my part, to get off gush and bosh and fulsome unfelt compliments, and all that sort of thing; such as you have listened to from the other side; and which was thrown in for the purpose of handicapping the closing by the State. The defense has closed. They can say no more. And the compliments I pay those gentlemen are, therefore, without a purpose other than the honest expression of my admiration. While complimenting the *intellectuality* of the other side; I regret that I cannot also compliment the morals or the conduct of the opposing counsel. I don't mean, in what I now say, what I shall say, to deprecate arts or efforts upon their side to acquit this defendant of the terrible crime with which he stands charged. I admit that the defense, when a man's life is depending upon the issue; has a right,—a legal, and a moral right too,—to use every device, pretext, and—I can almost say "trick of the trade"—to win a favorable verdict. I make no complaint on that score. The State of Ohio, however, does not employ its prosecuting attorney; and does not employ any assistants to the prosecuting attorney; to use arts and devices, and tricks of the trade, to secure the conviction of any man, whether it be for murder in the first degree, or of simple assault and battery. And I should do violence to my conscience, if I should resort to them. Therefore I say the fantasms that have haunted these gentlemen's minds throughout the progress of their argument may as well be dismissed right now, and forever.

I regret, gentlemen of the jury, and regret in the very last degree, that the methods and courses coldly, calculatingly pursued by gentlemen upon the other side, have driven me to say anything of a personal nature, or to talk about myself or them for a single moment. But a reporter is brought here,—a gentleman whose skill and ability we have already had evidence of, —to put every word of this trial upon paper for some future purposes. It is not wrong in me to say that he is brought here by the attorney from Highland County, who represents the defense in this case. Therefore it is,

gentlemen, in part, that stings are directed personally to me; and importanc, is given to what counsel upon the other side choose to say; intended coldlye calculatingly; not only to handicap me in the argument of this case; but to wound my feelings; to injure my character, to depreciate me even in my professional standing. (To Mr. Sloane, counsel for defendant.) O, sir, your shakes of the head come too late!

Mr. Sloane—Will you please let me explain?

Col. Gilmore—Sit down sir! I listened to you and took what you chose to give me, in the way of insult; and you must take what comes as the result of it.

Mr. Sloane—I have no desire to make it gentlemen, in relation to anything that he has to say to me.

The Court—Sit down gentlemen; there has nothing been said yet. And I have only to say that I hope Col. Gilmore will avoid all personality in the matter.

Col. Gilmore—I shall, in deference to the tragic aspects of this case, endeavor to do so as far as possible.

Mr. Sloane—I do not desire to say a word as to anything he may say in reference to myself, but I desire to put myself right both before the Court and the jury here, by saying that no allusion,—if I understand,—of mine, to the gentlemen in my remarks; was intended to wound his feelings or injure him, or anything of the kind; and that I had no knowledge of any likelihood of its wounding his heart in the least. I here utterly disclaim all knowledge that it would have that effect in any particular in the world.

Col. Gilmore—Then what did you mean by coming to me upon the other side of this table and attempting to withdraw privately what you had said publicly in regard to me?

Mr. Sloane—Col. Gilmore, you refer to some other ——

The Court—Well gentlemen, there must be an end to this.

Col. Gilmore—I do not want to have any controversy, and I did not open my lips all the time the gentleman was attacking me.

The Court—Wait a minute; I have had a little experience, and I know that sometimes the temptation is great; but I want simply to remind the gentlemen upon both sides, of the character of the case, the character of the trial; and say to them that they must try if possible to avoid personality.

Col. Gilmore—I shall endeavor to do so.

The Court—Very well, proceed then.

Judge Cole—If the Court please, all I desire to say, if I am permitted —

The Court—O, well, there is no necessity.

Col. Gilmore—My friend Cole rises to say a word, I suppose in maintenance of our anciently established friendship.

Judge Cole—Yes sir, and present friendsh p.

Col. Gilmore—And *present* friendship. I have only to say, with reference to him, that although he made some allusions of the same character, which raised momentary anger in my breast, yet my friend has done such execution upon himself by his speech, that it is all displaced, gone, and forgotten. It has been my fate, (for I am growing old and grey haired, and broken down to a large extent physically)—it was my fortune, to be to some extent an intimate acquaintance of Sloane's father; his associate. The slight acquaintance I have had with the son—and it has been very slight—has been such as to excite admiration for his intellectual abilities; and I say this defense has heightened my appreciation of his intellectual abilities very greatly. But I never in all my life, –I say to him,—uttered one single word about him (whatever I may have *known*) except in friendship and appreciation.

Mr. Sloane—Will you permit me to say something, Colonel?

Col. Gilmore—No sir, I don't want to hear it. I heard your speech and that is enough —It was therefore with something of *amazement*, gentlemen of the jury, that I heard with almost his first utterance in this case, tragic

as this case is, *in appropos* as it was to such a case, the taunt that at one time in my life I had had religious convictions; that at one time in my life, —thirty-eight years ago—under those religious convictions I had pursued studies and graduated in a theological Seminary. *Therefore* I was spoken of in this Court House, and in this trial as "The *Reverend* W. E. Gilmore;" oftentimes repeated. Now gentlemen of the jury, to those of you who know me personally, it need not be told that two or three years ago, happening to have occasion, and the opportunity, I wrote a biographical sketch of myself which is contained in "*Williams' History of Ross and Highland Counties*," and is to-day to be found in perhaps twelve or fifteen hundred households in these two counties; in which, of my own motion, I spread before the world the intelligence, (if anybody was interested enough in me to read it,) that in my very early youth I did become intensely impressed with religious feelings; and that I did, under the intensity of those impressions, intend to devote myself to the ministry: that I did go to the theological seminary—Lane Seminary—and graduated there, and took my degree of Bachelor of Divinity; and I told with equal frankness in that sketch of myself, that a great scandal occurred in connection with my name. I concealed nothing I had no reason to conceal anything. When the scandal erupted, I was two hundred miles away, and I hastened to Cincinnati to meet it. I went into the courts with it. I crushed it. And the most venemous enemy that I ever had, who knows the facts, does not believe one word of it.

Mr. Sloane—Nor I.

Col Gilmore—Of any impropriety even on my part.

Mr Sloane—Nor I sir! nor I sir!

Col Gilmore—(*To Mr Sloane*) But it comes too late, after the hissing, "Reverend W. E. Gilmore," and the repeated reiterations of "Reverend W. E. Gilmore" in your address to this jury! I am charged and accused then, with having once had an attack of *religious* feeling. I can not accuse you of anything of that kind. No sir! no sir! There is nothing in your history that would justify me in making any such accusation as that. I do remember when you were a "Murphy." I do remember of listening to your eloquent speeches upon the temperance question;—just as eloquent, just as wonderful as you have made here to-day;—and I remember also that you almost next day furnished "the awful example" which you had talked about in your speeches; to illustrate the force and truth of the lectures. There is more. *You know it!* But I have not the heart to treat you as you tried to treat me here; and I will not further refer to it.

Now, gentlemen of the jury, I have done with this personal matter. I am ashamed of the necessity that has arisen for talking about such a matter, right here in the face of this man, and the tragedy that has been presented to you by the testimony in the case.

I shall make no further reference to it whatever.

Gentlemen of the jury, you have wandered, since yesterday at noon, with Mr. Sloane, in a sort of torrid intellectual zone, and atmosphere. He has exhibited to you the most gorgeous flowers of speech, in endless variety and beauty. He can do it; he has done it. You have wandered with him in groves,—as it were,—and forests of imagination? and he has invited you too to the spectacle more than once, of volcanic eruptions of passion and invective. No man perhaps, in southern Ohio, or Ohio anywhere, could lead you more delightfully through such zones. No man perhaps could exhibit to you more of the gorgeous word painting that delights all of us. But, gentlemen of the jury, I propose to invite you back from that torrid zone to the temperate zone of law and evidence. The State of Ohio does not demand of my friend Bitzer, here, its efficient prosecutor for Ross county, that he shall go outside of a fair reading of the law, and the fair recountal of the testimony, and the fair application of the law to that testimony. And much less does it require of me—his accidental assistant in this single

case—that I should go outside of law and evidence; and try by any art, if I have any art; or any eloquent appeals, if I have any eloquence; to wrest from you gentlemen, a verdict that would do this defendant wrong. It is not a duty; and God knows I have no desire of that kind. I remember in the preliminary trial of this case, in the Mayor's Court, when called upon by the Prosecutor at that time to assist him; that my friend Cole turned to me time and again in the argument, designating me "the big-hearted, and warm-hearted man," to whom they "would willingly try the case, and submit the fate of Giddings."

Mr. Sloane—That was my own expression.

Col. Gilmore—No sir, it was Cole's; partly his perhaps, and partly yours.

Mr. Sloane—I said that in so many words.

Col. Gilmore.—And gentlemen of the jury, I now admit, I was just fool enough to believe they *meant* it then Because I did think, I have always thought and I think yet, that those who know me admit that I am sympathetic in the last degree; and am the last man of all this earth to demand blood in any case. This is the first time in all my life, (though I have defended six capital cases), that I have ever stood the representative of the State, and prosecuted a case of this kind. And I am free to admit that I feel, and *deeply* feel, that I am out of place here; that my place should be on the other side of the table. Nevertheless—with all that feeling—I hope and trust that I can do my honorable duty, my sworn duty, in the case; and discharge in good conscience all that I ought, to the State of Ohio, or to society. Do I mean by that, that I can discard all feeling for this unfortunate man? Do I mean by that, that I can look upon the face of his old mother; that I can look upon his children; that I can look upon his friends around him, and not feel sympathy and sorrow? No, gentlemen of the jury, I would scorn myself if I could. It is not from the *lips* and *throat* only, that I say this; as I can not help but think of all the fine expressions of counsel upon the other side, said in a thousand-fold finer and more eloquent way, were; but because it is *real* with me; and I think it but counterfeited with him. You are not asked, gentlemen of the jury, to cease to feel sympathy here. I do not think so meanly of any of you as to suppose that you *can* look upon that man without hearty sympathy; I do not think so meanly of any of any of you as to believe that you can look upon those children without feeling your hearts rise in your throats and choke utterance: I do not think you can look upon the mother and relatives, or anyone connected with this unfortunate man, without feeling deep, heartfelt, almost uncontrollable sympathy with both him and them. The State don't ask you to steel your hearts against such feeling and impulses. It don't ask you to unman yourselves. It don't ask you to throw away human feeling, and become mere cold and cruel executioners of the law. The State simply asks you to look at the law in this case as it shall be given to you by the Court, and the facts in this case as presented by the testimony: and upon a tair application of the law as given by the Court, to the facts as given upon the witness stand to make a true deliverance between the State of Ohio and this defendant at the bar. But, gentlemen of the jury, let me remind you here, of the oath you have taken. You have been sworn "*to make true deliverance between the State of Ohio, and Daniel Giddings, upon the law and the evidence.*" If any juror is affected in any degree in coming to the conclusion that will wind up this case with a verdict, by any outside pressure of *public opinion*; any feeling upon the outside, *pro* or *con*; then he will not stand acquit in the sight of God at least, of his duty. You are not sworn to try this case, upon the question of whether the sympathies of half, two thirds, or the whole of the community is for or against the conviction of this man. That is not it. You are not sworn to find a verdict according to sympathy, emotion, or whatever feeling may arise in you from the peril this man is in; or the distress that his family is in; nothing of that kind. You are not to find your verdict from impulses of *mercy* even.

You are not forbidden to *feel* such impulses; but your verdict must be founded upon better reason than that; or you can not go from this court room with clear consciences in the matter of duty discharged in it. You are not to try this case gentlemen of the jury, upon the comparative eloquence of counsel. That is not it. I said I would call you back to the cold expression of law and fact as developed in this case; and if then, gentlemen of the jury, if you can rightly and conscientiously send Daniel Giddings a free man out of that door, there is not even in that row, (referring to the relatives and friend of the defendant), one that will feel more rejoiced than I. Not one; not *one!* But gentlemen of the jury you have a duty to perform, and so have I. Mine, is to remind you of the law and evidence; yours, to conclude upon the guilt or innocence of this man.

Now this defendant stands here charged in this indictment with *murder in the first degree;* the penalty whereof, if convicted of that degree of crime, *is death.* I propose, although it has been repeated two or three times, and will be repeated again by His Honor when he comes to charge you, to read from Wright's reports, in the "*Turner case*," a very brief and sufficient definition of murder in the first degree: "*It is the intentional, unlawful killing by one reasonable being of another, in the peace of the State, of deliberate and premeditated maliee.*" Let me stop here for a moment to say, that Mr. Sloane in his argument, says to the jury, "that he agrees with the indictment pending here, which charges murder in the first degree in two counts, the only difference between the counts being that it charges that the death wound was inflicted by the shot in the head in one count, and in the other that it was inflicted by the shot that penetrated the heart of the deceased, that this *must* be either murder in the *first degree* or *nothing.*" I can well understand, that the astute attorney upon the other side would like to impress this jury with the idea that this case is one either of murder in the first degree or nothing, because he would be glad to rely upon that feeling that is in every one of your hearts, that would make you hesitate long and revolt, and perhaps *forbid* you from finding a verdict that would consign this unfortunate man to a death upon the scaffold. He *therefore* wants to impress upon your minds, that in this case the condition of things is such, and the testimony such, that you *can not* find any verdict without stultification; that it must be in the first degree, or else one that bids this prisoner go acquit altogether. The counsel knew well, that the Court here, in charging you, will tell you differently. I say to you, gentlemen of the jury, that if you conclude from the testimony in this case, that the killing down there upon Paint Creek bank, was not the result of the deliberation which the testimony shows had been had by the prisoner for six weeks prior, that it was not true, in your opinion, that he carried there with the deadly purpose, which he himself admits that he *had* entertained; that he had abandoned that idea; and that he went to the creek bank on that fatal day without that murderous purpose in his heart; that you may *nevertheless* find that there was malicious killing; intentional killing, (without the deliberation and premeditation) upon sudden provocation, that makes up the crime of murder in the *second* degree. I will read Judge Wright's definition of the second degree, that you may know what it is: "*Murder in the second degree is the intentional, malicious, and unlawful killing by one reasonable being of another, in the peace of the State, but without deliberated and premeditated malice.*" Now gentlemen, it may be possible that you will conclude under the testimony in this case, that he did not carry that murderous purpose down there; and that he had not time down there to form it, and deliberate upon it; and that the killing was the intentional, malicious, unlawful killing of Benjamin Wiltshire, in the peace of the State, *without* deliberated and premeditated malice. Sloane is not right, then, in saying that there can be but *two* conclusions in this case.

Let us go further. This indictment for murder in the first degree will permit a verdict of murder in the second degree; and it will also permit a

verdict of *manslaughter;* which is defined here by the same Judge,as "*the unlawful killing by one reasonable being of another, in the peace of the State, without malice, either upon a sudden quarrel or even unintentionally while the slayer is in the commission of some unlawful act.*" And now, gentlemen of the jury, it is true, and it is true in every sense of the assertion, that you may find under this indictment, that Daniel Giddings is guilty of murder in the *first* degree, or you may find that he is guilty of murder in the *second* degree, or you may find that he is guilty of *manslaughter.* And thererore there is no force and there is no truth in the attempt of counsel upon the other side to impress upon your minds that your finding must be of murder in the first degree; or must be acquittal.

I do not find, gentlemen of the jury, that it is necessary for me to read the authorities that my associate counsel and myself have collected upon questions of murder and manslaughter. I shall not make much use of this great pile of books, which we upon our side, and they upon their side have collected; because, they have nearly or quite all of them been presented to His Honor in the progress of this case; and because I know of the learning of this Court, accumulated long before this trial came on; and the refreshment of his Honor's mind by industrious research during the progress of this trial, make it unnecessary. And I have regard too, gentlemen, for your weariness, and the great length of time that you have been kept in this case. It will be but rarely and upon but one or two collateral matters, if at all, that I shall cite, or read any book that I have brought into the court room. But I contend, if the Court please, that in cases where an adulterer is slain, even though the husband find the adulterer *in the very act* of adultery; even if the heart crushing fact comes to him with the suddenness and unexpectedness of a stroke of lightning from a clear sky; even though the wife then being debauched, has been, in his estimation, up to that moment, pure as the icicles that hang upon the eaves of Diana's temple; cold and chaste to all the world; and though his soul be wrapped up in her with a love past understanding; even in such case, at the common law, if the husband slay him, it is manslaughter.

I have contended, and will contend, upon authority too that could be multiplied almost indefinitely, that if the information of the adultery of the wife comes to the husband sufficiently long before the homicide to have given him a chance to have overcome his first impressions—to have *thought* over the matter—"cooling time," as the law defines it, and he *then* slay the adulterer, that his act at common law is murder. I say, that in a long line of cases running back hundreds of years at common law, I believe there is not one single exception to the ruling of the Courts upon this proposition. If there is, I don't know it. Now if such be the common law of the land, as it has been for centuries; when and where, and by what authority has these rules been changed? I know, Your Honor, that Mr. Sloane, the very industrious gentleman upon the other side, can find, and has found, (and I will venture to say that he has found *all* that could be found,) of cases in *nisis prius* where there have been some rulings to the contrary; some shades of difference: some letting down of the rigor of the law in regard to this class of crimes. I know, too, that there have been many cases tried in *nisis prius* courts, wherein, despite the ruling of the Court, juries have "taken the bit in their mouths" and, disregarding the law, and as I think, disregarding their oaths too, have refused to apply the law to the facts. That was the fact in almost every one of the cases presented here by the gentleman on the other side————Day's case, Sickle's case, Jarbo's case, Harris' case, Coles' case and all the rest of them. Is it not so?

