

5
A FULL REPORT OF THE

TRIAL OF

JOHN GORDON AND WILLIAM GORDON,

CHARGED WITH THE

MURDER OF AMASA SPRAGUE;

BEFORE THE

SUPREME COURT OF RHODE-ISLAND,

MARCH TERM, 1844:

With all the Incidental Questions raised in the Trial carefully preserved—the Testimony of the Witnesses nearly verbatim—and the Arguments of Council and a Correct Plat of all the Localities described in the Testimony, prepared expressly for this Report.

REPORTED BY EDWARD C. LARNED AND WILLIAM KNOWLES.

SECOND EDITION.

PROVIDENCE:

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MARCH, 1844.



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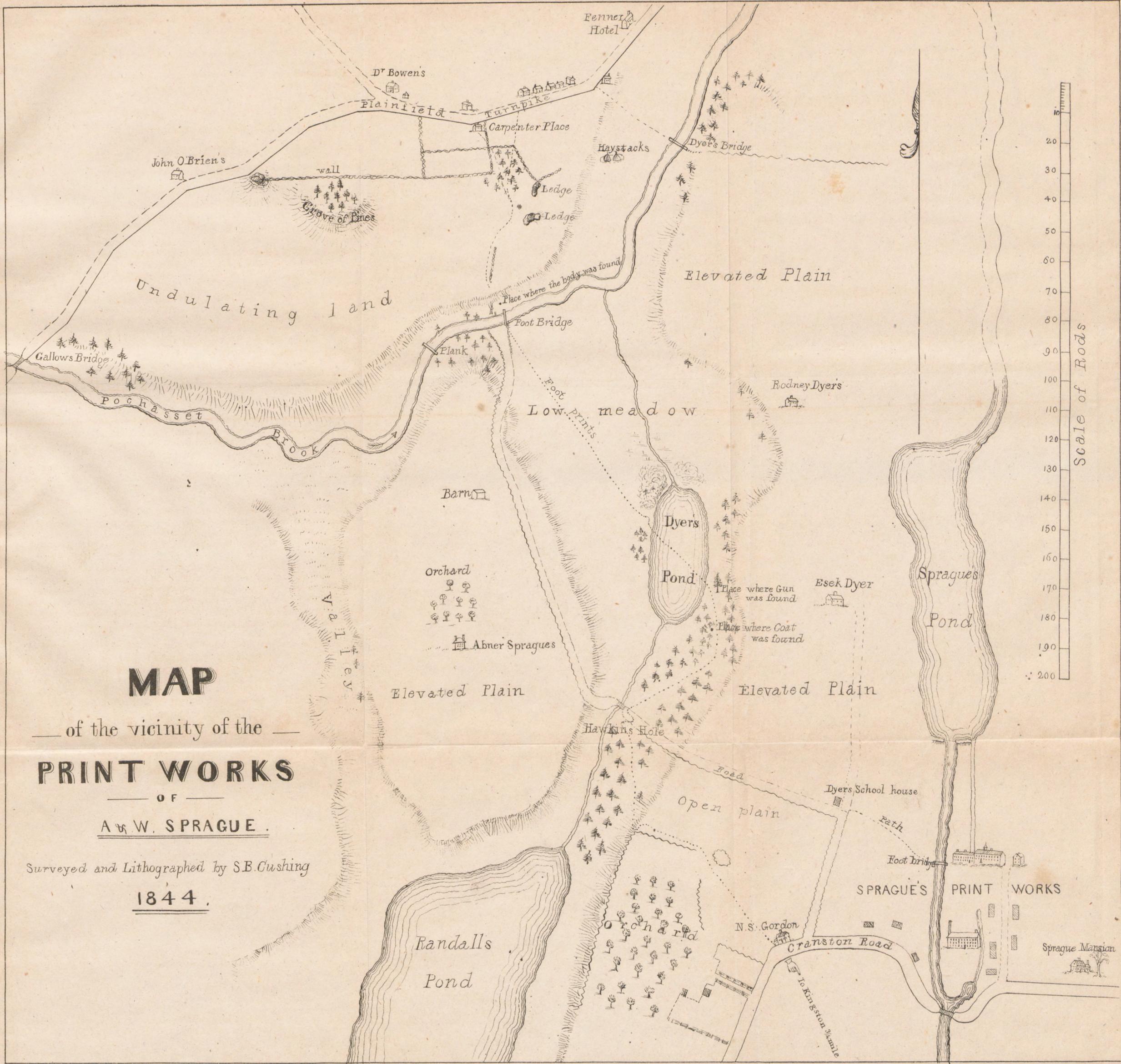
MURDER OF ALISA SPRAGUE

BEFORE THE

SUPERIOR COURT OF RHODE-ISLAND

MARCH TERM 1844

Entered according to an act of Congress, in the year 1844, by EDWARD C. LARNED and
WILLIAM KNOWLES, in the Clerk's office of the District Court of Rhode-Island.



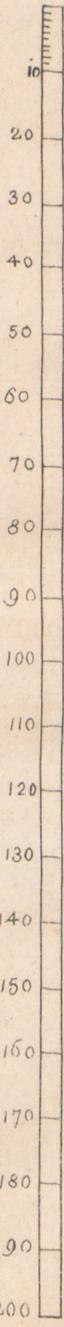
MAP

of the vicinity of the
PRINT WORKS
 OF
A. W. SPRAGUE.

Surveyed and Lithographed by S.B. Cushing

1844.

Scale of Rods



PREFACE.

The following pages contain the report of one of the most extraordinary murders ever committed in New England. No trial since the celebrated trial of the Rev. Ephraim K. Avery for the murder of Miss Cornell has created such extreme interest or produced such intense excitement in this State as the present.

The deceased, Mr. Amasa Sprague, was a gentleman of high standing in the community—a man of large property and great business ability. He was the brother of Mr. William Sprague, formerly Governor of this State and late Senator in Congress. The murder was committed in broad day-light; on Sunday afternoon; in the heart of a populous region; by the side of a beaten path constantly travelled, and within sight of the windows of houses in the vicinity. It was attended with circumstances of brutality and barbarity such as the annals of crime seldom present. The head of the murdered man was so shockingly disfigured by the repeated blows of his assailants as not to be readily recognized. The gun with which the blows were inflicted was broken, and the barrel bent by the violence of the strokes. Yet the perpetrators were enabled to commit this deed, in this atrocious manner, and depart from the spot with the bloody weapons of death in their hands without being seen by a human being. The profound mystery thus thrown around the transaction gives an increased interest to these trials.

The accused were Irishmen; they were three brothers. Nicholas S. Gordon was charged as being accessory before the fact—John and William Gordon as principals. Nicholas resided in Cranston on the main road, near Mr. Amasa Sprague's mansion house. John was living with him at the time of the murder. William resided in this city. John and William came over to this country from Ireland in July, 1843. Nicholas had been in this country seven or eight years.

The object of the reporters in preparing this report has been to present, as far as possible, an accurate statement of the testimony, as nearly as possible in the words of the witnesses. Without doubt, much superfluous matter has thus been introduced; but they have deemed this course preferable to that of giving a condensed statement, as it presents each witness's testimony in his own words, as it was delivered on the stand.

The only difference consists in the omission of the questions asked by the counsel to the witnesses—the nature of which will be readily perceived from the answers of the witnesses. Whenever the course of questioning has been at all peculiar and the questions have been deemed of any importance, they have been given.

In reporting the arguments of counsel, the intention has been to give in all cases the substance of the argument, and, as nearly as possible, the language of the speakers.

In the discussions upon the intermediate questions on points of evidence which arose in the progress of the trial, we have aimed at presenting the exact point at issue—the nature of the objections raised, and the decision of the Court, with such accuracy as to make the report valuable for legal reference.

The map which accompanies the report is a faithful copy of the plat used at the trial, which was prepared expressly for that purpose by a skilful surveyor. The map is executed by the same hand, and is perfectly accurate in all respects. The dotted line across it represents the track leading from the place of the murder to the house of Nicholas Gordon. Important points along the track—such as the place

where the gun and coat were found—the Gordon House—the driftway along which Mr. Sprague was travelling when last seen alive—will be readily understood by a reference to the map.

“The path,” “the regular path,” and the driftway,” were used indifferently by various witnesses to denote the cart way on the brow of the hill, leading from Sprague’s village over the river above the “footbridge” to the Johnston road. The place where the tracks in the snow cross this path is called Hawkins’ Hole.

When the great rapidity with which this report has been issued is taken into consideration, it will not be surprising that some verbal inaccuracies shall be found in it. But the public may depend upon its entire accuracy so far as regards the substance of the testimony and the arguments. The reporters are aware that the sole merit and value of such a report consists in the fidelity and completeness with which it is executed. To attain this they have spared no exertions. Of their success the public must be the judges.

REPORT OF THE TRIAL.

SUPREME JUDICIAL COURT }
Monday April 8, 1844, }

STATE VS. WILLIAM GORDON AND JOHN GORDON FOR MURDER.

Counsel for the prisoners, Messrs. S. Currey, J. P. Knowles, T. F. Carpenter, and S. Y. Atwell.

For State, Jos. M. Blake, Att. Gen. and W. H. Potter, Esquires.

The Court met at 10 o'clock A. M.

Present, Chief Justice DURFEE and Associates, STAPLES, HALE and BRAYTON,

The Indictment of the State vs. William, John and Nicholas S. Gordon for the murder of Amasa Sprague having been assigned for the trial this day.

Mr. Blake, Attorney General, moved that the Prisoners be brought into Court and arraigned.

Nicholas S. Gordon, John Gordon and William Gordon were accordingly brought into Court.

T. F. Carpenter moved the Court that the prisoners have a separate trial. He stated that there must be a severance of the indictment as far as regarded Nicholas he being charged as accessory before the fact. He desired that each of the prisoners should have a separate trial, that each might stand or fall upon his own case and be unaffected or unprejudiced by the guilt or innocence of the others. The indictment seems almost to demand this for in some counts it charges the prisoners as principals, and in others as accessories.

Attorney General objected to the prisoners, John and William, having separate trials. They had no right to demand it. It was a matter solely within the discretion of the Court. To this point Mr. Blake cited, 12 Wheat. United States vs. Marchant; 2 Sumner Rep. 37.

The sole ground on which the right to a separate trial can be based is that the prisoners when jointly tried are deprived of their right of being tried by a jury of their own choice. But this point has been expressly overruled and it is laid down in the book that the right of the prisoner is a right of rejection and not a right of election of jurors. Of this right of rejection the prisoners will not be deprived by a joint trial.

The witnesses affecting both are I believe the same. The indictment in every count charges John and William either as principals or accessories at the fact, which in point of law is the same.

Mr. Atwell,—This motion is for a separate trial. It is addressed solely to the discretion of the court. We do not make it as a matter of right. The question of right has been before decided by this court. But we address ourselves solely to the discretion of the court. These men are entitled to a fair and impartial trial. It is a case of momentous importance to them. It involves their lives. The ends of justice will not be promoted by a joint trial of these men, and the indictment is of such

a character as to warrant the Court in granting separate trials. The right of each of the prisoners to be tried by a jury of his own selection is impaired by compelling them to be tried jointly.

Durfee, Chief Justice—The Prisoners John and William are jointly indicted for this crime and as there is no reason shown to the Court—why they should be tried separately—the Court think they must be tried jointly.

The Prisoners were then arraigned and pleaded Not Guilty.

A Jury was empanelled.

Each of the drawn jurors was asked the following questions.

1. Have you attended to the reading of the indictment against the prisoners.
2. Have you formed or expressed any opinion whether the prisoners are guilty or not guilty of the charges set forth in that indictment?
3. Have you any conscientious scruples of finding a man guilty of a crime which the law punishes with death?
4. Are you related to the prisoners or to the deceased.
5. Are you a freeholder in the county of Providence?

Twenty-two Jurors were peremptorily challenged by the prisoners.

Six were set aside on account of having formed an opinion, and three on account of having conscientious scruples.

The following are the names of the Jurors empaneled.

J. C. Hidden, Foreman	Andrew Windsor
N. H. Stilwell	George Whipple
Samuel Ross	Lebbeus Whipple
Asa Steere	Elisha Mowry
Joseph C. Shaw	Nathan A. Brown
Nicholas Carr	Isaac Field.

The Attorney General then informed the Court, that W. H. Potter would assist him in the prosecution of this case.

W. H. Potter opened for the Government.

MR. POTTER'S OPENING ARGUMENT.

MAY IT PLEASE THE COURT,

GENTLEMEN OF THE JURY,

I appear before you, Gentlemen, at the request of the Attorney General (with the permission of the court) to assist him in the arduous and responsible duties which a cause of this importance devolves upon him. I would have preferred, Gentlemen, that the duty which I have undertaken to perform, had been assigned to another, who would have performed it with much greater ability, and more to the satisfaction of yourselves and the Government. The opening of this cause, on the part of the Government has however, been assigned to me, and I shall endeavor to do it with what ability I have, knowing, full well, Gentlemen, that the assistance I shall render will be but feeble, and that, do it as I may, it will, relatively at least, be but poorly done.

A crime Gentlemen, of the greatest magnitude, a murder most cruel and atrocious in its character, has been committed. A life most valuable, has been violently and illegally taken. A citizen, most worthy & respected, in the peace of God and of the State, upon his own soil and almost at his own door, the Sun of whose last day had not then gone down, upon God's holy Sabbath, has been brutally murdered. The highest of laws human and divine has been violated. Some man hath impiously assumed the prerogative of his creator. Some man has done a deed upon which falls alike the condemnation of God and Man.

We read and learn of crimes committed at a distance, under a warmer Sun, among a people less obedient to law, and having, as we deem a lower standard of morals, and are but little affected by it. But in peaceable and law abiding New England, the commission of a crime like that we are now about to investigate, spreads consternation among us all. It comes home to each of us with the force of reality. Our wonted feeling of security in the protection of the law is impaired.

I have characterized this crime, Gentlemen; as most atrocious. The details as they will appear before you in the evidence, will then show the truth of the assertion. The perpetrators of this deed were instigated by no ordinary motive. It was not for gain nor from a sudden heat of blood. They were moved by a hate long harboured; by a spirit of revenge which never forgot its object, and which the life of its victim, alone, could not satisfy.

I need not say to you gentlemen, that this cause is an important one. The solemnity of the preliminary proceedings in empanelling

you as a jury, the charge made, the issue to be tried, and its consequences have already sufficiently impressed you with its importance. It is important to the prisoners at the bar, for upon its event depends their life. Upon your verdict, gentlemen, it depends, whether they shall perish ignominiously upon the scaffold, or live out the full number of days which God in his Providence may have allotted to them. Upon the result of this trial depends their highest interest in this world. Upon their absolute guilt or innocence may depend a still greater interest in another. But that is beyond your jurisdiction, it belongs to a higher tribunal. To that tribunal the innocent, the guilty, all may appeal; but from that there is no appeal.

It is important to the Government, it is its duty, to see that the laws are respected and faithfully executed. In proportion to the faithfulness with which the laws are executed, will be the feelings of respect and security which will prompt the good to support them, and the feelings of dread which will deter the evil from violating them.

It is important to the community, for the reason, already given. The Government has a right to the obedience of the citizen, and the citizen has a right to the protection of the Government. If crimes like this go undetected, and if detected and proved by proper evidence, go unpunished, every man feels that the legal security for life is diminished. He loses his respect for, and becomes distrustful of the protection of the law, and is prone to take the redress of his wrongs into his own hands. The commission of this crime must have brought these home to each of us. We all in the pursuits and collision of life make enemies. The deceased, doubtless, as little supposed that he had an enemy who would waylay him, and who sought his life, as either of us do now.

Remember gentlemen that in this prosecution the Government has no feelings of resentment no passions to gratify. It has but a stern and severe duty to perform. It knows no persons. It asks only to ascertain the truth as regards to this matter. It is equally desirous to protect the innocent as to punish the guilty.

And here gentlemen, allow me to say one word in relation to the brother and relatives of the deceased, who are present attending the progress of this trial. They entertain no other feelings toward the prisoners at the bar, than such as are warranted by the proof. They desire only to ascertain the naked truth. This duty they owe to the memory of the deceased. If the prisoners at the bar are guilty they wish that guilt to be proved; if innocent, that their innocence should be made apparent. Did the

do or desire either more or less, neither you nor I, gentlemen, could justify them.

With these general remarks, naturally enough suggested to my mind by this cause, I pass to the indictment and proof. You are empanelled, gentlemen, to try whether or not John Gordon and William Gordon are guilty of the murder of Amasa Sprague. The indictment contains a variety of counts, or distinct modes of alleging the crime, so as fully to meet the proof, in all of which, Nicholas S. Gordon, the brother of the prisoners at the bar, is charged as accessory before the fact, or as instigating the prisoners to the commission of the deed. In all these counts the prisoners are charged as principals, in some the one with other persons unknown, as giving the fatal blows, and the other as accessory at the fact, and so on, vice versa. An accessory *at the fact*, gentlemen, is one who is present aiding and abetting the crime; one who knows of its commission and is in a position to render assistance to him who actually does the deed; as one who keeps a look out to give notice of the approach of any person, to prevent detection, or to lend the strength of his arm if need be. In the contemplation of law, these are all principals and equally guilty with him who gives the blow.

I will now endeavor to give you, gentlemen, without going into the detail of the proof as it always appears in a case of circumstantial evidence, such an outline of the proof to be produced on the part of the Government, as will enable you to perceive its applicability, as it is produced, to the issue you are to try. The deceased resided in Cranston near his manufacturing establishment, on the Cranston road, so called, owning a farm about a mile North-west from his residence, called the Carpenter place, lying in the town of Johnston and extending up to the Johnston road, so called. There was a private path for teams and waggons, leading through the fields from the residence of the deceased to the Carpenter place and out into the Johnston road, over which, the deceased was in the habit of passing on foot to see his stock which he kept there, and which was also travelled by work people and others, passing from the Cranston to the Johnston road. This path starting at the Cranston road, passes Dyer's School House, near Sprague's village, and then out on to an open plain, perfectly in sight from the house of N. S. Gordon, where he and one of the prisoners then lived. The other had lived there some time before, and both well knew that he was in the habit of passing this path, and the usual time of his passing it. Passing over the plain west from Dyer's School House, we come to Hawkins' Hole, a deep, narrow ravine, with a brook and thickly skirted with pines and other trees. We then rise a sharp hill and bearing to the North-west, continue along the brow of the hill upon an open plain, leaving the house of Mr. Abner Sprague a little to the left and in full sight of the path—continuing on, we descend a sharp hill, (the path bending a little before we come to the descent) and come to the river, which there forms the dividing line between the towns of Cranston and Johnston—over this river is a foot bridge, extending some 20 feet on the Johnston side beyond the edge of the water, when the river is at its ordinary height and being at this point some 2 or 3 feet above the surface of the ground. Here is where the murder was committed, the body being found several feet from the end of the bridge, on the Johnston side, lying on the arms and knees, face down and head to the west.

A few rods from the bridge we rise a steep hill. An old wall extends down to within a few rods of the brow of the hill, among the loose stones of which a man by lying down might conceal himself from a man coming up the hill till he got within five or six rods of him. It was at the brow of this hill that the first blood was seen and thence sprinkled back along the path on to the bridge some 15 feet. Here on the ground on the west side, were prints in the snow as though a man was knocked off the bridge, and then foot prints back by the side of the bridge to the place where the body lay—all bearing marks of a desperate struggle—passing on by the old wall, we come to a ledge of rocks, where several men might conceal themselves, and thence still further to a larger ledge one of them shelving and making a sort of cavern where three or four men might conceal themselves and overlook the path the deceased took, nearly the whole length. About this ledge and cavern, the ground was much trodden as by persons stepping about there—there is near this a grove of pines; the ground rising from the river to the Johnston road. The deceased was last seen as far as we can prove by Mr. Abner Sprague, about 3 1-2, o'clock, passing his house going towards Johnston. The body is found about 4 1-2 p. m. by a man living with the deceased. The weather was very cold and the ground covered some inches with snow—A gun lock was dug out of the snow near where the body was found, the next day—A pistol was found the night of the murder at the N. E. corner of the bridge—cap exploded, the barrel not discharged and loaded to the muzzle. Passing a few rods from the bridge on the Cranston side, a sliver of a gun stock is found by the fence with blood and hair upon it. Getting over this fence at this point we come into a bog meadow, smooth and leading towards Hawkins' Hole; at the fence where this sliver is found, we find a single track leading to Dyer's Pond (to the nearest of the pines extending north of Hawkins Hole)—continuing across the pond the track leads to the nearest large pine tree very thick at the bottom—here we find a gun broken off at the breach, barrel bent and not loaded, lock gone and covered with blood—then we follow the track a little further on and under another thick tree we find an old coat also bloody; thence the track continues until it comes out in the causeway leading across at Hawkins' Hole, then on this causeway two or three rods, then off into the thick pines and swamp, until it comes to the nearest point to N. S. Gordon's house, and thence almost a straight line into his back door. From the bridge to Dyer's pond a person passing along these tracks would hardly be seen by a person passing the driftway, and from the pond to the point where the tracks leave the swamp and start for N. S. Gordon's house, entirely concealed. These tracks are far apart and deeply indented and sometimes breaking through the crust of snow into the water on the bog. We find a pair of boots (which John Gordon when arrested said were his) wet up to the ankles and which exactly fit these tracks—these tracks are also accurately measured and correspond with the boots.

The gun found we prove to be Nicholas S. Gordon's; when, where, and of whom he bought it: that he kept it in his store and prisoner had access to it; we shall prove John to have had it in his hands out on the path the day but one before the murder. The coat we shall prove to be Nicholas S. Gordon's, and worn by John; we prove John to be at home for a few minutes, only a short while after the murder, and then going to a neighbor's and remaining till he heard

ti the murder; then going with these persons towards the house of the deceased—they going on to see the body and he turning off at the gate and not going in; we prove that the morning before the murder he had no black eye, and that the next morning he had a black eye and swollen face; also that he has given different accounts of this and where he was on the day of the murder.

We also prove that the other prisoner at the bar (Wm. Gordon) was seen by two men on the Johnston road nearest the place of the murder in company with another, taller man, about 1 1-2 o'clock, and that he then had a gun in his hand; we also prove by these same two men, that as they were coming to Providence they met William Gordon and this other man a little after sunset, (after the murder) near the same place getting over the wall out of the lot where the murder was committed into the road; that the tall man had the gun and the other (Wm. Gordon) in his shirt sleeves, both walking very quick; we next find him (giving him sufficient time to pass from the Johnston to the Cranston road) running up the hill just by the house of the deceased, continuing on dodging under the heads of a pair of horses attached to a sleigh overturned in the road, without stopping to render any assistance and then hastening into the city with all speed; and also very contradictory accounts of himself of where he was on that day.

This is what we expect to prove on the part of the Government, together with feelings of the bitterest hostility entertained by Nicholas S. Gordon towards the deceased and often expressed in presence of the prisoners.

Here gentlemen I will say a word with regard to circumstantial testimony.

Facts may be proved by circumstantial testimony in a manner as strong and conclusive to the mind as by positive testimony. Nay gentlemen in some cases it may be stronger and more convincing. One, two or three witnesses swearing positively to a fact may be mistaken or deceived. They may have formed a design to deceive, they may have been bribed or they may perjure themselves. If a fact be proved by a number of witnesses each one swearing to a simple disconnected fact only, the chance for combination to deceive is lessened and the means of detection are increased. When these facts, thus sworn to, all correspond and together make up a continued chain of testimony, it is more cogent and conclusive upon the mind than any direct testimony. Its binding effect upon your consciences as jurors is by the law as great. In fact gentlemen nearly all the criminal cases from the very nature of the case are, and must be, decided upon circumstantial testimony. Men about to commit a crime disconnect themselves from others and naturally seek concealment. A majority of the convictions had, are upon this kind of testimony. And I repeat gentlemen, it is as cogent convincing, and conclusive, and as binding upon your consciences as the most positive testimony. So I apprehend you will be instructed is the law by the Honorable Court.

With these remarks, gentlemen, with this explanation of the map, and this statement of facts, I submit the case to you in the first opening on the part of the Government.

THE TESTIMONY.

DESCRIPTION OF WOUNDS.

DR. ISRAEL M. BOWEN—I am a physician and reside in Johnston, about a quarter of a mile from the place of the murder; was called about a half an hour after sunset to go to a man who had been found dead down by the strin-bridge. When I arrived at the place, I found a man lying on his face, with his head to the west; the body resting on the hands, knees and toes, the face downward.

When I arrived there, there were a number of the neighbors present. I turned the body over and recognized it as the body of Amasa Sprague; and from appearances had no doubt but that he had been murdered. I discovered a wound on the left side of the head which had fractured the skull, ruptured the membrane of the brain, and the brain had protruded through it. I went myself after a coroner; after I returned with a coroner and jury, I discovered another wound on the head, three inches long; in a line with the other, but farther back.

After the body was carried home, I was present at the examination. Dr. Miller examined it. He discovered two wounds on the skull nearly parallel, on the back part of the head.— On the right side of the head there was a wound of the skull and the bone fractured. A heavy blow had also been received on the cheek which had depressed the cheek and temple bone of the right temple. There was a contusion on the left temple. The bone was fractured; the fracture running in various directions, and the bones were loose under the skin. The nasal bones at the bridge of the nose were broken down, and the skin bruised, but not ruptured.— There was a wound across the chin an inch in length. The under jaw was fractured. A wound on the right fore arm appeared to be made with a ball. The ball appeared to enter at the wrist, going upward and outward to the top, making a passage a out four inches long.— The *ulna*, or small bone of the arm was broken.

The wounds were fatal; taking them together I have no doubt that they were. The wound upon the left temple would produce death, two or three of the others might.

The instrument with which the wounds were inflicted appears to have been blunt. The wounds on the back of the head were smoother. They might have been made with the breech of a gun. The wound on the chin was transverse; the edges ragged. In my opinion the deceased came to his death by these wounds.

