


TRIAL, &c.



THE historian cannot approach a task more unwelcome to himself, or more distressing to human feelings, than the recording the depravity of a fellow being; the pain of the relation must be acute as the enormity of the crime is great. In this case, it amounts to that of MURDER, and that attended with circumstances as unparralled as they are appalling. "Of the dead," says the proverb, "speak not evil." Gladly would we consign to oblivion the deed of the *three brothers*, but the account has gone abroad, connected with some falsehoods and many inaccuracies. Justice to the parties calls for a fair statement; and the good of the living requires that the fate of the Thayers be spread before the public as a lesson and a warning.

John Love traded, occasionally, for about two years, in the neighbourhood of Buffaloe, in the Western District of the State of New-York; he was a man of persevering industry, and had accumulated some property. It would appear, that he made the most he could of his money, was a close man, and had generally the best of the bargain; those whom he sued gave him the name of a hard creditor: the best side of the picture, and charity should induce us to incline to it, represents him as sober, cool, and inoffensive; in his commerce with others, he probably took as much advantage as law would permit, and sought in that law an enforcement of the contracts they made with him. His dealings with the Thayer family were considerable, some or all of them were in his debt, and for the recovery of these debts he brought suits and obtained judgments. For the double purpose of avoiding his demands, and possessing themselves of his property, the three brothers Israel, Isaac, and Nelson Thayer, planned and executed the murder of Love. The latter was a man of apparently nearly 30 years of age at the time of his death.

Isaac Thayer, senior, and his three above named sons, lived in the town of Boston, in the county of Erie. In the indictment, on which the sons were tried, they are designated as labourers. The father is upwards of fifty years of age, the sons had arrived at vigour of manhood.

A close intimacy appeared to subsist between Love and his murderers, he had no family, and he frequently in his visits to the country resided at the house of the old man. As they were poor, it is surprising that he permitted them to be so heavily his debtors; this is attributed to his particular esteem for them. His having

sued them, and having taken out an execution against their property, is in itself no proof of friendship; but his holding the execution in his own possession, instead of placing it in the hands of an officer, is in support of the presumption that he intended to be as lenient as possible. There is evidence that there was a management in train between the three brothers Thayer, and Love, whereby the latter might have satisfactory security for payment in preference to other creditors, and yet use lenity towards them, on an execution to the amount of \$275, nor was this the only demand he held against them.

About the middle of December, Love disappeared suddenly. His friends, the Thayers, gave out that he was compelled "to clear out," having been detected in a forgery somewhere up the lake. Isaac undertook the agency of Love's affairs, and the collection of his debts, by virtue of a power of attorney, the execution of which was verified by an affidavit in the following words:

"I swear by the everlasting God, that I, Isaac Thayer, the undersigner, am John Love's lawful attorney, having received full power from said Love."

ISAAC THAYER.

Sworn and subscribed the tenth day of January, 1825, before me.
D. SWAIN, J. P.

This proceeding was well calculated to deceive the public and to lull suspicion, but the murderer seldom escapes detection and punishment. Scarcely was Love cold in his grave, when his agent Isaac Thayer proceeded to collect his debts, and succeeded in a few instances, he was proceeding and threatening suits, when having called on Amos Smith, Esq. and presenting his power of attorney, demanded payment of a note which Love had placed with Mr. Smith for collection, and which had been collected; this magistrate refused payment as the power of attorney was not witnessed. This was easily mended, the power was shortly afterwards presented, with the name of Nelson Thayer as a subscribing witness. The shrewd magistrate had frequently seen Love sign his name, and he unhesitatingly pronounced it a forgery.

The sudden disappearance of Love, which had already been much spoken of, became more and more the subject of conversation and suspicion. The Thayers from being in a state of poverty and embarrassment, became able to pay their debts, they had and sold Love's horse, they knew all about him, and no other person knew any thing, they had money and bundles of bills, their speeches respecting him were confused, dark, and contradictory. Appearances becoming so convincing that murder had been committed, and suspicion rested so strongly on Isaac Thayer, that he was arrested on the 19th February. The

examination of Isaac Thayer was made part of the evidence on his trial, and was as follows :