Mr. Sloane.—No, sir; Mary Harris is now a raving maniac in Washington.

Col. Gilmore.—Mary Harris may be a raving maniac, but that is not the question I put to the gentleman.

Mr. Sloane.—I may have misunderstood you.

Col. Gilmore.—My assertion was, that in all those cases, the jury, either from sympathy, or upon pretexts not in evidence in the case, or but slightly indicated by the evidence, acquitted the defendants contrary to the instructions of the Court.

Mr. Sloane.—I don't think it was so in but one case, and that is the Newman case that I spoke of. I do think that the evidence of insanity was insufficient in that case; but in every other case the jury had the right under the instructions of the Judge and the testimony. to acquit.

Col. Gilmore.—In Days' case, Cole's case, Sickle's case, and every case I have seen that has been quoted by the gentleman, the instructions by the Court to the jury, have fully supported the rules of the common law. It was the *jury* that *disregarded the law*, and took the case case into their own hands; and despite the law as laid down by the Court, found verdicts not in accordance with the instructions the Court has given, or, as I qualified myself a while ago, they found pretexts but slightly indicated by the testimony; upon which to hang the verdict that they desired to bring in. That is the truth, gentlemen of the jury. Take the Jarbo case, for instance. In that, the sister of Jarbo having been seduced and ruined; with his sister upon his arm the brother sought the seducer; he demanded of him what he was going to do in the premises; and although the brother shot him down before he could have drawn a pistol from his pocket or used it, yet the jury found a verdict of not guilty upon the theory of self-defense; because the seducer then and there had a pistol with him, and got it sufficiently out of his pocket perhaps. (and probably drawing it because he was menaced with the pistol in the hands of the brother,) but *only* getting it sufficiently removed from his pocket to let it drop at his feet as he fell. Yet the jury in that case, as in the Sickle's case and Pierce's case—found a pretext for a verdict of acquittal on the theory of self-defense. And in nearly all of those cases where they did not take the bit in their mouths and find a verdict contrary to the instruction of the Court, they founded their verdict upon some hypothesis not supported by the testimony; but used simply for the purpose of hanging upon it a predetermined verdict of acquittal

Now gentlemen of the jury, I don't understand that it is claimed upon the other side that the adultery or Giddings' wife, in this case, was in any sense a justification of the homocide.

Mr. Sloane,—I claim it was a *moral* justification, but not a legal justification.

Col. Gilmore.—"A *moral* justification, but not a legal justification," says Mr. Sloane now! Gentlemen, what was your oath then? Was it to try *moral* quesiions here? Was it to find a verdict upon moral considerations, or was your oath to make a true deliverance between the State of Ohio and this defendant, uppon the *law?* "Moral justification!" Thank you for the word. The entire defense here has been made upon the *moral* aspects of this case. Gentlemen of the jury, you have nothing to do with that. You are to enquire of the law and the facts, and apply the facts to the law; but moral considerations, outside of that, are just so many devices by which to evade, or refuse to perform your sworn duty. It can not be otherwise.

I have claimed that if "cooling time" occurred between the husband's knowledge of the adultery and the homicide; that then the crime is murder. That is was murder at common law. That it was murder, and continues, under the law, to be murder, now. I do not cite in support of this declaration, authorities two or three centuries old. I cite authorities that are recent. That was the charge of the Court in the Sickle's case, and in the Cole's case; it was the charge in the State of Ohio vs. Gardner, in Downs' case; Thompson's case. It is the rule as laid down by Wharton's American Criminal law, Section 983.

Nay; I have gone farther than that, and contended that even proof of adultery is not amissible in this case as furnishing provocation for the homicide afterwards; if there was cooling time between the knowledge of the

husband and the commission of the homicide. I assert this upon the authority of Wharton's American Criminal law, Section 983, and 2d Wheeler's Criminal Cases 651. I go further than that, and claim that what *is* cooling time is a question for the Court; that the jury can only find the fact of how much time *did* intervene between the husband's knowledge of the adultery and the act of homicide; and that whether *that* was cooling time, is a question for the Court. But I understand His Honor here as saying that he will not charge such to be the rule in this case. Is that correct? (*To the Court*)

The Court—Well, I don't know as that is competent here, for various reasons.

Col. Gilmore—Very well. This defense, I said in the opening, was most skillfully constructed and conducted by raising the question of "*emotional insanity*" here —

The Court—I think, under our statute, as I have it here, our laws are more humane than most States; but think it is a question for the jury. If any great provocation occurred; enough to excite violence, under our statute, unless there should be provocation by the slayer himself, it would reduce the grade of killing to the degree of manslaughter.

Mr. Sloane—Not alone.

The Court—The other would depend upon the circumstances showing self-defense.

Col. Gilmore—Well, with very great deference to the Court, whom I know knows a great deal more law than myself; I can not think that that is the rule. I cannot think it is the *Ohio* rule. I don't think that it is in accordance with the authorities in this State. It has been held too, (and I desire to refer to that simply, before I go into other parts of the case); it has been held at common law; that the husband can ot act upon *secondary* evidence. To reduce the killing of the adulterer from murder to manslaughter, the husband can not act upon secondary evidence; he must *see* the act. It won't do for him to accept the declarations of his neighbors; it won't do for him to accept the declaration of any number of his neighbors or acquaintances, as to the fact of adultery; but he must *see* the act. He must be governed at the moment by the *sudden* impulse that grows out of the *discovery* of the act. That will reduce the homicide from murder to manslaughter. Why, gentlemen of the jury; it would not do to adopt such a rule as that the husband might in such case act upon secondary evidence; and the information perhaps, of busy-bodies, idlers, and scandal mongers; that he should take the law into his hands and punish the adulterer under the impulse of either a real or artificial passion; take *life* upon a *supposition* that adultery has been committed with his wife. The law don't permit the husband in *any* case to assume to be judge and executioner in a matter of that kind; but the law in its humanity does permit that this crime, where the husband does *see* it, and it comes upon him *suddenly*.—does pay such deference to the frailty of humanity,—as to allow for sudden impulse, and the execution of the impulses of sudden passion. It reduces the crime from murder to manslaughter. It does not permit, under the penalties of manslaughter, that the husband in *any* case, may take the execution of the law into his own hands. Why, even the Jewish law, bloody as it was, did not permit anything of that kind. True, the Jewish law punished both the adulterer and the adultress with death, but it was upon "*conviction before the judges.*" They "*shall be taken before the judges,*" and if the fact be proved, execution shall be by stoning by the "*whole congregation.*" They were the executioners under the old Jewish code—the whole; the body of the people. The culprits I suppose were led out into some open place: the population assembled, and pelted them with stones until they were dead. But the judges must first pass sentence; and the executioners were provided for by law even under that ancient code. "*There would be wild work,*" (says Justice Parke in the *Fisher* case, *in 8th Carrington's reports*—) "*There*

would be wild work in this world if parties were permitted to take the law into their own hands; and find judgment, and execute it in such cases." And verily there would be wild work! Why, gentlemen of the jury, Mr. Sloane said in his argument here—and I believe Judge Cole said as much—that in his own opinion, adultery *should* be punished with death; and that the statutes ought to be so amended as to make it a capital offense! I don't know; but my impression is, that they went even further than that; that, in the fervor of argument, they said that the statute does clothe the husband with the right to slay the adulterer! Now I should like Sloane, or my friend Cole here, if in the Legislature of Ohio, to offer an amendment to the Crimes Act, of that kind! I would like to see either of them rise there and present an amendment to the Crimes Act of Ohio, that would either punish the adulterer with death, or clothe the husband—more monstrous still!—with the power to find verdict, pronounce sentence, and execute death! I imagine that if a proposition of that kind had the slightest probability of passing, that that Legislature would dissolve very much as that crowd of Jews did, who brought to Jesus a woman taken in adultery, and asked judgment upon her. When Christ said to them;—"*He that is without sin among you, cast the first stone,*" the crowd commenced melting away; and finally there was none to pass sentence or execute it, either. And if the Legislature of Ohio should have a proposition of that kind before it, the Sergeant-at-arms would very soon have to go out and hunt absentees, in order to have a quorum. Conjecture that Sloane and Cole as members of that Legislature, would not want to vote upon that proposition. Gentlemen of the jury, it is simply *absurd*. The Legislature of Ohio has had the crime of adultery before them for consideration time and time again; they have enacted statutes upon that subject; and to-day, the crime of adultery, upon conviction, is punishable with *three hundred dollars fine*, I believe, and *sixty or ninety days*—which is it?

Mr. Bitzer—Three months for the offense.

Col. Gilmore—Ninety days imprisonment in your jail! That is the sober common-sense of the Legislature of Ohio. But the enthusiastic, excited declaration of Sloane in this case, for a purpose, is, that the statute ought to be amended so as to make it punishable with death! You can see the absurdity of the proposition. You can see to what lengths his enthusiasm leads him! It is but one of the hundred other evidences, that he has given in this trial, that for the purposes of the case he can go beyond and outside of law, reason, and common sense.

Gentlemen of the jury, with all the power that the gentleman from Highland county (Mr. Sloane) can put into voice, and gesture, and words, the assertion has been made to you that his wife's adultery was *unknown* to Giddings up to the time of elopement; and that he was wrought upon,—that his excitement increased,—that it was continued,—and that it culminated there at those logs in a moment of *temporary insanity*, "*impulsive* insanity," whatever that may be. Now gentlemen of the jury, I desire to ask you whether the testimony shows that Benjamin Wiltshire *was* the "seducer" of the wife of Daniel Giddings. Does it show it? I say that it does not. I say that the evidence shows that this woman long before she formed the acquaintance of Ben Wiltshire, had been unfaithful to her husband, and had become a degraded and a defiled woman. No man feels more abhorrence, for the crime of *seduction*, than I. I believe that it ought to rank next to murder; I believe that it is one of the vilest, one of the most woe-producing crimes that can be committed. But do you believe gentlemen of the jury, from the testimony in this case, that there was any seduction on the part of Benjamin Wiltshire, of the wife of Daniel Giddings? Do you believe that she *required* the arts and wiles of the seducer, at the time that he became acquainted with her, to defile her? Of course the prosecution in this case has had but limited opportunities of discovering the testimony involving the character and conduct of this woman in years gone by,

and before this transaction; but even those limited opportunities have revealed enough testimony here, I think, to satisfy any mind that this woman was a vile woman long before. Not only so, but that *the fact was known to Daniel Giddings.* Now gentlemen of the jury, if he *did* know the facts, it is too late, months, nay years after he knew them, to enact, suddenly, the role of broken hearted husband, and take Benjamin Wiltshire's life. The law dont't permit that. Don't you believe that in the beginning of July last she was a tainted and defiled woman, both probably by reason of her connections with Ben Wiltshire. and with Lyman Blair? Don't you remember that her defilement antedated the beginning of July 1882, too, by *at least several years?* Why, Giddings himself states that it is so! He admits his knowledge of the fact. He says when his youngest child now living—his third child born—*was a baby*, that this woman had gone away with another man,—had maintained adulterous relations with him,—and that that fact has been known to him all through the intervening time. He admits in his testimony, or in his statements, that he knew of her adulterous connection with Lyman Blair; and he knew —

Mr. Sloane—Col Gilmore, just give us that testimony.

Col. Gilmore—His acknowledgement of it to Dewey and his wife, to Kleindinst, to Mrs. Trigo, and to others; and God only knows how many more we might have found if it was in our power to investigate.

Mr. Sloane—That ain't true. If the Court will permit —

Col. Gilmore—O, yes it is true. But we were shut out from investigating this woman's conduct except where we could bring her adultery *home to the knowledge of the husband.* That is it. We might have discovered the facts; and the witnesses to the facts of a thousand adulteries; but if we could not bring them to the knowledge of Daniel Giddings, if they didn't influence him in his conduct, they were of no use, not an iota in the world, to us; and we were prevented from producing them in evidence. It is only those that we could show did come home to his knowledge that we can use. And bear in mind too, that we can only prove that knowledge *by his own declarations* to others; and we have only such list of those persons and acts as he has chosen to discover, himself. I will not, gentlemen of the jury, undertake to go into detail, for the time is hastening on. I will simply refer you and refresh your memory as to the persons.

Mrs. Trigo for instance states, if I recollect her testimony correctly, (and I would not misrepresent it for anything in the world;) that Giddings admitted to her, that he had *seen* the acts of adultery between Ben Wiltshire and his wife;—that he had seen them "*wallowing in the leaves like hogs, time and time again.*" Now, gentlemen of the jury, Mr. Sloane in the course of his argument, has undertaken to make it appear to you that in all these statements Giddings was simply saying that these things had been *told* to him. You remember the long argument he made, the long string of sophistries that he used, with the intent and purpose to destroy the value of the testimony of Mrs. Dewey, Mrs. Trigo, Mr. Dewey, and Kleindinst? He says that "Giddings never said that he had *seen* anything of that kind, but that he had *heard* it only;" that all these witnesses substituted the word "*saw*" for "*told*"; that Giddings never said that he saw it, &c." O, gentlemen of the jury! that sophistry, that ingenuity won't avail in this case; because, coupled with the declaratlons which were made, was the further declaration that *he had followed them, that he had stood within a few feet of them while these orgies were being practiced, and that they did not know it!* Now, he could not have been told that? That was not something that Giddings "was repeating as having been told to him." He said that *he* had followed them, that *he* had stood right close to them, that *he* had seen them wallowing in the leaves like hogs, and that they did not know it.

Counsel here, in his viciousness, assaults in this connection the witnesses, Mrs. Dewey and her husband, and attempts, to discredit them as witnesses. I trust there are members upon that jury that know these parties; that know

Mrs. Trigo ; that know Dr. Dewey, that know Dr. Dewey's wife, a daughter of Allen Stinson. I imagine that if Mr Sloane had known them as well as some of the rest of us know them, that he never would have made an assault of that kind upon them; and I tell him here now, that Dr. Dewey maintains as high a standing and as good a character in the community where he lives, and wherever he is known, as any of us, even the best of us; and that Mrs. Dewey maintains a character and standing in every respect as good as does your wife, sir, or mother, or my wife or sister; or anybody elses' wife or mother or sister. Counsel has committed an error here. It is an error gentlemen in keeping with his conduct of this whole case——— ruthless, relentless, stopping at nothing. He has permitted nothing to hinder him or control him in his efforts to carry this case through, right or wrong. Mrs. Trigo too, is above and beyond the assaults of Mr Sloane. These witnesses who he has attempted to discredit, stand as high as any person in Ross County; not perhaps the wealthiest of our people; not perhaps the most intelligent of our people in the way of education, perhaps not so cultivated as some others; but in integrity, in truthfulness, in honor, as good as any within the bounds of Ross County. It comes with bad grace then, for this gentleman to come here from Highland County, not knowing our people, and make such attacks upon them as he did, and ask a jury of Ross County to discredit them as witnesses. His whole argument has been based upon the theory that you must, and shall believe the statements of Daniel Giddings himself; and that they alone contained the evidence upon which this case must turn.

Gentlemen of the jury, the defense is two-fold here. While much comment has been made upon the adulterous connection, and the facts as developed of that adulterous connection; from the latter part of June up to the time this woman returned from Washington, C. H., yet nevertheless the defense don't rely upon that; nor upon anything that occurred there, as a means of getting a verdict of acquittal at your hands; but their defenses are, 1st that it was an act of self-defense on the part of Daniel Giddings to kill Benjamin Wiltshire when and where he did; and 2d. that at that time of the homicide, Giddings, was under control of emotional insanity such as destroyed his will power; that he was not a free agent at the time he fired the shots.