Cross-Examined—Some of the wounds might have been made with the breech of a gun, those on the back of the head could not well have been. There was nothing about the wounds

on the temple which would contradict the supposition that *they* were made with a billet of wood. Mr. Sprague was a large and powerful man. The wound on the right arm would, I should think disable it. I could not tell how long the body had been lying in the place where it was found. I did not feel under the clothes to see if it was warm. The wounds on the head bled some when I arrived. It could not have lain there a great while. There is much passing on this path, and some one must have discovered it.

DR. LEWIS L. MILLER—I was called to examine the body of Mr. Sprague, about nine o'clock in the evening. I do not know by whom I was sent for. I examined the body. It was there in the house. This was Sunday evening. The body was lying on the floor, the head and shoulders a little elevated. The body had been already examined. I made no search for wounds there. A ball wound was discovered very near the end of the *ulna*, or knuckle of the wrist upon the outside. The radius or large bone of the arm was not broken off. It might be fractured. The ball came out on the top of the arm. The wound was larger where the ball came out. Gun shot wounds are always larger where the balls comes out. I cannot tell how near the gun was to the object wounded. A wound is always dark where the ball enters. The ball which made the wound might be of the size of 24 to a pound. I should think it larger than the pistol which was found near the spot would carry. It was not smaller than would be used for a small musket.

The next wound which I examined was on the chin, rather underneath as if the blow had glanced under. The edges of this wound were ragged. It could not have been made with a cutting instrument. The next wound which I examined was on the nose. The blow broke the bridge of the nose to pieces. The bones were crumbled; so much so, that it was not easy to replace them. The nose was turned upon one side.

The next wound commenced on the left and upper side of the forehead. The skull was cut entirely through; the bones broken, the membrane ruptured, and the brains oozing through. This wound was half an inch in width. It might have been made with the breech of a gun. It was not made with a cutting instrument. A part of the skull was beaten in. The bone lower down, the temporal bone, was fractured into several pieces.

There was another wound on a line with this and further back. The scalp was cut through,

and the skull fractured. There were two wounds of the scalp on the back part of the head and a little higher up than the one last mentioned. The scalp was cut through but the bone was not fractured;—pretty clean cuts. Can't say whether it might have been done with the guard of a musket. The wounds were not smooth like the cut of a sharp instrument. Might be made with a blunt sharp instrument. Probably the edge of the guard of a musket might have done it.

The wound which I examined next, was nearly opposite the first wound on the head which I examined, and on the right side. The skull was fractured in this place. There was a wound on the right cheek and temple, which had the appearance of having been made by a flat instrument. The cheek bone was broken in, and the lower part of the skull bone fractured.

I did not discover any other wounds. Two of the wounds pretty certainly would either of them have been fatal, perhaps three. A man could not stand after receiving either of these three. (The witness alluded to the two wounds on the left side and the one on the right side of the head.) The wound in the wrist would disable the right arm. The arm seemed to have been raised in the act of defence when the ball entered it. Balls glance very often on striking a bone, sometimes comes out near the place where they entered. I have no doubt that the deceased came to his death by these wounds. Undoubtedly they were the cause of his death.

Cross-Examined—I arrived at the residence of Mr. Sprague about half past nine in the evening. I can form no estimate as to how long the body had been dead.

PLAT.

S. B. CUSHING—I made this map of the premises where the murder took place. (The plat a copy of which accompanies this work was here referred to, and was lying before the witness,) the scale of distances which accompanies the plat is correct, and the places are put down in their true relative positions. I began the plat on the 9th of January, and carried on the measurements and completed the drawings at various times afterwards.

LAST TIME MR SPRAGUE WAS SEEN ALIVE.

ABNER SPRAGUE—I was acquainted with the deceased. Saw him on the day of his death. I was between the path he was travelling and my house. He was going to the Carpenter place. Was in the habit of going there frequently. He had stock there. He went on Sundays as well as on other days. I was near enough to know him, but not near enough to speak to him. (The plat was laid before the witness.) Recognize this plat as describing the premises. I was between the house and the path. I was opposite to him when I first saw him, saw him until he had got by almost to my barn. He always travelled this path when going to the Carpenter place. The course of the snow track on the meadow may be seen at places on the driftway. Randall lived on the Carpenter place. Amasa Sprague frequently went to the Carpenter place on Sundays;—more frequently I should think than on other days.

Cross-Examined—This driftway is passed considerably less on Sundays than on other days because many of the laborers in the factory live over in the houses on the Johnston road, and pass to and from their houses on week days. When Henry Fenner sold liquor over in John-

ston, there was much more travelling on Sundays.

BODY FIRST DISCOVERED.

MICHAEL COSTELLO—Worked for Mr. Amasa Sprague three years since next June; worked at the house. I lived in Johnston a mile from Mr. Spragues, on the Johnston road. Went back and forth to my work, usually going home about sundown. I went home on the driftway; I guess I went by what you call Hawkin's Hole. Crossed the foot bridge and went over the hill to my house. I came that way to Mr. Sprague's on Sunday morning and returned that way at night;—about sundown. The first thing I discovered was some blood on the bridge. The bridge was slippery and I had my tin pale in my left hand and held on to the rail. Looking down to mind my steps, I saw the blood three or four yards before me, and looking forward I saw him lying upon his hands and knees and the tips of his toes, his face downwards. He didn't move;—and I looked at him. And I didn't want to go near him; so I thought I would just go up to the house, the Carpenter house which belongs to Mr. Sprague. And I saw a man drawing water at the door, and I told him there was a man down at the bridge lying in a very bad way, and I thought he ought to be taken care of.

He said Dr. Bowen would be back in a little while and would go down. I went to the next house, Thornton's. Saw his son at the door, and told him there was a man down by the bridge lying on the ground and bloody. He said his father was not at home. He told me there was a man in my house; he heard him speak. I went up to my house. Found a man there; told him and a man who lived in the cellar, and another man, a neighbor; and these three men, Thornton's son, and myself, went down. It was about sun-down when I got back. We could not make out who it was. We went down and looked at him, and Thornton cried out that it was his father. And then he kneeled down and looked up in his face as well as he could, and said it was not his father. But he said he was dead and no one must touch him; it was against the law. He said he would go for the coroner, I think he called him. And he went off, and we staid there; and some one said the coat looked very like Mr. Sprague's. Then Henry Fenner's son halloed to his father and said it looked very much like Amasa Sprague. The father said he would go over and see if Amasa was at home. When he got part of the way over the bridge he looked backward and saw Dr. Bowen and other men coming down the hill, and he came back. They turned him, and said it was Mr. Sprague.

I was there when the coroner came. The body was found on the Johnson side of the river, about a rod from the end of the bridge. The hat lay six or seven feet from the river. The blood went only part of the way over the bridge. It went up the hill the other way, some five rods, in the foot path. I saw no man after I saw the body until I saw the man drawing water. Was too much scared to take hold of the body. Heard of a pistol being found while I was there; could not exactly see the pistol. Mathewson stooped down and said he had found a pistol. A teamster came along and took the body home. It was dark. Several men were there. The pistol was about a rod from where he lay, under the Johnston end of the bridge.

Cross-Examined.—Travelled the common pathway in going home from Sprague's village. Went up after I crossed the bridge upon the

left hand side of the wall, straight up. Looked back once in a while. He lay a rod from the end of the planks pretty close to the pathway. It was about sunset when I got there the last time. After I got there the second time it was a quarter of an hour before Fenner got there. The young man and the old man came together. When going up the hill to the Carpenter place, one can see a part of the bog meadow.

At this point in the trial the court was adjourned to 9 o'clock Tuesday morning.

TUESDAY MORNING, APRIL 10TH.

WALTER BEATTIE.—Saw the body of Mr. Sprague on Sunday about 6 o'clock, lying on the ground where he was found. The body was lying on the right side. There was a great deal of blood on the ground, and many people were collected there. There was blood four or five rods up the hill, on the footpath. The blood appeared to be scattered along in drops. The path is a common footpath, and not very wide.

JURY EMPANELED A SECOND TIME.

At this stage of the trial a communication was handed to the Court, directed to one of the jurors, and informing him that a grandson of his was dying. He asked the Court if he could be excused from serving on the jury. By joint consent of the Attorney General and the prisoners, under the direction of their counsel, the juror was excused by the Court. The prisoners were again arraigned on the indictment. The reading of the indictment was waved.—The jurors already empanelled were re-empanelled. The asking of the ordinary and formal questions was waved, and the jurors were sworn in by the clerk; the counsel for the prisoners answering "no objection" to the question "will you be tried by this juror." Jonah Steere, one of the drawn jurors, was then called, and the questions put, under the direction of the Court, to the first panel, were put by the Attorney General to this juror, the counsel for the defence answering "no objection." The reading of the indictment was again waved, and the prisoners being arraigned before the new jury, answered "not guilty."

The Attorney General said he should again go over the testimony very briefly, from the beginning. It is unnecessary to recapitulate.

CORONER.

ROBERT WILSON.—I am coroner of the town of Johnston. Was called by Dr. Bowen on Sunday evening, December 31, to officiate as such on the dead body of Mr. Sprague. Proceeded to Dr. Bowen's house. Called the town sargeant. A jury was empaneled, and a brief examination took place, enough to determine the cause of the death. This was between six and seven. It was dark, and the only light we had was from a small lantern. We examined the wounds described by Dr. Miller.

PISTOL FOUND.

I went back to Dr. Bowen's house. Before I went a pistol was found lying on the ground. I examined it briefly. It was a percussion lock. It had been snapped, as if some one had attempted to fire it and failed, and threw it under the bridge. I took it to Dr. Bowen's and presented it to the jury. One of the jurors,

with a pen-knife, drew the wad. It was loaded to within an eighth or a quarter of an inch of the muzzle. I put the powder and ball in a phial, and the wad in a paper by itself. I delivered the pistol, vial and wad to the examining officer at the prison. The wad appeared to be a piece of a Boston newspaper.

Cross-Examined.—It was just before meeting commenced in Olneyville that I was called. I was in the meeting house when called on; the meeting had not begun. It is about two miles from the place of the murder to Olneyville. It was dark when I started. I stopped at my house only a few moments to get paper and things which I thought I should need. I do not know who first called my attention to the pistol. No one seemed to know anything about it. The only person examined on the ground was Mr. Costello. Mr. Albert Waterman took the charge from the pistol. I did not know that it was loaded until I got to the house. The pistol lay partly under the bridge, and was filled with snow. Thought it had been dropped. It may have fallen in the same way.

On the right hand side of the bridge, to one going from Johnston to Cranston, and about half way from the end of the bridge to the water there were marks of a struggle. Blood was smeared upon the posts of the bridge;—the snow was much trampled and thrown about. I was on the ground but once. Fifteen or twenty persons were present when I arrived, standing together mostly. The body was twenty-five or thirty feet from the place where the scuffle took place. The scuffle occurred on the same side of the river where the body was found. I did not cross the bridge to the Cranston side. The conclusion I came to was that some person had come up behind the deceased, and knocked him off the bridge. To get on the bridge again you must go round to the end of it.

Abner Sprague, re-examined.—I knew the time of day from my having been down to the lower end of my place and came back to feed my pigs. Since the murder, at the request of some one, I went up into my chamber, and looked out to see if I could see from my windows a man crossing the bog on the snow track. I could not see the further edge of the pond. Could just see over the brow of the hill the brush and low cedars on the further side. Might have seen a man's head above the brush beyond the pond.

I was not long out of doors after Mr. Sprague passed. Did not hear the report of a gun. It is seventy or eighty rods from the place where I last saw him—to the foot bridge. It might take him ten or fifteen minutes to reach it. The wind was blowing strongly that way.

Dr. Miller, re-examined.—The wounds on the back of the head might have been made with a blunt sharp instrument. I mean an instrument with a sharp corner. The wounds would not have exhibited the appearance they did if they had been made with the hat on.

Costello, re-examined.—Lives close to Thornton's. The body was lying across the path. Railing only on one side of the bridge. There was a track upon the snow as if the back of a man's hand doubled up and bloody had pressed upon the snow.

Knight was the man's name who was drawing water.

The hat was upon the upstream side of the bridge. Mr. Sprague had on a kind of frock coat. Don't know if it had pockets or not. Saw no man on the road. The evening was clear and cold. The wind was in my face

Cross-examined.—The wind was pretty much in my face. I heard no gun. Last saw Amasa Sprague alive that day. Don't know whether it was in the morning or afternoon.

PIECE OF THE GUN FOUND.

STEPHEN SPRAGUE.—I live in Cranston, a mile or more from Amasa Sprague's. Was at the place of the murder the next day. Found a piece of a gun or pistol. I found it on the Cranston side of the bridge. I was coming back from the place where the body was found, and when about to get over into Abner Sprague's meadow, saw some drops of blood, not more than six or eight feet from the Cranston end of the bridge. I came along two or three lengths of fence where there was a rail down. I found this piece of a weapon three or four feet from the fence on the side where the cart path was; a little more than a rod from the end of the bridge. There were several round us—one within four or five steps of me, when I picked it up. This was in the forenoon of the day after the murder—Monday. I picked it up and gave it, I think, to Daniel Dyre; I am not positive. The blood was on the bog side of the road, and the person appeared to have got over the fence into the bog. The piece seemed to me a sliver which had come off by the breech pin of a musket or pistol. There was blood and hair on the sliver; the hairs sticking to the sliver. (The sliver was here produced.) Think it is the same. It looks like the same. There was blood on the snow around the piece. Not much blood,—a little blood on the snow makes a great stain.

APPEARANCE OF THE GROUND AT THE PLACE OF THE MURDER

WALTER BEATTIE.—Was at the place of the murder on Sunday evening. It was about six o'clock when I left home to go there. I live in Cranston close to the Print Works. Went over and saw Mr. Sprague lying on the ground, a few feet from the bridge. The head lay west; the body lay on the right side; the face towards the bridge. There was a good deal of blood where the head was.

I saw the blood four or five rods from the body, on the footpath which leads up the hill on the Johnston side. There was blood from the brow of the hill down to the place where the body lay. The blood could be traced pretty near to the body, and on to the bridge two-thirds of the way from the end of the bridge to the water; on the path the blood went zig zag. On the right hand side of the bridge, going to the Cranston side, the snow was trampled, and there was an appearance of a struggle. There were footprints from the place where the struggle was to the place where the body lay, and blood. Most of the blood was upon the posts which support the bridge.

TRACKS FIRST FOUND.

I was at the place of the murder again on Monday morning; David Lawton and several others went with me; we took the regular way to the ground; we looked into the river up and down on both sides to see if we could find any weapons. When we came upon the Cranston side and had followed the river down a little way, I proposed to go home across the meadow, as it was nearer; we came a little way and found a track, single track in the snow; I asked what it meant; it went back to the fence, and we could see it the other way as far as a track in the snow could be seen on a smooth meadow.

We followed this track to the pond—Dyer's pond; we could not see it on the ice, but we saw a track on the other side; we went over and found the track coming down to the pond. It was larger than the other and went up the edge of the pond towards Rodney Dyer's house; we followed it a little ways and I said it was no use to follow that track, it was better to see if we could find the other track; We then went back, and a little further down found a track that seemed to be the same that we had followed from the fence near the bridge; the track was of a man who took longer steps than I should do on an ordinary walk. I followed the track down into the swamp; the last I saw of it was the print of a heel on the top of a cedar bough which was bent over. I stepped on to the same and it bore me; the next step that I took I went in nearly the whole length of my leg. Here I lost sight of the track; went out upon the upland where some men were; then came back and looked again; went through the swamp and down an opening towards Hawkin's Hole. Going down through the opening I saw two tracks, but did not examine them, because there were two.

COAT FOUND.

Tuesday morning David Lawton and myself and others went over again to the swamp. I went and showed the place where I had lost the track. Luther Mason sprung into the brush, and soon exclaimed that he had found the track again, and Lawton said he had found a coat and that there was blood on it. I went and put my hand in the right pocket of the coat and found a box with powder in it and two pieces of newspaper besides; there was a good deal of blood on the coat; the blood was on the breast and on the right elbow; there was a hole in the elbow, and the blood was on the white lining around it; there was wax also on the elbow of the coat and hairs—black hairs were sticking on it; some of them took the coat; it was blue, and considerably worn; the coat was a short frock; we carried it to Mr. Spragues; somebody proposed to search the river with a boat.

It was suggested that we should go and examine the swamp on the left of the path which leads by Hawkin's Hole; while we were looking here we heard the cry to the north of us—the gun, the gun.

Nathan Pratt had the gun when I first saw it; I had not then seen the place where it was found; this place was very near the place at which the track the day before was lost to us.

The gun was broken—the breech broke off. Part of the lock was there; I went over to Almond Arnold's, where Mr. Pratt boarded, to see the gun; saw blood on the gun. There was hair on the sliver, none on the gun.

(The coat found in the swamp was produced.) This is the coat that was found, and these, I should think, are the articles which I took from the pockets; the blood was on the right arm of the coat and on the breast.

On Wednesday I do not recollect that I saw anything found; saw the place of the murder examined. Gardner Luther was there with a stake picking the snow where Mr. Sprague's head lay; said he had found several pieces of the lock; I looked and told him that there was all but the tube; a man held out something and said, Is that what you want; took it and found it to be the tube.

There was no charge in the gun; I was not at the place on Sunday night, when the pistol was

found; did not see the charge drawn from the pistol.

There was blood on the elbow where the coat is torn.

Know that Mr. Sprague was in the habit of going to the Carpenter place on Sundays.

AFTERNOON.

Walter Beattie was again called to the stand.

I had boots in my possessions said to have been taken from the house of Nicholas Gordon. They were given to me by the high sheriff; did not put them into the tracks by Hawkins's Hole.

[The Attorney General said he should want to call this witness again, if he could be permitted to do so, to prove another point of the testimony; if he could not he should examine him on that point now. It was decided that he might be called again.]

The gun found was produced, and the witness identified it as the gun found in the swamp. The pieces of a gun lock found where Mr. Sprague was murdered, were compared and answered well to the parts which remained attached to the barrel.

Cross-examined—I thought at the time it was wax; the hairs were dark colored and of different lengths. The blood on the elbow was upon the white cloth—the lining; the stain was fresher then than now; I took it for blood. It was on the right arm of the coat; I had the coat in my hands some minutes; this was on Tuesday.

Mr. Sprague's cattle were kept on the Carpenter place; they can go over nearly all the farm; the fences are removed; there is no barn; the cattle were not sheltered in winter; they were foddered at the stacks; the stacks are near to Dyer's bridge.

I did not measure the tracks after we crossed the pond; measured the length of the steps.

Mr. Sprague's village contains, I should think, about five or six hundred people; there is a village upon the Johnston road; don't know whether the people of this village remain at home on Sunday or not; there is not a great deal of visiting between the villages. Many of the people in Mr. Sprague's village come into town to meeting on the Sabbath.

Direct.—Cannot say whether there is any particular solemnity at the Catholic Church the day after Christmas or not.

ROBERT BEATTIE.—I am the brother of the previous witness, and was with him on the Monday after the murder, when he examined the tracks; I crossed the pond; but did not go any further; was not present when the gun was found; I went home; the step was a long one for a short man; a short man might take steps as long without jumping; the distance from the pond to the bridge is, I should think, one-eighth of a mile; the steps were nearly three feet long.

TRACKS TRACED.

HORATIO N. WATERMAN.—Live in Cranston, with Mr. Sprague; saw him on Sunday, about half past two in the afternoon, traveling up the path from the boarding house to his own house; saw him go into his own house; I went into the house immediately, at the back door, heard his voice in the house until about three o'clock; I heard him apparently get up, walk across the room, and heard the front door open and shut.

I was at the place of the murder; saw tracks from where the body was found across the bog meadow; we took the track from the body on Tuesday in the afternoon, and proceeded across

the meadow to Dyer's pond, and across the pond to the place where the gun was found; and from the place where the gun was found to the place where the coat was found; and from the place where the coat was found to Hawkins' Hole, where the track was lost; John De Merritt and George Wellman went over the crossing into the swamp; I left the two men and took the left side of the fence—they went along the north side; the size of the track was No. 8 or 9, boot; did not measure exactly; I laid a stick to the track in various places.

It was the same track all along; I should think the man was upon the run; the tracks were wide apart; measured after I got over the pond—the tracks the same; then went to where the coat was—the tracks the same; could perceive the tracks pretty much every step; the ice came nearly up to the tree where the gun was; after crossing the pathway at Hawkins' Hole, the ground was soft; the appearance was as if the man had jumped from branch to branch; in some places the tracks had been saturated with water and frozen, and were very distinct; did not see any mud; I went with these men (John De Merritt and George Wellman) to the orchard on the top of the hill; saw the measure laid into the track within five or six feet of Nicholas Gordon's door, and also twenty feet back—the measure the same there as in other places; no other track would correspond with the measure, except the straight one that crossed the meadow; I should think the boot was rather a crooked one.

There were bushes round the tree where the gun was found, large enough to hide a gun; the snow was ankle deep in places; should think the tracks had been made a day or two, from their being frozen where the water had soaked up into the snow; it thawed a little in the sun, Sunday. I should think, and on Monday; I spoke to De Merritt and told him I had found another track going off towards the pond.

Cross-Examined.—The tracks were distinct from the place where the gun was found to the place where coat was found, and from that place to Hawkins' Hole; between the place where the coat was found and Hawkins' Hole every track could be seen two or three rods ahead; do not say that the tracks were made on Sunday; from where the coat was found to Hawkins's Hole, there were no bushes where the tracks were; between the place where the gun was found and the place where the coat was found there were bushes.

The track was perfectly distinct; there were other tracks by the side of it, but none crossing it; I infer that the track was an older one, from the fact that, in the wet places, it had frozen; in other places I don't know that there was any different appearance; I should think the snow would have melted a little in the open places on Monday; it was seven or eight rods from the gun to the coat; the sun would shine there for an hour or two.

Direct.—The length of the steps was greater in the track that I took to be the older, and indented in the mud and snow; that was the reason why I thought the track older; in different places between the pond and Hawkins's Hole the foot went in so deep that the water had frozen in the tracks; these measured the same as the tracks in other places; saw no difference in the size of this track, throughout.

JOHN DE MERRITT.—I live in Cranston, close to Mr. Sprague's Works; on Tuesday afternoon, directly after dinner, I went to the place of the murder, took the track at the south side of the foot-bridge and measured it, the

length and breath, to the pond; I took the track about the fourth or fifth length of fence from the bridge I crossed the pond, and found the track again; I followed it to the place where the gun was found—from there to the place where the coat was found, and thence to Hawkins' Hole; it came out on the driftway at Hawkins' Hole. The track seemed there to make an angle and then went off into the swamp above Hawkins' Hole; it bore away to the left, towards the edge of the swamp and came out of the swamp about half the distance from the causeway to the fence of an orchard; then along the side of the swamp to the corner of that fence, turning and passing up by the north side of it, in a straight line to the back door of Nicholas Gordon's house.—There was snow close to the door, and the last toe track was within fifteen or eighteen inches of the door sill.

Mr. Horatio N. Waterman was with me and another man. We applied the measure very often, once in a few rods. The steps were longer than ordinary; there were other tracks; they were shorter and did not sink so far into the snow; the measured tracks were apparently older; between the place where the coat was found and Hawkins' Hole the steps were shorter. I measured the track within two or three feet of the path at Hawkins' Hole; it was the same that I had measured between the pond and the bridge. The difference that I observed was that the track I was measuring appeared to be older than the others; the other tracks were measured; they did not correspond; the other tracks were on the east of the measured one; did not observe whether more than one track came out to the path. The path that I was tracing looked the older; the others appeared fresher and newer on the snow. All that I can say is that they looked fresher. There is no opening in the swamp on the south side of Hawkins' Hole; the tracks appeared to make a kind of short turn on the travelled path; on the south side of Hawkins' Hole there was only one track; the swamp is very thick and bad to pass. The track went about half the distance to the fence through the swamp, then came out and went along on the side of the swamp; one could not be seen here from the brow of the hill; there was, I think, only one track that led up to the door; the track on the south side of the causeway corresponded to the track on the north side of the causeway; there was but one track from Hawkins' Hole to the door.

I have seen a pair of boots taken from the house of the Gordons: could not say it was the next day after; I applied the measure I had used to the boots; I applied it to the sole of the boots; it corresponded in length; there was about the eighth of an inch difference in the breadth. (The witness identified the boots as the same in appearance.) The track was about the eighth of an inch wider than the boot, ascertained by applying the measure to the sole of the boot.

I was with Mr. Cushing, when he altered the plat, between Hawkins' Hole and the door. (The alteration here referred to is in pencil mark, and to the north of the darker track, going up to the door:*)

Cross-examined.—When I had traced the track south to the causeway, it was lost in the path made by the travellers on the drift-way; It turned out again four rods east of the place

* In the map which accompanies this report this correction is made, and the dotted line as it now appears upon that map is the track as sworn to.

where it came on to the causeway; A man other than the one whose tracks I was measuring, coming along the driftway might have turned out here. It is not very remarkable for men to wear boots of the same number; If the boot was the same size I do not know that I could tell whether it was worn by the man who made the track on the north side of the drift way or not; I should have supposed, if I had not seen the tracks on the other side of the way, that the tracks on the south side were made by a man turning off from the driftway at this point.

I measured this track, I think, at the request of John O'Brien, if of any one; he started with us; I discovered the impress of the entire foot near the door; there were two tracks going out at the back door; the snow was not beaten down at the door; there had not been any snow after the track was made which I followed; a track looks fresher in its general appearance if new; if old the snow becomes crusted;—could not tell from an examination of this whether it was made Sunday morning or Saturday night, or Monday.

Direct.—Mr. Mathewson had the boots, I think, when I measured them; I think it was on Wednesday.

DAVID LAWTON.—Reside in Sprague's village, in Cranston; I found the coat in the swamp; it was about eight o'clock on Tuesday morning; seven or eight of us went from the store to the pond; we struck the swamp on the east side—the company a little ahead of me; I saw something in the swamp a little ways and stepped in and found it to be a coat; I came out on the upland, and gave it, I believe to Theodore Quin; I went into the swamp again and was in the swamp when the pockets were examined. When I came out the company had gone to the house carrying the coat; I did not examine the pockets. (The coat given to the witness.) I think this is the coat.