<i>The People,</i> vs. <i>Isaac Thayer.</i>	}	EXAMINATION, <i>February 19, 1825.</i>
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Prisoner charged with murdering John Love, pleads not guilty, and saith, the last time prisoner saw John Love in Boston, was near the lower school-house in Boston. Prisoner, Nelson and Love together, none others together. Love talked of his forging and other embarrassments, for which he expected to be pursued. Love then and there gave over all his obligations that were then due, to prisoner, and called Nelson Thayer to witness the contract. Love then departed in haste; it was about sunrise in December last, but can't tell the day of the month. Prisoner saw no other person, nor heard of any approaching or near them. Prisoner had never seen Love but twice since, the first was some weeks thereafter, the last time was four or five weeks past, not less than four weeks—at both times prisoner saw Love in a field, no body present nor near, had never seen Love in any house since he left Boston nor with any person, and further saith, he, prisoner, was gone two nights, each time that he saw Love, that he went alone and returned alone both times.

Isaac was again examined on the 21st Feb. of which the following report was also given in evidence on the trial:

“Isaac Thayer, on oath, saith, the last time he saw John Love in Boston, was from four to ten days after he parted with him at the school-house, as related on witness' examination on the 19th inst. was with Love on the west hill, in witness' father's house, in the evening, and had seen him twice, and no more; and further saith, when he parted with him at the school-house, it was about sunrise, and Love handed him all his notes and demands, and departed in haste as a man was approaching that Love heard was in pursuit of him—he did not have Love's pocket-book, but had the papers; and further saith, the other two times, when he saw Love, was in the day time—in a field both times. Had never seen him in a house, since he saw him at his father's, nor in company with any person. He went from home alone and returned alone, both times, and was gone two nights both times, that he went to see him. The last time he saw Love was three or four weeks past, and knows he had not seen him within three weeks.”

A search was now made for the body of Love. A man of the name of Stafford was the first to find the grave, the mangled corpse was removed to the school-house, where the Coroner attended with a Jury. After a careful examination, as far as evidence could be procured, the Jury brought a verdict of *murder*

against the four Thayers, the father and three sons, who were all arrested and confined to await their trial. It is proper here to state that there is no proof, nor any well grounded suspicion, at present, that the father was either concerned in the murder, or acquainted with the evil design of his sons. The old man is however confined in the jail, under the charge of being an accessory *after the fact*. It is supposed, and from some evidence on the trial of Isaac and Israel Thayer, Junr. can probably be proved, that the young men communicated the affair to the father after the deed was done, his crime and the one now imputed to him, is that he concealed the murder, or did not discover against his children—the law in this case would doom him also to death, but it is not supposed that such a hard fate will await a father who hesitated to be the evidence against *three of his children*, and that in a case which must send them to an ignominious death, and entail distress and disgrace on his whole family. It is expected that he will be released by a *rolle prosequi*, which would dispense with trial, or by a pardon in the event of conviction. The execution of three brothers for the same crime, an occurrence not before known in this or perhaps in any other country, will sufficiently satisfy public indignation, and produce all the effects that can be expected from public example. The blood of old Thayer is not sought for by any person, and his release will give no dissatisfaction.

The body of the murdered Love was found on the farm of Israel Thayer, Jun. not more than thirty rods from the place where the murder was committed. The scanty grave was too short to admit of placing the corpse, at full length, and of so little depth as to admit but of a covering of earth not exceeding eight or nine inches, it was made on an old path, no longer passable on account of fallen timber, the ground over the grave was made smooth, the body lay close by a log and the place somewhat hidden by brushwood so carelessly placed, that a prying eye might discover it from the new path which lay not many feet from it.

TRIAL.

The Court of Oyer and Terminer was held at Buffalo on the 21st April, 1825, his Honor Reuben H. Walworth, Judge of the fourth Circuit, presiding; assisted by E. Walden, Samuel Russel, John G. Camp, and Christopher Douglass, Esquires, Judges of the Court of Common Pleas of the County of Erie.

At this Court, Isaac Thayer, and Israel Thayer, junior, were put on their trial. The trial was continued until 10 o'clock in the evening, when the Court adjourned to the following day, leaving the Jurors in charge of an Officer, and directing them to avoid all conversation on the subject of the cause before them. At half-past 8 o'clock on the 22d, the Court was opened, and the trial proceeded. On the part of the prosecution, there appeared upwards of fifty witnesses; on the part of the prisoners, there were called twelve witnesses, some of these were the same that appeared for the prosecution. The Jury, after hearing the mass of evidence, the addresses of the Counsel, and an able charge from the Judge, retired at 11 o'clock in the evening of the second day, and after a deliberation of half an hour, returned into Court, and delivered a verdict of GUILTY against both prisoners.