Now, gentlemen of the jury, he was defending himself from what? Was there any weapon upon the person of Wiltshire when his body was found between those logs? Is there any evidence that he had a weapon on that fatal day? Gentlemen upon the other side, have tried to make capital here, by demanding in the most tragic voice and manner, "*where are those clothes?*" They have tried to produce the idea that possibly a pistol was in the pocket of Benjamin Wiltshire when he was killed there, which was not found upon the search by the Coroner, assisted by the police officers. They have asked time and again, "Where are those clothes?" And they have charged the prosecution here, with the suppression of testimony, for the purpose of convicting Daniel Giddings. I hardly think, gentlemen of the jury, that that part of the speeches of the gentlemen upon the other side are worth replying to; worth pausing to consider. The evidence is before you, gentlemen, that the body was found here by Pickens in the first instance, by Rigney and other police officers of Chillicothe that followed immediately upon a telephonic message sent by Pickens, that the Coroner, that all of those persons—Kemmery and a number of others—were around the body; none saw any pistol there. The body was searched, but no pistol was found; and there is not a scintilla of evidence that Benjamin Wiltshire was the possessor of a pistol at the time of his murder; but it is upon that that Sloane relies. It is true that Wiltshire talked foolishly, bragingly and I must say absurdly too, up at Washington C. H., before he came down here on that fatal day—that he talked about "being prepared to give, as well as receive bullets in his hide." Now, gentlemen of the jury, upon that testi-

mony from Washington C. H., upon that alone, they rely, to make you believe that this man, Wiltshire, was armed when he was killed; that too, in the face of all this evidence of the search. O, yes, I forgot another theory of Sloane's to the effect that possibly "that pistol is lying yet in that drift wood down there in the locality of the homicide." You were down there gentlemen; I was not. I don't know whether there is any drift-wood in that vicinity; but of one thing I do feel morally sure; that is, that when that bullet penetrated the right side of Wiltshire's head, and lodged against the walls of the skull upon the opposite side, there could have been no spasmodic effert; or any other kind of effort; upon the part of Benjamin Wiltshire, that could have thrown that pistol one foot. It would have dropped, if he had had it, either from the hand, if in his hand, directly, perpendicularly from his hand to the ground, or if it had been upon his person in any of his pockets, it would have fallen with him to the ground, unmoved, untouched; for there could have been no power in Benjamin Wiltshire to have thrown it, and no spasmodic motion that I can conceive of, could by any possibility occur in such a case, to have thrown a pistol one single inch out of a direct line with his fall. And yet gentlemen, they want you to believe that at the time Giddings shot Wiltshire, as he acknowledges he did shoot him there; Wiltshire was in the act of drawing a pistol! But they say—and they are correct in the assertion—if you believe that at the moment the fatal shot was fired, Wiltshire was in the possession of, or drawing a weapon from his pocket, and if Giddings believed he did have a weapon in his pocket, then Giddings would be authorized to use his weapon, and it would be self-defense.

But, gentlemen of the jury, can you believe an hypothesis of that kind? That two men between whom the relations existed, that did exist between these two parties; that the adulterer, the man offending against the husband, would have done and said what Giddings, for the necesities of his defense, say he did say and do there on that occasion? It seems to me, entirely outside of the region of probabilities, or even possibilities.

Now, gentlemen of the jury, let us go back to the meeting of those two men on that day, and trace them to those logs and to the time the fatal shot was fired; and recall not only the testimony; but invoke your *common sense* to aid you in ascertaining what those circumstances naturally, probably, and really were. The woman had come back from Washington Court House. Under——I won't say the *pretext*, but based upon the presence of little Arthur there at the house when she went back to her husband, (as being a person competent to be a witness,) the counsel for defense succeeded in getting in to this jury *the threat* that they say Wiltshire made to Giddings' wife in Washington Court House, "*that he would kill Giddings on sight;*" and that his wife told Giddings of that threat; and charged him to "be careful."

Now, gentlemen of the jury, I say it was on the strength of the presence of little Arthur that this conversation between a husband and his wife became admissible, in the opinion of the Court. It is competent for me to ask you, gentlemen, to weigh the value of that testimony. Do you believe that boy, who, according to his own statement upon the witness stand, *was playing at the moment his mother came; who says he staid but a single instant there and went to playing again; and that he cried, and that his father and mother cried, and they all cried; and then he went instantly back to his play;* and he can not remember a single expression that was used there that day, only that he heard mother tell father "*to be careful, that Ben Wiltshire threatened to kill him.*" I say upon that pretext, this testimony is gotten in; and Daniel Giddings himself, tells you in his testimony, gentlemen, that that is the threat that came to his ears from Benjamin Wiltshire; he never heard any other. If Ben Wiltshire in his drinking, boasted to any person of his connection with Mrs. Giddings, if he talked like a fool about killing the husband or taking the woman, if he said what he did to Dewitt and Smith, if

he said all those things, there is no evidence in the world, not even Giddings' evidence, that any part of it ever came to Giddings' knowledge. The single isolated threat, that he says did come to his knowledge, was imparted first to him, on the very day in the very moment almost, of his meeting with his wife on her return from Washington Court House Threats made by Wiltshire unless imparted to the husband, could not govern his conduct or influence him. What difference could it make to any one of you, gentlemen of the jury, if I in my anger at any time should utter some devilish threats in regard to one of you, if it never comes to your knowledge, if you never hear anything about it? How can such threats justify you or impel you to take my life?

Now, gentlemen, of the jury, when on that day they met at Adler's saloon, this adulterous connection between Ben Wiltshire and Giddings' wife had certainly been known to Giddings, according to his own statement, for at least thirty days or more. That is conclusively proved by the letter to his bother Arthur; and his statements to Smart and others. He admitted that he had known of it "for thirty days or more;" that he "had come to Chillicothe time and again with the purpose of killing Wiltshire." And those pretended searches for his wife "*for purposes of reconcilliation*," upon which Sloane has dwelt so on, were, in my opinion, searches for Ben Wiltshire for the purpose of killing him; not for the wife for the purpose of taking her home. The indications in this case, point I think unmistakably to the implacable resentment in Giddings' heart towards this man; the purpose to kill, the murderous purpose nursed for a month at least before this fatal 5th day of August. But he says, remember now that it is Giddings himself testifying to you———that while he admits coming to Chillicothe time and again for the purpose of killing Wiltshire; that while he admits the borrowing the pistol from Lyman Blair for that purpose; he wants it to be understood that he *relented* when he thought of his wife and his children; and that he determined to let him alone, and let his wife go; to have no more to do with the matter; to follow them no more and give up the murderous purpose. Why, gentlemen of the jury, is it natural that he should say that now? Did he ever say that before this homicide? Yes, I now remember, he did say so to Smart; that "he thought of his wife and children and had given up the purpose;" but upon the witness stand he says here, that two or three visits were made prior to relinquishing the purpose to kill. Now the fact of the business is, gentlemen, the first time he *did* see him he did *kill* him! Then we are at liberty to infer—and that is the only common sense inference—that this purpose to kill existed in his mind all the time; this express malice toward this man, and that he simply waited for an opportunity; and I believe—you can believe it or not, gentlemen—I believe from the circumstances surrounding this case, that he received his wife home as a *bait* or *decoy* to bring Ben Wiltshire within his power, that he might, with the vengeance that he had laid up and which dwelt all the time in his heart, kill him. They met in Adler's saloon.

I desire gentlemen, to go now over the ground from Adler's saloon to the logs where this homicide was committed.

The Court here adjourned until the following morning.

MORNING SESSION.

Col. Gilmore, resuming, said: If the Court please, and gentlemen of the jury, I shall probably never cease to regret as long as I live, that in beginning the argument of this cease I permitted myself—it was not within my control or within my power to prevent it—to get unduly excited. If it was a part of the design of this skillfully constructed defense, by taunt and insult; by personal wounds inflicted upon me; to so excite me as that the reaction

from the excitement would put it out of my power to control my own thoughts, to prevent me from following any train of thought that I had intended to persue in the argument of this case; then that intention was eminently successful. I regret it exceedingly, because I know that it prevented me from placing before you in their true light, many of the facts, and perhaps much of the law too, that I had intended to present and to use. Let it go however. I don't even know now fully, and can not recall with certainty, what parts of the case I discussed yesterday afternoon. I shall now confine myself as strictly as I can, to what I regard as the material facts deleloped in the testimony in this case.

Gentlemen of the jury, on the part of the defense, substantially there is a single witness in this case; one single witness! That witness is the defendant, Daniel Giddings himself. Out of the host of persons who have been brought here by the defense and placed upon the stand and examined; there is, in my opinion, in all they have said, but little of real importance; very little that will aid in coming to a conclusion as to the character of the act done upon the creek side on that fatal day. The testimony produced here in the beginning of the defense, to prove the good character of Daniel Giddings, up to this time, does not, and can not reflect upon, except in a very slight degree, the criminality of that act with which he stands charged. It is true in every criminal's life there is a *beginning* of crime, and that up to that beginning of crime, the person has borne, at least, a negatively good character. It is not for us, on the part of the State, to deny that Daniel Giddings did bear a good character; and had a good reputation among those who knew him, up to time this thing commenced. I am free to go further, and to say, that in all probability, if Daniel Giddings had been mated with a woman fit to be his wife, or anybody's wife, a woman who had loved him and inspired love in him; a woman who had preserved herself from all contaminations of unholy passion; I have no doubt that he would have passed through this life an honorable and a respected man. It is not necessary for the State to presume anything else, or to assert anything else. It is undoubtedly true, however, it seems to me, from the testimony, even that introduced by the State as to his character, that he himself best describes his own character in the declaration which he made to Lockwood, while his temper was boiling in anger against Benjamin Wiltshire, that "*under ordinary circumstances he was a good natured, quiet man; but if the provocation came, and if his anger was sufficiently aroused; he could show himself the blood-thirstiest wretch on earth!*" I believe this is true of him. I believe that he is a man who while ordinarily quiet and peaceable; who perhaps very greatly prefers to live in quiet and in peace; that he is one of that class of men who when aroused, can be as relentless and as cruel as any on earth. I believe that I am warranted in saying this much, because the circumstances of this case show, in my opinion, that he *did*, when the opportunity occurred and the passion was so excited, show himself as cruel and as blood-thirsty as any person on earth ever did. Here let me stop one single moment to say—and I shall probably not refer to it again—that the defense have exhausted the possibilities upon their side, in endeavoring to picture Benjamin Wiltshire before this jury as a ruffian; as a man in the habit of carrying concealed weapons, and among them, perhaps the most brutal of all weapons; "*billies* or *knuckles.*" That he has been a man quarrelsome in the last degree; that he has been a dangerous man; that he has been a malicious man all his life. Gentlemen of the jury that is an untrue character of Benjamin Wiltshire. It is not the fact in regard to him that he ever was quarrelsome, or was malicious toward his fellow men, or that he ever was in any degree a dangerous man. It is a very easy thing, gentlemen, if you cull a community over, to find enemies of any man who are ready in any case that involves this somewhat easy inquiry; to say harsh and hard things about him. But very few men have passed through this world, and especially if they have lived in circumstances that called them into ac-

tive and perhaps unrefined colision with their fellow men (the associations of the bar-room, for instance, the association of rough gatherings; and huskings, and barn raisings and all that sort of thing,) as Ben Wiltshire did without occcasional fusses and fights. Why, I don't regard myself as a quarrelsome man, or dangerous man, or a malicious man; and yet it would have been a very easy matter for counsel on the other side to have found me to have engaged in three or four fights to every one Ben Wiltshire has been proven to have been engaged in all his life. Accident forced them upon me. Accident forced occasional difficulties of that kind upon Ben Wiltshire. And in those occasional difficulties no man was ever seriously hurt; no man's life was ever in danger; no grievous bodily harm was ever inflicted or ever intended to be inflicted by Benjamin Wiltshire. Yet these trifles are magnified by counsel for the defense, and Mr. Sloane finds in them, justification for a description of the character of Ben Wiltshire, accented in epithets and denunciations, such as perhaps the veriest ruffian in the world would not more than deserve at any rate.

Wiltshire and this man Giddings were different men in mental constitution; they were different men in their habits; the latter quiet, reticent, retiring ahd dangerous; the other talkative, given somewhat to drink, uneasy, boasting; and, on occasion, quick to quarrel and slow to hurt. Sloane has dwelt with considerable emphasis upon the fact proven by Charley Hansel (and I hope you know Charley Hansel as well as I do,) that some twelve yearsago, in Charley Hansel's saloon, he not having the antecedent facts at all, but coming from Chillicothe into his saloon just in time to see the difficulty, he saw Wiltshire strike a man with a billy or slung-shot. Sloane has pronounced that the brutal act of a vicious, dangerous man; "attacking an unarmed and unoffending citizen; and pursuing the assault with the intent then and there to take his life, and would have taken his life if it had not been for the interference of Hansel!"

Now, gentlemen of the jury, how does Mr. Sloane know that they were unarmed, and unoffending citizens? We asked the question of Hansel, if it was not true that those two men (not one) whom Ben Wiltshire assaulted at that time, had not combined together at a very recent period before that, at a gathering down there in the vicinity of Massieville, (at a ball I believe), and jumped upon Wiltshire and beaten him brutally? Who knows that they were unarmed at the time? But let the character of that transaction be what it may have been, it stands an isolated case in the whole history of Wiltshire; and citizens just as good as there are in Massieville and the vicinity, including the pastor of the church there, the church he attended.

Judge Cole—He did not say that.

Col. Gilmore—I believe if the pastor did not testify that he was a member of his congregation, and he went to him about those matters, then I am mingling what he said to us in private, with what he said on the stand.

Mr. Sloane—The expression was this, that he knew him about as well as he knew the members of his congregation.

Col. Gilmore—I am perhaps mingling what he said in private, with his testimony.

Judge Cole—I knew you would not do it intentionally.

Col. Gilmore—At any rate, whether that be true or not, we have his testimony that living there as the pastor of the church, and interested in the moral character of that community and probably making inquiry and acquainting himself with the personal character of those who were around him, and toward whom, as a minister, his services were directed; that he never heard that Ben Wiltshire was a man either quarrelsome, vicious, or dangerous. We have the testimony of Willis Brown and his wife, who perhaps knew him as well as any other persons down there, (and Willis Brown has been employing him season after season for the last twenty years or twenty-two years—) to the effect that he never regarded him as a dangerous man in his life; and never heard, with all his facilities for hearing, any

such reputation as that he was a quarrelsome, violent, vicious, or dangerous man. The truth is that he drank too much ; that being drunk he was sometimes involved in quarrels ; but, gentlemen of the jury, is that the character that puts a person possessing it, outside of the pale of the laws? Does it make him an outlaw, or warrant any person in coming upon him at any moment that he may be choose to be offended at him, and taking his life? Is that the law of the land? No, gentlemen of the jury, this is simply a strange effort on the part of the defense, to paint this man as a devil, with whom the law had nothing to do, whom the law did not throw its panoply around, whom the law did not protect in his person, or even in his life? And if prejudices of this kind naturally exist upon the part of the defense as against Benjamin Wiltshire, they are not properly entertained by you and should be discarded. The worst, the *very* worst of all Ben Wiltshire's life, that has been presented to this jury, or that could have been presented to this jury, is his adulterous connection with this prisoner's wife. Now, gentlemen of the jury, I believe I have said that I held the crime of seduction in as much abhorrence as anybody ; that I regard the seduction of a virtuous maiden or wife, as being the crime almost next in enormity to that of murder ; but I appeal to your common sense, and to your knowledge of the world and of society ; is it at all a rare thing that men have yielded to the *tendered* embraces of women not virtuous? not refined, not needing to be seduced? The history of Joseph has dwelt in the minds of men for more than three thousand years, I suspect very strongly, principally because the conduct of Joseph in that interview with Potiphar's wife was unnatural in the estimation of most men, and *exceptional.* Wiltshire did nothing worse than to acquiesce in the desires expressed to him, by conduct, if not in words, by the wife of Giddings. We believe fully, and we believe the testimony warrants us in saying, that this woman has been an unchaste woman for years ; that she has been *insatiate* almost in her sexual passions. Whatever of additional criminality there may be in adultery where seduction is the precedent of the adultery, that criminality does not attach in this case, to Benjamin Wiltshire.

Now, gentlemen of the jury, I propose to come back to the meeting of these parties at Adler's saloon, and hurry as fast as I can over what I have yet left to say. Remembering and keeping in mind the facts proven in the case, undenied by Giddings, that he had worked himself up to this passionate hatred of Benjamin Wiltshire ; and that he had borrowed this pistol from Lyman Blair six weeks before this homicide for the purpose of taking his life ; that he had carried it with the purpose of taking Wiltshire's life upon sight ; that he had come to Chillicothe, according to his own admission, time and again for the purpose of finding Wiltshire and taking his life—bearing all this in mind ; let us go to the meeting in Adler's saloon. Giddings had been to Chillicothe on that day, he says, for the purpose of attending to some business with Mr. H. B. Lindley. He says that that was the only purpose of his coming. He still had the pistol in his pocket, which he had borrowed, as he says, "for the purpose of defending himself with if he should be attacked by Wiltshire, when he went to Washington Court House, to bring back his goods." Now, if he had put that pistol in his pocket under the then existing circumstances, when going to Washington Court House for the goods, and carried it in his pocket while there, I should not be at all disposed to blame the act. It is probably what you or I would have done. It was not unnatural and I attach no significance in the world to that. But he had borrowed the pistol *before* that, and carried it for the avowed purpose of *killing Wiltshire.* When he came back from this trip after his goods, why did he not give it back to the owner, if that was the sole and only purpose for which he borrowed it? But he carried it the next day and came to Chillicothe with it in his pocket.