Cross-examined.—There was not much hair on the elbow; I am sure there was some; I might be mistaken about its being blood; I took it to be blood.

Direct.—The appearance is about the same now that it was then.

NATHAN B. PRATT.—I went to the swamp on Tuesday between nine and ten. I started from Mr. Arnold's boarding house to go to the place where Mr. Sprague was murdered; I struck into the swamp a few rods to the east of Hawkins' Hole; went through the swamp to the place where the murder was committed; while there I proposed to go and give a good search in the river for whatever we could find; we looked up and down each side of the stream, and then went to the pond not far from the track; we examined the bushes on the west side of the pond, and then crossed over to the east side about a hundred yards from the tree where I found the gun; followed along the track, looking into the bushes; I went up to the tree to see if it was hollow; bent down and saw the piece of the stock; I took it up and looked at it; when I turned my eyes from the piece of the stock which I had in my hand; they fell upon the barrel of the gun; it was standing up on one end and leaned partly against the tree as if it had been tossed into the bushes and had not had a chance to fall down; the under brush were very thick.

The witness identified the gun in the possession of the Court as the gun found by him.)

There was blood and hair on the stock. The hair was dark; I gave the gun to the high sher.

iff, Mr. Potter; a piece of the lock was also lying on the ground near the breach of the gun.

Cross-examined.—I went to the place where the murder was perpetrated on Tuesday; have lived at Mr. Sprague's ten months.

GARDNER LUTHER.—I was at the place of the murder on Monday. Did not find any thing at the place on that day. On Wednesday or Thursday I was turning up the snow on the place where Mr. Sprague's face lay, and found the cock of a gun. I continued picking and found the tube of a percussion lock. Afterwards I found a screw head. I carried them to Mr. Sprague's house and gave them to an officer.

Cross-examined.—I do not know that Nicholas Gordon ever had this gun. I have seen him with a gun. I think it was two weeks previous to the murder. Can't say whether the gun resembled this gun in Court or not.

Attorney General.—Did you know of Nicholas Gordon having a gun about the time of the murder?

Mr Atwell.—In object to that question. It has nothing to do with the guilt or innocence of those men whether Nicholas Gordon owned a gun or not. The Government must first prove that the gun was ever in the hands of these prisoners. Nicholas Gordon is not now on trial. The prisoners must be brought into contact with the gun.

Attorney General.—The murder was undoubtedly committed with this gun, and it is perfectly competent for us to prove the ownership of the weapon with which the death was inflicted. It is perfectly competent to prove this fact, that Nicholas Gordon owned this gun for the purpose of showing that the prisoners might have had access to it, for the very purpose of bringing them into contact with it. The gentleman says we must bring the prisoners into contact with this gun before we can affect them and yet he objects to our taking the first step toward bringing them into contact with it.

Mr Atwell.—The Government are beginning at the wrong end with their proof. They ought first to bring the prisoners in contact with the gun and then they may prove whose gun it is, but they have no right to prove that this was Nicholas Gordon's gun for the purpose of inferring hence that it was used by the prisoners.

Durfee, Chief Justice.—It is competent for the Government to prove this fact, of the ownership of the gun, in the same manner as they prove the corpus delicti. If they do not afterward connect the gun with the prisoners the evidence of course goes for nothing. The Attorney may ask the question.

I do know that Nicholas Gordon had a gun; cannot say that it was this gun. I should think two weeks previous to the death of Mr. Amasa Sprague; saw him with one; can't say that it was this; it resembled this gun.

WEDNESDAY MORNING, April 10.

HARDIN BRIGGS.—I saw Nicholas Gordon with a gun last fall. I know him, saw him have a full stocked gun with percussion lock, and old fashioned gun altered into a percussion lock. It was in the latter part of fall, or fore part of winter. He had it about 400 or 500 yards west of his own house. The gun had a small bore, unusually small for that size of gun, (the gun shown to the witness) that gun is very much like the one I saw him have, the lock of

this gun has been altered from an old lock to a percussion lock.

Cross-Examined.—Can not think what month it was. People often go a gunning round there, go on Sundays. The workmen are out gunning Sundays, they are the ones who go out that day chiefly. There are no particular marks about the gun most I observed was, that it was a full stock, and very small bore.

WALTER BEATTIE, re-called.—The back door of Gordons House cannot be seen from the high-way. It can, I think be seen from Stones House, Stone had a large family.

Cross-Examined.—There are trees between Stones and Gordons, apple trees. They would obstruct the view to some extent. The Stone family occupied the south part of the house as I understood, and the north side was left for Dr Grosvenor, who came out in the summer. It is from the north side, that the Gordon's back door can be seen.

GUN IDENTIFIED.

JAMES FRANCIS.—I left a gun with Mr Tillinghast Almy for sale. It was in the fall of last year. It was a small fowling piece percussion cap lock, very small bore; rough made; full stock not varnished; brass trimmings. When I had it, there was one screw gone about the middle of the lock; (gun shown to the witness) This is the gun, I should know it among a dozen. There is a screw put in where the other was missing; it is not a gun screw and does not go in. I got my pay for the gun after it was sold. Almy is an auctioneer. It sold for \$2,50. I owned it but a short time. The wormer is the same; the head I think is the same; the ramrod I cannot say about. I left but one gun for sale there last fall.

Cross-Examined.—The first time I saw the gun they took me over to the jail. Alfred Wright asked me something about the gun I sold Almy; asked me if I should know it; I told him yes; by the small bore and a screw gone. They showed it to me and I knew it in a minute. I would swear my life upon it. I should know it among a dozen.

JAMES H. SABIN.—I was clerk of Tillinghast Almy in October 1843. I find an entry I made on Almy's books Oct 5, 1843 relative to a gun (The books were exhibited. The entry is as follows: "James Francis, one gun, settled.") This is an entry of things for sale. Francis is the name of the person who left the gun to be sold (Francis (Oct 7 sale fowling piece,) N. Gordon." I recollect the gun (the gun shown) should think this was the gun but don't know. It compared with this. I know that the gun left by Francis is the same as that sold to Gordon because it is so entered on the book. The name of the owner is put on the left of the column.

Cross-Examined.—I can not swear this is the same gun but have no doubt of the correctness of the entries. I take the names from the auctioneer. Do not know whether there is any other entry of a gun bought by Francis.

YOUNG MORGAN.—I made a ram-rod for Benjamin Waterman; Ben Kit they call him. He bought me a piece of wood; I made one; there was a knot in the end of the piece of wood; the plane run into this knot in making it, and made a splinter. I thought I had spoiled it. Took my knife and cut out that part and made it as smooth as I could. But it hollowed in in that place, I could not make it smooth. The man goes by name of

Ben Kit. He is a kind of a simple man—he held out the money to pay me; I told him to keep it. (The ram-rod of the gun was shown) I think this is the same ramrod I made; I did not put on the screw; made it 3 to 5 weeks before the murder.

Cross-Examined.—I judge from the place in the ramrod which I have described, where I had to cut in and could not finish it smooth.

ANDREW BRIGGS.—Fixed a ramrod the last Saturday of October, or first of November. I had the ramrod from Benjamin Waterman, (Ben Kit.) It was a walnut ramrod; (the ramrod of the gun shown.) This seems to be the one. This wedge in the ferule is not put in in the usual way. It is the usual way to put in cross pieces; I did not cross this one. The wedge was oak; I knew from its being made of a piece of a spoke.

Kit is a kind of simple fellow; he knew enough to get rid of work. I put the wedge in in a hurry to get rid of him. I will not swear this is the same. It is a little thing to swear to; it looks very much like it.

SEARCHING THE HOUSE.

JABEZ J. POTTER.—I arrested John Gordon upon this charge at Nicholas Gordon's store. Sheldon, Chafee, and Ellis were there; it was Monday evening about 6 o'clock; I went into the shop after arresting Nicholas and arrested John; he had his coat off; I told him he was my prisoner; I went up stairs with him. Sheldon searched, found some dirty clothes in the chamber, and a pair of boots very wet. John said they were his; they were a pair of calf skin boots; they appeared to have been quite wet, but to have got dry some. I did not take them away. We found a bayonet and sword in the garret. When he came out, Nicholas shut the door leading into the house, and bolted it on the shop side. Nicholas said he did not want any body to go in; he locked the door and put the key in his pocket. There was a mark on John's face; did not notice it particularly; heard him say something about a fall Christmas. John did not, I think, ask what he was arrested for. Nicholas did. I saw the clothes afterward at the jail; did not see any members of the family except a woman, the mother of prisoners.

Cross-Examined.—I think John saw Nicholas after I had put my hand on him, John, to arrest him, but not before. I do not think it was generally known that there were officers round. Nicholas said that was his brother with his coat off. John was sitting right by the door near the store. There was a good deal of excitement in the village.

DANIEL K. CHAFEE.—Was with Potter when John Gordon was arrested; searched the shop; found no gun; looked for it particularly as I understood a piece of gun was found; looked more particularly in the store than house. When I came out Nicholas bolted the door leading to the house, on the shop side; the window shutters were all fastened on the inside. Nicholas locked the outside door and put the key in his pocket. I noticed a bruise on John's face; quite a large bruise as though he had had a heavy blow. I asked him how he came by that bruise. After considerable hesitation, he said he came in town Christmas and fell down going home. While in my presence he did not ask why he was arrested, nor did he in my hearing. He was very callous and mute. John said he lived with Nicholas and tended the shop

when Nicholas was away. Sheldon did the searching up stairs. There were no clothes taken from there that evening. Did not notice the clothes particularly.

Cross-Examined.—John did not ask in my presence why he was arrested; he walked in company with quite a number when he went to Sprague's; some of the way he might have been by the side of Nicholas. He seemed sullen and unwilling to converse; he was very slow and reluctant to talk. Nicholas was handcuffed in the store. I think I found John sitting on the bench, back to the door. When Nicholas was talking about his being somewhere else, John said, I can prove I was somewhere else. I went into town to meeting and after that returned home. People were round the house; saw none round the back door. Ellis was at the back door; I think he started to go round the back way. There was snow on the ground.

JOHN M. SHAW.—I served the precept against William. Tuesday morning I went to N. Gordon's house; there was an old lady there, the mother; she refused to let me in at first. After some conversation she let me into the room occupied by herself; the door was locked going into the store. I insisted on searching. She said I had better not go in, Nicholas had the key. I broke in the door; I searched the house with Mr. Knight, found various articles of clothing up stairs. The clothing was rather behind and under the bed on the floor; found a shirt which, on the elbow, had a stain of the appearance of blood on it, or blood and water. It is fainter now than then; found a dark vest with spots on it; one of the vests had a box of percussion caps and pistol ball; also some powder in one of the vests. The powder was wrapped in brown paper.

Saw a box with powder in it in the store—a thin box. Saw a canister of powder. The powder in the canister, in the box, and in the vest similar; could see no difference between them. (Vest shown.) Think the vest is the same and in the same situation in which I found it. There were half a dozen balls in the pocket. (The box and paper of powder identified.) The box was such a one as this. There were some caps and a flint in the dark vest. The dark vest is the same one of which I spoke as being stained. Saw a blue coat with metal buttons, which was or had been wet, (coat shown.) This is like it. I found two pair of pants, one pair wet to the knees, and the other parts dry, and one pair wet all over. (Pantaloon identified.) The pair wet all over is positively the same here shown. The other pair I think is the same.

Gen. Knig brought in some powder. We compared powder from the canister, the box, the paper and the vest, and from other source; all similar.

Found a pair of boots; they were pulled out from under the bed by Sheldon. They were damp as though they had been quite wet. The boots were marked T. (Boots shown.) I think these are the boots. There was a stranger to me there, who said he could show me the track to the house. I put the boot in the track in the field back of the house. The boot fitted the track as to the heel perfectly; the heel going in deep. The snow was so hard that the toe did not make much impression except in high places where the snow was not so hard and there the toe fitted. I was satisfied that the boot made the track.

William Gordon drove into the city in a carriage in front of me.

I saw him in Bowen's office. He said he was in the city all day. He told me of being up by St. John's Church at ten o'clock, and at christening at about six o'clock. Did not give any account of the time between ten o'clock and the christening. I asked him if he was in Cranston on Sunday. Said he was not.

Mr. Searle took the clothes. The shirt here, is the same. The spot on it looks fainter now than then. There was a bill of groceries in one the pockets, bought of Tillinghast Almy. There were a few drops of blood on the under sheet of the bed near the head, the bed tumbled, as if recently slept in.

The store was fastened in the usual manner. Searched thoroughly, found no gun there. There was a very small assortment of goods in the store. There was hardware and shawls up stairs. Found a hat there. I don't think I know anything more, important to the case.

Cross-Examined.—Under the roof in the garret was found a bundle of shawls. I think the clothes in the room where the bed was, had been tumbled round before I saw them. The old lady said I wanted to steal. Seemed very ignorant. Only two went out to see if the boot would fit the track. The heel of the boot broke through the crust of the snow, the other part did not. The boots are common sale boots I should think. The snow was so hard as to bear in almost all places. It would not perceptibly have dampened boots. I had on thin boots, and did not find any inconvenience from the dampness. Stood round on the snow a good deal.

The vest like other clothes was laying around on the floor. There was a basket for dirty clothes in the women's room, none in the men's. The room was the ordinary lodging room of the men as I took it. The appearance of the room was as if it had been searched.

GUN SOLD TO GORDON.

TILLINGHAST ALMY.—Was an auctioneer in this city in October last. According to my books, Francis left a gun for sale, sold to Nicholas Gorton Oct. 7. I suppose it was meant Nicholas Gordon. I spelt it Gorton, he has laughed at me for my Yankee manner of spelling his name. Both names Gorton and Gordon mean the same man. Mr. Sabin is not a regular clerk of mine. There is another gun entered in June 1842, to N. Gorton, do not know by whom left. W. H. Green, my boy, made this last entry. There is no entry by whom it was left. The other gun, the entry was to Francis, which shows that he left it there. No doubt of the correctness of the entry.

Cross-Examined.—Know no other man by the name of N. Gorton on my books. Gorton and Gordon mean the same man on my books all the way through. When I don't know the men and they don't send their names up, I usually say "cash," I found the name on my books, and I suppose Nicholas S. Gordon to be the man meant. I have no doubt from my books that Nicholas Gordon was the purchaser of the gun, because he was a general customer.

COAT SEEN IN THE POSSESSION OF NICHOLAS GORDON.

JOHN CASSIDY.—Know Nicholas S. Gordon. Don't know who owns the coat. I thought I saw a coat like that taken out of a lumber wagon at Nicholas Gordon's, some six or eight months ago. Never saw him wear it to my recollection.

Cross-Examined.—It was so mean a looking

coat, that I noticed it for its being so mean; I did not examine it particularly; the last time I saw the coat was yesterday, when it was here; Nicholas took it out of the wagon and threw it into the house; I knew Nicholas Gordon very well, but have never seen him wear that coat.

I saw the coat at Amasa Sprague's, after the murder; I was asked by William Boyd if I knew that coat; I told him no, and asked if he did; he said he thought it was Nicholas Gordon's; then it came to my recollection, and I said that I believed I had seen Nicholas Gordon throw it out of a wagon; It was in the afternoon that I saw the coat.

AUGUSTUS ELLIS.—Was at Nicholas Gordon's store when John was arrested; I stood at the back door a little while, until I thought they had arrested them; I put a fastening over the latch, and went round to the front door; I took my stand by the door; saw no gun found; the store was fastened when the men came out—shutters and doors.

JOHN GORDON SEEN SOON AFTER THE MURDER.

JOHN KINGSTON.—Know Nicholas Gordon; his mother lives in the house with him; John made his home with Nicholas, unless he stopped at his boarding house; John Gordon and William, with their mother and sister, came over to this country in July last; I saw John and William Gordon on the Sunday of the murder, between four and five o'clock; I live, perhaps, half a mile, more or less, from the Gordons' house; I am sure it was not five o'clock, and after four; it was after the company that had been with me, Benjamin Earle and others, had departed, but so soon after, that I thought they must have seen him; we went soon after to Monkey Town; got some drink at King's tavern; John came back with us; he was with us all the time; the distance to King's tavern is about the same as the distance to Nicholas Gordon's; we remained in my house until six or seven o'clock, when a sister came in and said that Mr. Sprague was murdered. Then myself, sister mother and John Gordon, went to Mr. Sprague's to see the body. When we got to the gate he turned towards home for all that I know.

John had on I thought, a long top coat; thought it was of a bluish color. He wore a hat. I don't know whether it was an old or a new, or what kind of a hat it was.

I have seen a gun in the store of Nicholas Gordon, or some part of the building. It was sometime last year. Don't know what kind of a gun. Saw William Gordon with a gun can't recollect what time. He was somewhere around the premises. It was in the fall, September or October.

Cross-Examined.—Never knew that the Gordons were quarrelsome or disagreeable. It was not dark when we got to the house. Can't recollect how long we remained at my house after John Gordon arrived before we started. Staid at King's until we had two glasses a piece and then came back again.

We came out not many rods from Mr Sprague's door when we went up to see the body.

It could not be over five minutes from the time when Earle went away when John came in. The coat he had on I never saw him have on before, saw nothing extraordinary in his conduct.

WILLIAM KINGSTON.—Know John Gordon. Knew when he came to Cranston in June or July last. He worked part of the time at Dry Brook. I understood he stopped with his

brother Nicholas when the murder was committed. Saw John at our house on the day of the murder, between four and five o'clock. Earle was at our house that day. Left before John came, about five minutes, before. Went with him to King's Tavern. Stopped at the house perhaps ten minutes before we went. Took a couple of drinks at the tavern and came back to the house. Staid there until we heard of the death of Mr Sprague. We went up to Mr. Sprague's. John went as far as the gate then left as I thought to go to his brothers. My sister lived at Mr Spragues. She came and informed us first of the murder. I have seen a gun in the bed room of the house about a year ago; bayonet on it. It might be a rifle.

Cross-Examined.—There was nothing extraordinary in John's appearance. dressed in top-coat down to knees. greyish kind of trousers. Just as pleasant as ever. I saw him to be. Saw no difference in him. When he heard of the murder he appeared as much amazed as any body. It was not dark when we got to King's Tavern. It is not quite so far to King's Tavern as to Gordons House from our house. It was not lighted up at the Tavern. But light enough to distinguish a five cent piece from 6 1-4. He said he came down from his brothers. It was a pretty clear night I believe.

(It is three-quarters of a mile lacking 7 rods from the Gordon House to the Kingston House. As measured by the surveyor.) John had boots on when he come the snow; was so hard it would not wet the boots unless he went in some swamp, did not observe whether his boots were wet or not.

Tillinghast Almy, re-called—I find in my alphabet of the Ledger "Gorton." In the ledger it is "Gordon" but seems to be altered in the Day book it is "Gorton" and also N. S. Gordon in July 1843. Some time after that I find it "Gorton" again I infer therefore that I wrote it Gorton and that he laughed at me for spelling it so.

JOHN SEEN WITH A GUN.

ABNER SPRAGUE Jr.—Live in the house with Abner Sprague. Know John Gordon, saw him within 20 rods of the place where Amasa was murdered on the Friday before the murder in the afternoon. He had a gun with him. I saw him twice. The first time don't recollect when, a few rods from where I saw him last time I met him going towards the watering place with a gun. I said you're going after them hey? he said yes and pointed over towards Amasa's crib, said he saw about a dozen partridges there the other day. I never saw any partridges there and should think it a poor place for them, The next time I saw him 3 or 4 o'clock Friday afternoon before the murder. I asked him if Hunt has moved he said no, said he did not work there but thought he should, said he lived with his brother, I asked if he saw those partridges, said no, said he had seen some rabbits over there. He was leaning on the gun. I told him that it was dangerous for him to lean on a gun in that way.—He took it up and half bent it, said it would not go off so.

The gun was an old looking gun with rust on the lock, the gun stocked the whole length. It was one of these percussion locks. I was one looking for the gun. I saw Mr Pratt come out of the bushes with it, I got to him just as he came out, from the appearance of the gun I thought it the same gun I saw John Gordon have I had no doubt of it at all. I said at the

time I thought it was John Gordon's gun. It was all bloody then.

This was the Friday before the murder, because Charles Searle told me it was the last day of registering, he came up to me just after Gordon had left. I saw him coming before Gordon went off, and we stopped and talked three quarters of an hour after he came up.

Cross-Examined.—I took most notice of the barrel. I do not say positively this is the gun. I saw John Gordon, have but I have no manner of doubt it is the same. He told me he always kept a gun at home. I don't know but he meant the old country.

The crib is a hundred rods from the house I have hunted partridges don't call myself a great marksman; never knew that partridges come around barns. Quails will do so but partridges are not apt to go where there is no brush. I never saw a dozen partridges together in my life.

John was right on the path-way. It is a common travelled path-way. I have not seen another man there this winter with a gun except John Gordon. He said he did not know but he should go to Drybrook. The road that he was pursuing was a kind of half moon route to go to Drybrook. He told me he had seen a place where a running brook had melted the snow from the grass; that the rabbits came there to feed; that he got a couple there the other day and was going there again. He often went past my house. That was the nearest way to Drybrook. He never had a gun then. I never saw him in this driftway except the two times he had a gun.

The first time I ever saw him was when he passed my house and stopped to get some water. A second time he stopped to get some sapsons. The difference in the distance to Drybrook between going by our house and going by the driftway is a half or three-fourths of a mile. The route by the driftway is a kind of half moon route.

The first time he came past the house I did not know him. I asked of the black woman at the house who he was. Did not know that either of the Gordons had been arrested when the gun was found.

ALFRED WRIGHT.—I know James Francis. I took him to the jail in a hack to see the gun.—Question, Did he describe the gun to you before it was shown to him.

Mr Carpenter.—We object to that testimony. It is confirming the testimony of a witness who has not been impeached.

Attorney-General.—We thought the witness was impeached by the cross-examination, but we do not insist on the evidence. It is of no great consequence.

BENONI WATERMAN.—I live about 75 rods from Nicholas Gordon's. I saw him one day as I passed his store standing in the door holding something up to his cheek pointed towards the barn. I called it a pistol.

Saw John Gordon the Sunday morning of the murder about 8 o'clock. I did not see that he had a black or swollen cheek at that time. I observed him at the time, but noticed nothing of the sort.

Cross-examined.—Know William Gordon. Don't recollect passing him on the road.

JOHN GORDON SEEN ON THE CRANSTON ROAD.

NEHEMIAH WHITE.—I know John Gordon by sight. Saw him on the day of the murder between one and three o'clock, near a house in Cranston, about a quarter of a mile

this side of Sprague's factory. He was going on the Cranston road towards home; no one with him.

WILLIAM BARKER.—I live in Providence near the Tockwotten house. Went to Johnston on the day of the murder. I went from the back of John Barton's on Christian Hill; a few minutes past twelve o'clock, not more than five minutes. Bowen Spencer was with me. We were going to Mr. Spencer's father's. We walked through Olneyville, on the Johnston road. Passed two little houses beyond Dr. Bowen's. It was said John O'Brien lived in one. A little past these houses met two men coming towards Providence; one a tall man and the other a short man. The short man had a gun. There was another man behind them; don't know whether in company with them or not. We went on to Mr. Spencer's father's. When we were coming back, after tea, and had got to the foot of the hill by Simmons' village; the sun was just setting. We turned the corner by the two houses and saw two men coming from the lot, through a gap in the wall. We met them about half way between the Carpenter place and John O'Brien's.—One man had no jacket on; he was in his shirt sleeves. He held his head down, and they were walking very fast. I said to Spencer, are not these the same men we met before; he said they were. I said it is rather suspicious for men to be out gunning such cold weather and come back without a coat on.

I heard afterwards that a man was found dead. I enquired and learned that a man was murdered; and that it was Amasa Sprague. It was down by the String bridge. Went down there.

I have seen a man who looked very much like the man I saw in his shirt sleeves; saw him in Bowen's office. I went in there at the time O'Brien was being examined. I said to some one that was walking about there, that looks very much like the man I saw with no jacket on. I did not know, at the time, that it was William Gordon, nor that he was arrested. Mr. Ellis afterwards told me that he was. The tall man was considerably taller. I have never seen the tall man since.

Cross-examined.—It was not later than two o'clock when I first met these men between these two houses. It was 1-2 or 3-4 of a mile from the hill to where I saw them the second time. (The hill here spoken of is near Gallow's bridge. Mr. Simmons's lower mill, as it is called, stands a few rods above this bridge. It was here that the witness saw the sun just setting when on his return to Providence.)

They were coming across the field towards the bar-way, and passed through it into the road just as I got opposite the Carpenter House.

The only thing that made me note the appearance of the men when I first met them was that they were out gunning Sunday. The tall man had on a coat, not very long. Don't know whether it was next to his shirt or an overcoat; nor did I notice particularly the gun. I saw no powder-horn and did not notice whether the man wore a hat or a cap. I did not look at his hat or cap so much as at his face. I did not note the man so much the first time; and don't know that I could have identified him the next day after first seeing him. The short man had no coat on when I saw him the second time. I don't know whether he had a hat or a cap on. The short man had on a long frock coat and did not hang his head down the first time I saw him. I don't know whether I could have identified him the next day or not. I believed him to be the same man because they were

one a short man and the other a tall man. They had a gun and they appeared to me to be the same.

Direct.—The size of the short man corresponded with that of William Gordon. I am not positive whether the coat was light or dark. Meeting these two men near the same place with a gun caused us to notice them.

BOWEN SPENCER.—I went out with Mr. Barker. We started from my house about 12 o'clock or a little after. When we got out by Simmons's mills, by those two houses, we met the two men, one of them tall, the other short. The tall one was dressed dark; the other had on a jacket which come down low towards his knees. It was of a lightish character. The other one of them had a gun. When we came back we met the two men again by the two houses.*

* One of these houses is omitted on the map; the other is O'Brien's.)