On the following day, (Saturday,) the Court was opened at 8 o'clock, when Nelson Thayer was put to the bar, for the same murder of which, his two brothers had been convicted. The evidence was nearly the same as that against Israel and Isaac. The Jury retired after 11 o'clock in the evening, and returned in a few minutes with a verdict of GUILTY.

The evidence, the proceedings on these trials, and the confessions of the convicted, brought to light the following horrible facts.

The reader is already apprized that John Love was murdered by the three brothers, Israel, Isaac, and Nelson Thayer, the inducements to commit the crime have also been alluded to.

The murder of Love had been preconcerted and determined on, some weeks before it was executed. Israel Thayer's family consisted of a wife, and an infant child a few weeks old, and a very intelligent boy, named Daniel A. Pierce, about 11 years of age. The murder was committed at Israel's house. His hogs were killed on the 14th December, but not cut up until the following evening, evidently with the intention that any appearance of blood might be easily accounted for. Mrs. Pierce was induced to go on a visit to their neighbour Irish, the boy had permission (without asking it) to go to his mother's, who lived in the neighbourhood, a hog's pluck was given to him to carry home, and he was told he might remain during the night at his mother's. The house being thus cleared of all unnecessary persons, John Love

was decoyed to the house of Israel Thayer, where he proceeded accordingly, and agreed to spend the night there. A loaded rifle prepared by Israel was placed on a log near the house. Several persons testified on the trial, that they heard a gun go off in, or nearly in, the direction of Israel's house, on the evening of the 15th December; there was some variation in the testimony as to the positive evening, also as to the hour, but the confession of the prisoners after their conviction, which may on this point be relied on, states the hour at between 7 and 8 o'clock. While Nelson and Israel were in the room, and Lovel sitting at the fire and in conversation with Nelson, Isaac approached the window, took up the loaded rifle, and shot Love through the head, and then, without entering the house, went to the house of Sylvester Irish, which was a short distance from that in which the murder was committed. On the evidence of the Coroner who held the inquest at the school-house in Boston, over the body of Love, on the 24th February, it appeared, that the ball passed entirely through the head of Love, having entered above the cheek-bone near the outer angle of the eye. Love convulsively drew up his feet and shoulders, and remained on the chair alive, but apparently insensible of his situation. Nelson, hereupon, with the axe he had employed in cutting up the hogs, gave Love a blow near the ear, and a second blow upon the back of the head, Love fell, when he was supposed to have been fully dispatched by one or two blows as he lay on the floor. Nelson denies having given but one blow, the matter of several blows having been given is collected from the appearance of the body when examined at the school-house. The Coroner, who was also a physician, in his evidence before the Jury on the trial of the prisoners, stated, that in addition to the ball-wound, there was a wound on the back of the head near the crown, which fractured the skull bone, and had the appearance of a blow of an axe, also another wound or bruise behind the left ear on the temporal bone, and another wound on the face or cheek, extending under the chin and across the wind pipe; these wounds had the appearance of having been all inflicted by the same weapon, the flesh of the cheek hung down, having been cut to the bone; the flesh was, in one place, cut entirely off, so as to leave the bone bare; the neck was broken, as was the bridge of the nose. The evidence of another physician, Dr. Gould, was substantially the same as that stated by the Coroner. Dr. Gould thought there must have been two blows, as the injury done could not proceed from a single blow. The body was removed out of the house by the brothers Nelson and Isaac, and imperfectly secreted, whilst they deliberately returned to the work of cutting up the hogs. Isaac returned for a moment to the house, but did not remain long, having remarked that he did his part, and would do no more. The hogs being cut up, the blood

was washed away, but part of it adhering firmly to the chair, some of the bloody pork was placed thereon and so left. The body of Love was then removed and placed where it was subsequently found, on the 23d February, as already related. The two Nelsons then proceeded to the house of Irish, where Isaac and Mrs. Thayer were, and after remaining a short time, all returned together to Israel's. On their return, the meat was put away, and the chair washed off by Israel's wife.

Immediately after this transaction, the murderers possessed themselves of the property of the deceased, and by forged orders, and subsequently by a forged power of attorney, proceeded to collect the debts due to Love. After their arrest, a pocket-book was found in a chest in the bed-room of Nelson Thayer, with notes to Love, of which the following schedule was produced on the trial of Israel and Isaac.