Now, gentlemen of the jury, the prisoner ingeniously here attempts to make it appear that it was simply from *forgetfulness* that he brought that

pistol with him to Chillicothe on that day. I appeal to your common sense; could a man carry a weapon of that kind in his pocket and not be conscious of its presence there. And in his sack coat pocket? Why, there is perhaps not ten minutes in a day that you. and he, and I,—who wear sack-coats,—do not thrust our hands into our pockets; and if a pistol was there we would recognize its presence. No, I can not believe, and do not believe that that pistol was brought to Chillicothe on that occas on, as the result of mere *forgetfulness* of its presence. It was brought for a purpose. Now bear in mind the fact, that while the prisoner admits that he had on previous occasions intended to kill Wiltshire, on sight; he says that he relented when he thought of his mother and children, and dismissed that purpose, and determined to let the law take its course. Yet, gentlemen of the jury, *that the first meeting that ever does take place between those parties, the homicide occurs!* Does not that fact prove the state of mind of this man all through those preceding weeks? When the very first meeting between those parties results in *executing* the purpose which he says himself he had entertained for weeks before? Is it not a fair inference of law and common sense, --whatever he may say about having dismissed this purpose from his mind, --that it still laid there waiting occasion? He says he came to this city on August 5th without knowledge that Wiltshire would be here; without thought that he would see him. Well now, for all that I absolutely know, gentlemen, that may be true. He may not have had any *certain, definite,* knowledge that Wiltshire would be in Chillicothe on that day. "How"—says Sloane in his argument--"would it be possible, unless Giddings was gifted with omnicience, to have known that a man thirty odd miles away, would be here in Chillicothe on that day?" Well, I know all the force that is in that, gentlemen. There is another side to the probabilities there. He knew perfectly well that Wiltshire had lived in the vicinity of Massieville all his life; he knew that his going to Washington Court House was simply to carry with him this wife of Giddings'; (she *willingly* going; by the by, herself introducing him, you remember, up there in the family to which they went, as her *husband*, and even having the audacity when Giddings went up there, to introduce her *husband* as her *brother*; showing how full and complete her acquiescence was in whatever relations existed between her and Wiltshire at the time) I say Giddings knew that Wiltshire had gone there for that one reason, and the reason being withdrawn he undoubtedly could make an excellent guess at the return of Benjamin Wiltshire. He was up there for the enjoyment of this woman. That having ceased by the woman's coming home, his reasons for staying at Washington Court House ceased also, and it was the most probable thing in the world that Benjamin Wiltshire would return at least to Chillicothe if not to the vicinity of his home at Massieville. Giddings evidently expected that. Gentlemen, there is something, to me, altogether unsatisfactory in the explanation by Giddings of his whereabouts and his conduct on that 5th of August after coming to Chillicothe. He visited Lindley's it is true.—And here let me make one remark that now occurs to me, although it breaks the connection.—Counsel on the other side were very elqouent, and especially in the opening of this case, in stating that this defendant after his shame; after the dishonor of his house; was simply seeking the recovery of his wife and to sell his property here, and get away from the community where his disgrace had occurred, and go somewhere in the Far West; where the story of his dishonor would never find him; where it never could be thrown up to his children; where it would be unknown to all those around him. But gentlemen, that little feature of this case is entirely eliminated by Giddings' own statement as well as Mr. Lindley's, as to what the exchange of property was. He intended, *not* to go to some remote place in the Far West, but was seeking a location but a few miles from Chillicothe; and in the very neighborhoods where he had been raised, and where he was best known. Now do you suppose, or did he suppose that such a removal as that would get beyond

the possibilities of this story coming back to his children and to his neighbors there? No, gentlemen, nothing of the kind. That was a little pathetic appeal thrown in here for the purposes of the case, among hundreds of others of a like character that you have heard in the two or three days argument of the defense.

He came to Chillicothe, and he brought the pistol with him; he says he went to Lindley's and transacted his business, and Lindley says so; but he says that he went clear back to the saloon at the Narrow Gauge Depot; possibly at that time not having yet heard that Wiltshire was here; possibly for the purpose of waiting around the depot until that train came and he ascertained whether Wiltshire was upon it or not; possibly for the purpose of going from there home and coming back another day to wait for the appearance of Wiltshire. I cannot help believing, and I do believe, that while down there walking to and fro upon Paint street, during the period that he says he "*came to be restless*" for no very clear reason; that he either heard that Wiltshire was in town, or he saw him go into Adler's saloon. There is no proof of that gentlemen. I am not asserting it as a *fact* developed by the evidence here; I am simply asserting our hypothesis and belief. He went in there. Now, gentlemen, according to his own statement, he *unexpectedly* comes face to face with the adulterer of his wife;—face to face with the man that he says he had come to Chillicothe to kill, on two or three occasions. Just think for one instant of the way they met there, and believe if you can, that there was nothing in the heart of Daniel Giddings at that moment but the calm, quiet willingness to meet Wiltshire upon friendly terms, and talk over the affair with him. Is it within the bounds of reason? Can you believe that he was the calm, quiet, unangered man, that he represents himself to have been? There was testimony that Wiltshire got off of that train, *drunk*. A witness whose credit stands as high as anybody's—an officer of the Road down there, whose business is around the depot; saw him and noticed him, and says that he indicated intoxication at that time; that he had seen him before when intoxicated, and that he was impressed at the moment, and believes that he was intoxicated to some extent. As Giddings and Wiltshire met they greeted one another with:—"How are you Daniel?" and "How are you Ben?" Now upon the part of Ben Wiltshire I can well conceive that he was only anxious to know that Gidding would not kill him or attempt to kill him. I can very well understand how even in the maudlin condition that he then was, he should approach Giddings with the purpose of ascertaining what was the *animus* of Giddings toward him at that moment. I have no doubt it was a surprise to him when Giddings met him with apparent friendship, even cordiality; shook hands, invited him to drink, clinking glasses together, and drinking his health! Wiltshire knew that Giddings had been up to Washington Court House, and that he was thoroughly acquainted with the fact that he and his wife had been staying up there together in the disguise of man and wife. It was therefore natural that he should seek, on the first occasion, to know whether it was "war, and war to the knife and the knife to the hilt," as between himself and Giddings. I have no doubt it was a surprise even to the muddled intellect of Benjamin Wiltshire at that moment; that Giddings received him so calmly, so quietly, shook hands with him so readily, invited him to drink, drank with him and drank his health at that moment. That conduct disarmed all suspicion of a conflict between himself and Giddings. It threw Wiltshire off his guard, dismissed all fears from his mind, and at once re-established at least acquaintance and quiet association with Daniel Giddings. Giddings says at this point, that Wiltshire said to him, "*I want to have a talk with you*"; and that he, Giddings, responded, "*and I want to have a talk with you, Ben.*" Afterwards in the statement of what took place at the logs, Giddings represents Wiltshire at the moment of reaching the log as slamming his hat down upon the log with a defiant and hostile air and manner; and turning to him with the inquiry, "*Now by God, what have*

you got to say to me?" How utterly inconsistent this is with what he had said before, viz: that it was *Wiltshire* that desired a conversation with him. Seeing that, perhaps—(or perhaps it was brought to his attention by his careful counsel; I don't know;)—he chose upon re-examination to re-state that point, and said that it was, he believed, "*himself that told Wiltshire that he desired a conversation with him.*"

Mr. Sloane—Not upon re-examination, Colonel, it was upon cross examination.

Col. Gilmore—Whether upon cross examination or re-examination, is not material. They started then from the saloon for the purpose, ostensibly, of having that conversation. Now gentlemen, believing that it is entirely probable, I have no sort of hesitancy in admitting that it is likely to be true that after they got out of that saloon and started away, Wiltshire having added three quarters of a glass of whisky to the whisky already in his stomach, having added to that extent to the intoxication that White said existed at the time he got off the train, it is altogether possible that being drunk and walking in that direction, that he began desiring more drink and referred to Struble's saloon, and suggested going there himself. It is the more likely for, for all we know, Giddings may truthfully say that he did not know of the existance of Struble's saloon; and I believe Struble also says that he never was there before. It is altogether probable then, gentlemen, and it is altogether natural too, that this man then intoxicated to the extent that is shown, and desiring more drink, should have spoken of Struble's saloon, and led the way to Struble's saloon. It is hardly within the bounds of reason to suppose that they did not converse, and converse a great deal upon the way; considering the relations that had existed between them, and the circumstances that surround them at the moment, and the fact that he "wanted to talk to him," according to Giddings' statement. It is altogether probable that there was a good deal of conversation that you will never know anything about.

Wiltshire led the way into Struble's saloon, and invited Giddings to drink there, as Giddings had invited him to drink at Adler's. Again this now considerably intoxicated man added another half-tumbler-full of whisky, according to Struble's statement and to Giddings' admission, to the amount that was already in his stomach. Giddings drank in the one instance a glass of beer; in the other, blackberry wine. He was not intoxicated. No person pretends that he was, and so far as I know, or the evidence here discloses, perhaps never was intoxicated in all his life.

Mr. Sloane—One of your own witnesses testified that he thought he was, after he left Struble's saloon.

Col. Gilmore—No, no; that is a mistake.

Judge Cole—Clark testifies to that.

Col. Gilmore—No, sir; Clark did not see them after leaving Struble's.

The Court—The jury must reconcile the testimony.

Col. Gilmore—He has never, since I have seen him, exhibited the slightest appearance or indication that he indulged in drink at all; and I believe there is no evidence in any way showing that he was in a state of intoxication on that day. The glass of beer that he drank, very probably, I am not going to say from the evidence, but I say very probably, was the first drink he drank that day; and I say that what he drank on those two occasions could not by any possibility have affected his brain. He was calm, cool, collected; in the full possession of all his faculties at that time. But having added this half tumbler of whisky at Struble's to what he had before then drank, Wiltshire showed all the marks of an intoxicated man. That attracted the attention of every witness who noticed him, from that time up to the period of his death. It is true, I believe, that Struble says that he did not seem drunk. But it is equally true that Struble was waiting upon his customers there in the saloon, and not noticing him. Besides, some men's standard of "drunk" may be different from that of other men. He was

drunk beyond all question. He must necessarily have been drunk after adding those two quantities of whisky to that already in his stomach when he got off the train; he must have necessarily have been *drunk*. He vomited in the saloon. Gentlemen, they endeavored to account for that vomiting by his having smelled Limberger cheese which somebody was eating there. Now it is not all likely that Ben Wiltshire was of such delicate organization as for that to have had such an effect up his stomach. Smelling Limberger cheese, an article which Mr. Sloane says he is fond of, (I make the same confession) and a great many people have learned of late years to be fond of as an article of diet. It is not at all likely that caused him to vomit, but it was the amount of whisky that he had taken that caused him to vomit, and so raised the ire of Struble. He vomited right there at the counter. If it had been the Limberger cheese turning him sick and he was in command of himself at the time, he could at least have gotten out of the door before vomiting; but if he vomited from drunkenness he would not have had either the thought to go out of doors, or care as to where he vomited; just as he was indifferent, and vomited right where he stood in the saloon.

They went out of Struble's and proceeded further southward on Mulberry Street; they passed New Street on their way down toward Paint creek. Giddings states, gentlemen, that when they passed New Street, he "suggested taking that course home." It is very natural he should say that *now* under the circumstances in which he testifies, but he says Wiltshire insisted on going on "*to find a shady place to talk.*" It seems to me the most unnatural and improbable thing in the world that, considering the situation and circumstances of Ben Wiltshire at that time, such a thought should have suggested itself to him as to go thirty-two hundred feet through the sun of an August afternoon, *to hunt a shady place to talk!* Why, there were abundant shady places between Adler's saloon and Paint Creek, that they could have found to have talked in, if that had been the only object in going. There was another motive in seeking a shady place; and it was not for the shade, in my opinion, but for the concealment the shade may have afforded, that Giddings—*not* Wiltshire—sought that place! Joseph Seeberger says he first saw them coming down from between New street and the slaughter house. And here, gentlemen, let me say that however slow-minded he is, that witness showed every mark of an honest, conscientious, careful witness. However much Mr. Sloane's ingenuity bothered or confused him in the examination, yet the witness struggled in his slow way, thoughtfully, to tell "the truth, the whole truth, and nothing but the truth." And I am sure, gentlemen of the jury, that you agree with me when I say that that witness's testimony can be relied upon as being truthful, unprejudiced and careful. I believe it is true, that looking up the street when he first saw these men, he says Wiltshire was in front of Giddings, describing them at the time as "the man with the light suit on; and the man with the dark suit on." Wiltshire being the man with light suit on, and Giddings being the man with the dark suit on, as I believe is conceded. I believe he says that at the time he first noticed them on Mulberry street, that the man with the light clothes was ahead; but he also says that by the time they got down in the neighborhood of the slaughter house, the man in dark clothes was leading the way, Now gentlemen, there is very little significance in who led the way, up to the time they got to the end of Mulberry street. *But Giddings led the way across Honey Creek.* Now when they got there to the end of Mulberry street, and sought to cross Honey Creek into that plowed cornfield, into a place that no road or path leads into from Chillicothe, there is significance in every step, in every inch of their progress. Giddings assisted Wiltshire across the little slough called Honey Creek. Giddings says that Wiltshire also threw "a pole" across to further facilitate it, but Pickens did not see him do so, nor Seeberger, and nobody saw a pole there afterward.

Mr. Sloane—Giddings stated it.

Col. Gilmore—Giddings stated it, it is true; I don't deny he stated it; but I say nobody else saw Wiltshire assist himself in any degree across Honey Creek. Nobody saw him put that pole there; nobody saw the pole after it was put there. They have proved that a large number of people were assembled about the body when the officers went down. Nobody saw it. My friend Cole here, with all his careful preparation of this case, has found no witness to say that that pole was in fact there.

Judge Cole—We have found no witness to say it was not there, either.

Col. Gilmore—No, because you have not looked for such.

Judge Cole—*You* ought to have looked for that.

Col. Gilmore—The first indication we had of the pole, was from the mouth of Giddings, on the witness stand. How could we look for that of which we had no information or idea? We can not accept it as a truth, simply because the defendant, under the circumstances that exist, swears that Wiltshire did assist himself across by the throwing of this pole. From the time they left Mulberry street, and started down the bank of Honey Creek, clear to that log, where the homicide occurred, the evidence is that Giddings led the way. Seeberger's testimony shows that he led the way from the time they passed the slaughter house until they crossed Honey Creek. Seeberger's testimony shows that he led the way across the plowed ground as far as the log itself; and Pickens' testimony also shows that he led the way, from the time they crossed into the cornfield, and crossed his furrow, and as far as he continued to watch them, in their progress toward that log. But the gentlemen on the other side say as they approached the log, that Wiltshire being familiar with the locality, and Giddings knowing nothing about it, Wiltshire took the lead and led directly to the log, upon which he sat down. Now gentlemen of the jury, I say that the testimony of this honest German boy, Seeberger, shows that *that was not true.* I believe that this jury understands without my attempting to state what Seeberger swore to, as to their separation at a distance which Seeberger says was about as far as from here "*to that stove yonder*" from the log; while Giddings, being in front, and not knowing that Wiltshire was sheering off to the right, went straight on down, *perhaps to the denser thicket that was straight before him;* but that Wiltshire, drunk, as he unquestionably was at that time, sheered off to the right and took a seat upon that log before Giddings saw that he had departed from the straight path that he had been pursuing, and before Giddings knew that he was not directly behind him. It was then, looking around for Wiltshire, that he discovered that Wiltshire had sheered off to the right and was sitting upon that log. At that time, according to Seeberger's testimony, Giddings was twenty or twenty-five feet to the east of Wiltshire; and as Giddings turned to go to where Wiltshire was, this witness, Seeberger, turned his eyes for the first time, away from these men. Wiltshire had placed his hat upon the large log, and sat down upon it, and Giddings had just discovered that Wiltshire was not following him, and he turned to see where he was, and then started to walk this distance of twenty-five feet to where Ben Wiltshire was sitting, when Seeberger turned his eyes away.

Now, gentlemen of the jury, remember Seeberger's testimony as to how *soon* after he turned his eyes away, these fatal shots were fired. I invite your most careful attention now to this testimony; and I regard it as altogether the most important testimony that there is in this case; as the testimony that throws most light upon the character of this transaction; as the testimony which will guide you most accurately, and most reliably to the verdict in this case. In answer to the question: "*The fellow with the dark suit, he was ahead?* A. *Yes, sir.* Q. Where, in the cornfield? close to the logs? A. *The fellow with the dark suit he was ahead, and he walked straight out; and the fellow with the light suit made a sort of turn like. When he sheered off to those logs; and then when he made a kind of turn, he made a few steps and sat on the log under the trees, that is, Wiltshire did;* and the other fellow, of course, when he seen him turning off, that is when they were

out of the cornfield, that is, outside of the plowed ground, and that part of the island, as we used to call it, that was not planted with corn; that is, when they were out of the cornfield, this fellow followed; and when he followed I went away; and just as I got in the center of the slaughter house the two shots were fired and I ran right back." (He did not walk, gentlemen, but ran right back.) "And looked at that place where the man was sitting, and I didn't see the man any more, nothing but smoke, that is, raising up; and just as I was looking at the smoke, I saw the fellow with the dark suit running away and out of there, run right toward the creek, and right toward the creek bridge, and that is the last I seen."