When we came back we met the two men again by these houses; one of them, the short one, was in his shirt sleeves. They were walking quick. Mr. Barker observed that they looked suspicious. They went towards the houses. We soon met my brother, who said they had found a man frozen below. We turned out to go there, but after we got down a little ways we concluded it was too far turned into a little path, got over the wall. We asked a man about it, and he said the body laid down under the hill. We went down there; and found the body, laying on the right side. I have not seen John Gordon; seen William in jail. I have thought he was the man. I have never doubted it myself; but cannot swear to it positively. Cannot say how far it was from the hill where we were when the sun set to the place where we met them. The short one I met face to face; he turned the gun aside. I stepped out of the track and he passed by me. I think the short man had on a hat; cannot say what the tall man had on. Saw William Gordon in the jail. I went to see if he was the man. I did not notice him so much the first time as the second. The tall man had a gun the second time; the short one had not; don't know what colored pantaloons the short one had on. I looked at his head more than any thing else; cannot tell how long it was from our first seeing them, until the last time. When I saw these men the first time it could not possibly have been later than two o'clock. I don't know the distance from Barton's, but it could not have been past two.

BENJAMIN WATERMAN (alias Ben Kit.) I carried a ram rod to be made to Capt. Morgan. It belonged to Nicholas Gordon. Mr. Morgan made the ramrod for me. Andrew Briggs put on the ferule and Nicholas put on the screw at the end of it. Briggs put in the wedge.

Mr. Atwell.—Did he put in a cross piece?

Answer.—Yes Sir.

Attorney-General.—Did he put in two pieces or one into the ferule.

Answer.—He only put in one piece, Sir. It was a week before new years'. I know the ram rod, sir. I should know it the darkest night ever was seen—tell it by feeling, sir. It was the week before new years.

Ques. What year?

Ans.—Don't know the year; sir. Don't keep the run of the years. Can't write nor cipher—make my mark, sir—that's all.

JERIMIAH STONE.—There was a ramrod in the shop when I went there. Ben Kit,

(Benjamin Waterman) I supposed to have brought it there. He wanted the wormer put on. I tried it and told him to carry it back to Nicholas to fix it himself. The rod was too small for the wormer—told him to tell Nicholas to wind some thread round it to make it larger.

BENONI SPRAGUE.—Reside in Cranston near Amasa Sprague; saw Wm. Gordon on the Sunday of the murder. It was about ten minutes past sun-down, running up the hill towards Providence. I supposed he was running to stop Mr. Arnold's horses which had tipped over his sleigh. But he passed the horses and kept on. The horses stood across the road up against my garden fence. Some one said what is that man running for. I said he is going to stop Mr. Arnold's horses, but he stooped under their head and kept on running up past Mr. Amasa Sprague's toward town.

ALMON ARNOLD.—I do not know William Gordon. I upset my sleigh on the Cranston road a little after sun-down, ten or fifteen minutes, near Benoni Sprague's house, south of Amasa Sprague's house. After I got my sleigh righted. I went on towards Providence, passed a man at an ordinary walk going towards Providence. I drove quick, the man was in the track. He did not get out until I drove up to him and spoke to him. The horses heads almost touched him. I pulled up and hallowed to him. As he stepped aside he looked up and my son said that is Nicholas Gordon's brother. I drove quick until I overtook him. It was about three quarters of a mile from where I overturned my sleigh. I was five or ten minutes going the distance after righting the sleigh.

ANDREW ARNOLD.—I am son of Almond Arnold; recollect the day of the murder; came into town; passed a man on the road going towards Providence. We had tipped over before. Don't know how far it was where we met him. It was N. Gordon's brother. I knew him had seen him at the store, when I went there of errands. Don't know the names of either of the brothers.

Mr. ATWELL.—Oh! there is no doubt about it we admit that it was William.

Dr. THOMAS CLEVELAND.—I am the keeper of the jail. Had a conversation with William Gordon the day after he was brought to prison. I went into the cell. William was proclaiming his innocence, and telling me the evidence of it. I took down the minutes in a memorandum book and have copied it. He stated he was in town and went to Church in the morning. Went out to see his mother, got there about two or three o'clock. This was his first statement. The second was that he stopped at the half way house between four and five o'clock, to get cider, and went to see his mother; staid about ten minutes and then returned. He said he met a woman near the half-way house,

Took his dinner before he went out with some of his friends. Holohan I think. Met this woman about 5 or 6 on his return.

Have had conversation with John Gordon said he was in Church, in the forenoon returned home, and got there about two or three o'clock; dinner not ready.

Went to Kingston's, he and two of the boys went to king's tavern to get something to drink, left King's tavern before sundown; remained at Kingston's until he heard of the murder; never made any other statement.

Cross-Examined.—William stated that he was at the half-way house about four or five o'clock;

saw a woman who knew him. He said he got back here to a christening though late. Met a woman near the city, did not give the name of the woman at the half-way house.

GEORGE RIVERS.—Was in Bowen's office after Wm. Gordon was brought in, and questioned him. He seemed willing and anxious to answer. Said he was not in Cranston on the day of the murder, repeated it several times over. Said he was at Church in the morning, in the afternoon was with Nicholas. Went to the christening about four or five o'clock. After some conversation about the christening he corrected himself, I recollect this particularly because I did not then know that there was any proof of his being in Cranston. He appeared to be excited, I thought he had been drinking.

EDWARD H. HAZARD.—Was in Bowen's office when William was brought in, he protested his innocence and said, God knows I did not do the deed. Said something about his being at the christening in town, first said it was four o'clock, afterwards that it was seven. Rivers called my attention to his differing statements. Appeared to have been excited with liquor.

WALTER BEATTIE.—Have walked the distance between John O'Brien's and Nic Gordon's; have the minutes in my pocket. Walked from O'Brien's to the river in two minutes, from the river to Randal's pond six minutes; Randal's pond to the Gordon house one and a half minutes. Walked as fast as I could; the walking was good and a man could walk faster than when the ground was covered with snow. We also allowed for crossing the pond, bog and river 400 yards, which we walked two and a half minutes; making the whole time twelve minutes.

Cross-Examination.—Don't know that the river was frozen over at the time of the murder so as to bear a man; it was not at the bridge. If very high a man might have waded it; but would get pretty wet. Did not see the river frozen at any place. Don't know how deep the river was at the time of the murder.

ALFRED WRIGHT.—Was out there the day after the murder; noticed the river frozen over about fifty yards below the bridge; don't know how hard.

JOHN M. SHAW.—Went with Barker and Spencer where they said they were when they saw the sun set. It was on land not so high as the land west of it. Think there would be fifteen or twenty minutes difference in the sun-set there and on a horizon.

On Thursday below Gallows bridge there were two places where I could cross the river on fallen trees, this was above the route travelled by Battie.

RICHARD KNIGHT.—Went to the house of N. Gordon on the night that the house was searched; saw two vests found, and one said to have been brought in from out of doors. A pair of boots found, which appeared to have been wet; clean on the bottom; white as if they had been wet. Took the contents out of one of the pockets of the vest; have some powder taken from the canister; it compared with the powder in the vest.

Attorney General.—Do you know of Nicholas Gordon having any difficulty with Amasa Spragu before the murder.

Mr. Carpenter objected to the admission of this testimony, on the ground of irrelevancy to the issue. Suppose it were proved that some

other persons in the town of Cranston or in the State of Rhode Island had a difficulty with Amasa Sprague, and had threatened him, and that the accused were intimately acquainted with these persons, would it be competent to prove that fact in order to affect the present prisoners? The object of the government in introducing this testimony was to give to the prisoners a motive for the commission of this crime; but the ill will of Nicholas cannot be presumed to have been shared by his brothers without proof of the existence of any such hostility on their part. It would be piling presumption upon presumption, first to infer that they had ill will toward the deceased, because Nicholas had, and then to infer that ill will to have been the motive to the commission of the crime. The fact of relationship makes no difference to the principles of law. If the declarations and threats of one's relatives and friends were to be imputed to himself, no man would be safe; the social relations would become sources of evil instead of blessing. When all that the government want in this case is to find a motive, will the Court lend them the aid of a remote inference to furnish the shadow of an apology for a motive to the jury? Is my malice to be presumed to be transferred into my brother's bosom by the magnetic influence of kindred affections?

The fact that these threats were uttered in the presence of these prisoners makes no difference. If any thing is to be presumed from it it is that they did not sanction them—that they condemned them, since they did not approve them. The testimony ought not to be admitted.

W. H. Potter contended that this testimony was admissible. The Government offered to prove feelings of hostility on the part of Nicholas S. Gordon the brother of the prisoners toward the deceased, and threats made by N. S. Gordon in the presence of the prisoners for the purpose of showing a motive in the prisoners for the commission of the deed. It is objected, to by the council for the prisoners as irrelevant.

The prisoners are charged with the joint commission of the crime in connexion with Nicholas Gordon, who is charged as accessory. He alluded to this merely as showing the relevancy of the proof offered to the issue. He contended that the testimony already put in; the fact that the prisoners were the brothers of Nicholas; that they lived in the house with him; that the gun was owned by him, that the coat had been worn by him, afford at least primary testimony to establish the fact of the existence of a conspiracy between Nicholas Gordon and the prisoners at the bar for the perpetration of this crime. A conspiracy need not be proved by the declarations of the persons forming it. It may be proved by the acts of the persons engaged in it, indicating a common design, in fact any circumstances going to show its existence. If a *prima facie* case of conspiracy had been established in this case then the act and declarations of each of the conspirators may be viewed as the acts and the declarations of each of the rest and may be admitted as evidence against the others, although the conspirator who makes them is not on trial. The prisoners and Nicholas Gordon are indicted jointly for the commission of this offence. Nicholas being charged as accessory before the fact, must be tried separately yet any declaration of his, might be offered as going against the others. They might pass to the jury for them to judge whether such common design did exist, and whether in con-

nexion with the other facts and circumstances in the case they are sufficient to justify the inferring a motive on the part of the prisoners; and it is competent for the Government to offer evidence of acts of hostility and threatening expressions on the part of N. S. Gordon towards the deceased in the case of a joint crime in which the latter was charged as accessory to the acts of the prisoners, and the whole arising out of a conspiracy between them all to commit this crime.

Mr Potter cited 3 Stark, on Ev. 401—2.

State vs. Ephraim K. Avery, where the declarations of the deceased, her letters &c. were admitted in evidence as proof against the accused. She was a third person as to him as much as N. S. Gordon is to the, prisoners at the bar; and there was no stronger or other reason for transferring a motive from her to him in that case than exists as to N. S. Gordon and the prisoners in this case. They were equally as much disconnected.

The indictment was not for a conspiracy but for something more. It charged that the prisoners and N. S. Gordon not only conspired to kill the deceased, but that they actually did it. In proving the greater crime, we must not necessarily prove the lesser. We must commence some where. The evidence offered is relevant to the issue. It is a fact from which the jury must reasonably draw an inference of the innocence or guilt of the prisoners. It is therefore *competent* testimony. Of its weight, of its adequacy to furnish a motive on the part of the prisoners to commit this; crime the jury, and they alone, must decide.

This is the purpose for which the evidence is offered, and these are the grounds upon which the Government rely to show its competency.

Attorney General closed the argument for the admission of the testimony he said that it had not occurred to his mind that any objection could be made to this testimony; and he thought it would require a technical course of reasoning to convince the mind that there is any objection to it. The law of evidence was more than any portion of the law, founded upon plain common sense. The murder has been proved, and a numerous train of circumstances go to fasten it upon a particular family; would it now occur to any person except a lawyer that it was not competent to inquire whether in the family, by some of the members of which all the circumstances prove the murder to have been committed, there were motives existing for the perpetration of the murder. It is perfectly well settled that when a conspiracy has been *prima facie* established the declarations of one of the conspirators now on trial may be offered against the others. It is for the court to judge whether such evidence of the existence of a conspiracy has been offered as to make out a *prima facie* not a conclusive case. If so then this evidence is perfectly competent go to the jury:

Is it not competent for us to prove a conspiracy? If so, this is one step toward that proof.

He contended, in the second place, that it was competent to admit this testimony on the ground of motive. It was always competent for the Government to prove a motive for the commission of a crime. Of the adequacy of that motive the jury were to judge. Was there ever a case in which the Government were precluded from proving just such a motive as they suppose to have existed. If that motive was not adequate it was for the jury to determine it. Why should not then, in this case, the Government be allowed to prove the existence of just such a motive as did exist, and which they suppose to have instigated this crime—viz: the mo-

tive of gratifying their brother Nicholas' revengeful and angry feelings against the deceased. Might not such have been the motive—might it not have been a sufficient motive? If so, shall the Government be prevented from proving its existence. Suppose Nicholas would have profited greatly by the death of Mr. Sprague. Might not the same objection have been urged against the admission of the proof of that fact? It might have been said that it did not appear that the prisoners were to have the money.

Attorney General then referred to Selfridges case upon the point. How would you ever be able to prove a motive in a case of murder committed by accessories and principals, unless you can be allowed to prove the motive of the accessory, and the connexion between the parties. The government cannot go into the secret bargains between the plotter of a murder and its actual perpetrator. If shut out from proving the motive of the supposed accessory, they are shut out in many cases from proving any motive at all.

He contended therefore that the evidence was admissible on two points. 1st, As the declarations of a co conspirator. 2d, As going to prove the existence of a motive in the hearts of the prisoners for the perpetration of this crime.

Mr. Atwell closed the objection:—

The Government were trying these prisoners upon an indictment, the framing of which had been within their own control, and now because they have seen fit to frame that indictment in such a manner as to charge Nicholas Gordon as accessory and John and William Gordon as principals, they contend that to be a reason for varying from the well established rules of evidence in this case and allowing the threats of Nicholas, a person not now on trial, to be proved to the Jury. The principles of evidence cannot be changed in consequence of the mode in which the Government have seen fit to frame their indictment. The Government offer to prove the declarations and threats of third persons, who so far as the purposes of this trial are concerned are to be deemed strangers to these defendants. They offer not the declarations and threats of the prisoners at the bar, but the declarations and threats of Nicholas S Gordon, and contend that they are to go to the Jury as proof of motive to commit the offence on the part of the prisoners. The ground taken is this, that there was a conspiracy between Nicholas S Gordon, the declarant, and the prisoners, the prisoners are not indicted for a conspiracy, and no evidence of the existence of any such conspiracy has been offered.

Attorney General—The ground taken was that these declarations went to prove the fact of a conspiracy.

Mr. Atwell—I am aware of that—the ground taken by the Attorney General in the close, is somewhat different from the ground by Mr Potter in the opening. Mr. P. contended that a conspiracy had been proved and these declarations were to go to the Jury, as the declarations of one of the conspirators. The ground now taken is that these declarations go to establish the fact of such a conspiracy. This ground is not tenable, for all declarations of a conspirator to be legal evidence, must have been made after a conspiracy has been proved. The conspiracy must be proved by other evidence than the declarations, the sole ground of admitting which, is the existence of such a conspiracy. It is not possible to prove John and William Gordon to have been in a conspiracy with Nicholas, by the

declarations of Nicholas, for such a rule would put it in the power of every man to jeopardize the life of his fellow man. The existence of the conspiracy must first be established by independent testimony, before the declarations of one of the co-conspirators, not on trial, can be admitted against the rest. The evidence here offered is that a long time before the murder, Nicholas S. Gordon had threatened the death of the deceased, in the presence of the defendants. Does that fact go a single step to prove the existence of a conspiracy between him and the prisoners? If they were on trial for a conspiracy, would such evidence be deemed competent? In a case of circumstantial evidence, it is not true that every circumstance in any manner connected with the crime, is to be admitted in evidence, on the contrary such evidence is to be closely scrutinized and courts are to watch over the safety of prisoners, by allowing nothing to pass which does not directly tend to to prove their guilt. The fact that the maker of these threats, was the brother of the prisoners, does not affect the principle. The malice and hatred of one man are not to imputed to another without proof. These declarations therefore cannot be admitted either on the ground that they go to prove a conspiracy—or as the declaration of one of the co-conspirators.

Nor can they be admitted on the ground of motives, for these declarations do not go to prove any motive in the hearts of the prisoners at the bar. Suppose it could be shown that a dozen men in Sprague's village had threatened Amasa Sprague, and the prisoners had been by and heard those threats, could they be given in evidence against them. It would be easy in this case to prove that such threats were made by other persons. The threats must be traced to the prisoners, they must have been sanctioned and countenanced by them, to make them legal evidence, or to constitute a motive in their hearts for the commission of the crime.

Durfee Chief Justice.—Do you intend to prove that any declarations were made by the prisoners themselves?

Attorney General.—We do not.

Chief Justice.—Do you intend to prove that the prisoners were present and heard these threats.

Attorney General.—We do expect to prove so

Chief Justice.—You can go on and put in your other evidence and the Court will consider this point during the recess.

BENJAMIN EARLE.—Was at John D. Forbes, 1-2 a mile from Sprague's—fifty feet from Kingston's house. Came in ten minutes past sunset. Stood in door and saw sun go down. My wife was with me.

AMOS D. SMITH.—Noted the clothing of Mr. Sprague after his decease. The pockets were examined by myself and Mr. Harris. We found in one pocket a silk handkerchief, an apple, and about \$60 in money. The money was not in a pocket book, but wrapped in a paper. By the envelope it appeared he had before taken from the envelope \$40. The package was originally \$100. Some change in his pocket. His watch was at home. The friends thought nothing had been taken.

GEORGE BEVERLY.—Was clerk for Tillinghast Almy; left last July. Knew Nicholas Gordon well. He was in the habit of wearing two different coats. This one he did not wear often. Cannot say so much about this as the other. (The witness referred by this coat to

the coat found in swamp.) Recollect he had a coat of this rusty worn out colour. Looked like this across the back. Some times, when he came in the night he would wear this if this is the coat—sometimes in the day time. Day before yesterday I saw this coat. I had in my mind the other, the best coat, and I thought I was mistaken. I examined it this morning, and then I recollected that he had two coats. I recollect the other better than this now; I thought that the coat was more shabby than this is, if possible.

Cross-examination.—If there were no other shabby old coats than this in the city I should think this was the coat, but there are a great many old coats look something alike. I should never have thought of this coat unless I had been brought here. This morning I showed it. Cannot swear to the coat. See no difference I can point out. The other coat had on a velvet collar; open skirts behind; rather narrow in the back. This one is rather narrow in the back for him. He is wide shouldered for a short man. The other coat is quite a good one.

JAMES SHELDON.—Was at Gordon's house when Nicholas was arrested; found a pair of boots under the bed. John said they were his. They were damp and apparently had been wet; looked white around the edges; they were a thin light pair of boots. I did not observe any bruises upon John Gordon's face. It was in the evening when we were there. John said he slept up stairs.

ROGER W. POTTER.—I first saw the boots in the milk-house at Amasa Sprague's with a trunk of clothes, put them into possession of Walter Beattie, and he delivered them to me before the grand jury sat. There was a musket ball in the pocket of one of the vests; don't know which vest it was; it fitted the bore of the musket. I tried it at the muzzle. There was a round box of powder in the coat pocket. Noticed in the store of N. Gordon two or three similar boxes; could not tell them apart. I compared the powder in the boxes, in the canister in the store, and the powder in the pistol; all similar. Did not leave the pistol there at the time. Saw the things for the first time at Sprague's.

STEPHEN MATHEWSON.—Was at the body on the day of the murder. Found the pistol near the foot of the bridge. Turned it over and left it there until some one picked it up. It lay there about half an hour. I did not give it to the coroner; some one else did. It was the right side of the piece that sticks in the ground that holds the bridge up; on the right hand side of the bridge as you go over to Johnston. (Pistol showed to the witness.)—This is the one, I have no doubt.

THEODORE QUIN.—Saw the coat here produced. It was put into my possession by David Lawton. Did not examine the pocket myself. Walter Beattie took the things out of the pockets, put them back again; gave it to Alexander Boyd and he carried it to the house.

ALEXANDER BOYD.—Have seen this coat before: was delivered me by Theodore Quin on the second of January, about 2 o'clock. Carried it to Mr. Sprague's house and delivered it to Rollin Mathewson. There was an old newspaper, some powder, &c. taken out of the pockets whilst I had it, examined and put back there. There were several persons present when the coat was delivered to Mr. Mathewson. Charles Searle was one.

CHARLES F. SEARLE.—Seen this coat

before; was present when it was delivered to Mr. Mathewson. He put it under the sofa for a short time, afterwards took it out and carried it up stairs, and I afterwards saw it in Byron Sprague's possession in a little white trunk.

BYRON SPRAGUE.—Think I have seen the coat before; and think it was put in the trunk. I had the key a part of the time; afterwards it went into the possession of Mariana Sprague, my cousin, and was afterwards delivered to Mr. Potter by some one: don't know whom.

JOB WILBOUR.—Was present at an auction in June '42, in Tillinghast Almy's store. Nic Gordon was present there and bought a gun. It was a light gun, with bayonet and equipage. The one present here in Court is not the gun. I saw John Gordon on Friday before the murder, stopped and looked him in the face. There were no black marks on his face then. Think I saw him on Saturday; saw him at the pump; passed by; saw no bruise.

RUSSELL CLAPP. (This witness was called with reference to the statements of Wm. Gordon in Mr. Bowen's office. His statements in regard to the conversation differed somewhat at first, from those of Mr. Rivers, but he afterwards came on to the stand and said that he thought he was mistaken in his recollections of the conversation, and agreed in the statement of Mr. Rivers and Mr. Hazard.)

ALFRED WRIGHT. Was in Bowen's office when Wm. Gordon was brought in. He came up to me and said he wanted to be committed. I asked him for what, he refused to say; he walked about, much excited; probably had drank some that day, though he was not intoxicated. I asked him to tell where he was that day, he need not bring witnesses, his brother had been discharged on his own statement. He thought I was a magistrate. He said when I asked him to tell where he was, "By God, that was a question of my own asking;" said he was not there that day. By there, I understood him to mean the place of the murder.

THURSDAY AFTERNOON.

Durfee, Chief Justice. The Court have had the question of the admissibility of the evidence of threats of Nicholas S. Gordon, made in the presence of the prisoners, under consideration, and think that the evidence must pass to the Jury for them to judge how far such threats may have affected the minds of the prisoners so as to furnish them with a motive to commit this crime. The relevancy of it may be illustrated by supposing the prisoners should offer to prove that a most friendly and amicable relation and the kindest feelings existed between Nicholas Gordon and Amasa Sprague, the deceased, with a view of shewing the absence of all motive on the part of the prisoners. The Court in such case would feel bound to admit the evidence.

Mr. Atwell. We except to the opinion of the Court and pray your honors to note our exception.

Attorney General. Do the Court mean to confine us to proof of hostility evinced in the presence of the prisoners. Will it not be competent for us to shew by separate evidence the existence of this hostility between N. S. Gordon and the deceased and afterwards bring home all knowledge of it to the prisoners.

Durfee, C. J. You can go on and put in now the evidence which you stated you had, of threats of N. S. Gordon made in the presence of the prisoners. The Court will decide upon the admissibility of the other evidence when it is offered.

GEORGE ASPINWALL. Seen the coat here produced. It was in a trunk of clothing which was brought to the Prison before the examination. I examined the trunk. The coat seems to be the same one. Trunk has been in my possession until the meeting of Grand Jury. Saw John Gordon when first brought to the prison; he had a black eye.

NICHOLAS S. GORDON IN PROVIDENCE AT THE TIME OF THE MURDER.

JOHN DeFOSTER resides in Cranston; was in the city on the day of the murder; know Nicholas S. Gordon.

Attorney General. Did you see Nicholas S. Gordon in town that day? if so when and where?

Mr Atwell. We object to that question.

Attorney General.—We propose to prove that Nicholas S. Gordon was in town during the day of the murder, and consequently could not have committed it.

Mr. Atwell.—That is precisely what I supposed the Government intended to prove and to the introduction of any such evidence we object. All the evidence thus far goes to fix the commission of this crime upon Nicholas S. Gordon, and we say the Government have no right now to prove that Nicholas Gordon did not commit it, in order to draw an inference that these prisoners did.

Haile, Justice.—Why, Mr. Atwell, suppose the Government should offer to prove that every man in the town of Cranston, except two, was absent on that day for the purpose of fixing it upon those two, would it not be perfectly competent?

Mr. Atwell.—Undoubtedly—but it would not be competent to prove that fifty were away in order to fasten it upon two men out of the other fifty.

Staples, Justice.—This murder was committed as the Government contend, with Nicholas Gordon's gun, and Nicholas Gordon's coat. Now, if the case was to go to the Jury on this evidence, would you not contend before them and with great force that Nicholas Gordon was the perpetrator of the murder? If so, is it not perfectly competent for the Government to rebut such a presumption, by showing that Nicholas was in a situation where he could not have used that gun or coat, on that day, and thence to infer that the prisoners at the bar, who had access to the gun were the most likely to have used it?

Mr. Atwell.—But the Government ought first to show some connection between the prisoners and the gun and coat, before they can rightly draw any such inference.

Staples, Justice.—I presume the Government think there has been some testimony to that point already put in.

Brayton, Justice.—Here are three persons who have access to a certain instrument with which a murder has been committed. You wish to discover who did use it. Proof that one of these three was absent and could not have used it, is certainly proper evidence to criminate the other two.

Durfee, Chief Justice.—The evidence may be admitted.

JOHN DeFOSTER, continued. I saw Nicholas S. Gordon about 3½ o'clock; did not speak with him; saw him by the Catholic Church. The Church usually comes out at that hour. I do n't know but might be later than that.

WM. H. GREENE. Saw N. S. Gordon

on the day of the murder about 5 o'clock in this city.

Cross examination. Am clerk of T. Almy's. I knew Nicholas Gordon well; he traded at the store; don't recollect of ever seeing Gordon have the coat on which is here exhibited; have been in the store four years, and Gordon has traded there during that time; was there while Beverly was there. Do n't think I ever saw that coat.

ANN GLEASON. Recollect seeing Nicholas Gordon in Providence on the day of the murder; saw him at our house from 3½ to 4¼.

[Note. The fact of Nicholas being in town, was not contested by any evidence on the part of the prisoners.]

THREATS OF N. S. GORDON AGAINST THE DECEASED.