1 note	Able Merriman,	6,000	feet boards to bearer.
1 do.	do.	7,000	do. do.
1 do.	do.	7,000	do. do.
1 do.	do.	6,000	do. do.
1 do.	do.	7,000	do. do.
1 do.	do.	3,800	do. whitewood scantling to John Love.
1 do.	do.	7,000	do. boards to bearer.
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7 Notes.	Total,	43,800	Feet.
1 Note,	John Stafford,	4,500	Feet boards to bearer.
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8 Notes for Lumber,		48,300	
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1 Note	John Stafford,	\$5,00	
1 do.	do.	2,00	
1 do.	do.	25,00	
1 do.	do.	450	
1 do.	do.	10,00	
1 do.	do.	15,73	
1 do.	do.	9,00	
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7 Notes for money,		\$71,23	

One note for 100 bushels wheat, signed Asa Carey, endorsed 80 bushels--Balance 20 bushels.

It should be observed that the Counsel for the defendant relied much on the circumstance, that no *positive* evidence was adduced in proof of the charge of murder; but the reader will see that, however guilty the prisoners, it was impossible to produce evidence, beyond themselves, of a crime, at the commission of which they alone were present. The reasonableness of admitting *circumstantial* evidence, and relying on it as sufficient to justify a verdict of conviction, is sufficiently apparent, because, were such

excluded, the murderer, who would escape punishment, need but commit the act without an associate. In the absence of positive evidence, the circumstantial should be very strong in order to satisfy a jury; it was so in this case. John Love had been certainly murdered, the neighbours had seen him in company of the Thayers on the 15th December, he was not afterwards seen, his horse was in the possession of one of them, and sold by him, about the 24th December, for forty dollars; the accused, or some of them, had possession of his property, a power of attorney dated January 8th, was a palpable forgery, the body was found within about 30 rods of Israel's house, the brothers had become suddenly in easy circumstances, although previous to December they were highly embarrassed, Isaac was known to have a rifle about the supposed time of the murder. These, connected with other circumstances, amounted to such a connected link of testimony, that it left no room to doubt. Their subsequent confession, if any doubt could have remained, must have settled the point.

On Monday, the 25th of April, the three brothers were placed at the bar, on the opening of the Court, at 10 o'clock, when his honour Judge Walworth proceeded to pass

SENTENCE,

In the following impressive manner :

Nelson Thayer, Israel Thayer, Junr. and Isaac Thayer—You have been indicted by the Grand Jury of this County for the murder of *John Love*, at the town of Boston, on the 15th of December last. You have respectively had fair and impartial trials, in which you have been aided by faithful and intelligent counsel. After a deliberate and painful investigation, of your several cases, by petit juries, they have been constrained and compelled by their consciences and their oaths, to denounce each and all of you guilty of a most foul and aggravated murder.—Have you or either of you any thing to say why the sentence of the law should not be pronounced against you, in pursuance of your conviction for this offence?

The feelings and emotions with which I enter upon the discharge of the solemn and important duty which devolves upon the court, and which I am about to perform, are too painful to be expressed. To pronounce the dreadful sentence which is to cut a fellow mortal off from society, to deprive him of existence, and to send him to the bar of his Creator and his God, where his everlasting destiny must be fixed for eternity, is at all times and under any circumstances, most painful to the court. But to be compelled, at one and the same time, to consign to the gallows

three young men who have just arrived at manhood, standing in the relation to each other of brothers, and connected with society in the tender relations of children, brothers, husbands, and fathers, presses upon my feelings with a weight which I can neither resist or express.

If in the discharge of this most painful duty that can ever devolve on any court, I should, in portraying the horrid circumstances of this case, make use of strong language to express the enormity of your guilt, and the deep depravity which it indicates, I wish you to rest assured it is not with any intention of wounding the feelings of your relatives, or for the purpose of adding one pang to your own afflictions, while the righteous hand of an offended God is pressing so heavily upon you. But it will be for the purpose, if possible, to awaken you to a proper sense of your awful situation, and to prepare you to meet the certain and ignominious death which shortly awaits you. It is to endeavour, if possible, to soften your hearts and to produce a reformation in your feelings; that by contrition and repentance you may be enabled to shun a punishment infinitely more dreadful than any that can be inflicted by human laws—the eternal and irretrievable ruin of your guilty souls.