Now, gentlemen of the jury, Seeberger had kept his eyes upon them. This being a rough plat of the place, (counsel exhibiting diagram to the jury) you will understand, Seeberger having watched them after they had crossed Honey Creek, and crossed the field toward Paint Creek, says that Wiltshire turned off, and sat down upon the large log here; Giddings having pursued this straight path to this point, (counsel indicating) and then observed that Wiltshire had so sheered off, and seated himself twenty-five feet east of him, turned to go there; and then Seeberger turned his eyes from them and walked twenty-five feet into the slaughter house—just about the distance that Giddings had to walk to re-join Wiltshire —and he heard the two shots and ran back, (not walked back) to the door, where he could see the place. When Seeberger got back there, the smoke had lifted "just two or three feet." Now, gentlemen of the jury, stop and dwell for a moment upon the possibilities of Daniel Giddings' statement, as to what took place at that log, being true. Stop and ask yourselves whether you can believe this man, testifying under the awful shadow of the gallows, in his own behalf; this man, testifying under this tremendous temptation; I ask you to stop and consider whether it be possible even, that he tells the truth. Mr. Sloane says, with singular assurance, it seems to me, "there were but two witnesses of this transaction; only one of them lives; and Daniel Giddings' testimony stands before you undisputed!" Only one lives. Yes, gentlemen of the jury, Daniel Giddings had taken care that only one should live. Benjamin Wiltshire's lips are sealed in the silence of death. He can not be he here to tell of the attempt to take his life, and what the facts were. The attempt was a success. He is dead! And only Giddings can testify before you in regard to the character of this transaction. But his testimony is not undisputed. Beside the testimony of Seeberger and Pickens there are *other* witnesses in this case, witnesses that could not be mistaken, witnesses who could not be corrupted, There is the blood, the log and the position of Wiltshire upon it, to dispute the truth of the testimony of Daniel Giddings. He had just as far to walk from the time he turned toward Wiltshire, as Seeberger had to walk to get to the center of the slaughter house, where he heard these shots. Now, gentlemen of the jury, was it possible that there should have been that long and pathetic dialogue between the parties; that there should have been that eloquent appeal which Giddings says he made to Wiltshire then and there? an appeal that it seems to me, right upon its face, has been studied and prepared for this case and would not and could not be the natural, ordinary utterances of this unfortunate man? a speech that compares in its terseness, its sympathetic appeal, its eloquence, with the best efforts of Mr. Sloane himself? I say it could not have been. Giddings says, the first thing that took place there, was, that Wiltshire sat down upon the leg, took his hat from his head, slamed it on the log, and said to him just as he had reached the first log: "Now, by God! what do you want to say to me?" To which the defendant answered, "Ben." (using the first name; using a term of familiarity; Ben.), "you know Mary has come home now, and begged me to take her back and forgive her. I have done so, on account of my children. She has promised to be a true wife to me, and to love me; and not do wrong any more. She will keep her promise if you will leave her alone. You know that you have got

a great influence over her. I beg of you for God's sake, for my sake, and for my children's sake, not to come to my house any more, or interfere with my wife." To which Wiltshire replied: "You be damned! I have got as much right to that woman as you have. I have come to take her away, and I will do so, if I have to kill you." With which expression, "he raised from the log, threw his hand behind to his hip pocket as if to draw a weapon, and that then, he, (Giddings,) instinctively drew his pistol and fired, he supposes; he don't know how many shots he fired; and remembers nothing further." This is Giddings' description ef what took place at that log. I say gentlemen, that this address to Wiltshire which is put in his mouth here, is not the natural expression of a man of Giddings' character, education, habits, modes of talking or thinking; nor the natural expressions of a man, such as Giddings, under the circumstances such as then existed. I say that the style is above and beyond him; that it has been carefully conned and put in his mouth; and that the time was insufficient to have had this dialogue occur there, after he walked up to Wiltshire. I repeat, gentlemen of the jury, that upon every branch of this case, that is of value to the defense, Giddings stands *his only witness for himself.* The defense understands, thoroughly, how true this is. They have occupied almost an entire day in appealing to this jury to believe every word Giddings has said in his own defense; in endeavoring, by all the ingenuity that could be exercised by this most ingenious gentlemen here upon my right, to make this jury accept what he said, as true. For he realizes, and Judge Cole realizes that upon the belief in *Daniel Gidding's testimony by this jury, his fate hangs!*

And now, gentlemen, I propose to show you that beside the terrible instinct, the terrible temptation to perjure himself for purposes of defense, there is evidence here, evidence that seems to be indisputable, that Giddings could not, and *did* not, tell the truth as to the transactions at the log. I propose to examine for a few moments the testimony of Daniel Giddings in *other parts of this case*, to ascertain whether he has—with more than Roman firmness,—preferred the truth to saving his own life. I desire to test his credibility by examining his testimony in connection with the testimony of other witnesses. Giddings' testimony substantially contradicts the testimony of Al. Eichenlaub, as to what took place in the saloon of Eichenlaub, three or four weeks prior to this homicide. You will remember, gentlemen, that Giddings, when upon the stand, could remember, and *did* remember going to Eichenlaub's saloon on one particular occasion; he *did* remember that he drank nothing, and called for nothing; he remembered that he passed through the bar-room and sat down in the room beyond it; he remembered exactly *where* he sat, that it was by the south partition, with a table close to it. He remembered of a little conversation he had with Eichenlaub upon that occasion; but he strangely forgot the important fact, if it was a fact, as Eichenlaub states, *that he went on tip-toe behind Eichenlaub*, when Eichenlaub went to the back door; and that in response to Eichenlaub's surprised and enquiring look, he answered, "*O, I thought may be it was Ben Wiltshire.*" He denies any recollection of that. Gentlemen of the jury, is it natural, is it probable that he could remember all those little details which he testified to, as to going in there,—and where he sat, and all about it; is it *possible* that he can remember all these and testify to them here, and yet *forget the capital fact* in the testimony of Al. Eichenlaub? He can remember his conversation with Smart over there in front of Kauffman's; or as Giddings states it, "*in front of the stairway that leads up to Mr. Cole's office.*" He can remember exactly whereabouts on the pavement they stood; he can remember that part of the conversation in which Smart told him his business, that he was a reporter for one of the papers here; he can recollect thinking of what the proprieties required of him; that he "*hesitated when Smart told him he wanted information for publication*"; but that he did go on and tell Smart about his family difficulties and his situation. He remembers all that; every detail about that conversation; but when he comes to the

admission, that on the 20th of July, when that conversation was held with Smart, "*he knew that his wife had been unfaithful to him not only with Wiltshire, but with several other persons.*" there is another sudden lapse of memory; and he cannot recollect that he said anything of that kind; in fact, substantially denies that he *did* say anything of the kind to Smart. *Substantially*, I say, for he did not do it in direct terms. He remembers his conversation with 'Squire Mick; he remembers going there to Mick's office, and having an interview with him in which he spoke of Wiltshire's conduct and his wife's; spoke of the elopement; (for it occurred only a day or two before I believe,) and asked for a warrant for *larceny* against his wife;—and 'Squire Mick's credibility will hardly be attacked or undervalued; told him that his wife had *stolen*, under pretense of taking her own property, a part of his goods and carried them away; and he wanted her *arrested*. How does that comport, gentlemen of the jury, by the by, with the "yearning" affection which this man is represented by his counsel to have had for his wife, notwithstanding all her guilt; that yearning affection that would not permit him to eat, or sleep, or work; that sat him "*in the corner of his house, with tears in his eyes, in despair and grief, brooding over the loss of this wife*"; I say, how does it comport with all that? But he could not recollect, when he comes to testify, that he *did* ask for a warrant for the apprehension of his wife. He asked "for a writ of replevin," he says. Now gentlemen of the jury, don't you know that that is not true? Are you not assured by Mick's testimony, that he did want to arrest for stealing, this wife "*whom he yearned after;*" this wife "*whom he loved so wildly;*" the wife the "*loss of whom maddened him,*" according to the counsel upon the other side. That he was willing to add to the discredit that had already attached to her by her adulteries, the discredit of being a *thief*, and being *arrested* as a thief, and *tried* as a thief? But he cannot remember that! He only asked for a writ of replevin. He substantially then, denies the truthfulness of 'Squire Mick's testimony.

He denies Lockwood's statement about being, under provocation, "*as blood-thirsty a wretch as any on earth.*" There is no more respected man in Massieville, or around Massieville, than Theodore Lockwood, who is the principal business man of that village. Giddings denies that he ever used any such expressions as Lockwood has sworn he *did* use in his presence and hearing.

Mr. Bitzer—Lockwood was their witness too.

Col. Gilmore—Yes sir, he was their witness; and they accredit him as a person who can be believed by the jury, when they put him on the witness stand.

He denies Mrs. Trigo's statement to the effect that "*if he could have found Wiltshire, and if it had not been for his children, Ben Wiltshire would now be lying in some of the grave-yards around the country, and he would have been somewhere else;*" and of saying that "*it was fun for Ben now; but it would be hell for him hereafter.*" Is not Mrs. Trigo a respectable witness; Is it possible that she could have stated such things on the witness stand unless they were true? A witness may be mistaken in a statement as to the *exact words* used, or the exact *color* of the fact, but such testimony as Mrs. Trigo delivered here could not by any possibility be delivered in any case, unless such were substantially true, or the witness was *willfully* perjuring herself. Giddings denies that such statements were made by him.

He denies upon the witness-stand, his *own* statements, contained in the letter to his brother Arthur. He denies that at *that* time he knew of this adultery with Wiltshire; he denies that he knew of *any* adultery on the part of his wife. He says that on the 21st, when he wrote that letter, the utmost was that he had "*suspicions*, because of reports that had come to his ears"; but that he had "discredited them and refused to believe them"; and yet he writes to his brother Arthur detailing his wife's infamy; he writes him, "*that for more than a month he had known by investigation and by observa-*

tion, that his wife was in the practice of adultery." You remember, gentlemen, that in the cross examination of him as to what time he had made the "observation," he squirmed and endeavored in every way in the world to explain it away; and to make it comport with the declarations that he had just before made, that "*at the time he wrote that letter he did not believe that his wife was unfaithful.*" Now gentlemen, if he swore to an untruth when he said that he did not know of his wife's adulteries on July 31st, the date of that letter; that he had not then investigated and satisfied himself of anything of the kind; then gentlemen how much can you depend upon his other statement, that he did not know of his wife's adultery with other persons in Erie County, running through those six years back? If he won't tell the truth in regard to what was the condition of his knowledge on the 21st of July, then is it at all strange, or am I at all ungenerous in saying that his testimony as to his knowledge of his wife's previous adulteries running through a series of years, was also untrue?

He denies upon the witness-stand in the course of his testimony, (and finds it *absolutely necessary* to deny,) the entire testimony of Dr. Dewey as to the conversations that took place in his own house when Mr. and Mrs. Dewey were calling upon the prisoner's very excellent mother; where his wife's conduct was under discussion; where they talked about what was *then* known as facts in regard to her adulterous intercourse, not only with Ben Wiltshire, but also with Lyman Blair; and where they discussed the wife's previous adulteries while living in Erie County; where they even talked about the wife being "*so low, so degraded, so reckless of every propriety, so indecent in her lust as to have sought connection with a man who (Mrs. Blair says) was then eighty-three* years old!"

Now, gentlemen of the jury, I want to make one remark here in regard to the testimony upon that point. In tenderness (—and our tenderness in this case has always been misunderstood—) in tenderness to Mrs. Blair, in tenderness to the reputation of this old man, Mrs. Blair's father,—knowing that it was objectionable—knowing that it was incompetent testimony—we permitted gentlemen on the other side to put Mrs. Blair upon the witness-stand to testify that it was *untrue* that her father *had ever had* any such connection, or attempted connection, with Mrs. Giddings. We had not attempted to prove, *as a fact*, that there had been anything of that kind. We did not believe it as a fact. I believe the counsel for the other side overheard my talk to my associate counsel, "that the very suggestion was monstrous; that he ought not to have been brought in to the case." The State has not asserted it to be a fact that Mrs. Giddings ever had any liason, or attempted liason with the old man Cox. The State has never found it necessary to say anything of the kind; but the *conversation* that was detailed by Mrs. Dewey and by Dr. Dewey, *was a conversation between Mrs. Brouse, the mother of Giddings, and the defendant himself at the house of defendant.*

Giddings has found it necessary, not only to dispute, point-blank, the entire evidence of Dr. Dewey and Mrs. Dewey; but he has also to dispute, point-blank, the testimony of William Wiltshire as to what occurred at the time of the talk on that day when they were going fishing;—of the offer by Daniel Giddings to "*give twenty-five dollars to any man that would swear to a lie, that his wife might get a divorce.*"

At this point, gentlemen of the jury, it is perhaps proper that I should refer briefly to the unexampled denunciation of this witness William Wiltshire, by one of the counsel for the defendant. I do not suppose that Mr. Sloane ever passed one word with William Wiltshire; I have no idea that he knows anything about the character and standing of William Wiltshire. This deceased man, Benjamin Wiltshire, has venerable parents yet living, who stand as well in the community as any of our farmers. He has a brother who is a reputable and respectable physician; who was a physician in the army; resident of this county. William Wiltshire, so far as I know,

is also a decent, peaceable, law abiding, good citizen; with as good a character for truth and veracity as Mr. Sloane, or Mr. Cole, or myself, or anybody else. Why then, gentlemen, that vicious attack upon him, based upon nothing else or better, than his personal appearance? What sort of a test is that? What sort of propriety is there in it, that Sloane should turn to that man and denounce him as "*having a face which, if he was ever put upon the prisoner's dock, would of itself and without testimony, convict him of any crime that he might be charged with*"? Why, gentlemen of the jury, that was an unfair way to treat a witness. It shows the weakness of the defense, that it impels them to attack thus vehemently, William Wiltshire, only because he was a witness for the State; that it impels them to attack Mrs. Dewey for the same reason; that it impels them to attack Mr. Kleindinst for the same reason; and throughout this case to attack everybody that the State has put upon the witness stand. We have not found it necessary upon our part to attack any witness, except Giddings himself. We now accredit them so far as we know, to the jury, with giving fair testimony in every instance excepting only the one whose testimony I am now discussing. I should be thoroughly ashamed of myself, if I should turn upon an innocent man or woman, and *simply* because he or she was a witness called by the party opposed to me in a law suit, should indulge in such terrible invective, such terrible denunciation, such abuse as has been showered upon each and all the witnesses for the State, by Mr. Sloane.

William Wiltshire's testimony, by the by, was corroborated in great part by Giddings himself. He don't deny that William Wiltshire told the truth when he was telling the conversation about the divorce, there in Giddings' house; but tries to evade it, by pretending that it was a *jest* and a *joke!* That is an admission that William Wiltshire told the truth; that even the *brother* of the deceased, *could* tell the truth, and *did* tell the truth. The defendant here admits that the damning evidence given by William Wiltshire, as to the state of his affection for his wife, *was true*, but he attempts to avoid those facts by simply saying that he was joking; joking, when the wife was *crying*; joking, when the state of things existed, that William Wiltshire describes!

Now gentlemen of the jury, it is true that this conversation occurred, and it was true that Giddings, then and there, expressed his *real* feeling toward his wife. That he has been anxious to get her back is undoubtedly true; but, in my opinion—and the evidence I think supports me in that opinion—the only care that he had for that wife on earth, was for her *services as a housekeeper, and as the nurse of his children.* There was no affection such as the husband should have for the wife; there was no value attached to her as a loved wife. The value was that of the servant and the nurse; that is all. This is in perfect accord with what he said as related by other witnesses:—*that he would have parted faom her long ago; that he would have sent her away to shift for herself long ago; if it were not for her services as nurse and housekeeper.* And I suppose he intended so soon as his children were of an age to dispense with her. I have no doubt that intent has been constant in his mind.

He also disputes the testimony of Kleindinst. Mr. Sloane attacks Kleindinst because of some peculiarities of religious beliefs, or non-beliefs,—I don't care which Now gentlemen of the jury, I am perfectly willing to leave that witness' testimony to your judgment. Consider his manner, his consistency, and everything else. But Giddings denies *his* statements also.

He denies Seeberger's evidence as to leading the way in the corn-field.

He denies Pickens' evidence on the same point.

Here, gentlemen of the jury, are no less than thirteen witnesses that are *to be contradicted by the testimony of the defendant alone!* And yet counsel for the other side say this man's testimony goes before you "undisputed!" They dwell upon it all through, hour after hour, because they know, gentlemen of the jury, that if you discredit Daniel Giddings' testimony as to

what took place in the fatal moment there at the log; then their defenses both of self-defense and insanity, fall to the ground. Eliminate Daniel Giddings' testimony from this case,—discredit that testimony,—and there but remains a bare naked case of deliberate, premeditated murder. It cannot be anything else. Now I want you to eliminate it, not because I want that man hung; but because I want to see the law honored, because I want to see crime rebuked; because I want to see the community protected. Why,—says Sloane,—if this man go aquit "*who will be hurt?*" Gentlemen, the whole body of the State of Ohio will be hurt; the law will be violated, and Justice, will go bruised, bleeding, staggering, out of this temple of the law, from wounds inflicted by the ministers of the law.

Now, gentlemen, I invite your careful scrutiny of the testimony of Giddings' as to *positions* of himself and Wiltshire at the moment the shots were fired. Compare it with the *wounds* that were upon the dead body,—with the *spurt of blood* upon the log,—with the *smear* of blood that went down the side of that log where Wiltshire's head scraped as it went down. Now remember, that Giddings had as far to walk,—just about the same distance—in going from the point where Seeberger took his eyes from him, to get to Wiltshire's side, as Seeberger himself did walk when he turned back from looking at them, before hearing the two quick reports of the pistol. He probably did not approach Wiltshire on the run, but walked deliberately and quietly up to him, just as Seeberger walked deliberately and quietly, into the slaughter-house; just about the same distance. Then these shots rung out on the air; and Seeberger heard them and *ran* back to look again at the parties from whom he had just turned his eyes. I know that witnesses can not measure time in looking back at an event, in minutes or hours, with any certainty. Nothing is more unreliable than such recollection of time. The best measure is what was *done* in the time.