MISS SUSAN FIELD, (a young woman.) I know all the Gordons; knew Nicholas 3 years ago; have not been at his house since August last; have met him in the streets since August; went to his store frequently before that, sometimes as often as three times a week, sometimes not so often. John and William came over in July. Nicholas said in their presence that he sent the money for them to pay their passage over, and went down to Boston for them. Nicholas had two coats, one a bottle blue, a long coat, and old one; the other was a green. He did not wear the old coat often. Have seen him wear it. He used to let his dog lay on it. Saw this coat in the old shop. He had black pantaloons and blue; I saw John have on the old blue coat one rainy day. It was small for him. I have seen John wear Nick's black pants. Nick had two or three vests, one a kind of brown vest, of broadcloth, one dark green, of same, a buff one that was plaided off with stripes, a nankeen colored cotton one. I never saw William or John with Nick's vest on. John had the first day I saw him, a pair of dark brown trowsers, ribbed, badly worn. William had a pair of black, and of blue trowsers. John had a nankeen colored vest that was spotted. (The coat found in the swamp was here produced and shewn to the witness.) That is the coat I saw Nick's dog lay on; it is the one I called the bottle blue; he used to use it in the waggon in the place of a cushion; saw the dog lay on it by the side of the counter in the store. (The clothing found in the Gordon house was here produced and shown to the witness.) The buff vest is the one I saw John wear, the brown vest is the one I described as being Nick's; he used to wear it every day; the black trowsers are the ones I saw John wear. John and William had nothing decent until they began to wear Nick's clothes. I have seen John wear the blue coat with brass buttons; (the hat found at N. Gordon's home, a very old and ill-shapen one was here produced and shown to the witness.) Witness laughed and said, I guess I do n't know that hat. I never saw anything like it before. I saw a gun in Nick's store; saw a pistol there, it belonged to Nicholas, it was lying on the shelf. I never saw but one gun there at once; the pistol had a percussion lock. I heard Nicholas say Amasa Sprague had taken his license away from him, and God damn the man who ever took his license from him, he would be the death of him. They took John Holloway's license from him, but God damn him he shan't take mine away. I'll have my revenge. I'll be the death of him. John was present and an Irishman when this was said. The Irishman said, No, Nick, you don't mean so. Nicholas said, Yes, by God, I do mean so. I would run him through just as quick as I can wink, and he

struck his fists together. Nicholas was the head man of the family. The rest did as he said. I described the clothes before I saw any of them. As soon as I heard of the death of Mr. Sprague and how it was, I told the woman whom I live with that I suspected who it was, and told her what I had heard Nick say, but told her not to say anything. I afterwards heard the Gordon's were arrested. This woman went down street and met Shaw, the constable, and told him she wanted he should come to the house. I described the clothes to Mr. Shaw, to Mr. Samuel Staples, and to Gen. Green, before I saw them. I told Mr. Shaw about what I had heard Nick say.

MISS FIELD, cross-examined—Mr. Atwell. Where do you live?

A. I live at No. 20 Benefit street.

Q. Whom do you live with?

A. With Mrs. Susan P. Garner.

Q. Was not Mrs. Susan P. Garner formerly known as Susan Parr?

A. Her name is Mrs. Susan P. Garner; I have nothing to do with any other name.

Q. Was she not called Susan Parr?

A. I have told you her name once, and shant tell it again.

Q. How long have you lived with Susan Parr?

A. I shall not answer you when you call her by that name; when you call her by her right name, I will answer you.

Q. Well, how long have you lived with Mrs. Susan Parr Garner?

A. Since August; she wanted me to help her.

Q. What time did you say John and William Gordon came over to this country?

A. In July last; I know they came over in July; I know they came then, because I was out at Cranston when they came.

Q. Where were you staying in Cranston at that time?

A. I was out on a visit to my mother, who lived out there; I was at my mother's house.

Q. How often did you go to Nicholas' shop?

A. I went sometimes three times a week; sometimes, perhaps, I wouldn't go more than once a week.

Q. What did you go to the store so often for?

A. I went to buy things.

Q. What did Nicholas keep in his store?

A. He kept thread, needles, pins and tape; some groceries; he did not keep calico or shawls.

Q. What did you use to buy when you went?

A. Well, I bought pins, and needles, and tapes, and thread, and other things that I needed.

Q. Did your stock of pins, needles and thread, require to be replenished as often as three times a week?

A. Sometimes I went for my mother, and sometimes for myself. Whenever I went home, I always calculated to carry my mother something. I never calculated to go empty-handed, when I went to see her.

Q. And you had to go three times a week to get pins and needles, did you?

A. Whenever my mother wanted anything, I went down there to get it; I liked to trade with Nicholas; got things about as cheap of him as of anybody.

Q. When did you cease visiting Nicholas' store in this manner?

A. Since last August, when I came in town; I have not been out there since.

Q. Why did you leave off going to see Nicholas?

A. I told you once; It was because I came in town.

Q. Did not your mother continue to live out there?

A. She did.

Q. Why did you not go out and visit her?

A. I was sick in August, and the winter was very cold.

Q. How many times was you at Nicholas' store in August?

A. I don't know how many times; I never counted them.

Q. Well, about how many?

A. Well, perhaps I was there ten times; perhaps more, perhaps less. One day I was there three times.

Q. Did you know what clothes William and John had, when they came?

A. I know what I saw them have on; that is all I know, of course. I don't know whether they had other clothes; how should I know what clothes they had, except what I saw on them? I am not in the habit of going into people's bed chambers to examine their clothes.

Q. How did it happen that you broke off going to see Nicholas so entirely?

A. Because I did not go out of town.

Q. Is your mother living there still?

A. Yes.

Q. Why have you not been in so many months to see her.

A. I told you once I was sick, and after I got well, the winter was so cold I did not go.

Q. Did Nicholas sleep at his shop?

A. I can't tell whether he slept there or not; I was not there when he went to bed.

Q. How did you happen to know so much about his clothing?

A. I know what I saw. What clothes I saw him have on, I know about; I don't say he did did not have other clothes than these.

Q. You know William and John, do you not?

A. I know them when I see them.

Mr. Atwell—There they both are, which is William, which and John?

Witness turns, points to William, and says, that is the one I am not so well acquainted with; that is John; that one, pointing to John, is William.

Mr. Atwell—There, you may go now.

Attorney General—Miss Field, which is the one that tended the store?

A. Pointing to John; that is the one.

WILLIAM MANCHESTER. Have heard Nicholas S. Gordon speak about Amasa Sprague.

Mr. Atwell. Were there threats made in the presence of either of the prisoners?

Ans. No.

Mr. Atwell. We object to this testimony, of course. We do not wish to argue the point.

Att. General.—I now propose to prove the expression of hostile feelings and bitter enmity on the part of Nicholas H. Gordon towards the deceased, although not made in the presence of the brothers.

Mr. Carpenter and Atwell.—To all such testimony we object.

Mr. Atwell.—We shall not argue the point, but leave the Court to decide it; it is too plain to require any discussion.

Att. General.—The grounds on which we offer this testimony are these. 1st. We think that we have made out by the testimony thus far, the existence of a conspiracy between these men. We offer these declarations as the declarations of one of the co-conspirators, which are to be taken as the declarations of all. 2nd. On the ground that we have proved the prisoner to have been greatly under the influence of Nicholas and dependent upon him, and therefore these threats, and this animosity on the

part of Nicholas constituted a motive in John for the commission of the act.

DURFEE, C. J.—The Court think the testimony is inadmissible. Any threats made in the presence of the prisoners may be introduced, You must prove the existence of a conspiracy by independent testimony before the declarations of a conspirator not on trial can be offered in evidence against the others.

HARDIN HUDSON. Has heard Nicholas talk about Amasa Sprague; was talking about losing his license. John was present at the time; the other one I never saw before. Nicholas talked about losing his license; said it was all Amasa Sprague's doings, and he would have his revenge of him yet; seemed in a passion; did not think he meant what he said. Laughed at him. He was in a great passion, and kept so, for all my laughing at him; said he would come up with him if he lived. John said nothing about it; kept on about his business; Nicholas kept on talking. John did not seem to take any part in the conversation.

JOHN M. SHAW. Have had conversation with Miss Susan Field. She described the articles of clothing; some which I had not seen myself, and a pistol, which I then knew nothing about. Her description corresponded with the things. She described an old coat, light blue, very ragged, which he used to have on the seat of his wagon, and wore sometimes on stormy days. Described another coat like this one in court; one vest only of the lot here, and one not here; the dark one; green one she did not describe. Her description was full and particular.

Susan P. Garner told me on the Monday after the murder, there was some one at her house who could give me some information; I went up there, saw Miss Field; she told me about threats; that she should suspect the Gordons; said Nicholas did most of the talking; never heard such conversation from John or William; said Nicholas threatened Mr. Sprague in the presence of John and William; he used such language that John, perhaps, might answer, "don't talk so loud before folks."

Att. General.—We now propose to prove that Amasa Sprague, the deceased, did oppose and prevent Nicholas S. Gordon from obtaining a license. We understand the Court only to decide that the *declarations* of Nicholas Gordon not made in the presence of the prisoners cannot be allowed to pass to the jury. We offer to prove this as a fact known to the prisoners, on two grounds. 1. In connexion with the fact that the threats made in the presence of the prisoners against the deceased related to this act of his. 2. As an independent fact showing the existence of a cause of hostility in the Gordon family.

Mr. Carpenter.—We object to the admission of the testimony; we do not purpose to argue the point.

The Court consulted upon the question.

Durfee, C. J.—The Court think the testimony is admissible.

CHARLES F. SEARLE. A June town council, Mr. Sprague asked me to appear and request the town council not to grant a license to Nicholas Gordon. I went up, and made this known to the council; Nicholas Gordon was present; the subject was postponed to the next meeting.

A next town council Mr. Sprague appeared in person, and opposed the license; the license was opposed. I informed the council that at the request of Mr. Sprague, I appeared to op-

pose the license; the reason was, the badness upon the workmen, who were running thereal times of day and night. There were other licenses granted; several taverns and a stock license was granted.

ELISHA C. LAWTON. Is a member of the town council at Cranston; Amasa Sprague opposed the granting of a license; the license was not granted. He had had no license up to that time.

Cross-examined. It was given in evidence that the neighborhood was as much opposed to his having a license, as Amasa Sprague. The first remonstrance was rejected, on account of being written in pencil mark.

Next month Amasa Sprague appeared in person and opposed it; this was in July.

ROGER W. POTTER. Brought in William Gordon from Fenner's Ledge, on the day of his arrest; did not seem to me to be affected by liquor; walked perfectly well to the carriage; got in and rode as well as a sober man. He talked a good deal; said he could prove he was in Providence all day, not in Cranston at all. I think I cautioned him not to talk too much before me; I remarked when he came into court, that he had changed so much that I should not have known him; had shaved off the hair around his face.

S. B. CUSHING, recalled. I have made the calculation of the apparent time of sunset on the 31st of December, 1843. At the place where Spencer and Barker were at sunset on that day, it would be 4 o'clock 16 minutes; at the place where the body was found, it would be 4 o'clock 20 minutes; at Sprague's house, 4 o'clock 24 minutes; at Kingston, 4 o'clock 25 minutes.

Attorney General. We have no more testimony to offer in the opening.

Mr. Atwell. We propose now, under the last ruling of the court, to summon witnesses to prove that Mr. Sprague has had difficulties with others; and, also, to show that they had an opportunity to commit the murder.

Durfee, Chief Justice. Well, sir, you can offer such evidence as you deem expedient, and if the court think it competent, they can suffer it to pass to the jury.

MR. POTTER'S CLOSING ARGUMENT.

MAY IT PLEASE THE COURT:

After going so minutely, Gentlemen of the Jury, as I did in the opening, into the outline and nature of the testimony in the cause, I shall not now trespass, for any great length of time, upon your attention. I shall state to you the principal facts, the main points upon which the Government will rely, without commenting upon the evidence as I proceed. To do this is not my province, and I feel that it will be more ably done by the Attorney General, who will follow me in the close of this case on the part of the State.

I think, gentlemen, now that you have heard the testimony on the part of the government, that you will not charge me with exaggeration in the statement which I made of it in my first opening. The proof has fully come up to the statement which I then made.

I will here gentlemen, before commencing my remarks on the evidence, call your attention to the definition of murder as given in the books; because the language there used will give you a more clear and distinct idea of it than any that I can command. *Cited 1 Russell.*

The homicide being proved, the law presumes

it to be murder, and it is for the accused to show any circumstances going to extenuate or excuse the offence. With the law as thus stated I presume the learned council for the prisoners, will agree. The counsel for the prisoners, however, make no question of law in this case. They admit that such is the law, and those who are guilty of the commission of this offence, are guilty of no lesser crime than murder. I need not therefore dwell upon this point.

The indictment, in all the different counts, charges Nicholas S. Gordon as accessory before the fact, in the commission of the murder. The prisoners at the bar are charged in all the counts as principals; in some counts, the one as giving the fatal blow and the other, with other person or persons unknown, as accessory at the fact, aiding and abetting the commission of the crime, and so on alternately, alleging the murder to have been committed in different ways. But in point of law both these are equally principals, and, if guilty at all, equally guilty of the murder.

The testimony in the case is wholly circumstantial, made up of a great number of distinct facts testified to by different witnesses; but though thus circumstantial, the links in the chain are so close, and each so strongly connected with the others and all tending to the same result, as to afford to the mind the most irrefragable evidence of the guilt of the prisoners at the bar. I will say, gentlemen, that in my short experience I have never had, nor in my examination of the records of criminal jurisprudence, have I ever seen a case so strong and conclusive.

We prove these three men to be brothers. One of them, Nicholas, having been in the country several years, the other two having only come over last summer. We prove the existence of feelings of hostility between one of the brothers, Nicholas and the deceased. We show the cause of that hostility. It arose out of a fact which was calculated to produce bitter and revengeful feelings. It was an injury inflicted in that point where men are most susceptible. The deceased had been the means of preventing Nicholas S. Gordon obtaining a license, and by that means deprived him of a part of his gains. It was taking so much out of his pocket; thereby giving him the strongest motive for the commission of this act. In accordance with these facts, we find this man entertaining towards the deceased feelings of the direst hatred and revenge—not only *entertaining* these feelings, gentlemen, but expressing them in language as clear and as strong as language can express the feelings of the human heart. We find this sort of feeling to have been expressed repeatedly in the presence of the prisoners, accompanied by the most vindictive threats against the life of the deceased; they not dissenting from them; but on the contrary, in some instances expressly yielding them their assent and in others only cautioning Nicholas not to make such threats in the presence of others. And what is more natural, gentlemen, than that these prisoners, whom he had sent for to come to this country, who had lived with Nicholas S. Gordon, he being, comparatively well off in the world, whose passage money he had probably paid, whom he had clothed, fed and sheltered, one of whom at least at the very time of the murder depended on him for his daily support—should have sympathised with that brother in his feelings, in his partialities and his resentments; that they should have participated in his joys and sorrows, and in his

friendships and his enmities. Such feelings gentlemen are common to human nature. They exist to some extent in almost every family. The Father takes side with the son in all his quarrel, and the son takes side with the Father. From the mere natural relation and sympathy the friend of the one becomes the friend of the other, and the enemies of the one the enemies of the other. This then is the relation in which these persons stand toward the deceased.

We find the deceased murdered. It is in a spot well known to these prisoners, along a path which he was in the habit of travelling on that day. The prisoners knew of this habit. They lived in the neighborhood. They knew if they had concerted this murder when and where it might be perpetrated.

Starting at this point, gentlemen, we have proof the most cogent and convincing in regard to John Gordon. The morning after this murder, we find tracks leading from the place where the body lay across a swamp to where the gun and the coat were found—thence through the swamp by a concealed route to the nearest point to N. S. Gordon's house, and thence directly to the back door of the house. There was a regular beaten path leading from the spot of the murder where any person passing in that direction, and having no motive for deviation or concealment, would naturally have gone.—But, gentlemen, the man who committed this deed, coming from the scene of crime, red with the blood of his victim; the fatal weapon of death in his hands, and the bloody coat upon his back, certainly had a motive for concealment. These would have been damning evidence of guilt, if a human eye should rest upon them. He dared not go along that beaten track. It was daylight; if he, in this condition, should meet a man upon the road, his fate would be sealed; the gaze of the eye of his fellow man, would be as fatal to him as the ball which had just issued from his gun; the man would be amazed at his appearance, if he continued in the path he would, in less than five minutes, come upon the dead body of the deceased.—The connection between the two, would furnish the most positive evidence of his guilt. He had, therefore, a most powerful motive for concealment, and the swamp where the gun and coat were found, was the nearest place of concealment. This, too, was in the way to the house of N. S. Gordon, where he might exchange his cloths. The man who did this deed which man, we say, was John Gordon, took that track. He goes along the fence three or four lengths, from the bridge, gets over the fence, drops a slice of the breach of the gun, thence directly to the nearest of the thick pines in the swamp, there the gun is hid, thence to the coat, and thence is directly tracked to the door of Nicholas Gordon's house, where John Gordon lived. There we find a pair of boots wet, and which John Gordon acknowledges to be his.

I wish now to call your attention to the kind of evidence, by which John Gordon, is thus identified with this transaction. It is as strong, as conclusive, and as irresistible as any evidence of the most positive character can possibly be.

We find a single track leading from the dead body of the murdered man. We find it going first up to the spot where the gun covered with blood—the instrument with which the murder was, without doubt, committed—was found; going onward from thence to the spot where the bloody coat, which was as undoubtedly worn by the murderer, was found; and thence through the swamp to the house of N. S. Gordon. We find

the boots which went through that swamp at such rapid strides, the wet boots of John Gordon. This chain of circumstances seems to fix the guilt of the perpetrator of this deed beyond a doubt, even if there were no other circumstances in the case—standing uncontradicted and unexplained. There were no other tracks at the time. They were carefully examined.—They were measured with great care and exactness, by men of the most unimpeachable character, and who have testified to the facts here upon the stand, with great clearness and candor. The heel prints and the toe prints were both examined—the marks on the bushes were noticed. There were a part of the way, that is, between the place where the coat was found, and the causeway at Hawkin's Hole, other tracks at the side of the above, which were also examined. The measure of the first did not correspond with any of them. The tracks were examined by men who were in search of the murderer. They found tracks on both sides of the pond; they found them in the swamp; below Hawkins Hole; in the swamp on the other side of the beaten track, through that to the nearest point to Nicholas Gordon's house, and thence in a straight line to the back door of N. S. Gordon's house. Now the man who made that track if he had no motive for concealment, he could have gone to N. S. Gordon's house by a beaten path direct, and much shorter than the route through this wet and tangled swamp. Recollect in this connection, gentlemen, that a man going from the place of the murder to the swamp in the line where the tracks are found, cannot be seen for the greater part of the way, by one passing along the beaten track; and also bear in mind that there was no other place so handy for the immediate concealment of the gun and coat—this must have been the first object of the murderer—there was no other swamp near—that a man passing along where the gun was concealed, can be seen only by one going in the same line with himself; the cedars conceal him from view on either side. Well, when the man who took that track got to the drift-way by Hawkin's Hole, if he was going to Nicholas Gordon's, he would, as I before remarked, if he had no object for concealment, pursue the beaten path leading in the most direct way to that house; a path well travelled, and which was the usual passage way for those going in that direction; but the person who made these tracks, goes over the fence, across the bog meadow, into the dense and very bad swamp, on the other side of Hawkins' Hole, goes through it until he comes to the spot nearest to Gordon's house, and then takes the nearest route directly to the back door of that house. Gentlemen, it would seem as if the human mind could not resist the force of this testimony. It would seem as if the man who committed that deed left behind him evidences of his guilt literally written in letters of light.

We have the track from the spot of the murder, to the weapon with which it was committed, to the coat which the murderer wore, from thence by a secret and most unfrequented and difficult path to Nicholas S. Gordon's back door, where John Gordon lived. We have the boots acknowledged to be John Gordon's, wet at the time, and exactly filling these tracks. We have John Gordon with the very gun in hand nearly at the place of the murder, almost at the very day, with the coat almost as it were on his back. Truly, gentlemen, the circumstances and the proof almost seem to paint this man in the very commission of the act; they stamp his guilt indelibly upon him.

The identity and ownership of the gun is proved too by evidence more cogent and convincing than it is often in the power of the Government to present. It is proved to have belonged to John Francis, to have been left by Francis for sale at Almy's, to have been there bought by Nicholas S. Gordon, on the 7th of October last. We have thus traced it beyond the possibility of a doubt, to Nicholas S. Gordon. We shew the prisoners to have had access to it; nay more, we shew upon this very spot, this very gun in the possession of John Gordon. We find him pass in this direction twice with it, under the pretence of hunting, though at seasons when there was little hunting to be done, and where there was no game to be found. We find him passing in other directions frequently, but without the gun. Here is the brother of a man whom he had heard threaten the deceased—with whom he lived, and with whom he had cause to sympathise fully, with gun in hand, almost at the very spot of this transaction, and this gun is identified, identified I say beyond the possibility of a doubt, as being the weapon with which the deed was perpetrated. The particularity with which the gun has been identified in all its parts, from the minutest portion of the lock to the stock and the ram-rod, makes the most conclusive and irresistibly convincing piece of circumstantial testimony that could possibly be presented to the human mind.

We pass now to the coat. This is another strong point in our testimony, and the clearness and particularity with which it has been identified, is to me as astonishing as the other. It is proved on the very back of one of the prisoners. It is proved to be Nicholas S. Gordon's coat—proved so by a variety of witnesses, all of whom give their reasons. It is proved by Miss Field, and the particularity with which she described it before it was shewn to her, and the way in which she puts the coat on the back of one of the prisoners, is as convincing as the evidence in regard to the gun. It was an old coat. Nicholas flung it sometimes on his waggon seat, to sit on, sometimes threw it by the counter in his store, for the dog to lie on, sometimes wore it on rainy days, and sometimes John wore it. It has blood upon it. The man who committed the deed wore it. It is traced to John. All the testimony connects by connected and indissoluble links, the prisoner at the bar with this horrid deed.

Well, gentlemen, soon after the murder was committed, we find John Gordon on the Cranstons road, coming to the Kingstons'. He says tea is not ready at home, and he had come down there. He and the Kingstons go over to King's tavern, take two glasses of liquor each, come back to the Kingstons', and he is there when the news of the murder is brought. They all go up, as is most natural in such cases, to see the body. I say, gentlemen, most natural was it, when such a man as Mr. Sprague was found murdered, that the people of the vicinity should go to see his body. The curiosity which is natural to the human mind, would have prompted them to do so. But mark, gentleman, they all start for the avowed purpose of going to see the body of the deceased. John Gordon goes with them as far as the gate at the house, and there turns away; they go in; he does not go in. Think ye gentlemen, curiosity is not as strong in his breast as in that of other men? WHY did he not go in? Why go up to the house door with those who had expressed the intention of going to see the body, and then turn away? Why does he do this? If he is the same man who

had used that fatal gun and wore that bloody coat, who had made those long tracks with those wet boots not two hours before, he surely had a strong motive for not going in—for shunning that house. If he had a human heart in his bosom, he felt that he could not go in and look upon his victim. Human nature could not have endured that sight unmoved. He felt that his nerves, braced as they were by two drinks of liquor, were not strong enough to bear the sight of that murdered man, now that the fiendish passion which had instigated the atrocious deed had been sated—now that the excitement of action was gone. He feared that some quiver of the lip—some involuntary motion of the countenance—would betray the fearful secret struggling in his breast; that some searching eye would detect sure indications of his guilt.

We prove also that John had no black eye on the morning of the day on which this murder was committed, or on the day before. We prove that he had a bad bruise and swelling on his face on Monday night. We prove that he made false statements about this bruise; that he said he got it on Christmas, by a fall. We prove that persons who saw and observed him the day before, saw no bruise on his face. It must have been a bad bruise to have continued thus swollen and black for more than a week. Put this fact with the others—put that fact with the gun and the coat, the track, the boots, the fact of his not going in to see the body, and it becomes a fact of great weight, particularly when taken in connexion with the false statements, shewing a desire to assign some other day for its cause, than that of the murder.

I pass to William Gordon. He also is a brother of Nicholas S. Gordon; has been present and heard his threats against the deceased. He also has been in some measure dependent upon that brother, and had reason to sympathise in his hatreds. We prove him in the vicinity of the place of the murder, just before and after the commission of the act. He is seen with another, a taller man, on the Johnston road, with a gun under his arm, before two o'clock, in the vicinity of the spot. He is met by two men, one of whom had particular reason for noticing his appearance; for they met face to face in the track, and one had to turn out into the snow, to let the other pass; and as you well know, when two men meet each other in this way, each is reluctant to turn out, and they are apt to look each other in the face. These two men went out into Johnston, on a visit to a relative, and took tea there. When these two men returned, they met the same men whom they had before met on the road. They had no doubt of their being the same. They saw them coming across and out of the field where the murder was committed, into the road. One of the men had no coat on; he was in his shirt sleeves; he now had no gun; but the tall man had a gun; this other man, gentlemen, is probably one of those persons to the Grand Jury unknown, as is charged in some of the counts of this indictment. The men, gentlemen, who swear to these facts, are not swift witnesses; they are cautious and careful. One of the men whom they met was in his shirt sleeves. Most natural was it, that so bitterly cold a day as that, (31st day of December,) they should have observed a man out in the open air, in his shirt sleeves; common humanity would cause us to notice such a man, and on such a night to almost shiver from mere sympathy for him. Most natural was it, when they saw this man walking fast, holding his head down, that they should

have said, "that's a suspicious-looking chap." Most natural was it gentlemen, when they heard soon after of the murder of Mr. Sprague, and were walking home, talking over the affair between themselves, that they should have expressed their suspicions of these men, whom they had met under these circumstances. I know not how a human mind could have been constituted, which would not have entertained such suspicions.