From the testimony which was given on the trials of your several cases, there is no room to doubt the certainty of your guilt, or the aggravated circumstances attending the perpetration of the bloody deed. The man whom you have murdered was your companion and friend. He had loaned you money to relieve your necessities, and to support your families. He was the lenient creditor, renewing and exchanging his judgments and his executions from time to time to prevent the sacrifice of your property. He was the lodger of your father, and frequently enjoying the hospitalities of your own roofs. In the unsuspecting hour of private confidence, you decoyed him to the retired dwelling of Israel Thayer, Jr. and there, while he was enjoying the hospitality of the social fire-side, you stole upon him unperceived—you aimed the deadly rifle at his head, and with the fatal axe you mangled and murdered your victim, mingling his blood with that of your butchered swine. But your guilt and depravity did not stop here. Scarcely had you committed his lifeless corpse to its shallow grave, before you began to collect and riot upon the spoils of his property. To the crime of murder you added those of theft, fraud and forgery, and repeatedly imprecated the vengeance of Heaven upon your perjured souls.

The punishment of death has been denounced against the crime of murder, not only by the laws of all civilized nations, but also by that law which was written by the pen of inspiration, under the dictation of the unerring wisdom of the Most High. And as God himself has prescribed the righteous penalty for this offence,

as there is strong reason to believe that very few murders are committed, which are not ultimately discovered, and the wicked perpetrators thereof brought to merited punishment.

Wretched and deluded men! In vain was the foul deed perpetrated under cover of the darkness of the night; in vain was the mangled body of your murdered companion committed to the earth, and the lonely grave concealed by rubbish; in vain was the little boy sent home to his mother, and the unsuspecting wife removed from her house, that no human eye should be near to witness the foul and unnatural murder; in vain did you expect the snows of winter to conceal the grave, until the body of your victim could be no longer known and recognized. You forgot that the eye of your God was fixed upon you. The eye of that God who suffers not even a sparrow to fall without his notice. You forgot that you was in the presence of Him to whom the light of day and the darkness of midnight are the same; that he witnessed all your movements; that he could withhold the accustomed snows from falling on the earth, or his breath could melt them when fallen, leaving the grave uncovered and thus exposing you to detection and condemnation. His vengeance has at length overtaken you. The sword of human justice trembles over you, and is about to fall upon your guilty heads; you are about to take your final leave of this world, and to enter upon the untried retributions of a never ending eternity. And I beg of you not to delude yourselves with vain hopes of pardon, which never can be realized. Your destiny for this world is fixed, and your fate is inevitable. Let me, therefore, entreat you, individually and collectively, by every motive temporal and eternal, to reflect upon your present situation, and the certain death that shortly awaits you. There is but one, who can pardon your offences; there is a Saviour whose blood is sufficient to wash from your souls the guilty stains even of a thousand murders. Let me, therefore, entreat you to fly to him for that mercy and that pardon which you must not expect from mortals.

When you shall have returned to the solitude of your prison, where you will be permitted to remain for a few short weeks, let me entreat you by all that is still dear to you in time—by all that is dreadful in the retributions of eternity, that you seriously reflect upon your present situation, and upon the conduct of your past lives. Bring to your minds all the aggravated horrors of that dreadful night, when the soul of the murdered Love was sent unprepared into the presense of its God, where you must shortly meet it as an accusing spirit against you. Bring to your recollections the mortal struggles and dying groans of your murdered friend. Recollect the horror which seized you, while you dragged the mangled remains to the place of concealment. Think of the situation of your aged father, to whom you are in-

debted for your existence. Think of the grief of your distracted and disconsolate mother, who has nursed you in the lap of affection, and watched over the tender years of your infancy; who must now go down to the grave sorrowing over the ruins of her family. Think of the dreadful agonies, think of the unnatural and desolate widowhood to which you have reduced the unfortunate partners of your beds and of your bosoms. Think upon the situation of your poor orphan children, on whom you have entailed everlasting disgrace and infamy, and who are now to be left fatherless and unprotected to the mercy of the world. And when by such reflections as these your hard and obdurate hearts shall become softened, let me again entreat you, before your blood-stained hands are raised before the judgment seat of Christ, that you fly for mercy to the arms of a Saviour and endeavour to seize upon the salvation of his cross.