Now, if Seeberger's testimony is true, then it is impossible, utterly impossible, that those speeches could have been made, by Wiltshire upon the one side, and Giddings upon the other, there at the logs before those shots were fired.

Now then, gentlemen of the jury, let me draw your particular attention to the testimony of the logs themselves, and the wounds that were upon that man's body.

Giddings tells you his story of what occurred there at the supreme moment; that he approached Wiltshire in front, that Wiltshire was sitting on the large log, that he, Giddings, put his foot upon the small log directly in front of him, and separated three or four feet from Wiltshire, that he uttered that speech to him begging him to not interfere with his wife any longer; that at that moment Wiltshire, sliding down from the big log sufficiently to have his foot rest upon the ground, threw his hand around to his hip-pocket, and swore that "he had as much right to that woman as he; and that he intended to have her or to kill Giddings;" that at that moment standing face to face with the deceased, moved by "irrepressible impulse" he drew his pistol; he remembers pointing it; remembers the explosions, remembers the smoke; and he lost consciousness! Now, gentlemen of the jury, I say that that statement is not, and can not by any possibility be true. He did *not* stand in front of him; he *could* not have stood in front of him when he fired and made the wounds that he did. He admits himself, in a weak way to be sure, that the first shot was *through the head* of Wiltshire, as the State believes it was. He represents Wiltshire at that moment as facing him, looking him in the face and throwing his hand to his hip-pocket. There is evidence that there was not any pistol in Wiltshire's possession for it would have been found upon the search, or upon the ground. And thus unarmed, you are asked to believe that, throwing his hand to his hip-pocket he said: "I will have that woman or I will kill you!" Why, Mr. Mosher, (one of the jury) if I stand in front of you in the position that he describes himself

and Wiltshire to have been in that time; and you were facing me, and were situated as he has placed Wiltshire, and looking me in the eye, how could I fire and shoot you in the lobe of this (the right) ear, and send the ball in a direction that it would go horizontally toward the left ear to the plate of the skull on the other side? how could that be? Gentlemen of the jury, *that wound* stamps the evidence of the defendant in this case, as being untrue. How could he in addition to making that wound, leave that powder burn, in a ring around the place where the ball entered? Sloane himself says: (and it is true, and I suppose that every man upon the jury knows it to be true.) that a powder burn won't be inflicted unless the muzzle of the gun or pistol is within a very few inches of the wound. "ten or twelve inches" said Sloane; ten or twelve inches say I. The powder burn is clearly proved. Three or four witnesses as credible as any that could possibly be produced upon any witness stand, have told you that it was there; that they saw it. How could that be, in the position of the parties as represented by Giddings in his testimony? The theory of the State is, that this man, walking, approached Wiltshire from the east; coming up upon the right side of Wiltshire, as he sat upon that log unconscious of danger, thinking, it may have been, that Giddings had become reconciled, and that he was no longer dangerous. Wiltshire being maudlin drunk, thoughtless of danger, looking straight to the front evidently. That Giddings, whose murderous purpose had never been abandoned during all those weeks and days, who had it firmly in resolve from the moment he saw Wiltshire in Adler's saloon, to the moment that they arrived at those logs that he coolly, calmly, repressing all excitement, repressing threatening look or gesture, walked up and sat down upon that log, upon the right side of his victim, within three or four feet probably; and that he took the very first instant of opportunity to draw that pistol (cocking it as he drew it.) and shot down his victim! We believe that he placed the pistol within a few inches of Wiltshire's head, and sent that ball crashing through his brain without one single word of dialogue. And that to make sure work, when the blood flew in the "spurt" which was described by the witnesses, along the center line of the log; and when his victim sunk over on his right side, and the blood, oozing from this wound, "smeared the log" to the point where the curve of the log receded; and there fell to the ground: this man leaned over him and sent another ball, carefully and skillfully directed, through the heart of his victim; and then turned to run and escape. He knew that he had left the body in a place, where unless these shots attracted the attention of Seeberger or Pickens, it would probably lie unfound for days; and that he might possibly find the means of concealing it. I don't know that he reasoned that far about it, at such a moment of excitement.

Such, gentlemen of the jury, must of necessity have been the manner and incidents of this murder. There is no escape from it upon earth, It is the greatest wonder to me in this case, that these two gentlemen upon the other side, did not provide a better explanation for this unfortunate man, before he took the witness stand.

Gentlemen of the jury, a great and terrible crime was committed then and there. If it was committed as I have now described, both the theory of "self-defense" so elaborately put before you, and the theory of "emotional insanity" fall worthless to the ground. I say a great and enormous crime was committed there, It was committed coldly, calculatingly. The law books say that a *skillful* wound *skillfully given*, indicates premeditation and deliberation. A person under excitement is not likely to inflict a skillful wound. A man in such condition directs and fires shots without distinct aim; without calculation as to where the ball may strike; and is as apt to strike any one part of the person as another; or to miss entirely. But if the skiillfulness of the wound reflects upon the *premeditation*, surely it reflects upon the *sanity* also. These wounds were skillful. They were directed at

vital organs, the most vital organs of the human body. One shot was through the *brain*, the other through the *heart*.

And now, gentlemen of the jury, do not add one crime to another by letting the person, guilty of such facts as these, go aquit because of any maudlin sympathy that may have boen aroused in your breasts hy the appeals of ingenious counsel. You are not permitted, gentlemen to raise every *possible* theory and hypothesis in seeking a way to acquit this defendant. Your duty as jurors is to let the evidence have its full *natural* weight, according to your estimate of its correctness and reliability; and if you believe from the evidence that this crime was committed under substantially the circumstances that I have now described, then your verdict must be—*guilty of murder*.

And gentlemen, having discharged what I think is my simple duty in this case, I now leave the destiny of this man in your hands.

CHARGE TO THE JURY.

Gentlemen of the Jury :—The charge contained in this indictment is, that on the 5th day of last August, the defendant, Daniel Giddings, in this county, purposely and of deliberate and premeditated malice did kill and murder the deceased, Benjamin Wiltshire.

The only difference between the two counts in the indictment is, as to the location of the mortal wound upon the body of the deceased; the first averring that it was it was inflicted upon the right side of the head, the second that it was inflicted upon the left side of the heart, of him the said Benjamin Wiltshire.

It is a matter of no great importance in this case as to which of these wounds was the mortal one. Referring to the testimony, it is very probable that either, singly and alone, would have caused the death of the deceased, and was, therefore, a mortal wound. So that, in case you should find the defendant guilty, you might, consistently with the evidence, refer his guilt to the charge as contained in either count of the indictment. But as there would be a want of logical consistency in finding him guilty as charged in both counts, you should, in case you find him guilty, place your verdict upon that count in the indictment which the evidence shows, avers the most immediate and direct cause of his death.

To find the defendant guilty under either count of this indictment you must find beyond a reasonable doubt.

First, that Benjamin Wiltshire is dead.

Secondly, that he came to his death from a wound inflicted upon his body by the hand of Daniel Giddings in the manner described in the first or second count of the indictment, in the County of Ross, on or about the 5th day of August last past.

Thirdly, that the wound was by him purposely inflicted with intention of causing the death of the deceased.

Fourthly, that it was by him maliciously inflicted.

And, fifthly, that the homicide was so committed with deliberation and premeditation by the accused.

These are the averments essential to constitute murder in the first degree, the charge contained in both counts of the indictment.

But it does not follow, that the defendent must be acquitted, if the proof should fail to establish all of them. For if the evidence establishes by the requisite degree of proof, that the defendant killed Benjamin Wiltshire, at the time and place named, by purposely and maliciously inflicting a gun shot wound upon him with the intent to kill him, without deliberation and premeditation, he is then guilty of murder in the second degree and you should so find, and return your verdict against him; or if the proof should fall short of establishing all this beyond a reasonable doubt, still if you find by the requisite degree of proof, that the defendant purposely inflicted the wound or wounds upon the deceased with the intention of killing him, but without malice, upon a sudden quarrel you will then find him guilty of manslaughter, if you also find that he so killed him, without justification or excuse; in other words, that he unlawfully killed him; for such a homicide amounts to manslaughter under our statute; or, if you should find, that he unintentionally killed Benjamin Wiltshire, with or without malice, whilst he

was in the commission of some unlawful act directed against the deceased and resulting in his death, as purposely and unlawfully beating and wounding him, then you should likewise find him guilty of manslaughter, for such a homicide, also, amounts to such an offense under our statutes.

And finally you may acquit him of the charge of murder or manslaughter, and find him guilty, under this indictment, of an assault and battery, or of a simple assault, if you are persuaded by the evidence that he is guilty of such an offense, and nothing more. I use the language "persuaded by the evidence" that I may guard you against the possible misapprehension, that you have any discretion in the matter. You are controlled by the law and the evidence, and your finding must be in accordance there with. Such is the obligation of the oath you have assumed, ; and no one of you can in conscience discharge the obligations of your oath, by disregarding either the law or the evidence of the case. The obligations imposed by the oath of a juror in a case like this, are of the most delicate and important character and can only be discharged in the forum of the conscience by the exercise of the highest sense of duty to the State and the accused.

I have thus, as briefly and clearly as I could analyzed the essential elements of the crime charged in the indictment; and pointed out what should be your verdict upon a given state of the proof.

I will now undertake to define to you the more important of these elements, and their mode of proof.

That Benjamin Wiltshire is dead, and that he came to his death by the defendant, is not now controverted; and you will find little or no trouble upon this point.

First, then as to the purpose and intent to kill, in inflicting the wound of which the deceased died.

Secondly, of the element of malice.

And, finally of that of deliberation and premeditation.

As to the proof of intention.

In cases like this, the perpetrator of the act of killing, seldom avows at the time his purpose and intention in doing that which results in depriving another of his life. Wherefore, resort must be had to the facts and circumstances connected with the commission of the homicide, upon which the reason is to be exercised, aided by such inferences as are afforded by experience and observation.

The law regards all persons who have arrived at years of discretion as rational beings, capable of reasoning from cause to affect upon all matters within the ordinary experience and knowledge of men. It is, therefore a rule of evidence that every person possessed of the faculty of reason, is presumed, as a matter of fact, to contemplate and intend the natural and probable consequences of what he does. So that when one purposely shoots at another with a loaded gun, and death ensues, an inference of fact arises and should prevail until the contrary appears, that he intended to kill ; because death is the probable consequence of such an act.

As to malice.

This is a distinctive feature in the charge of murder, as without malice, there can be no such thing as murder. It is not easy to give to it any exact definition. It relates to the moral qualities of a man's acts. Its general use in law is, to express an act done without any sufficent reason, where the act is wrong in itself. As applied to a case of homicide, it expresses that it was committed by the accused without any adequate reason therefor, and under such circumstances of cruelty, as to evidence a mind devoid of social duty, and fatally bent on mischief. And because ordinarily no man may lawfully kill another, and intentional homicides are in general the result of malice and evil passions, or proceed from a heart devoid of social duty, in every case of intentional homicide, not otherwise explained by the circumstances, it is presumed in the first instance, that the slayer was actuated by malice,

and the burthen is placed upon him of showing the contrary, unless it appears from the circumstances adduced against him by the State.

It is not, however, required that he should do this by evidence establishing the facts on which he relies to remove the inference of malice, beyond a reasonable doubt. It is sufficent if the circumstances on which he relies for this purpose are established by a fair preponderance of evidence.

And if after hearing and weighing the evidence offered by the State, in connection with that offered by the defendant, the jury entertain a reasonable doubt as to the existence of malice, they should resolve that doubt in his favor; for when such a doubt exists, after hearing and weighing all the evidence pro and con the preponderance must certainly be with the defendant.

The absence or existence of malice in the act of killing marks the distinction between murder and manslaughter. For though, under our statute, there may be malice in an unintentional killing, amounting to manslaughter, still malice in such case is a very different thing from malice in an intentional killing. For the term malice is always referable to the nature of the act, it is intended to characterize; a malicious beating is one thing and a malicious killing is another and different thing.

What then are the circumstances that will overcome the inference of malice arising from an intentional killing?

I refer not here to such circumstances as may show that the defendant was acting in self-defense. I will refer to those circumstances hereafter. I refer now only to such things as negative the imputation of malice, and reduce the offense from murder to manslaughter.

These circumstances generally arise from some provocation the defendant has received from the deceased, or else from the heat of passion excited by a sudden quarrel.

The distinction, (says a learned author whose language I here adopt as apt and relevant to the subject), between murder and manslaughter, as put in the books, and as generally understood by the profession, is not merely an arbitrary rule, but is founded on a thorough knowledge of the human heart and framed in compassion to the passions and frailties which belong to and are inseparable from our natures. We look in vain through all clases of society, for even one individual who has such command of himself as to remain passive and unmoved when suffering under personal injuries. Passion arising out of even imaginary wrongs, frequently gets the ascendency of distempered minds; and even those that are bettter regulated are sometimes carried away by the ordinary "ills which flesh is heir to." These may, however, be subdued and overcome by a proper course of reflection and discipline, and it is our duty to keep them in proper bounds; but he who has suffered great bodily harm, the parent who sees his child, or the child who sees the parent, suffering under the hand of ruffian violence, or the husband who finds his wife in the embrace of an adulterer, does not stop to reason about the extent to which he will carry his resentment, and in proportion to the degree of provocation will be the almost certain degree of resentment; and if, under the influence of such an excitement, one man takes the life of another in whose wrong it originated, it is mansladghter and not murder. There must, however, be a reasonable provocation, and what will or will not constitute a reasonable provocation, is perhaps, the only difficulty in applying the otherwise well defined distinction between the crimes of murder and manslaughter. The line, which distinguishes between those provocations which will and will not extenuate offenses, is not, nor can it be, certainly defined. Those provocations, which are in themselves calculated to provoke a high degree of resentment, and which ordinarily superinduce a great degree of violence, when compared with those that are slight and trivial, and from which a great degree of violence does not usually follow, may serve as a general outline to mark the distinction, and when applied with judgment and discretion will usually lead to correct results."

In this case you should take into consideration all the circumstances preceeding as well as attending the commission of the homicide and inquire what would ordinar ly have been the conduct of men in general under like circumstances; and should you thus find that the defendant did no more than might be expected from men in general under like provocation the law in its tenderness to human frailty would require you to say that there was no malice; and as I have already said where there is no malice connected with the act of killing, the homicide can amount to no more than manslaughter; and you can not, in the absence of the malice, find the defendant guilty of murder in either degree.

As to deliberation and premeditation.

This requires proof that the intention to kill had been deliberated upon and the design to do it formed, before the act was done, though it is not required that either should have been for any considerable length of time. Deliberation and premeditation supposes that the party by reflection understood what he was about to do, and determined to do it in the gratification of his malice.

By the term "*deliberation*" is meant that the defendant meditated, reflected upon the purpose and intention of killing the deceased; by the term "*premeditation*" is meant that the meditation incident to *deliberation* was (pre) before the act of killing was put into execution by the commission of the homicide. Hence, from the very terms employed, the purpose and intent to kill must have been formed and have existed in the mind of the accused for such a period of time prior to the killing as, in the proper use of language, would exclude the idea, that it was in the mind of the accused, for the first time in the act of killing. For if it had no existence in his mind prior to this, it can not be murder in the first degree. The most it could amount to in such case is, murder in the second degree. This, as I think, is the proper and necessary construction to be placed on the language of our statute. The difference between murder in the first degree and in the second, should be as marked as the difference in the punishment.

We have now stated and defined to you the essential elements of the charge contained in the indictment; and which the State must establish by the requisite degree of proof, before it can claim a verdict at your hands, whether it be for murder in the first degree or of any of the lesser offenses.

But there are certain matters set up in evidence on behalf of the defendant, that must first engage your attention.

Counsel for the defendant say they admit that Giddings killed Wiltshire; but deny that it was done unlawfully and of deliberate and premeditated malice; they deny any malice whatever in the killing. For they say:

1. That it was done in the lawful exercise of the right of self-defense.

2. That the defendant is the subject of what is termed *transitory insanity*, and slew the deceased under the impulse of his malady, caused by a combination of circumstances, relating back to and including his parentage, his personal history, and particularly certain recent domestic troubles, with which the deceased was connected, and, as claimed, principally occasioned.

We will consider these in their order.

It is a part of the law of this State, as well as of other States and countries, that, under certain defined circumstances, a person may, in defense of his own life, or to avoid great bodily harm, take the life of an assailant. And when this right is legitimately exercised, the homicide so committed, whether justifiable or excusable, according to the distinction at common law, is not an unlawful taking of life; and is, therefore, neither murder nor manslaughter.

It is then necessary to understand the circumstances under which a person may take life in self defense, in order to comprehend what constisutes manslaughter; as this right constitutes the boundary line between this offense and a lawful homicide.