We next find this man, who was seen in his shirt sleeves, on the Johnston road, and identified by two witnesses as William Gordon, the prisoner at the bar, coming up the hill, by Benoni Sprague's, on a run. We find him there at a time of day giving him ample opportunity to have reached there from the place on the Johnston road, where seen by the two witnesses. The distance is proved to have been walked in twelve minutes, and the river is proved to have been generally frozen over above the place of the murder, and to have been so narrow in some places that a man could jump across it. When we find him on the Cranston road, he is not walking at a natural pace, but is found going at a dog trot up hill, and by Benoni Sprague's house. He might well want to get where there were more people, to mingle in the crowd, where he would be less observed, and to get there as soon as possible. He must first get a coat; this he accomplishes by stopping at N. S. Gordon's; but home is not a safe place for him. He wishes to be further from the scene of the murder.

There is another little circumstance which goes to show the state of his mind. A sleigh has been overturned, and when he is first seen running he is thought to be running for the horses, but he passes directly on, under the heads of the horses, and continues running. He is afterward overtaken on the road by Mr. Arnold in a sleigh, with two horses both of whom had bells. They ride almost over him without his moving out of the track. He is so absorbed that Mr. Arnold is obliged to call out to him before he pays any attention, he then looks up and Mr. Arnold's little son says, "that is Nick Gordon's brother."

Then you have the contradictory statements of these two men as to where they were on that day; statements so plainly false, that they can be attributed to no slip of the memory—statements which, if innocent, they could never have made, but such as if guilty it would have been most natural for them to have made.

These, gentlemen, make the principal points in the case. I have adverted to them more minutely than I meant to do, when I commenced. And I ought perhaps to ask the pardon of the Court for exceeding the limits within which my duty as opening counsel for the Government confines me.

There are other points. The blood on the shirt—the pistol—the powder and balls found in the pocket of the coat, and in the vest—the wadding of the pistol and the pieces of newspaper, to which I have not particularly alluded, but which, with this mere reference to them, I leave to be commented on by the Attorney General in the close.

The frequency and magnitude of crimes, gentlemen, in our country of which almost every journal which reaches us bears testimony, devolves upon all men, concerned in the administration of the laws, a high and responsible duty; and upon none more imperatively, gentlemen, than upon Jurors. To them we look for the protection of our lives and liberties, for the maintenance of

law and the safety of society. If Jurors, when evidence is presented to them, which satisfies their minds beyond a reasonable doubt, from false sympathy, from fear of the consequences, from a regard to the prisoner or from any other motive swerve from their high and solemn duties—the community can have but little confidence in the protection of the laws. Remember, gentlemen, that the State has rights as well as the prisoners. Remember that you owe a duty to the community as well as to the accused.

Gentlemen, I caution you against mingling sympathy for the criminal into sympathy for the crime. Your duty is only to enquire into the guilt or innocence of these men of the crime with which they stand charged. You are to be satisfied that that guilt is proved by satisfactory evidence. Evidence, in the appropriate language of one who for many years filled with distinguished ability the office of Attorney General of this State—evidence is that which satisfies the mind; no better definition of it can be given.

What you have to ask, gentlemen, is simply: does this evidence satisfy your minds of the guilt of the prisoners at the bar. If it does, you are not to look to the consequences. You have nothing to do with that. Your oaths call upon you to say, under the law and the evidence as given to you, whether they are guilty, or not guilty; the consequences do not rest upon your heads. The pardoning power is not vested with you. You are to do your duty fearlessly, manfully, and without fear or favor. You are not to be swerved from it by any considerations whatever. So perform it, gentlemen, to the prisoners at the bar, so perform it to the State, so perform it to the community and yourselves, that when your verdict shall have been rendered and passed irrevocably from your control, and the time for reflection comes, you may feel the inward satisfaction and sustaining power arising from the conscientious discharge of a high duty and the approbation of your consciences.

With these remarks, of the jury, I submit this cause to you in the opening on the part of the government.

FRIDAY Morning.

MR. CARPENTER'S OPENING ARGUMENT.

Mr. T. F. Carpenter opened for the prisoners.

He said he had no doubt the jury were so impressed with the deep importance and solemnity of the duties, which devolved upon them as to have suspended their opinions upon the question of the guilt or the innocence of the prisoners, and formed as yet no settled opinion upon the case.

He had no intention of occupying much of the time of the Court. In his first opening his sole object would be to present briefly some of the points upon which they should rest in the close.

His view of the case thus far was, that the only evidence which had been introduced, connecting with any certainty either of the prisoners with this transaction, was the testimony of Barker and Spencer implicating William Gordon. They met two men on the Johnston road near the place of the murder, one in his shirt sleeves. Those men, he had no hesitation in saying were the real murderers of Amasa Sprague. These men testify that the man whom they saw was William Gordon. If William Gordon was the man seen by them; and if he was one of the two

men met on the Johnston road with a gun in his hand and afterwards in his shirt sleeves on a bitter day in December; then there is a chain of evidence which fastens this crime upon him, almost beyond a doubt. Was William Gordon that man? Bear in mind that this is the most cogent evidence which has been introduced into this case. It carries with it the most forcible conviction to the mind.

Now they proposed to prove by indisputable evidence that William Gordon was in Providence on the day of the murder at 3 o'clock; that fact can be established beyond all reasonable doubt. It was not requisite for the prisoners to prove this fact, because it was not necessary for them to prove that he was somewhere else on the day of the murder it is for the Government to prove he was there. He should not attempt to prove where he was; if two honest and intelligent men had not sworn that they in their opinion saw him on the Johnston road in the vicinity of the spot.

They proposed to prove that John Gordon was in town and attended church the morning of that day, and remained until afternoon. This proof would be offered to remove suspicion from the minds of the Jury in regard to the prisoners. It is not essential for everyman who is suspected to prove where he was on that day, but he should offer such evidence as would satisfy the Jury that John Gordon could not have committed that murder.

The proof offered by the Government is wholly circumstantial in its character. Circumstantial evidence is always to be regarded with distrust. It is a dangerous reliance in a matter of life and death. Of the laws governing this species of testimony, he should speak more at large when he came to comment on the evidence.

He should offer some evidence in regard to certain facts which have been proved by the government, and which, though they do not necessarily connect the prisoners with this crime, tend to prejudice your minds against them. His object would be, not simply to obtain their acquittal, but to obtain it by the introduction of such testimony as would remove from the public mind that suspicion of the prisoners' guilt which otherwise might be fastened upon them during their whole lives. The boots that were found, the tracks that were found, he should, in the close of his opening argument, examine step by step; the confessions, as they are called, would not escape his attention. They were substantially true, and with very little variation, which was easily accounted for, were the same story which the prisoners now, and always, from that day to this, have persisted in.

Without going further into detail, he should proceed to call their evidence, the applicability of which, the Jury's previous knowledge of the case would enable them readily to perceive.

WILLIAM GORDON'S ALIBI.

JEREMIAH BAGOT.—Know Wm. Gordon have known him since he came to this country. I saw him on the Sunday of the murder; I saw him at my house. It is the next house to the Catholic Church on Broad street. He came into my house when I was eating my dinner, near as I can judge about half past one o'clock. He did not stop five minutes. I did not get up from the table from the time he came in until he went out again. N. Gordon and Michael O'Brien were there at the same time. They all went away together. I don't know where they went; did not see them again

that day. Saw John Gordon in the Catholic Church at mass. He sat in No 10 and I sat in No 11, he on one side of the aisle and I on the other. Saw him after church; he came into my house and asked for Nicholas's paper; took it and went out. I looked at the clock, said it was quarter past twelve. I looked to see if there was time to go to the Post Office before it was closed; it closes at one o'clock on Sundays. I have often seen John and William Gordon. They generally called at my house on Sunday. They seemed to be very nice men; I never saw anything wrong in them. William worked in this city with a man named O'Brien a tailor he lived in the city at the time of the murder; dont know for how long.

Cross-Examined.—It was the Boston Pilot which John took for Nicholas. It was about half past one o'clock when William came in; did not look at the clock; I started to go to the Post Office; met Nicholas down by the corner; asked him to come home to dinner; the bells rung for one o'clock as we got to Richmond street; went home sat down to dinner and while at dinner William came in.

MICHAEL HOLOHAN.—I know William Gordon. Known him from a while after he came here. I saw him Sunday, Dec 31st, the day of the murder; saw him in the Catholic Church at mass; saw him between one and two o'clock; came to my house, he and Michael O'Brien; remained there until half past two pretty near. He dined with me together with Michael O'Brien and the man that boards at my house, Jeremiah Ryan. I was going to a funeral down street. I got up said I must leave them, or I should be late to the funeral. Wm. Gordon was sitting by the stove, got up said he was going home. He left me went toward Hoyle Tavern. I went up toward the main st. My house is in Pond street; as I came out into main street, I saw the clock; It was half past two; I met the funeral near Mr. Martin's planing works. I thought John and William were very honest and peaceable men; John used to come to my house more than William. When I left he was going home.

Cross-Examined.—I came through Graves lane to get into main street. Can't say what time Church was out that day. Wm. came some time between one or two o'clock I think; I had no clock or watch in the house. Can tell when he left because I looked at the clock in the street; As to the time when he came in, cannot tell except from my judgement. It was some over a half an hour after mass I think before William came to my house.

JEREMIAH RYAN—I boarded with Michael Holohan the day the Gordons came there; dont know what day it was; am acquainted with John and William Gordon. Saw William that day; I heard the next day that Sprague was murdered. It was to the best of my belief between 1 and 2 o'clock when William came in with Michael O'Brien. They staid to dinner. I was present when they went out. Michael O'Brien stopped with me. Holohan and William Gordon went out together. To the best of my belief William remained about an hour from the time he came in till he went out.

Cross-Examination.—Nicholas came in soon after; some one asked what time it was; Nicholas drew out his watch, said it was near three o'clock. William had then been gone some time; O'Brien went out with Nicholas when he went out. I depend on my judgement alone for the time there being no watch in the house. Nicholas stopped some time in the

house after three o'clock; can't tell how long William had been gone when Nicholas came home.

MICHAEL O'BRIEN.—Am acquainted with William and John Gordon; saw William on the day of the murder; first saw him at Church, at mass. Saw him after church; saw him standing at the door of the church; next saw him at Mr. Bagot's; after that at Mr. Holohan's. I asked William if he would not go in; said he did'nt care if he did. Dinner was not ready when we got there. William was going, but they said he should not go until he had had some dinner; he staid till a few moments after dinner; he and Holohan went out together; the time when he went out was about half past two o'clock; can't recollect exactly; judge from the time I left it was about half past two. Have known them since they came to this country; used to see John in town; saw him the Sunday of the murder. I called to see if Nicholas was going to town; he had gone. John said he was going and we came together. Some place this side Cranston met another man named Martin Norton. When we got to the half-way house John said, "Mike," said he, "see how my pantaloons are bursted." I looked and said that was bad. I let him have my coat to hide the tear. It was a darkish colored coat. John took it and put it on.

It was longer for John than I. I did not see the coat again till I saw it on John in jail. The pants were badly split. I got the coat in jail.

Never knew any thing against William or John Gordon; thought them quite nice men. I was at the christening; saw William Gordon come in; can't tell the time. It was late, and we were sitting down to supper; he had the same clothes on as in the morning. I had been there more than an hour when William came.

Cross-Examined.—Noticed that John had a swollen cheek; It was on the right cheek I think. Saw him in the morning. Got home from the christening about 10 o'clock. Mass is about 12. Went to the Post Office; came to Bagot's about 1 o'clock; staid a few minutes and went to Holohan's; met William at Bagot's house. It was after one; can tell the time only from my judgement. At Holohan's dinner was getting ready. William was there about an hour in all.

MARTIN QUICK.—Acquainted with William Gordon; not much with John. I saw William on Sunday December 31. Boarded in Knight street. After mass we had a luncheon. I stopped until about 3 o'clock. Met William over by the High street Bank; said he was going out to his mother's. I said "it is cold, I would not go out." Said he must go out and see his mother; she was sick, or he would not go out. He asked me if I would not take something to drink. We went into three taverns and could not get any. When I got down by the church they were just coming out from Vespers. This is generally about half past three o'clock; would not take five minutes to walk down there. I mentioned this to a great many, after I first heard William was arrested.

It was in the fourth tavern on the right hand side going out to Olneyville where we got our drink. William said he would go across there did not see him afterwards. I heard William had been taken up, said it could not be him as I left him at three o'clock mentioned this to Mr Baggot and to Mr Holohan within a day or two afterwards. Did not mention it immediately; did not wish to leave my work. Have not contributed any money towards this defence.

MICHAEL O'BRIEN—re-called.

Attorney General.—How long did William Gordon stay after dinner?

A.—Can't tell.

Q.—Was it five minutes, or twenty minutes?

A.—Might be five, might be twenty, can't tell; he stopped about an hour in all; it was about 10 o'clock when I got back to my boarding place from the christening. Nicholas asked me to go in and have some supper; told him no, it was too late.

Q.—Whom did you see at Nicholas'?

A.—His mother, the little girl, John and Nicholas.

Q.—Did you get your coat?

A.—No.

Q.—Why?

A.—I had no occasion for it.

Q.—It was a cold night, was it not?

A.—Yes.

Q.—You did not intend to give John your coat, did you?

A.—No.

Q.—Was any thing said about the coat?

A.—No.

Q.—Why did you not take it if it was a cold night?

A.—I was warm walking and had no occasion.

Q.—You said nothing about your coat then?

A.—I don't know that I did; did not tell him I wanted it, or speak of it; did not see the coat there. Nicholas walked home with me from the christening. Heard nothing said at Nicholas' when I was there.

Q.—You had heard of Mr. Sprague's murder had you not?

A.—Yes.

Q.—Was nothing said about it?

A.—I don't recollect there was; not a word.

Q.—Did not you and Nicholas talk about it going out?

A.—I don't recollect we did; I to Nicholas or he to me.

Q.—Where was you when you first heard of Mr. Sprague's murder?

A.—At a tavern near Hoyle tavern.

Q.—Who was present?

A.—There were a good many; can't tell their names.

Q.—What was the first thing you said after hearing of the murder?

A.—I don't know, I believe the first thing I said was to ask for something to drink.

Q.—Did you say nothing about the murder?

A.—I can't recollect that I did.

Q.—Do you recollect saying you were "damn glad of it," or any similar expression?

A.—I don't know that I said so; can't recollect any thing about it.

Q.—And you don't know that a word was said about it walking out by you or Nicholas?

A.—I do not recollect.

Q.—You knew Mr. Amasa Sprague did you not?

A.—I did.

Q.—You had worked for him had you not?

A.—Yes, worked for him four or five years.

Q.—And you heard of his being murdered and said nothing about it, made no remark?

A.—I don't recollect saying any thing about it, I had drank considerable. I was able to walk but had as much as I could carry.

Q.—When you got into Nicholas' was nothing said there about the murder?

A.—Don't recolect there was.

Q.—Not a word?

A.—I dont know.

Q.—You past Mr Spragues house after you

left Nicholas, did you go in to see the body?

A.—I did not.

Q.—Were they a good many people there.

A.—There were.

Q.—Why did you not go in?

A.—I had drank a good deal and did not want to go before so many people.

Q.—Had you not heard any of the particulars of the murder?

A.—No Sir.

Q.—Had you no curiosity to hear about it.

A.—I don't know as I had, I did not think it a fit place for me as I was then.

CATHARINE HOLOHAN.—Know William Gordon; saw him Sunday of the murder at my own house. He came in betwixt one and two as near I can judge. Staid to dinner, and about half an hour after dinner, as near as I can judge. Went out with my husband; stopped an hour at my house. Was not in any hurry until my man said I must leave you, I am going to a funeral. Whilst they were at the house the Sunday school bell rung. It rings at 2 o'clock.

DENNIS O'BRIEN.—Live in back street in Providence. Am a tailor, William Gordon worked and boarded with me last October. The Sunday of the murder William left my house, dressed in his Sunday suit; which he has worn every day since he has been living with me. Saw him again a few minutes past six o'clock in the evening. He was dressed in the same clothes he was when he went away in the morning; blue-black frock coat, silk velvet vest, blue pants and hat. Came from the christening about half-past eight, with Nicholas and O'Brien. He went back again to the christening; told him not to be out late. He appeared the same that night as the first day he came to me. He came home about half past nine o'clock. I heard of the murder of Mr Sprague next morning William turned round and said Mr Sprague says he, I can hardly believe that Mr Sprague is killed; did not converse with him particularly about the murder. A good many came in, he joined in conversation with the others. I have always found him a fair man and attentive to his work. Told me he was going to church I said to him you will be late. Said he would go to the High street church, expected to see his mother there.

JOHN GLEASON.—I was at the christening. Nicholas Gordon and John O'Brien came there sometime about sun-down. It was light enough to see faces. We took supper at a quarter past six. William came in just as we were sitting down; sat down and eat supper. Observed nothing peculiar in the appearance of his countenance or dress; same as at church. He was free, sociable, and pleasant, like the rest; and sung two very pretty songs. William went out once and returned back after a few minutes.—William sat next to Nicholas; but no conversation between them.

FRIDAY AFTERNOON.

THOMPSON KINGSTON.—Am acquainted with John Gordon. Known him since Sunday after he came to Cranston. Remember the Sunday of the murder. I lived with Amasa Sprague; was in his service. I came to town that day to go to meeting. I staid after the afternoon service. I stopped at Peter Carrighan's. I left his house about sun-down, or a little after. Went out by the Cranston road. Met William Gordon. I met him this side the half-way house. We both stopped and spoke with each other;—

did not take notice how he was dressed; spoke some five or eight minutes. Saw no difference in his appearance from usual. He said he had come out to see his mother; he thought she would be displeased with him if he did not come out and see her. He was going direct back to the christening. It was light enough to see him. I knew him before he got up to me. I left Providence in time, I thought, to get home before dark. The house I left last, is at the end of the town. It stands opposite to a street called Cranston street. I had to go from there to Mr. Amasa Sprague's. Intended to get home before dark. I never knew anything about the character of these men. I went in from Mr. Sprague's to the Kingstons to tell them of the murder. I thought perhaps they had not heard of it; and saw John Gordon there; he came with us along the road. One seemed as much amazed as the other, when the fact was told; and saw nothing different in their countenances. My brothers worked in Mr. Sprague's employ. I live now with Mrs. Amasa Sprague. My brothers and John came up to the house with me. My brothers are still in the employ of Mr. Sprague.—They had heard of the murder of Mr. Sprague, when I got home.

**THE OWNERSHIP OF THE COAT
BY N. S. GORDON DISPUTED.**

TILLINGHAST ALMY.—I never saw the coat exhibited here, on Nicholas Gordon, to my knowledge. I did not recognize it when I saw it in court. I often traded personally with Nicholas Gordon. I do not say I never saw this coat or that I ever did see it; I say I do not recognize it. I don't know but I had as good an opportunity to see Nicholas Gordon as Gerge Beverly had. I was away some, during the summer. Beverly might have been at the store more than me. If he wore the coat, I think, from my knowledge of the man, he would have worn it in the evening. I was usually there evenings.

Cross-Examined.—I think Mr. Beverly is an obsequious man; that he would notice a man's coat sooner than I should. I can't say I have seen this coat—I may have seen it twenty times—but I cannot identify it. Beverly remarked a man's dress more than I did; he would sometimes make an observation about the fit of a man's coat.

JOHN FLEMING.—I know Nicholas S. Gordon; used to see him five times out of ten, when he came in town; he stopped frequently at my house, with his waggon; he has been at my house for eight years, late and early. I never saw him with such a coat as that. I should have remembered it if I had. He wore a blue beaver-cloth, worn thread-bare, with velvet collar. I have known John and William since the 20th or 21st day of June. [Nicholas's greenish coat was here produced, and shown to the witness.] I have seen Nicholas with this coat on, frequently, but it is not the one I refer to. That was a beaver-cloth. I never knew anything against John or William. They were not quarrelsome.

Cross-examined.—I live now on India Point; moved there the 27th October last. The Beaver coat is a sort of Kersey coat; dark blue; had a faded velvet collar. I saw another old snuff-colored coat. I put down my name for \$5 towards this trial, but when I was robbed I took it off, because I thought I could not afford it. I have not taken an active part in preparing the testimony.

JEREMIAH BAGOT (recalled.)—I have

been acquainted with Nicholas S. Gordon for about 7 years. Seen him frequently. He often called at my place since I moved up by the Catholic Church. I have been there since 1839 or 40; bought it in 1841. He stopped there pretty much every week. Saw him in damp and dry weather. I never saw him have this coat in his possession or wear it since I have known him. In the winter services commence at two o'clock. It did last winter on 31st December. They usually last from an hour to an hour and a half, according to the length of the sermon. The Sunday school commenced at 1 o'clock last winter. I have never seen Nicholas wear the beaver coat spoken of by Mr. Fleming. If I had seen him wear such a coat as the one produced here, I should have remembered it.

JOHN O'BRIEN. I have known the prisoners since last June. I never heard anything against their character more than any of the neighbors. Known Nicholas since 1836. Seen him often. He boarded with me when he kept his store a year ago last July. Lived with me from 2d July to last of August. He was sick. I have seen all his clothes since he came to Cranston. All the clothes I see with him were brought to my house when he was there. I never saw him with such a coat, summer or winter, wet or dry. I have been in the store very often. I never saw this coat there. I have seen all his clothes; never saw this coat.

Cross-examined.—I heard Mr. Fleming when he was examined. I don't know but I have seen him wear another coat. I had a chance to see him morning and evening. He had another overcoat, a bottle green. Never saw any other overcoat besides the green coat. It was a long coat. Never saw him wear a top coat. He wore the blue one at my house. I never knew him to wear any other over coat within three years besides these two; the one here and the green.

ABBY N. KING. I have been acquainted with Nicholas S. Gordon for three years or more. He left boarding with me a year ago last June. He has not boarded with me since. I had charge of his clothes so far as to do his washing. His clothes he kept at my house. A few weeks at first he did not bring his clothes, then afterwards he brought them. He came to our house in September and staid until June or July following. I was asked by some person to see the coat found in the swamp at time of the grand jury. I never recollect seeing the coat until I saw it in the grand jury room. I did not then examine it particularly; only noticed that it was blue twilled cloth. (The coat was here shown to the witness.) I have never seen it before except here. He had a bottle green which was given to me to cut up. He had taken away a part of his clothes after he left my house before he took away his trunk. The trunk was there for some time. When I was moving the trunk one day it came open and I noticed some old clothes in it. This coat was not among them. Mr. Charles Searle requested me to look at this coat. (The coat with velvet collar was here produced and shown to the witness.) This is something of the make and colour of a coat which he bought when he boarded with me. It is very much worn now, but that was two years ago. He took his trunk away the Thursday before the murder of Sprague. I had asked him to take the trunk away before. His clothes were hung around a clothes room which I let him have to keep them in.

WILLIAM ARNOLD.—Am acquainted with John Gordon. Saw him on day of the murder about 13 rods from Rufus Sprague's house. He was going towards his house, as he said, from church; stopped and talked with him about buying some potatoes. Should suppose it was 2 1-2 o'clock. Rufus Sprague is about 50 rods this side of Amasa's.

Cross-examined.—He was going toward Nicholas.

Question by a juror.—Did you see any bruise on his face?

Ans.—I did not.

JOSEPH W. KING.—Am acquainted with John Gordon. Saw him on Christmas day. Saw him lying in the Cranston road about 8 miles out. He and William were together. William was a little ahead. When I first saw him his heels were in the air. He was trying to get up, but fell back two or three times. He was drunk. I took them both in my team to Nicholas'. Said they had been having a social cut. It was somewhere between 10 and 11 o'clock.

WET CLOTHES ACCOUNTED FOR.

MARGARET GORDON (a young woman sister of the prisoners) Came over to this country in June last. Lived part of the time in Cranston. Lived in this city with John J. Stimpson; lived with him 9 weeks. Lived with Nicholas while in Cranston. I came in town to live against his wish. Saw part of Nicholas' clothes. He might have had clothes which I did not see. Could tell those I have seen. (the coat found in swamp was shown to the witness.) I never saw that coat. I lived in the house, but was in the store only four or five times. I left home the day after William; was only out there once until Christmas. I went home the day before Christmas. Saw John Christmas day. It was 2 o'clock when I got home; John was there. His clothes were wet. He said he had got a fall. He went after a fowl over to Fenner's; came back in a short time. It was a turkey. John killed it. My mother was there, and Mr. Morrison and Michael O'Brien. All John's clothes were wet; told him to go up and change them. I supposed he went and changed them after killing the turkey. He was a little the worse for liquor. He had a mark under his right eye; said when he fell he got it.

Cross-examined.—We met John and William coming home from the first service when we went in town. It was a little after 2 o'clock when we got home. John had dark blue pantaloons. Did not notice what clothes he had on afterward; noticed he had on dry clothes. Could not tell what colored coat he had on when he changed; dark blue coat on when he got wet.

MICHAEL O'BRIEN.—Was at Nicholas Gordon's on Christmas day. William, Mr. Morrison, John, Nicholas, Margaret, and the little girl were there, and Mrs. Gordon. Was not there when the turkey was killed. Saw John that night; his clothes were not wet as I noticed, when I got there. Saw the bruise on his face; it was under the right eye, on cheek bone. Did not ask how he got the bruise.

Attorney General.—Do you recollect, Michael, on reflection, what remarks you made about Mr. Sprague's murder that Sunday night with Nicholas?

Ans.—I did not think I should have any occasion to make any remarks.

Q. What do you mean by that?

Ans. I never expected to be called here.

Q. Well, did you say any thing about it to Nicholas, or any one; and if so, what?

Ans. I do not think I made any remarks about the murder; if I did, I don't recollect them.

Attorney General.—That's all.

JOHN O'BRIEN.—Measured the tracks from the corner of Rodney Dyer's field—this is the measure—(witness here produced a piece of shingle) Waterman and John Demeritt were with me when I measured them. They are larger than John Gordon's boots.

PATRICK MORRISON.—Was at Nicholas Gordon's house Christmas day before the murder. Was there when John and William came in from meeting. John went for a turkey. John was reeking wet when he got back with the turkey. Said he fell in coming over the swamp. He was a little the worse for liquor. Did not see John change his clothes. He did not at once on account of killing the turkey. He wore a blue coat with gilt buttons, and blue black pants. John cut off the head of the turkey and some of the blood got on his pants. Saw a bruise on his face. Said he fell by the side of the bridge in the swamp and liked to have killed himself.