Listen now to the dreadful sentence of the law; and then farewell forever, until the court and you, with all this assembled audience, shall meet together in the general resurrection.

You and each of you are to be taken from hence to the prison from whence you came, and from thence to the place of execution, and there, on the seventeenth day of June next, between the hours of twelve at noon and two o'clock in the afternoon, **YOU ARE TO BE HANGED BY THE NECK UNTIL YOU ARE DEAD.**

And may that God whose laws you have broken, and before whose dreadful tribunal you must then appear, have mercy on your souls!

The Batavia (N. Y.) Press of the 18th June, has more than a column of editorial matter under the head of "Hanging." The following extracts from the above, will show the great excitement occasioned by the trial and condemnation of the Thayers—the vast crowds drawn to Buffalo to witness the execution of **THREE BROTHERS**; and the moral reflections of the Batavia editor on the occasion.

"Our road was full of pilgrims, on Thursday and Friday last, stoutly facing the dust and heat, or the rain and wind, and pressing for Buffalo, to see "the hanging." Many hundreds have passed this place; and through the numerous avenues which lead to the lucky spot, there must pour many thousands to feast their eyes on the death struggles of three of their fellow creatures.

"To us it is truly astonishing, that civilized and christianized people, can be actuated by so senseless and inhuman a curiosity; and it is easier to extend our pity, than restrain our indignation, when we see these multitudes, sweating and toiling over a distance of fifty or a *hundred* miles, upon such an errand, at an expense of time and money that they would not incur, to found, for the children of misfortune, a hospital, or an asylum; or to procure the construction of a canal from the Hudson to the Pacific.

"We are often driven to the last extremity to procure, from the liberality of individuals, the trifling sum of ten dollars, to effect the public objects of the most unlimited utility and importance; whilst for this censurable curiosity, many a family is taxed several times that sum.

"There is something grossly vulgar and unmanly in this kind of taste; and we are shocked and mortified to find it so general in a community upon whose intelligence and moral feeling we had set so high a value.

"We know of nothing more repugnant to every principle of religion, humanity, philosophy, and true honour, than a desire to behold the calamity of our fellow men.

"We are of opinion, that the publicity of capital punishments is a most pernicious policy; and that the substitution of solitary imprisonment for life, would be infinitely better for public morals than hanging.

"We are aware that the terror of the example is often urged as producing a salutary effect, and that all young people particularly, ought to see such executions. How much were the moral feelings and principles of the boys corrected and strengthened, who came here some few years since, to see poor Farnsworth hung, and who cried piteously because the president had pardoned him, and spoiled their *fun*?

"We have no doubt but spectacles of this sort are as expensive to the morals as the purses of those who visit them.

"The money and time which this show will cost, would found a respectable seminary, or erect a more splendid temple for the worship of the giver of all good, than any in the state. And the seeds of more crimes and follies will be sown in this scene of dissipation and confusion, than during years of quiet attention to the domestic and social duties of home and neighbourhood.

! “It has lately become the fashion for the murderer to become a *saint* before his execution ; and for the hapless victim of his inhuman barbarity, to be unceremoniously turned off into perdition because he happened to be sent into eternity without the ostentatious preparation which his more fortunate murderer enjoys.

“Can such examples be salutary, or calculated to deter others from crime? Most certainly not. There is something fascinating in the idea of being the object of so much attention and sympathy ; and the criminal generally has decidedly the best of the bargain. He is the hero of the play, in this world, and secure of heaven in the next, while his honest, but obscure neighbour can by no means attain his degree of consequence in the first, and may stand a great chance, without some such lucky expedient, to miss the last.

“There had better be no examples of punishment, than such as these. They should appal, rather than fascinate. The idea of being sent off in obscurity to the solitary cells of a state prison, without the least prospect of ever seeing the sun, or any human being but his keeper again, would have more terrors for a conscienceless villain, than so triumphant a parade as is generally destined to grace the sainted murderer in his elevation to the gallows, and to heaven.

“If convicts wish for spiritual aid and consolation, let them have it. But we think it should be administered like charity, without ostentation. If they can assure themselves of repentance and pardon, well ; but to take so much pains to assure every body else that they have obtained it, must be worse than useless.

“Infamy and contempt should follow with certainty, deliberate crimes, not distinction caress sympathy and glory.”

THE EXECUTION.