It is generally agreed that the right of self defense is founded in nature,

and is one of the rights not surrendered to society according to the theory of the social compact.

But in a state of society it is, necessarily, so far modified, by the laws, as to be limited to the cases where it would result in imminent danger to life, or of great bodily harm, if the only remedy of the peaceable and well disposed citizen lay in an appeal to the laws, or the strong arm of the State. If the exercise of the right were not thus restricted, violence would beget violence and there would be an end of civil government. There must, however, be imminent danger to life or of great bodily harm, before the taking of life in self defense, can be resorted to by any one in any case.

But reason suggests, and the law makes a distinction between the case of a person driven to the necessity of taking life in self defense, in a conflict provoked or incited by his own wrong; and that of one reduced to such necessity in a conflict that was neither sought nor provoked by him.

In the case when the party assaulted is in the wrong, he must, before taking the life of his assailant, to save his own or avoid great bodily injury, flee as far as he conveniently can, either by reason of some wall, ditch or other impediment, or as far as the fierceness of the assault will permit, for it may be so fierce as not to allow him to yield a step, without manifest danger to his life or great bodily harm, and then, in his defense, he may kill his assailant, instantly.

But in the case where the assailed party is not in the wrong, neither provoked nor incited the conflict, and was assailed while in the pursuit of his lawful business, he may without retreating a step, kill his assailant if necessary to protect his own life or to avoid grievous bodily harm.

The danger must in either case, be actual or apparent, and the party killing must have honestly believed that he was in danger of losing his own life or of suffering some great bodily harm, before killing his assailant. And it is not enough that the party killing honestly believed that there was imminent danger to himself, the circumstances must have been such, as would have afforded a reasonable ground for such a belief. Of this the jury must judge from the circumstances as developed by the testimony. If the appearances were such as would have alarmed a man of ordinary firmness, and have impressed him that such danger was imminent; and if the assailed party honestly believed such to be the case, it is not material whether the danger was real or not. Thus, to make the application to this case, if you should find that the deceased threatened to kill the defendant, and, suiting his act to his word, hastily reached with his right hand to his hip-pocket, as if to draw and use a deadly weapon, and that the defendant, as would any man of ordinary firmness, then honestly believed that the deceased intended to instantly kill or seriously wound him, in such case it is not material to the defendant's right of self defense, whether, as a matter of fact, the deceased had, or had not, a weapon.

If, when violently assaulted, a party were required to act at his peril in judging whether there was real ground for apprehending imminent danger, before resorting to such measures as the circumstances seemed to require, for his safety and protection, it might be as hazardous to defend himself in the first instance, as to risk the ultimate result, of what appeared to be a violent and malicious assault upon his person and life; as he might escape from what appeared to be the most imminent danger, to be tried and condemned as a man slayer; where had the facts been, what the circumstances indicated, he would be excused.

Such then in brief are the circumstances, under which a person, when assaulted may, in defense of his life or to avoid great bodily harm, take the life of his assailant; the danger—real or apparent, must in all cases be imminent, and the party taking life, must have honestly believed that there was such danger; and the circumstances must show that there was reasonable grounds for such belief; and, also, when the assailed party was to blame in bringing on the conflict, he must have retreated, as far as the cir-

cumstances of his own safety would admit, before killing, otherwise the homicide will be unlawful, and the slayer guilty of manslaughter, if not more.

In one case, that of Selfridge, where the defendant had posted the father of the deceased in the public newspapers, as a liar, it was regarded by the Court as so far placing him in the wrong, as to have required him to retreat, when assailed by the son, if he could have done so with safety, before taking the life of his assailant, because the Court regarded it as an act calculated to provoke violence.

Here, in the case now on trial, the jury must determine from a consideration of all the facts and circumstances, as to which of the parties was in the wrong, in bringing on the conflict that ensued at the logs on the bank of the creek. If the defendant was, and could have retreated with safety to his own life or person, he should have done so, before taking that of the deceased; but if he was not in the wrong, or could not have retreated with safety, then he had the right instantly to take the life of his assailant, subject to the qualifications heretofore stated.

As relevant to the question of self defense, the defendant has offered evidence tending to show that the deceased Wiltshire was a man of a violent, vicious and dangerous character; and that his character in this regard was known to the defendant; and that the deceased had made threats against the life of the defendant, which had been communicated to him. Evidence has also been received tending to show that the general reputation of Wiltshire was, in the neighborhood, to the same effect. You are to consider this evidence in connection with that offered to the contrary as bearing on the question whether the defendant had reasonable ground for judging, that, under the circumstances of the encounter, he was in imminent danger of being killed or of suffering some great injury at the hands of the deceased. It is offered for this purpose and no other. It cannot be used or considered, for the purpose of showing that the defendant was assaulted, attacked or menaced by the deceased Benj. Wiltshire. It is a part of the defendant's plea of self defense, and must be established by a fair preponderence of the evidence, before it can be considered by the jury. Furthermore, reputation as to the character of Wiltshire can not be received and used as evidence that such was his character; this must be established by witnesses who speak of their own knowledge upon the subject; after which evidence of reputation may be received, as reflecting upon the question whether the defendant had knowledge of the dangerous character of the deceased at the time of the conflict between them, and was influenced thereby in resorting to the means he did in defending himself against the assault of the deceased.

By a man of a violent and dangerous character, is meant one, who will, with or without sufficient cause, inflict violence upon another, when aroused by the excitement of his passions.

The plea of self defense is an affirmative one, and the burthen is on the defendant to satisfy the jury of the existence of the facts on which it is based, by a fair preponderance of the evidence; unless the facts have been disclosed in the evidence offered against him, as may not unfrequently be the case.

If you find from a careful and candid consideration of all the evidence that, under the instruction I have given you, the defendant shot and killed the deceased in self defense, you should acquit him. If, however, you find that he did not, then you should proceed to the other inquiries:—whether the wound was inflicted with the purpose and intention of killing the deceased; and whether the defendant was actuated by malice in killing, and acted upon deliberation and premeditation; provided, you also find, that the defendant was not of unsound mind and irresponsible for his acts at the time he killed the deceased. And this brings us to the consideration of the second defense, that of insanity.

I have already adverted to the facts upon which this defense is claimed to

rest. You should recall to mind all the evidence that has been offered and received for your consideration in regard to this matter. It is of great importance to the State and the accused alike. The State has no interest in the conviction and punishment of an irresponsible agent; it would afford no example to others, nor would it deter others from the commission of crime, any more than would the punishment of a dumb brute; added to which would be the wrong and injustice inflicted upon the defendant, as a consequence of circumstances over which he had no control.

The difficulty of defining insanity in such language as shall include any and all cases, is confessed by physicians as well as courts. The greatest difficulty arises out of the imperfect knowledge upon the subject, possessed by men of science as well as the legal fraternity.

Some cases are so marked as to present no difficulty; others, again, are of such an occult nature as to present the most perplexing questions of doubt and uncertainly. Added to all which, in a case like the present, are the motives that exist for setting it up as a protection from punishment, where the party may be perfectly sane.

Hence when the insanity of the party is not of a marked character, and it is set up as a defense to a charge of murder, it becomes the duty of a Court and jury to move with caution, and carefully weigh every circumstance that may shed light upon the question; lest, upon the one hand, we be deceived into an acquittal when there should have been a convictiou, or, upon the other, fall into the lamentable mistake of having convicted when there should have been an acquittal.

The mental disease relied on in this case is what is termed transitory insanity. The physicians called on, as experts to enlighten you upon the subjcct say, there is such a form of mental alienation. That it may be superinduced in various ways, and is more likely to occur in persons of a highly nervous temperament, when they have been subjected to protracted mental anguish and are descended from ancestors who had been afflicted with mental derangement. There is nothing unreasonable in this; as such circumstances might induce a general insanity. And one of the physicians, Dr. Miller, who has been his attendant in the jail, and has had some considerable experience, as he says, in the treatment of insanity, is not sure but that the defendant is affected with what is termed, softening of the brain.

The only thing that perplexes my mind in regard to what is termed transitory insanity, is, that the subject may, as is said, be sane up to the moment of committing, and immediately after committing the offense. If this be so, it certainly introduces a very perplexing and difficult question into the administration of criminal law; the difficult question arising in great part from the limited means, so far as courts are concerned, of determining the question. Still whether such a form of insanity exists, is a question of fact, and not of law. It is a question that you must determine from the evidence before you, that of the physicians and what they say is taught by men of the most experience in the medical science, and those, in particular, who have devoted themselves to mental pathology, or diseases of the mind. For it is an old maxim, that credit is to be given to every one for the knowledge he possesses in the practice of his own art.

The rule, however, by which courts of justice have heretofore tested the question of insanity, when presented in a criminal case, must remain the same, though the difficulty of applying it may be increased. For, as said by Judge Thurman, in Farrer's cese, frequently referred to in the progress of this trial, the case (on insanity) is too well settled to be questioned. If a change is necessary the legislative power must be invoked to make it.

But the testimony of these physicians introduced as experts, hss been admitted for your instruction, not as conclusions of the question. It is your duty to find the fact and act on it, under the instructions of the Court, as you think the evidence, considered as an entirety, may require.

It is not claimed that this power has ever been invoked or that a modi-

fication has been introduced by any recent decision of our Supreme Court. It was affirmed in the more recent case of *Blackburn* vs. *The State*, 23 O. S., 146 (1872.)

Now what is a sane man and what is the rule in this State by which legal sanity may be determined? A sane man is one whose senses bear truthful evidence; whose understanding is capable of receiving that evidence; whose reason can draw pr oper conclusions from the truthful evidence thus received; whose will can guide the thought thus obtained; whose moral sense can determine the right and wrong growing out of that thought, and whose act can, at his own pleasure be in conformity to all these One not posseseed of these faculties is not a sane man.—*Edmonds Select Cases*, I Vol. 35.

Hence the power to determine right from wrong in a given case, not in the abstract, but as applied to the particular parts and circumstances of that case, the case in which his sanity arises as a question for determination, together with the power of will, adequate to accept the right and reject the wrong, is the test of sanity or insanity in this State. One possessed of such faculties of the mind, and power to determine and control his acts, is a rational being, a free agent, a responsible subject of the laws. One without these faculties of the mind and power of the will, is not a rational being, and is not responsible for what he does. Courts in the main, judge of the mental condition of a man, from the external indicia of the mind, in which they are consistent with all the analysis of the law of evidence. Nor am I, one of those, at war, with the settled rules of the courts upon this subject. When properly understood, and judiciously and carefully applied they are as safe, certain and humane, as is consistent with the interests of society.

As appropriate in this connection, I will here adopt a part of what I said to the jury on the question of insanity, in case tried before me several years ago:

"Counsel for the defense in this case have urged that we should disregard a rule (referring to that adopted by Courts as determining criminal responsibiltiy) so long received and acted on in the Courts, particularly those of our own State, and adopt the views, to a modified extent at least, of the medical profession, as more in accordance with justice and the enlightened humanity of the age. Whatever might be our private opinion on this subject, we are not at liberty as a court to disregard the settled law of the State. It is our duty to ascertain the law, and give it to you; it is your duty to receive it and apply it to the facts of the case. If there is any need of improvement in the law in this regard, the legislature is the proper branch of the government to furnish the remedy. And, notwithstanding the able argument of counsel, and the reasons of the physicians, we are not convinced that a change should be made. Much of the confusion that exists on the subject arises, as we think, from the failure to note the essential difference there is between the functions of a Court, when investigating the subject of insanity, and the aim of a physician when turned in the same direction.

"The object of the physicians is, in such case, to determine whether a certain person has any mental disease, and if so what, with a view to its treatment and cure. The physician seeks absolute knowledge on the subject, as nearly as is attainable, and the highest considerations of duty to his profession and his patient require that he should do so, to intelligently exercise the skill of his art. In a Court of justice, however, the inquiry is made for the purpose of determining whether a certain person, is legally responsible for what he does. It is merely concerned with the moral and intellectual qualities of a man's acts; and the subject of insanity is only relative to the question as it affects his acts and conduct in a legal sense. A court of justice is not alone concerned for the interest of the particular individual, unless it should be in appointing a guardian or a trustee. In the administration of criminal justice, there is upon the one hand, the public, composed of *all the members* of society, seeking protection from crime, on the other is the accused charged with some offense against the laws affecting the public. And it is one of the dictates of reason, that the highest humanity consists in so administering the law, as to afford the fullest protection to the life and property of the whole public, consistent with a just regard to the rights and condition of the individual. For this reason the punishment of offenders is adopted, not as a matter of humanity to them, but from the necessities of the public safety, because experience hath shown that the example of punishment deters others

from the commission of crime; the humanity of the law toward offenders is always measured by this consideration, and the reason and humanity of punishment is defensible on the ground of public policy, in all cases, where the example will have the effect of deterring others from the commission of crime, irrespective of the absolute mental condition of the party who is punished. There is no more humanity in taking the life of a sane man than in taking that of an insane man, where the execution of the latter has the same salutary effects as the execution of the former. Here, then, is the origin of the divergence there is in the views of the courts and medical men on this subject of insanity. From experience and observation it has been learned or assumed that persons who can distinguish between right and wrong, though partially insane, may be influenced from the commission of crime by the fear of punishment; and actuated by motives of public safety, in which consists the highest humanity, punishment is inflicted. To physicians, who are not professionally concerned with the safety of society from the commission of crime, and have but an inadequate idea of the policy of punishment, being more concerned with the treatment and cure of the disease of insanity, this may seem cruel, but to the jurist it presents another and a different question, that of public policy. With him the great purpose of inquiry is to find the cases that have sufficient reason to distinguish the moral qualities of their acts and may be influenced by the fear of punishment. With the jurist it is a matter of mental philosophy and public policy as well as of mental pathology.

But it is now proper that I should state to you in a more concrete form, the rule by which you may be governed in determining whether defendant should, or should not, be held as possessed of sufficient reason, and control of himself and his impulses, to be subject of punishment.

And here, again, let me remind you that you should before aiming at a conclusion, carefully recall, by the aid of your memories all the evidence and circumstances bearing upon the question, back to and including that tending to show that the father of the defendant died a mental wreck, and as carefully weigh and consider the same, remembering, however, before any inference is drawn from a fact, it should be reasonably well established by a fair preponderance of the evidence.

Then if you find, by a fair preponderance of the proof, that at the time the defendant shot and killed the deceased, he was laboring under some mental infirmity, rendering him incapable of determining that it would be wrong to take the life of the deceased because he had been the occasion of his domestic troubles, that his duty to his fellowman required that he should abstain from so doing, that he would be punished by the laws if he killed him under such circumstances, and slew the deceased, from the uncontrollable impulse of his mental disorder, without power of reason or will to see that it was wrong, and abstain from doing it, not from the impulse of passion excited by his domestic troubles, with which the deceased had been connected, then you should acquit him.

On the contrary, if you find that he did know that it was wrong and punishable by the law, if he could have restrained himself, if it was not the impulse of his mental disorder, if it was the impulse of the passion of anger, or a feeling of malice, excited by the wrongs he had suffered from the conduct of the deceased, then he was legally responsible; and, if he intentionally killed Wiltshire, he is guilty of manslaughter if not more, unless he killed him in the lawful exercise of the right of self-defense.

All persons arrived at the usual years of discretion are presumed sane, and accountable for what they do.

And when it is claimed that a party charged with crime is not sane, is not amendable to the laws for what he does, the burden is placed on the defense by a fair preponderance of the evidence, to establish this to the jury. And if this is not done the defense is to be rejected.

If the defendant fails in each and both of his defenses, you must then, upon the evidence and under the instruction I have given you, inquire as to the guilt of the defendant under the charge contained in the indictment.

The burthen is on the State, before a conviction can be had of any offense

under the indictment, to establish all the essential ingredients of that offense beyond a reasonable doubt.

If the State fails in this no conviction can be had in the case.

A reasonable doubt is an honest uncertainty existing in the minds of a candid impartial diligent jury, after a full and careful consideration of all the testimony, with an eye single to the ascertainment of the truth, irrespective of the consequences of their finding. It is not a mere speculative doubt, voluntarily excited in the mind in order to avoid the rendition of a disagreeable verdict. Such a doubt is considered by the law as merely captious, and as an unreasonable one.

To acquit upon trivial suppositions and remote conjectures is, says an eminent jurist, a virtual violation of the juror's oath and an offense of great magnitude against the interests of society—directly tending to the disregard of the obligation of a judicial oath, the hindrance and disparagement of justice and the encouragement of malefactors. On the other hand, the jury ought not to condemn unless the evidence removes from his mind all reasonble doubt as to the guilt of the accused, and he would venture to act upon it in a matter of the highest concern and importance to his own interests.

The defendant by his counsel has requested me to give to you various instructions. Such of these as I think are proper I will now proceed to give you. The principles involved in most, if not all of them, have, as I think, been already given you in my general charge; except the one as to the value you are to give to the character of the defendant which he has placed in evidence.

This charge I give to you without any, the least qualification. It is as follows:

The defendant has placed his previous reputation and character, as to being a man of peace and quiet, in evidence. If you find, gentleman, that previous to this difficulty, he sustained a good reputation for peace and quiet, you will weigh it in his favor, for what you, in your honest judgments, may think it is worth. Where the question to be determined by you may be close, it should be sufficient to turn the scale in his favor.