JOHN HEAP.—Saw Amasa Sprague on the day of the murder. Should think somewhere about three o'clock; not positive. He passed my door. I live on the lane, or driftway, as they call it.

CATHERINE CAMERON.—Saw Mr. Sprague on the Sunday of the murder; just as church was out. It was about 4 o'clock. He was going towards Rodney Dyer's school house, where church was held, just as we came out of meeting.

Cross-examined.—Judge that it was 4 o'clock only from meeting being just cut.

JAMES SHERIDAN.—Was on the road between Providence and Cranston on the day of the murder in the morning. Saw John Gordon on road. He had a long top coat on. I observed it was a kind of bottle green. The collar of the coat was turned under and I put my hand to it and fixed it. Saw the same coat on O'Brien at the jail. I never heard any thing against the Gordons.

WILLIAM TATELY.—Work with John Gordon at Drybrook as long as two months—perhaps more. Boarded at the same place with him. Never heard any thing against him. He was peaceable and quiet, as far as I knew.

JOHN DELANY (a young lad.)—Am acquainted with John Gordon. Know him by sight. Saw him on the Sunday of the murder. Saw him on the plane of the Arsenal House. He was going out. He passed by me. It was, I think, about 25 or 20 minutes past 2 o'clock. I had a little boy with me.

Cross-examined.—When I left Dean street believe it was about two; the boy with me said it was. I looked at the clock, but do not recollect the time. did not calculate the time until I was summoned. My brother told me the time the day I was summoned. I asked him if he recollected the time, I did not, and do not now, only that it was somewhere about two o'clock.

PATRICK HAWKINS.—Worked at Drybrook when John Gordon worked there. He was there in latter end of August till in November; remained until the works stopped; boarded with Benoni Waterman part of the time; he helped the madder dyer about his works; madder makes a stain like blood; a man working there could not help staining his clothes; John seem-

ed to be a prudent quiet man. I recollect a vest which he had which was much stained; a buff ground, I believe a red speck in it. His shirts were stained; he used to work in his shirt sleeves.

SATURDAY Morning.

EDWARD COIL.—Resided in Cranston at the time of the murder was opposite Mr Spragues store in the furnace room on the day of the murder. Mr Sprague came in there about 20 minutes after three, talked a little while and then went out never saw him again.

SENECA STONE.—Occupied the James Mason house near Gordons in December 1343, have lived there 21 years. People were in habit of going a gunning round there both in winter and summer. There was a road from my house toward the Gordons down by Hawkin's hole people coming from Fenners sometimes come that way should think a man might be seen passing across the field to the back door of the Gordon house from the Cranston road, have known Nicholas Gordon for five years has been my nearest neighbor. Saw him frequently some times three times a day, in all weather, never saw him with the coat on which has been produced here.

ELSIE BAXTER.—Live in Sprague's village; was at meeting in the afternoon of the Sunday of the murder. He was within a few steps of the School House as meeting broke up. It was, as near as I can judge, about half past three o'clock.

ACCOUNT OF JOHN ON THE SUNDAY OF THE MURDER.

ELLEN GORDON, (an old woman, the mother of the prisoners.) Was at home at the house of Nicholas on the day of the murder; at home all day. John came from church; could not say when, but should think it was two o'clock. He had Micheal O'Brien's coat on; told me he shifted the coat on the road, on account of the pantaloons being torn. It was torn before he went away; he went and shifted his pantaloons, put on grey ones; he came and sat where I was cooking dinner; dinner was not ready when he got in; we had salt beef and turnips and potatoes: boiled the water, put in the beef and potatoes and boiled them after he got home. He eat dinner, staid a little while and walked out at the front door. Did not see him again until after 7 o'clock, when he came back, told me had been to Kingston's; said he had heard of Sprague's murder and came home to tell me; had on the same clothes that he had on when he went out and went to church in, except the pantaloons. He came home a little past two. I put in the beef after he came in; kept it so late because I did not know what time he would come; the sun was pretty low when he went out. William came in soon after John had gone out. Said he had been to dinner in town; could not stop long for he was going to the christening. I had a bad cold at the time William had a child there. She was 7 years old last July. William came to see me. I was unwell; had not seen me since Christmas day; was unwell then and grew worse. Was at home Christmas day, after I came from church; got home about 2 1-2 o'clock. John went for a fowl after we got home. He got a fall and wet himself all over; said he got a slip and fell down; he had drunk a little too much liquor; had a mark

a little over the eye brow of right eye. He went over towards Johnston to get the Turkey. I wanted to change his clothes but he would not until he had killed the turkey; then he changed his pantaloons and put on dry. Did not see anything in John's hand when he went out on Sunday. Saw nothing but the bare clothes on his back.

Cross-Examined.—William's wife is dead.

Attorney General—Where did you say the bruise was on John's face?

A. It was over the eye brow of the right eye.

Q. Wont you put your hand on the place.

A. I can't put it on the place exactly it was somewhere over the eye-brow.

Q. How did John come home on Christmas day?

A. He came home on a team; William told me he fell in the road two or three times we met them as we went to church, on the Cranston road.

Q. How long did John remain at home on Sunday?

A. Until near 4 o'clock. I had no clock can't tell the time exactly.

Q. Did he come home again until he said he had been to the Kingston's?

A. No he did not come home until near seven o'clock.

Q. After he first came home, did he not go out and then come home and then go out again?

A. No, he did not go out until after dinner.

Q. Did you not state over at the prison that he came in, found dinner was not ready, went out came in and went out?

A. I do not recollect saying so. I don't recollect what I said over at the prison for I was so confused and troubled I did not know what I said.

Q. Are you now certain that your statements are correct?

A. Yes, I am certain they are. William was there but a short time, came out to enquire how I was. John and Nicholas both went in town. It was something after 4 when he came, to the best of my opinion.

Q. Did you not state at the prison that it was about 3 o'clock when William came in?

A. I do not recollect it

Q. Are you now sure it was 4 o'clock?

A. Yes, I am sure it was.

Q. When did Nicholas get home?

A. About 9 o'clock, John O'Brien came with him; came in, but staid only a few minutes. I was in the kitchen when Nicholas and John were arrested; there was a room between me and them; did not know what was going on; was at home Tuesday when the officers came to search.

Q. Did you leave the house at all on Monday.

A. I did not.

Q. Did anybody come there.

A. Nobody came to the house except William, he came early to know what the fuss was. John and Nicholas were then at Mr. Sprague's. William staid all night, slept up stairs.

Q. Did any one else come to the house?

A. Did not know of any one coming.

Q. Did Nicholas own a gun?

A. I don't know much about it. There was a gun there soon after I came there.

Q. Did you ever see John with a gun?

A. I might have seen him, can't say.

(The clothing found at the Gordon house, was here shown to the witness.)

The buff vest is John's, I boiled it to get the madder stains out. Nicholas had a vest like the dark one. Do not know the blue coat with brass buttons. The shirt belongs to Nicholas. Wil-

liam lived two months with Nicholas before he went to town. Know nothing about Nicholas having a pistol. I washed their linen for them. John had three or four pairs of pants, dark and light ones; a grey pair and a dark brown ribbed pair. (Brown pants shown.) Don't know about these. There were a good many old clothes there when I went there.

The brown ones are not the pair John owned. Have seen the blue coat with velvet collar; it is Nicholas'. I had nothing to do with the store. was seldom in there. Nicholas told me not to go in there. John wore blue pants to church Sunday, and put on grey when he came home. The grey ones he had on Christmas day. Did not wet his coat on that day, if it was wet he hung it up to dry, again. Saw some boots which the officer took on the day. I was so confused I did not care if they took everything.

Q. Were there any wet clothes in the house the day the officers came?

A. No, there were not.

Q. Are you sure?

A. Yes, I am sure there were not wet clothes in the house unless it came in through the roof and wet them.

Q. The house did not leak did it?

A. No, sir.

Q. Could not the clothes have got wet and you not know it?

A. Don't think they could, I was not out of the house day or night. I did not wet them, and did not leave any vacancy for anybody else to wet them without my knowing it.

Q. You did not wet them?

A. No, I did not. The grey pants were the ones John wet. They were dried again.

Q. When were they dried?

A. They were hung up the same day, remained two days and were dried. It was toward four when John eat his dinner, he went out about four.

(Coat found in the swamp shown.)

Never saw such a coat as that on either of my boys.

Q. Did Nicholas have any overcoat?

A. He had a frock coat, but don't know of any othercoat than that produced here. Heard them talk about one given to Mr King.

Mr. Carpenter—Mrs. Gordon do you mean there were no wet clothes in the house on Monday, or that you had not wet any?

A. I never wet a stitch of clothes for any of them from the Friday before.

(Mrs Gordon requested leave to go out of the Court room into the open air. She seemed very feeble and sickly. She was permitted to do so.

DENNIS O'BRIEN—I measured Nicholas Gordon for a suit of clothes; never saw him with such a coat as this produced here.

OTIS STONE—Lived with Seneca Stone in December last. Know Nicholas S. Gordon five or six years; saw him sometimes three or four times a day, sometimes not so often, never saw him have the coat here produced, on, or any of his family. Saw him in all weather.

The prisoners' counsel stated to the court that they had then no further witnesses. There were two more, whom they wished to examine. They stated what they expected to prove by them, and the Government proceeded to put in re-butting testimony.

REBUTTING TESTIMONY.

RICHARD KNIGHT.—I measured the boots found, with a stick. They compared, as near as I could measure.

Durfee, C. J.—This testimony is cumulative. The evidence of Demeritt and Waterman has not been impeached on this point.

Attorney General.—I offer it in contradiction of John O'Brien, but will not press it.

Q. Did Mrs. Gordon make any statements to you relative to the time John came home on Sunday.

Mr. Carpenter.—We object to that question. Mrs. Gordon was not questioned in regard to any conversation with Mr. Knight.

Attorney General.—I thought I questioned her on that point. I intended to do so. If I did not I must recall her upon the stand.

ELLEN GORDON (recalled).—

Att. General.—Did you make any statement to Gen. Knight about where John was on the day of the murder?

A. I don't recollect any thing about what I said.

Q. Do you recollect telling him that John came in about 5 o'clock and said Amasa Sprague was fixed?

A. I don't recollect saying so; don't know what I said. I was out of my mind that day; was so agitated that I did not know what I was about.

RICHARD KNIGHT (re-called)—Saw Mrs. Gordon the morning after the arrest of John and Nicholas. She told off a very straight story. Did not seem more agitated than now. I asked her who gave her the first knowledge of Sprague's death. She said her son John, when he came from church. She said she did not know. I asked her if it was sunset. Said she thought it was not. John came in; said Amasa Sprague was done for. Said no more; staid but a few minutes; I had no victuals and drink, and he went out and came back late in the evening. This was Tuesday forenoon before twelve o'clock.

(Mr. Knight, after taking his seat, got up and referred to Charles F. Searle.)

Mr. Atwell.—You need not have got any one to endorse your statement before it was contradicted.

AMY DYER, (a young woman.) [The clerk hands this witness the bible, and requests her to hold up her right hand, for the purpose of taking the oath.]

Witness. No, no, no, sir. I take no oath I can tell what I know without the oath.

Attorney General explains to the witness that the oath was administered in that manner out of respect to the Catholic form.

Witness. I want no swearing. I can tell what I know without that.

Attorney General. Have you any conscientious scruples against taking an oath?

No, sir, I will take no oath.

Durfee, Chief Justice. The Court have no remedy but to commit the witness, if the government insist upon her testimony.

Attorney General. We will waive the testimony; it is not very material. You may leave the stand, Miss Dyer, if you will not take the oath.

SOLOMON E. RISLEY. Preached at Dyer's school house at Sprague's village the day of the murder. Services began at 2 o'clock and ended between 3 and 3 1-2. I judge about a quarter past three.

RODNEY F. DYER. Was at the meeting at the school house the day of the murder. Think it broke up between three and half past three o'clock, as near as I can judge.

G. T. BEVERLY, recalled.—(Velvet col-

lared coat shown to him.) If I had been shown these two coats together, I should have said this is the coat Nicholas Gordon used to wear. I think this coat looks more like Nicholas Gordon's than the one found in the swamp. It looks more like Nick Gordon's than any one I have seen. I think it is the one I mentioned having seen him wear on rainy days,

Mr. Carpenter. You think, then, now, that you have never seen Nicholas Gordon have the other coat.

Witness. I cannot say that I have never seen the other coat, for he used to have an old coat in the waggon. I cannot say that it was the blue coat.

HARDIN HUDSON.—Have noticed the coat found in the swamp. Think I saw Nicholas Gordon wear it; he wore it drawing lumber and had it to ride on in the waggon. One day it drizzled and he had this coat on it was a very rough looking coat, this was last Spring, (the velvet collared coat was shown to the witness.) This I have seen hundreds of times. When the first one I spoke of got old he used to wear this common.

Mr Carpenter.—Have you been on the stand before.

A. I have?

Q. Was you sworn?

A. I Was

Q. You were sworn to tell the truth and the whole truth?

A. I was, and calculate to do so?

Mr Carpenter, that is all Sir.

JOB WILBUR.—*re-called.*—The day that I met John Gordon in the road was the Tuesday before the murder, I noticed his appearance He had on a thick darkish coat, a rough looking one, (coat found in the swamp shown) It would compare very well with this coat. I don't think the velvet collared coat looks much like it.

Cross-Examined.

Mr Carpenter.—Have you been on the stand before.

A.—I have?

Q.—Have you had any difficulty with N Gordon.

A. had no particular difficulty with him, he complained of me for selling without a license, I did not like that very well?

Q. Have you been to his house since.

A. I have not been there often, I went to him and told him I thought it was a mean trick; he said it was, but people came down drunk from my store to his, and he was accused of doing it?

Q. There were no hard words between you

A. Nothing particular?

Q. The conversation was all very mild and pleasant and good natured was it.

A. I don't know as it was?

Mr Atwell.—We request nothing further.

Attorney General.—Have you any prejudice against the Gordon's.

A. I don't think I have?

JOHN O'BRIEN.—

Attorney General.—Who was present when you measured the tracks by Dyer's bridge.

A. Mr Warterman, and Mr Demeritt?

Q. Did you measure at another time.

A. No Sir?

Q. How did you measure the tracks.

A.—I cut a bit of a tree and put it in the track and measured it with my thumbs?

Q. And this is the measure is it (The Attorney General referred to the piece of shingle handed into Court by Mr O'Brien on his previous examination.)

A. That is the measure?

Q. Did you cut this piece of wood from a tree.

A. No this is not the one I cut. I made this from that?

Q. When did you make this.

A. I made it yesterday?

Q. Did you not say when you handed that measure into court that it was the measure you put into the tracks.

A. No, I said it was the measure and so it is, it is the same length the stick I cut?

Q. How do you know.

A. Because I measured that stick, I measured it with my thumb, It was just ten inches long, my thumb is an inch wide, and my thumb went ten times across the measure.

Q. So you measured the stick you cut with your thumbs then made another measure out of a shingle yesterday by putting your thumb ten times along on it, and that you swear is the true measure of their track.

A. Yes Sir, it was ten inches long?

Q. Does not the width of your thumb depend on how hard you press it on the wood.

A. Yes Sir?

Q. And you are sure that you pressed your thumb just as hard on the stick you measured last January as you did this one.

A. Yes Sir, it was just ten inches?

Q. How do you know it is just ten inches did you measure it by a carpenters rule before you brought it here.

A. I did?

Q. But the first one you only measured with your thumbs.

A. I measured it with my thumbs they went just ten time across it it was just ten inches and so is this?

Q. And this is the only means you have of knowing the two measures to be of the same length.

A. Yes?

I never saw the coat produced here before. I heard different people say the coat belonged to Benoni Sprague.

Attorney General.—Who did you hear say so.

A. I heard a great many?

Q. Well, who were they.

A: A great many different people?

Q. Well mention one of them.

A. I heard James Sheridan say so?

Q. Anybody else.

A. Yes, a great many?

Q. Give their names.

A. I don't know who they were, a number of persons, I know James Sheridan for certain, did not hear him say so within one or two days after the murder, don't know as I did in a week after.

JOHN DEMENTT, *re-called.*—Measured the tracks from Dyer's bridge to the rocks, the tracks compared exactly with the other tracks* took them from the side by Dyer's, before you cross the bridge traced them by a couple of hay stacks along a wall to the first ledge to a gap where a man could go through, to the second ledge thence to the path-way, there they were lost on that side of the river. John O'Brien did

*The tracks here referred to are omitted on the plat, they commenced a little to the right of Dyer's Bridge to the south of the hay-stacks marked on the plat run along the wall to the first ledge of rocks, through a gap in that ledge to the second ledge which is the cavern rock, thence to the path leading to where the body was found. The reader will understand the subsequent testimony, and the argument better by dotting this track on the plat.

not give me any stick, nor cut any, nor apply any to the track in my presence, he did not have any measure, there was mud around Dyer's Bridge which made a distinct impression.

HORATIO N. WATERMAN.—Was with Demeritt when he measured the tracks; they went toward the bridge. Mr. Demeritt cut the stick to measure the track; he kept it; I had it sometimes and measured with it. Did not see John O'Brien have the stick at all; or measure the track; he did not to my knowledge.

ABNER SPRAGUE Jr.—Saw John O'Brien when he bought a turkey Christmas day; he bought it of Ben Fenner; I saw no appearance of his being drunk; there was no bruise on his face then; the bridge he had to pass over was a cart bridge.

EDWIN C. LARNED.—I took notes of the examination of Mrs. Gordon at the examination at the Prison. I was requested to take them accurately and carefully; I endeavored to do so; these are the notes which I took. (Witness here read his minutes of the examination at the jail, which varied in several material points from the same testimony of Mrs. Gordon as given on the stand.)

I saw no particular difference in Mrs. Gordon's appearance; do not think she appeared any more agitated then than now; her manner and appearance were much the same. She was told she was not a prisoner that she was discharged and was now brought in as a witness.

The following is the important parts of her examination at the prison as taken down by the witness. "John was at home about 2 o'clock; he remained a little while. He said he would walk out and perhaps dinner would be ready. He came in dinner was not ready and he walked out again; came in about 4 o'clock. He walked out on the road and came back about 7 o'clock."

NATHAN OMSBEE.—Was at Cranston on Tuesday after the murder; Saw two men with boots, fitting them into tracks; they were measuring at the time; I went down from String Bridge to the meadow; I found afterwards they were measuring in my track; I told them they were on my track. They put the boot into it, and it exactly fitted; the boot was smaller for the other track than for mine; when they found they were on my track they went to another. The men were strangers to me; Mr. Beattie was pointed out as one, by the witness; Mr. Rollin Mathewson designated as the other.

BENJAMIN FENNER.—Think I know John Gordon. Was at my house Christmas day I think; did not discover he had been drinking think he came for a turkey.

Q. Did he pay for it.

A. Oh! sister Polly attended to that. I don't know whether he carried the turkey home or not; think it was in the forenoon.

MONDAY Morning, April 15th.

ABNER SPRAGUE Jr. recalled. With John Gordon Friday before the murder; talked with him fifteen or twenty minutes; saw no bruise on his face then.

ROLLIN MATHWSON. Was over to the bridge with Mr. Beattie on Tuesday with the boots; don't recollect putting the boot into a track supposing it to be the track and some person saying it was his track; I did not put the boot in the track because there was no one track to be traced; there was no track, I think, which was the same for five successive steps.

WALTER BEATTIE, re-called. Don't

recollect of putting the boot into the track, and some one saying I had got on to his track; think I should have recollected it if he had.

The bog was so broken up we did not find the track at all there, and concluded it was no use to look.

NATHAN OMSBEE, re-called. I think Mr. Mathewson was one of the men measuring the track. The measure just fitted my track.

DAVID LAWTON. I was present when Beattie and Mathewson were there with the boots. They did not think they had the track; the snow was so beaten up we could find no tracks. I did not see them apply the boot to tracks, and a man come up and say they were his tracks. Was there all the time.

HUTCHINSON TILLINGHAST, testified to the same facts stated by the last witness.

ACCOUNT OF WILLIAM GORDON TO NEAR SUNSET OF THE SUNDAY OF THE MURDER.

JOSEPH COLE. I have seen William Gordon, but don't know him by name; that (pointing to the prisoner) is the man.

On the 31st of December I went from my brother's house on Atwell's Avenue. I had promise of work from Mr. Sprague; boarded with Mr. Knight. My brother went with me a part of the way. We went by the Cranston road; saw a man whom I thought was Nicholas Gordon. I walked slower, as I did not wish to overtake him; for I owed him a trifle and had not had the means of paying him; finally plucked up courage, and went up to him. Said I thought he was Nicholas. He said no. I am his brother; and told what his business was; that he was a tailor; and talked about wages, &c. Stopped at Mr. Knight's that night. Heard of the murder. When we got out to Mr. Knight's it was within a quarter of an hour of sun down. Knight's house is the next large house after Mr. Sprague's. William asked me to come along to his house. I said no; it is against the law. By that I meant that Mr. Sprague had forbidden the workmen to go to Gordon's store; and if I went there should not get any work. Went to New Jersey after I could not get any work there. Knight told me there was nothing against William, and I thought he was discharged.

Cross-Examined.

Attorney General.—When did you first see William Gordon after you met him on the road.

A.—I first saw him in a carriage coming up to the Court house the first day of the week.

Q. When did you first mention the facts you have now stated?

A. I mentioned them to Mr Knight on Tuesday after the murder.

Q. You saw William brought up here to be tried did you not?

A. I never saw him from that day until just as I saw him standing here.

Q. Did you not see him in the carriage coming up to the Court house?

A. No Sir.

Q. Did you not say so a few minutes since?

A. No that was Nicholas. He was in a carriage just along Cove Street.

Q. When did you next mention the circumstances?

A. To my brother after Mr Spragues murder. I did not mention it till after I heard of the arrest of the Gordon's. I knew the man a little.

Q. Did you send any word to Nicholas or his friends ?

A. I did not.

Q. Why did you not ?

A. I thought I had mentioned the matter to Mr Knight he was a competent man and that was sufficient. I told it to my brother and to a lamp-lighter by the name of Donelly. I told him it was Gordon the tailor.

Q. Why did you not mention these circumstances to Wm Gordon's friends, you knew Nicholas did you not ?

A. No.

Q. Did you not say you knew him and owed him ?

A. I knew him but little, bought something of him and owed him a trifle.

Q. By whose suggestion were you summoned to appear in this case ?

A. Chiefly by my brothers.

Q. Who did he tell to summon you ?

A. I can not say.

Q. Have you attended in the Court House during the trial ?

A. I was here the first day about ten minutes.

Q. Why did you not communicate this fact at that time ?

A. I thought I had once told it to Mr. Knight he knew me ; he was a competent man, and he would call me forward if it was important.

Q. You knew who was on trial didn't you ?

A. They were reading the indictment when I came in.

Q. Then you knew about it, didn't you ?

A. Yes, of course I did.

Q. Why did you not tell about it ?

A. I thought the man who walked with me had been discharged.

Q. Did you think William Gordon was discharged, after you came into the court room ?

A. I did.

Q. Where do you live ?

A. In Cranston.

Q. Who told you William Gordon was at liberty ?

A. I understood it from Mr. Knight ; this was when sitting at table at dinner, on Tuesday. I thought from what Knight told me, the man I saw on the road, the tailor, was set at liberty. I don't know that Mr. Knight said so, but he took it so calm, I judged so from his manner.

Q. He did not tell you so ?

A. No, sir.

Q. Did you not a moment ago say that he told you so ?

A. No. I said I understood him so.

Q. Then you thought so ?

A. I did.

Q. Where was this conversation ?

A. At dinner table with Knight, on Tuesday.

Q. When did you first understand that William was not discharged ?

A. The first was when I understood that one of the men on trial was a tailor.

Q. When was that ?

A. Last Saturday in the afternoon. I then told it to my brother.

Q. Did your brother say he was at liberty ?

A. No, sir ; he said he thought he was not.

Q. When did he first ascertain it ?

A. I can't say. He is in court ; he can answer for himself.

Q. Did your brother suppose William had been set at liberty ?

A. I suppose not, or he would not have told me that he did not think so.

Q. Did your brother and you have no conversation together about this matter ?

A. My brother had some conversation with me about it.

Q. Well, now if your brother had this conversation, did you not think this fact of enough importance, when these men were on a trial for their lives, to come forward and state it.

A. I did come as soon as I found out for certain ; but I did not find out for certain until last Saturday.

Q. But you and your brother had a discussion about this ?

A. Yes, Sir.

(Mr. Knowles here arose and stated to the Court that William Gordon had told him of his walking on the road with a man whom he did not know, and described the man ; he had been ever since in search of him ; but did not hear of this man until last Saturday.)

Q. Where did you meet this man ?

A. By the Arsenal, by the house on the other side of the road. I never saw him, to my knowledge, until that afternoon. He said to me he was a tailor.

Q. Has not the subject of this trial been much talked of in the community, and particularly among the Irish ?

A. This is the first time I have spoken of it in public anywhere.

Q. Was it not talked about in your shop ?

A. I did not remain many days. I went out of town. It may have been talked about three or four times.

Q. Where do you board ?

A. At my brother's house.

Q. Was it not talked about there ?

A. Not much ; they did not concern themselves much with such matters.

Q. Who did you find at Knight's, when you got there ?

A. I can not say. It is a great family when they are all at home.

Q. How high was the sun ?

A. Can't say ; it was just in the gloam of the evening.

Q. Had the sun set ?

A. It was close on sundown.

Q. How long after you arrived did you hear of the murder ?

A. I had had my supper, came out after supper, lit my pipe and sat smoking, when news came. It was not an hour after I got home.

Ques. by Mr. Knowles. When you heard the indictment read, did you then know or suppose that the tailor who had walked with you, was at liberty ?