Extract of a Letter from Buffalo, dated June 17, 1825.

The scene which this town exhibited during the two past, and this day, is without a parallel in this district, or, for all I know elsewhere. The population of the surrounding country, for several miles, in every direction, seemed literally to have turned out to witness the melancholy scene which this day was to present to the public. The three unfortunate Thayers, who, previous to their conviction, had discovered much hardness of heart for the crime they had committed, have happily relented, and becoming affected with proper sorrow for the horrid act, have religiously implored mercy of that God, before whose tribunal they have appeared. Whatever could be done to prepare them for their last trial, has been properly attended to; every attention to their personal convenience in prison, consistently with the safe-keeping of their persons, was liberally allowed by the sheriff, and an almost unrestrained admission of their friends. Several of the clergy were in frequent and almost constant attendance on them for several days. The parting scene between them and their immediate friends is described as touching, beyond the power of description. The jail and the streets wrung with the most heart-felt wailing. The religious exercises in the jail this day were not over until near noon. By this time the ground on which the gallows stood, as well as the way from the jail to it, were so crowded by people, that it seemed as if it would prove difficult to make way for the procession. The numerous spectators were, however, very orderly, and neither accident or material interruption occurred. It was nearly noon, when the three brothers made their appearance, dressed in shrouds and caps, and attended by the clergy and officers of justice, and a large party of the military, horse, and foot. The deportment of the prisoners, in this awful crisis, was decent, contemplative, and religious. The Rev. Mr. Fellmore and another clergyman delivered several extremely affecting addresses at the place of execution—the prisoners joined in great apparent earnestness in the prayer and devotions. The minister exhorted the prayers of all present, and never had he an opportunity of addressing so immense an assemblage. But if I except the launching of the unfortunate men into eternity, nothing was witnessed that could stand comparison with the public parting scene between them and their friends. Some hours have passed since I witnessed it, yet my heart throbs at the pang it produced, and my hand trembles while I write. Every thing being now arranged, they took a parting leave of the sheriff, whose conduct has done him great credit throughout, and whose tender kindness was acknowledged by his prisoners. The ropes being properly adjusted, they shook hands with each other, and continued in prayer to the moment when the drop fell. I know no more—my feelings overcame me—I turned my back on the awful scene, and made my way out of the crowd, as quickly as I could.

In addition to the above, we give the following from the *Buffalo Emporium*, of the 18th June.

The Three Thayers who murdered John Love, are now no more; having been executed yesterday, agreeably to the sentence of the court, about three quarters past 1 o'clock, P. M. It was nearly twelve when the prisoners left the jail. They were dressed in the usual manner of malefactors, with white shrouds and caps. They were escorted to the gallows, erected at the west part of the village, near Black Rock-road, by the rifle company, the music playing a death-march. We noticed that the prisoners kept time, and advanced with a firm step. After taking their seats on the platform, the Rev. Mr. Fillmore made a short address, calling the attention of the multitude to the unprecedented spectacle before them, and soliciting the united prayer of every christian present, for the unhappy men, who were in a few minutes to close their eyes on all earthly things. He then addressed the Throne of Grace—the prisoners kneeling and joining in the devotions. The prayer being finished, he addressed the people from 1st Corinthians, chap. x. and part of the 11th verse, in which he introduced the confession of the prisoners—the substance of which is now before the public. Mr. Fillmore having concluded, he was followed in prayer by the Rev. Mr. Story. Then came the parting scene. None that witnessed it will ever forget it. The prisoners rose—the ropes were adjusted—their arms were pinioned—their friends, consisting of clergymen, and others, came to them, and gave the parting hand; among them we noticed the sheriff, Mr. Littlefield, who appeared to be solemnly and tenderly affected by the interesting and important part he held in the proceedings of the day;—although he was the minister of justice, the feelings of the man were conspicuous. After parting with their friends, they took leave of each other by shaking hands. It was a sight that touched every heart. The last they uttered were ejaculatory prayers:—may they have reached heaven!—In an instant, the drop fell, and they were launched into eternity! Nelson and Isaac died without a struggle, and but little was apparent in the case of Israel. A momentary shriek followed among the people, and all was still. The bodies hung about half an hour, and then were delivered to their friends, and we understood were carried to Boston (N. Y.) for interment. The prisoners conducted with the utmost propriety.