This is an instruction I have given on more than one occasion; and I add, that it is relevent to all the issues in the case.

Again it not only sheds light upon the subject of inquiry; but it is also, admitted as a rule of public policy, as a reward held forth by the law to those who, by conformity to its commands, establish characters for peace and quiet. Where one who has established such a character by his conduct as a good citizen, may use it in repelling the charge of crime, he will be the more careful, not only to form it, but also, to retain it.

It is, however, only a circumstance favorable to his innocence. As a general rule a man's character for anything, is the outgrowth of what he is, and if by his conduct and deportment among his fellows, he has earned the reputation of being a man of peace and quiet, it affords grounds for believing that he is, what by his conduct, he seems to be; and the impartial mind is the less ready to conclude that such a one has acted contrary to what may seem to be *a law of his life*.

Nevertheless, observation hath shown, that such things sometimes have occured.

The weight, then, to be given to the hitherto good character of the defendant for peace and quiet, must be such as the jury, under all the circumstances, think it should receive.

It is very relevant to, and of much weight upon the question of malice; for the existence of such a character can not consist with the element of malice, until it has been up-rooted and destroyed. It is, also, quite relevant to the question whether the defendant, in committing the homicide, acted in self-defense; for here, again, he could not, without honestly believing that he was in imminent danger of great bodily harm or loss of life, have taken the life of his fellow, if he was by habit a peaceful and quiet man.

Still all this may have been, and it is for you to determine the truth as it is connected with the killing of Wiltshire by the defendant.

The Court, at the request of Defendant's Counsel, gives the jury the following special instructions:

If the defendant, Giddings, at the time he fired the shot or shots which are mentioned in the indictment, did honestly believe he was in imminent danger of loss of life, or of suffering great bodily harm, from the deceased, Benjamin Wiltshire, and if he had, at the time, no other means of averting the said danger, or honestly believed that he had not, than shooting as it is alleged he did shoot, he was, in law, justifiable in so shooting, even though he so shot with intent thereby to take the life of Benjamin Wiltshire. (This is so, if not in fault for the commencement of the conflict. Given with this qualification.)

As to the danger mentioned in the preceding instruction, and the necessity of the shooting mentioned therein, the defendant, under the law, was himself required and permitted to judge; nobody else *could* judge for him; but the law did not require him to judge *infallibly*, nor as you, in the same circumstances, might have judged.

The law only requires him to judge *honestly*.

And in such case, the law does not, with nicety and severity, judge of his judgment, nor require of *you* to so judge of it. The law does not measure nicely the degree of force which may be employed by a person situated as, in the preceding instruction, it is supposed the defendant may have been; and if, in the situation supposed in the said instruction, the defendant employed more force than was strictly necessary, or resorted to means which may not have been strictly necessary, he is not responsible for so doing, unless such force or such means was so disproportionate to the requirements of the occasion, as to show *wantonness*, or *revenge*, or a *malicious* purpose to injure the deceased. So, too, the law does not measure and compare *nicely* the respective fighting skill and physical abilities of the parties, nor does it require *you* to do so. If the disparity was such as that the defendant *might* honestly have believed, and *did*, in fact, honestly believe, that he could not, except by the use of the means he employed, avert the said danger, or arrest or stop the said personal abuse, the law justifies him in the employment of such means.

The danger mentioned in the preceding instructions need not be real; it is sufficient if it was only apparent and the defendant honestly believed it was real, and shot, as it is alleged he did shoot, under the honest belief that he could only avert it by shooting as he did. (And the circumstances were such as would have so impressed a man of ordinary firmness. Given with this qualification.)

And now as to the other instructions requested, and here given:

To make any threats evidence of malice for any purpose, they must have been uttered while the defendant was in a sane state of mind.

Even if you find the defendant made threats to kill the deceased, in conversations occurring antecedent to the homicide, if, nevertheless, the homicide was perpetrated by the defendant while in a state of insanity, it would still exempt him from legal responsibility.

If you should find from the evidence that the defendant bore malice against the deceased antecedent to the killing, but also find that fresh provocation occurred immediately preceding the killing, there is no presumption of law that the killing was done by reason of such antecedent malice or grudge; but to enable you to attribute the act to such old grudge or antecedent malice the State must satisfy you beyond a reasonable doubt of the fact that the killing was upon such antecedent malice and not because of the fresh provocation.

It is my duty to instruct you that you will receive all testimony as to verbal admissions, of any kind, of the defendant, with great caution. For it frequently happens that the witness by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the party actually *did say*, or the memory of the witness may be at fault, or he may not have correctly understood the statement. This is so much in accordance with the experience of courts that they have come to consider it the most unreliable of human testimony, and have made it a constant practice to call the attention of juries to the fact, and caution them to be careful in weighing such testimony.

(This is so as to all corrections and admissions offered as testimony by either side in the case.)

In this, as in all other criminal cases, the defendant is presumed to be innocent, until he is proven guilty.

If, upon a consideration of all the evidence, you find a reasonable doubt of the guilt of the defendant, you should give him the benefit of such doubt, and acquit.

There is no presumption of malice in this case, if any proof of alleviation, excuse, or justification, arise out of the evidence for the prosecution.

The existence of malice is not presumable in this case, if, on any rational theory consistent with all the evidence, the homicide was either justifiable or excusable, or manslaughter.

You will bear in mind that neither a preponderance of evidence, nor any weight of preponderant evidence, is sufficient to authorize a conviction of the defendant, but the evidence on the part of the State must be sufficient to generate a full belief of the guilt of the party charged, to the exclusion of all reasonable doubt.

Many of the instructions that now follow, upon the subject of insanity, are so nearly alike, it may be difficult to make the distinction; but, because each is proper in itself, I have, out of tenderness to the anxiety of counsel, given them; as a r petition may weary, but does not tend to confuse the mind.

You will bear in mind that the law holds no one responsible for his act, where his mind was diseased at the time of his act as to be without reason, conscience and will, and where from such causes the party was an involuntary instrument of such a disease, and incapable from refraining from the commission of the act.

In order to constitute a crime, a man must have memory and intelligence to know that the act he is about to commit is wrong; to remember and understand that if he commits the act he will be subject to punishment; and reason and will to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act, and the immunity from punishment he will secure by abstaining from it. If, on the other hand, he have not intelligence and capacity enough to have a criminal intent and purpose, and if his emotional or intellectual faculties are so deficient that he has not sufficient will, conscience, or controlling mental power, or if, through the overwhelming violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent, and is not punishable for his acts.

If the proof shows that the mind of the accused was in a diseased and unsound state, the question will be whether the disease existed to so high a degree that, for the time being, it overwhelmed the reason, conscience and judgment; and whether the prisoner, in committing the homicide, acted from an irresistable and uncontrollable impulse; if so, then the act was not the act of a free agent, but the involuntary act of the body without the concurrence of a mind directing it.

If you are satisfied from the evidence that when the prisoner committed the act charged against him he was laboring under insanity, or such an estrangement of mind as left him without discretion to discern the right or wrong of that act, or unconscious that it was wrong, a state of mind in which, at the time of the deed, he was not free to forbear to do the act, he is not responsible, and should be acquitted.

I instruct you that in order that the prisoner may be punishable by law for the homicide in question (if you find he committed it) he must, at the time of the commission of it, have had sufficient memory, intelligence, reason and will, to enable him to distinguish between right and wrong in regard to this particular act; to know and understand that it will be wrong and that he will deserve punishment by committing it; and sufficient mental power to control the sudden impulses of a disordered mind (if you find it to have been disordered); but it is incumbent upon the defense to establish these facts by a fair preponderance of evidence.

If, at the time the prisoner committed the act charged upon him, he had appealed to the deceased (who he believed had theretofore seduced his wife and enticed her to elope with him, from which elopement she had returned and taken up her residence again with the defendant) to promise him to not come about his (defendant's) home and interfere further with his wife, he, the defendant, fully expecting that the deceased would regard his appeal and make the promise requested, and, on the contrary, the deceased said he had as much right to the defendant's wife as he, the defendant, had, and that he would have her or kill the defendant, and the prisoner was, by reason of such disappointment and such answer, coupled with previous mental trouble, anxiety and grief, arising from a belief of the deceased's connection with the prisoner's real or fancied domestic troubles, thrown into a state of mind in which he was deprived of his memory and understanding so as to be unaware of the nature, character and consequences of the act he committed, or to be unable to discriminate between right and wrong in reference to that particular act, at the very time of its commission, he is entitled to an acquittal. (Provided the jury find that the incapacity of distinguishing

right from wrong, resulted from his mental disease, and not from a fit of passion. Given with this qualification.)

It is for the jury to say what was the state of the prisoner's mind as to the capacity to decide upon the criminality of the particular act in question—the homicide at the moment it occurred—and what was the condition of the parties respectively as to being armed or not at the same moment. These are open questions for the jury, as are any other questions which may arise upon the consideration of the evidence, the whole of which is to be taken into view by the jury.

The law does not require that the insanity which absolves from crime, should exist for any definite period, but only that it exists at the moment when the act occurred with which the accused stands charged.

If from the whole evidence the jury believe that Daniel Giddings committed the act, but at the time of doing so was under the influence of a diseased mind, and was really unconscious that he was committing a crime, he is not, in law, guilty.

If the jury believe that from any predisposing cause the prisoner's mind was impaired, and at the time of killing Wiltshire he became or was mentally incapable of governing himself in reference to Wiltshire as the debaucher of his wife, and, at the time of his committing said act, was, by reason of such cause, unconscious that he was committing a crime as to said Wiltshire, he is not guilty of any offence whatever.

The jury have the right, from their own knowledge of human nature, and the tendencies of the human mind, in addition to, and in confirmation of, the evidence of experts, to say how far the causes relied upon to establish irresponsibility on the part of the defendant at the time of the commission of his act, were adequate or sufficient to produce insanity, and did cause that result.

Even if the evidence of the insanity of the defendant should leave it in doubt as to whether he was insane at the time of the commission of the alleged act, if it also leaves in doubt his sanity at the time, he is entitled to an acquittal.

Under any circumstances the jury must find that the threats and act in question were the result of a sane mind.

I have now, gentlemen, according to the best of my ability, instructed you in the law of this case. It is your duty to accept the law so given you by the Court, and apply it to the facts of the case, as you may find the same from the evidence, adduced on the trial.

Upon you is devolved the duty of weighing the evidence and of arriving at correct conclusions therefrom. In the performance of this duty the law has conferred on you the exclusive right of determining the weight and credibility of the testimony of each witness who has been called and testified. The right must, however, be exercised honestly, according to the best lights of the jury—not arbitrarily. There is no method that has been or can be devised for the investigation of disputed facts, superior to the rules derived from experience and common sense, with which all men are to a greater or less extent familiar. Upon this generally received truth the jury system has been rested by the common law for so many ages. Wherefore, every juryman has the right to bring to the examination of the matters tried before him all the fruits of his own knowledge and experience relating to men and things, the physical laws of the universe, and the motives by which men are actuated, the springs of human conduct, in all the various situations of life.

One of the most perplexing difficulties that meets an honest jury in weighing the evidence is the existence of discrepancies in the narratives of the witnesses. Here it becomes the duty of the jury to reconcile such discrepancies consistently with the honesty and integrity of the witnesses, if it can be done, rather than to impute their existence to the commission of perjury by some of them. Perjury should not be imputed unless there is no other way in which the testimony can be reconciled with the known facts of the case, due allowance being made for errors of observation and imperfections of memory. It has been well observed that the usual character of human testimony is substantial truth under circumstantial variety; so true is this that mere discrepancies in the statements of witnesses is, by careful inquirers, accepted as evidence of the general integrity of the witnesses

than otherwise. Much allowance must, nevertheless, be made in weighing human testimony, for the interest, prejudice or partiality of the witnesses, one way or the other; attention must also be given to the ability, as well as to the disposition of the witnesses to state the truth, the strength of their memories, the faculty to communicate what they may have seen or heard and their opportunities for knowing the facts whereof they testify.

With due attention to these rules, and the cautions indicated, derived from the wide experience of Courts in the administration of justice, an honest and attentive jury, will generally be able to arrive at conclusions of fact, as nearly accurate as the fallibility of human reason will admit.

Gentlemen, the trial of this case is now in a measure closed. In this, all concerned, the public, the parties, the counsel, the witnesses, as well as yourselves and the Court, have reasonable grounds for congratulation.

The pledge of the Constitution, a speedy public trial by an impartial jury, has been kept and secured to the defendant.

The homicide was committed on the 5th of last August, and here, before the close of the same year, the case is ready to be submitted, for their consideration, to a jury of the defendant's countrymen.

This is commendable to the prosecution and the defense, alike. The case has received a careful and patient examination upon the law and the evidence before you. Counsel, upon both sides, have displayed unusual industry, learning and ability, aiding and assisting the Court by the diligence of their researches and the intelligence of their arguments; and I have no doubt that by sifting and commenting upon the evidence have rendered services that will be valuable to yourselves in performing the duty now about to be devolved upon you, the rendition of a true verdict upon the law and the evidence after careful consideration, for this is the true deliverance required by the terms of your oath between the State of Ohio and the prisoner at the bar.

The case, gentlemen, is now submitted to you for that consideration. Weigh the evidence with all the care, discrimination and impartiality you can command; and remember, that then, whatever the result of your verdict may be, you will stand acquit in the forum of your own consciences.

THE VERDICT.

The jury, after receiving the charge of the Court retired to their room and in about twenty minutes agreed upon a verdict of Not Guilty.

APPENDIX.

HYPOTHETICAL QUESTION OF STATE.

Q. Doctor, I have a hypothetical question here that I wish you would answer, giving a history of what we claim in this case: "If it be true that the defendant had always borne a good character as a quiet and peacable person up to the time of this homicide; but also true that, having married in 1872 his present wife, he had discovered, six or eight years ago, that his wife was indifferent to him, and that she had been guilty of adultery, and that he consequently lost his affection for her, and had frequent altercations with her; that he had been told by her that she wished he would go away and stay away; that he had said of her that he wished she would get a divorce; that he would give any man twenty-five dollars to swear to any lie that would secure such divorce; and if it also be true that, in the latter part of June or the beginning of July last he suspected strongly that she was in the practice of adulterous intercouse with the deceased; that he watched his wife and Wiltshire and saw them in the act of adultery on one or more occasions, and was close to them at the time of such act, without their knowledge, and neither did nor said anything upon such occasions; that he, however, brooded over the fact, principally upon the account of his children; that he drove his wife from his home to take refuge with her neighbors, where she remained for two or three weeks, coming home in the daytime and returning to Carter's at night; that during this period, and subsequently, and up to the time of her return on August 2d, the defendant was excited, sometimes sleepless, ate less than usual, worked less than usual, and was generally disturbed; that in the latter part of June or very early in July he borrowed a pistol of Lyman Blair, with the intent and purpose to kill deceased; that he came to Chillicothe at various times hunting deceased, with the avowed purpose of killing him; that he attempted to have his wife arrested for larceny, and did begin proceedings for divorce; that he failed on any such occasion to meet deceased, and did not see deceased until the 5th day of August, at about 2 o'clock in the afternoon; that the defendant's wife had returned to him on the 2d day of August, from Washington C. H., after having remained there with Wiltshire from the 19th day of July, the defendant knowing that his wife and Wiltshire were at Washington C. H., during that period of time; that he received his wife into his house again upon her return, only for the sake of the children; that on August 5th, at about 2 o'clock p. m., defendant met deceased in an intoxicated condition in Adler's saloon on Paint street; that they shook hands in a friendly manner, and drank together on the defendant's invitation, the deceased drinking whisky and the defendant only beer, each drinking to the other's good health; that they left Adler's saloon together and proceeded in a direction away from their homes and to an unfrequented part of the city and vicinity, a distance of about 300 yards to Struble's saloon on Mulberry street, where they again drank together in a friendly manner, the deceased again drinking whisky, and becoming intoxicated to the point of vomiting, the defendant drinking blackberry wine; that the defendant urged the deceased to haste in leaving the saloon, and proceeded to lead the way to the end of Mulberry street, passing through a thicket, assisting deceased across Honey Creek;

thence through the newly plowed ground of a cornfield, defendant leading the way, to a thicket of brushwood near Paint Creek, on the south side of said cornfield, in a secluded place, remote from all roads or paths, where the deceased first seated himself upon a log and laid his hat thereon; that the defendant, having reached a point some twenty feet east of deceased, turned and walked to deceased on the right side and instantly shot him through the head from right to left in a horizontal position, whereupon the deceased fell from the log upon his right side, and was again shot by defendant through the heart; that the defendant thereupon ran toward the Paint Creek bridge, in the meantime, on the way, concealing the pistol in his pocket, and, reaching the vicinity of the public road, dropped into a leisurely walk, and so passed persons whom he knew, until he reached the foot of the wooded hill south of the city; thence through the woods and over the hills, seeking the vicinity of his home in the evening, and remaining in hiding for several days." These being the facts, Doctor, in this case, supposing that those are the facts, what would be the state of the prisoner's mind at the time he fired the shots?

A. Supposing all of those facts to be proven, I should say that he was sane.