A. Yes, I have always thought so.

JOHN COLE. Lived in the city about five years. My brother left my house to go to Mr. Knight's, on the Sunday of the murder. Went out on the Cranston road. Heard the Gordons charged with the murder, and from all the stories, thought them guilty. I told my brother so, but he said no, I walked out with one of them, and could clear him. He was confident that the tailor was discharged. I told him the tailor might be one ; but he seemed positive about it. I enquired of Mr. Bagot about them, and he said the tailor was on trial. I told him the circumstances ; he said, he is the very man we are looking for ; we have searched for him. I told him it was my brother ; and my brother came up as soon as he knew it.

THOMAS CLEAVELAND, *re-called.* It is my impression that William told me another man walked out to Cranston with him, whom he did not know, and that he treated him to cider, at the half-way house.

**MAN SEEN BY DYER'S BRIDGE ON
THE SUNDAY OF THE MURDER.**

JAMES STRATTON. Was in my own house on the day of the murder; live on the Johnston side. Could see part of the way over Dyer's Bridge. I stood at my window; saw a man coming round by the brow of the hill, by Rodney Dyer's. He put his shoulder to a tree, and staid there some time; say ten or fifteen minutes. He came from the brow of the hill towards the bridge; went along till he came to another tree, then came toward the bridge. The man had a gun, and was shorter than I am. I do not know the time. Saw the man before and after I saw O'Brien go along. He wore a dark frock. He looked pretty stout; had a gun; saw him an hour in all, to the best of my knowledge; can not fix the time when I first saw him. He wore a black hat, of common size; was in plain sight; the distance about one eighth of a mile.

Question by a Juror. How came you to notice the man so long? Did you suspect any thing wrong?

Ans. No, I did not. I said that was rather a lazy gunner.

FRANCIS M'CLOCKLIN, Live next house to Stratton's. On the Sunday of the murder, saw a man in the potatoe field, walking along the stone fence, going towards the ledge of rocks; heard the report of a gun afterwards. From the time I saw him till I heard the report, was about fifteen minutes. Could not see if he had a gun; he was a tall man; taller than either of the prisoners. I remarked the loudness of the report. There was a tree between this man and me, the first sight. He was walking leisurely from the end of the wall toward the ledge of rocks; don't know where he came from. My testimony was taken down before Mr. Mathewson; did not know William; should have known John, if I had seen him in the clothes he used to wear.

Attorney General. Can you tell whether that man was William or John Gordon?

Ans. I can not say. I only say the man seemed to me a taller and stouter man.

JOHN O'BRIEN. Went a gunning on Sunday of the murder. (The witness described the route which he took on the plat to the Jury. The testimony was not important, and was given in such a manner that it could not be noted down.) When I got by the haystacks, (see plate) I looked round and saw a man standing by the oak tree, by Dyer's Bridge, under the bushes; don't know who it was; he drew back when I saw him; can't tell who the man was; never saw him about there, to my knowledge; pointed out the track to Mr. Mathewson and Mr. Knight.

ROLLIN MATHEWSON, re-called. Explained to the Jury on the plat, the route which O'Brien told him he took on that day.

RICHARD KNIGHT, re-called. Pointed out the route O'Brien designated to him as the one he took on that day; (these two witnesses explained this on the plat to the Jury, and pointed out some differences between O'Brien's descriptions.) I know Joseph Cole; he has boarded with me, and his two sons; don't know whether he came to my house at the time of the murder; don't know that I ever had any conversation with him about this matter. I never told him any body was discharged. Cole had been discharged from Sprague's works two or three times; twice certain. I never told him

any thing about a woman in the case, for I knew no such thing. Never had any conversation with him about the Gordons. I do not say I do not recollect telling him William Gordon was discharged. I say I did not tell him so. I could not have told him so, for he was not discharged. It was our policy to keep every thing secret, for the purpose of discovery; and I should not have said any thing about it; never was told of any man's walking out with William Gordon.

JOHN FORBES. Worked at Drybrook in the dye-house. John Gordon worked there; he helped me to run the dyes; the dyes stain cloth a red color, resembling blood. John's clothes were stained; his conduct was very correct.

JOHN E. NICHOLS.—(This witness was called to prove that Mr. Sprague was not in the habit of carrying a pistol.) I went often to Mr. Amasa Sprague's; never knew him to carry a pistol except once, when he went to Chepachet. He carried then one of Colt's revolving pistols; think I should have known if he had been in the habit of carrying a pistol; never knew of Mr. Sprague having any other pistol. I was in the habit of being at his house a number of times a week; was his clerk.

The testimony was here closed on both sides at 12 o'clock Monday, 15th April. The whole number of witnesses examined on both sides, was 102. Time occupied in the examination, six days.

Mr. Carpenter commenced his second opening for the prisoners, at 12 o'clock, and continued until the adjournment, at 1 o'clock. He resumed his argument at 3, and continued until 7, when the court adjourned. He resumed it at 9 o'clock on Tuesday morning, and concluded at one o'clock, having spoken nine hours. He went into a full examination of the testimony in consequence of the closing counsel, Mr. Atwell being unable from ill health to argue the case at length.

Tuesday afternoon, 3 o'clock. Mr. Atwell commenced his closing argument for the prisoners. He continued until 6 o'clock, when the court adjourned. Wednesday morning 9 o'clock, Mr. Atwell resumed his argument, and concluded the defence at 11 o'clock, having occupied five hours.

Mr. Blake, Attorney General, concluded the closing argument for the prosecution, at 6 o'clock, having occupied about five hours.

CHARGE OF THE COURT TO THE JURY.

DURFEE, CHIEF JUSTICE—

This is so entirely a question of evidence, gentlemen, that the Court can do little more than to give you their advice upon certain points, and leave the case to your sober judgment. The indictment consists of various counts which charge the same crime in various ways, for the purpose of meeting the facts which might be developed by the evidence. The prisoners are jointly indicted, but their pleas are several, and the verdict must therefore apply to them separately. You will be called upon to say whether John Gordon is guilty or not guilty—and whether William Gordon is guilty or not guilty, and you will pronounce both, or either of them guilty or not guilty according to the evidence given you.

The crime charged in the indictment, is murder—murder is the "unlawful killing of another with malice aforethought." The killing, or *corpus delicti*, as it is technically called, must be

clearly proved. *That*, in this case, has been most fully shewn. There can be no doubt that a most atrocious murder has been committed. I have been for many years upon the bench, and many capital trials have passed under my observation, and I will freely say to you, that no crime has ever come to my knowledge of such atrocity. It has no parallel in the annals of this State, nor one which can exceed it in the annals of any one of the United States. I make this observation not for the purpose of affecting your minds toward the prisoners, but with reference to the crime itself. As the State then, has clearly proved the commission of the crime, the next enquiry is who committed it, and in this case that is the sole enquiry. The presumption of law is, that every man is innocent until he is proved to be guilty. And it is in consequence of this presumption that the State are under the necessity of making out their case, not by slight presumption, but by the most clear and satisfactory evidence, before the accused is called upon to offer any evidence in his defence. And whenever your minds are fully satisfied on the view of the whole evidence, that the prisoners or either of them are guilty of the crime with which they stand charged, it is your duty to say so, without looking to the consequences of your decision. The accused may nevertheless be innocent—all human testimony is liable to err, or lead to error—but you have done your duty—there is the evidence and there are your oaths; and if that evidence satisfies your minds, you have no other course to pursue under your oaths, but to decide according to it. The idea that a jury, conscientiously deciding upon legal evidence, that an individual is guilty of murder, commit a crime, if the accused should turn out to be innocent, is not to be tolerated. It is your duty to render such a verdict, if the evidence satisfies you, and in no other way can you keep the oaths you have taken.

The evidence in this case is circumstantial in its nature. Evidence is of two kinds, positive and circumstantial. But much of that which is called positive evidence, will, if critically examined, turn out to be circumstantial. It is very rare to find a case of murder proved by strictly *positive* testimony. It is perhaps an idle question which of these two kinds of evidence is the strongest. The evidence of circumstances is equally conclusive with positive testimony, where it equally satisfies the mind. If but one person swear that he saw a man kill another, that is positive evidence, but the witness may be prejudiced. Were the same fact to be proved by a series of circumstances it would require perhaps twenty witnesses. In this case there has been more than a hundred sworn and examined. It is plain therefore that there is less danger from false swearing in a case which is proved by circumstantial evidence where the testimony of each witness constitutes a link in the chain, since their is less danger of perjury in the whole twenty or hundred, than in one.

In regard to the principles which govern circumstantial testimony, all that can be said, is, that the circumstances must be clearly proved upon which your opinion is to be formed. As to what circumstances are sufficient, no rule can be laid down—they must be such as to satisfy the mind beyond a reasonable doubt of the guilt of the accused—they must be such as you would act upon in the most grave and important affairs of life. The combination of circumstances which constitute the chain of evidence must be such as irresistably to fasten on the mind the conviction of the guilt of the accused.

Much has been said in this case about motive.

It is not in all cases necessary to prove the motive for the commission of a crime—there are cases in which the crime is clearly proved where the law infers a motive although no motive be shown. We have in this case permitted to pass to the jury, evidence of hostile feeling, and of its cause, and of threats expressed by Nicholas S Gordon, the brother of the accused, toward the deceased, made in the presence of the prisoners, that you may draw such inference from it as you think the facts shall justify you in drawing, with regard to motive. You are to give it such weight as you think proper—you are to determine for yourselves what effect his declared enmity would have upon the minds of the prisoners situated as they then were in relation to Nicholas S Gordon. If you think this hostility good ground for inferring the existence of a motive in these prisoners to commit this crime you will do so; if not, you will not do so. But the right of the Government to show the existence of any relations between the deceased and the accused, which may aid you in coming to a correct decision upon the facts which the evidence in the case reveals, we do not doubt. We have allowed evidence to pass to you of the identity of the gun with which the murder was committed and the gun owned by Nicholas S. Gordon, in order to show that the prisoners had access to it, and might have used it if they pleased.

We propose now to offer you some views in regard to the most essential part of the evidence in this case; which for the sake of the greater certainty we have committed to writing.

And first we will consider the evidence in relation to the opportunity which each of the prisoners had (if any) to perpetrate this deed. We begin with that which has been offered on both sides to prove where William Gordon was, on the day of the murder, and particularly at the hour of its perpetration. Without attempting to recite it, we shall content ourselves with advising you, generally, as to the manner in which you may estimate its value and effect.

If you regard the facts on the part of the State, and on the part of William Gordon, in relation to his opportunity to be present at the murder, as supported by evidence of equal force, then, since it is contradictory, or at least conflicting, it can, when taken together, yield no legitimate inference—no safe conclusion. It will suggest an hypothesis or supposition consistent with his innocence, just as readily as one consistent with his guilt. From such evidence no inference can be drawn that will not be accompanied with its doubt. And on the ground that he is to be presumed innocent until he is proved guilty, it will be your duty to return a verdict of acquittal. You will understand me here as speaking in relation to the testimony of Barker and Spencer on the one hand, and of the countrymen of William Gordon on the other. In making these remarks, I do not mean to weigh the credibility of the witnesses, or to consider their opportunities for knowing and identifying the accused.

That is a matter for you, gentlemen. I take the evidence as it is presented. You may come to a different result after determining what is entitled to credit and what is not. But I will make this remark; that when a witness testifies to facts, not inconsistent with the undoubted evidence in the case, and his character for truth is in no way impeached, and his testimony is not brought in question or doubt by the cross-examination, or by his previous declarations, or otherwise, he is entitled to full credit as a witness, who ever he may be.

This is all I feel it necessary to say in relation to William Gordon. Let us now pass to the other. Did John Gordon have an opportunity to be present at the murder.

If you believe the mother of the accused he clearly had not. But you will have to estimate the credit to which she is entitled, and in doing this, you will necessarily consider the relation in which she stands to the accused—her manner of testifying here—the consistency of her story with undoubted facts in the case—her declarations to Mr. Knight, made a day or two following the murder, as to the time of John's absence, what he said on his return—and her evidence given before the magistrate, and read here by the witness who took it down in writing, and if you should not consider her entitled to credit here on the stand, then the question of opportunity must be decided by other reliable testimony in the case. And if on the whole you should be led clearly to infer that he had opportunity, you will then pass to the other facts, clearly proved; and consider whether they be or be not consistent with the hypothesis of his guilt. For though he might have a motive, and though he might have opportunity, yet these alone are by no means sufficient to justify a verdict of *guilty*. It is necessary to prove that he *used* his opportunity; and to prove that he was present at the deed, and in some way partaking in it. Not that it should necessarily be proved that he struck the blows or any of them, but that it should be proved that he was present and in any way aiding and abetting, or in some manner giving countenance and encouragement to him or them who did inflict the fatal wounds.

With a view to this point let me ask you—Is it proved to your satisfaction that the tracks *from* the body were traced to Nicholas S. Gordon's house, where John Gordon dwelt; that the instruments with which the deed, undoubtedly was done, belonged there; that the bloody coat belonged there; that the pistol found near the body belonged there; that the boots which made the tracks belonged there; and that of all persons who could have made those tracks, John Gordon alone was there shortly after the murder? If it be so proved to your satisfaction, the coincidences are appalling, and it is for you to say whether this combination of circumstances be, or be not such as to force the mind necessarily upon that full conviction of his guilt which excludes the reasonable doubt.

But you will still feel it your duty to ask yourselves whether this combination of circumstances may not yet be consistent with some presumption of his innocence growing out of the evidence in the case. For if the evidence in the case suggests another hypothesis, consistent with the innocence of the prisoner, and which accounts for these extraordinary coincidents, it will create the reasonable doubt, and you will return a verdict of acquittal.

The hypothesis set up in the defence, is that the man seen on the Johnston side was the real murderer, and that he was *not* John Gordon. To test the truth of this hypothesis, it will be your duty to enquire whether it be or be not consistent with the undoubted facts in evidence. To this end you will ask yourselves—Did this unknown man wear boots of like size with those which John Gordon claimed as his? Did he, instead of returning by the route on which he came, shape his course towards Gordon's house? Did he happen to have the Gun that was seen in the possession of John Gordon but a few days before, or one so like it, that the witness cannot well see the slightest difference? Did he have

the pistol here shown? Did he happen to have the coat with the short hair upon it; and a coat so very like to the one in the possession of the Gordons that it may not be easily distinguished from it? Did he direct his foot-steps to Gordon's back door, and there stop without entering the house? If there be evidence to justify you in coming to these conclusions, then a hypothesis is established which may as well account for this combination of circumstances, as does the supposition of John Gordon's guilt account for it. But you are not at liberty to *suppose* these facts to be so. They must be *proved*, or they must be fairly inferred from the evidence in the case. If they cannot be so inferred, and if there be no sufficient evidence to support this hypothesis, the mind is necessarily thrown back upon that inference in relation to John Gordon which is forced upon it by the combination of circumstances proved, and there it must rest.

A word as to weighing testimony and I shall have done.

If witnesses be of equal credibility, and have equal opportunity to know the same facts, and they contradict each other, no legitimate inference can be drawn from their testimony, and they leave the mind in doubt. If witnesses be of equal credit, but one has a better opportunity to know the facts than the other, that one must be believed in preference to the other.

Questions of identity are often questions of belief. I say this in reference to the testimony relating to the Gun, the coat, the pistol, and some of the testimony in relation to persons of the Gordons. So questions of time are also questions of belief, where a person has no artificial means of measuring it, and in all these questions, we must be governed mainly by the belief and opinions of those who are the best able to judge, or have the best opportunity of judging, and then their judgment may be rectified and reconciled by those undoubted facts in the case which make up the great body of the evidence. Gentlemen, this is almost exclusively a question of evidence, and the Court, as I have said, can do little more than give you advice.—You will now, after giving every piece of evidence its proper weight and considering the facts proved in their combination, come to your conclusion. If satisfied beyond reasonable doubt of the guilt of either, or both of the prisoners, make the result known by your verdict; but if you be not thus fully satisfied of their guilt it will be equally your duty to return a verdict of acquittal.

The Jury retired at about half past six o'clock, and the Court took a recess.

At a quarter before eight the Jury returned their verdict. The prisoners were required to stand up before the jury. The Clerk inquired of the Foreman,

"Have you agreed on a verdict?"

Foreman. "We have."

Clerk. "Gentlemen of the Jury, who shall speak for you?"

Jurors. "Our foreman."

Clerk. "Prisoners, look on the jurors—jurors, look on the prisoner; what say you, Mr. Foreman, is John Gordon guilty, or not guilty?"

Foreman. "GUILTY."

Clerk. "Gentlemen of the Jury, as your foreman hath said, so do you all say?"

Jurors. "We do."

Clerk. "Prisoner, look on the jurors—jurors, look on the prisoner; what say you, Mr. Foreman, do you find William Gordon guilty?"

Foreman. "NOT guilty."

The verdicts were then recorded.

Clerk. "Gentlemen of the jury, hearken to your verdict, as the Court have recorded it.— We find John Gordon guilty of the felony whereof he stands indicted. We find William Gordon not guilty.' Is that your verdict, gentlemen?"

Jurors. "It is."

William Gordon was then discharged.

MOTION IN ARREST OF JUDGMENT.

THURSDAY AFTERNOON.

Mr. Knowles in behalf of the prisoner, John Gordon, moved that his sentence be deferred until the next term of the Court, or until some day subsequent to the trial of Nicholas S. Gordon, advocating the motion upon two grounds. The first was, that Mr. Atwell, of counsel for the prisoner, had been constrained by severe illness, to leave the city, and consequently was unable to make and support that motion for a new trial, or in arrest of judgement, which his associates, the Honorable Court, and all who had attended at the trial, (in view of the facts to which Mr. K. adverted,) had every reason to believe he would make were he now present.

The second ground was, that under the circumstances, the prisoner might well claim what humanity and public policy would seem to dictate, that he be suffered to live until his brother, the alleged instigator, Nicholas S. Gordon, should be tried. It had been well said that the murder of Mr. Sprague was without a parallel in this country. It might with equal truth be said, that the conviction of the prisoner in this case, was without a parallel.

The case was peculiar. The paternal relation between the prisoner and Nicholas S. Gordon was really the controlling fact, from which the evidence affecting John, derived all its relevancy and force. John Gordon is pronounced guilty of murder, because Nicholas S. Gordon is—*not proved*, but—assumed or suspected to be the guilty instigator. On the trial of Nicholas S. Gordon, facts might be elicited, which would show that John Gordon is innocent. It was within the power of Nicholas S. Gordon, be he guilty or innocent, to explain all those facts, which are supposed to warrant the verdict against John. Indeed, he is the individual to whom we should naturally first turn for an explanation in relation to the gun, the coat, the tracks, &c. &c., of which so much has been heard in this trial. He has, as yet, had no fit opportunity to furnish such an explanation.— On his trial that opportunity will be afforded. Till then, let the prisoner live.

Mr. Potter, on the part of the Government, replied: That if he rightly apprehended the gentleman, the grounds of his motion were, that the verdict of the jury was based upon the testimony admitted, and which was objected to as illegal, and that if the sentence was postponed until the trial of N. S. Gordon, something might possibly come out tending to exculpate the prisoner. He meant to state the grounds of the gentleman fairly, and he believed this to be the substance of them. He was surprised to hear the gentleman assert that the verdict of the jury was as unprecedented as the crime. Such an assertion, on such a motion, struck his ears strangely. Up to the time of the rendition of the verdict of guilty against the prisoner by the jury, he was taken and deemed to be innocent; but after that verdict was pronounced, he was deemed to be guilty. The

verdict is presumed to be a true verdict. And after the very long, full, and as he believed, truly impartial trial, which the prisoners had had, with the summons of the State at their command, surrounded by their friends and countrymen, who, to their credit, had been active in procuring all the evidence in behalf of the prisoners; and defended as they have been by four such able counsel, he was not a little surprised to hear such an assertion made. The gentleman assumed the whole question, viz., that the verdict of the jury, and the ruling of the court was wrong. The gentleman says he was ignorant of the points ruled. The court had minuted the point, and would inform him on request, very briefly. Or he would state previously the points ruled. And if the gentlemen were too modest to say themselves that they could apprehend them at once, as clearly as any one else, he would say it for them. It needed no delay. They were as competent to judge of it, and act upon it, as any counsel; not meaning to derogate at all from Col. Atwell's high reputation as a criminal lawyer. There was, therefore, no reason for a postponement on this account. But the gentleman says, and he (Mr. P.) believed he quoted his exact language, *that something might possibly come out on the trial of Nicholas S. Gordon, tending to exculpate the prisoner.* That possibly, perhaps, peradventure, something might come out to exculpate the prisoner. That Nicholas might then explain things.

Why, may it please the Court, Nicholas has had ample opportunity to explain. At the court of examination he was asked if he had anything to say. His lips were hermetically closed. His brothers had been on trial for their lives. One would suppose if he could or would explain away the proof the saving of their lives would have been a sufficient inducement. But the so called reason is too general, there is nothing definite about it; it applies as well to every case and every verdict as to this. Admit this to be a reason and a sentence could never be passed. Human judgement is fallible; and in every case there might be a possibility that time and circumstances would afford proof that, in any particular case, it was so. He thought that unless some other and stronger reasons than these were given, that the sentence of the law should be then pronounced. That when a crime, of this magnitude had been committed and a man, after so full and impartial a trial, by a jury of his country, had been convicted, high considerations of public policy, grave considerations affecting the administration of public justice and the welfare of the community, required that the law should take its ordinary course. That the crime, the conviction and the execution should be seen together. That men should see that the penalty of the law followed quick upon its violation. The Court he knew would give these considerations due weight. He deemed that no sufficient reasons had been given for postponement of the sentence; none which were not equally applicable to any other case.

The Attorney General said, after the very appropriate remarks of Mr Potter, he had but a few remarks to make. He would not oppose the motion did he not consider it his duty so to do. As to the point ruled by the court, the counsel for the prisoners can at once be informed of them and argue them. Gen. Carpenter has already argued one of them in the course of the trial. He deemed them perfectly clear, about which there can be no doubt. The counsel could argue them now or in the morn-

ing. The other reasons given he considered too general. A sentence could never be passed. They applied equally to all verdicts. That his duty constrained him to oppose the motion on these grounds. That the reasons are totally insufficient, and the sentence of the law should be pronounced and executed.

Gen. Carpenter. The notice is not a matter of right but addresses itself to the sound discretion of the court.

The Court said that they saw no reason for a postponement of sentence. That the court would be in session the next morning, and if the counsel for the prisoners thought best to petition for a new trial, they could be ready to do so in the morning, and the court would decide upon the matters then brought before them.

FRIDAY MORNING.

Attorney General moved that John Gordon be brought up for sentence. Prisoner brought in. Attorney General then moved that the sentence of death, the legal penalty affixed to the crime whereof he had been convicted, be pronounced upon him.

Mr. Knowles then presented a petition for a new trial, which he read and filed, and moved that on account of the necessary absence of Mr. Atwell, principal counsel for the prisoners, on account of severe sickness, that the trial of the Petition be postponed till the next term.

Attorney General said that a sense of duty compelled him to oppose the motion. That the questions to be argued had already been argued once, the counsel were familiar with them, and that that petition should be then tried or on the next day. An adjournment of the court to some earlier period than the next regular term was suggested. The court said that there was no time until July that was not already occupied.

PETITION FOR A NEW TRIAL.

Providence, sc.

SUPREME COURT. }
March Term, A. D. 1844. }

In the Case, The State of Rhode-Island vs. John Gordon:

And now on the twenty-second day of the Term, the said John Gordon, against whom a verdict of Guilty, has been rendered in the case aforesaid, before sentence passed upon him, moves the Honorable Court, for a new trial:

Because,

First, The Government, without having attempted to prove any conspiracy, or confederacy between him, the said John and Nicholas S. Gordon, his brother, was permitted to present to the Jury;—

1. Evidence of expressions of hostility towards Amasa Sprague, uttered by the said Nicholas S. Gordon in the presence of said John but not responded to, or acquiesced in by him.

2. Evidence of the entertaining by the said Nicholas S. Gordon, of unfriendly feelings towards Amasa Sprague.

3. Evidence of a supposed cause for hostile feelings on the part of the said Nicholas S. Gordon towards Amasa Sprague, to wit; the opposing, by the said Amasa, of a petition of the said Nicholas S. Gordon to the Town Council of the town of Cranston for a license to retail wine and other strong liquors.

And because,

Secondly: A paper purporting to be minutes of the testimony of one Ellen Gordon, given before the examining magistrate, shortly after the arrest of the said John, was allowed to be read to the Jury, to contradict and impair the testimony of the said Ellen as given for the said John on the stand on his trial; the witness producing and reading g said paper, expressly declaring that he had no recollection whatever concerning the said supposed testimony, other than that he intended to report it accurately.

JOHN GORDON.

By his Attornies,

SAMUEL Y. ATWELL,
THOMAS F. CARPENTER,
JOHN P. KNOWLES.

March Term, 1844.

Continued, and the afternoon of the first day of next Term assigned for a hearing thereon.

PETITION FOR A NEW TRIAL

State of New York
County of ...

In the Case of ...

NOTE.

Circumstance which the publisher could not control, have delayed this work a week beyond the time which he confidently believed, when the design of publishing it in this form was first conceived, would be required for its completion. Even now it does not carry out entirely the first design. When the first form went to press which was before the close of the trial, it was intended to embrace in this work all the arguments of counsel, and it was so stated in the title page; but the great length to which the trial was drawn out, and the length, particularly, of the closing arguments of Carpenter, Atwell and the Attorney General, which occupied three days of the Court, make this impossible without much further delay and swelling the work beyond the original design. With the exception of these three Arguments the Report is complete. These will be hereafter published by Mr. Larned, in a smaller edition, uniform with this.

For the general correctness of the work we are permitted to refer to the counsel in the Case; a few verbal and typographical errors will be discovered to be such without a reference.

On the map a line of tracks leading from Dyer's Bridge by the ledge of rocks to the old wall, near the place of the murder, and thence to the road near O, Brine's house was omitted by the Lithographer as unimportant. These tracks were introduced and commented on by the prisoners' Counsel

JOHN GORDON
RICHARD H. ATWELL
THOMAS F. CARPENTER
JOHN P. KNOWLES

March Term 1841
Printed and Sold by ...