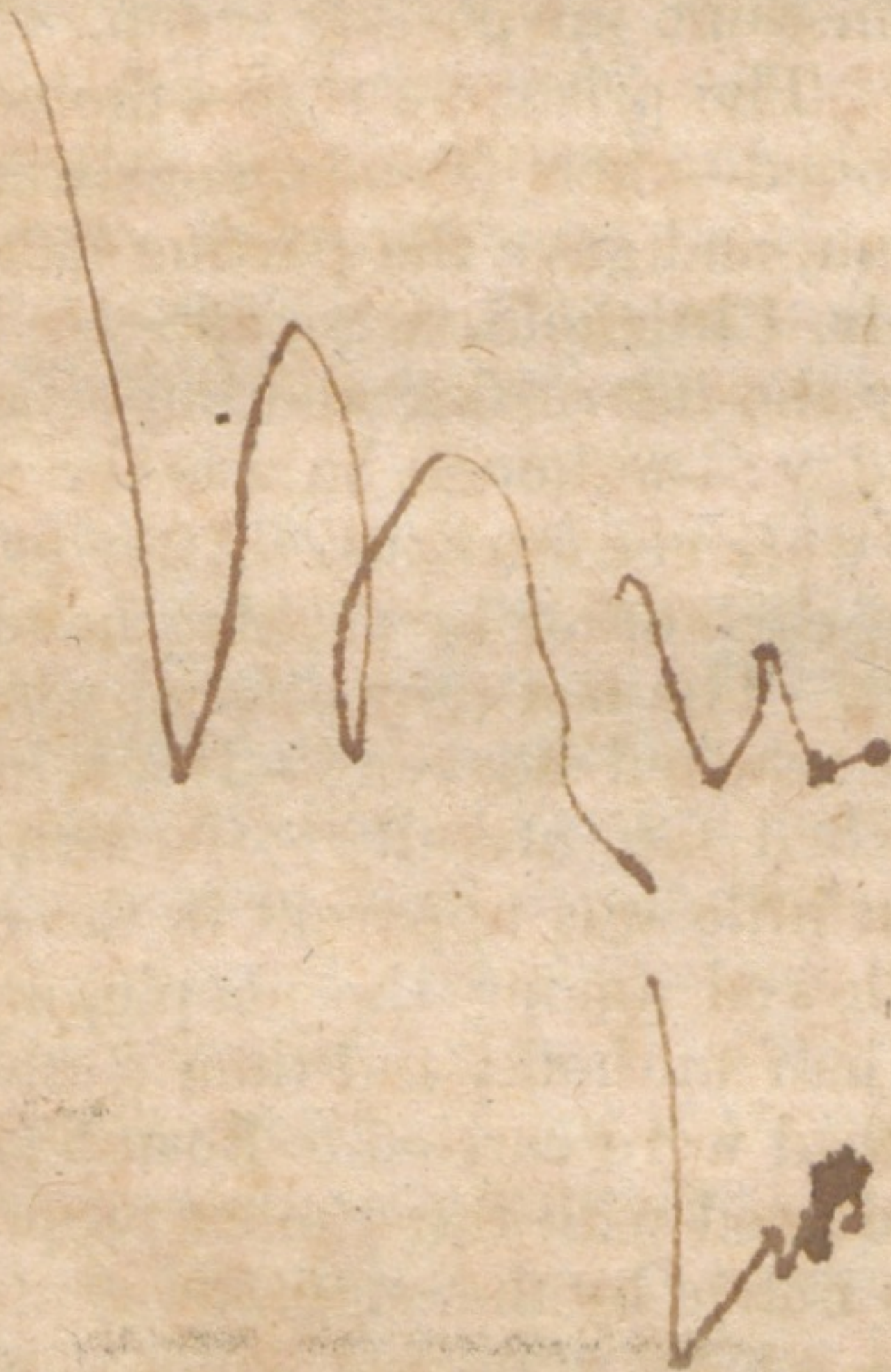
It would be easy to swell this notice by the suggestions presented to the mind in the awful spectacle which appeared before us; but we have no heart to do it; it must and will speak for itself. Suffice it to say, that the causes which brought these young men to the gallows, may be attributed to the want of parental religious instruction, and their want of education. How must these facts affect the hearts of parents! Had these youths been brought up "in the way they should go," we have no reason to believe they would have come to an ignominious end.

Nelson was 25 years old, Israel, jr. 23, and Isaac 21. The two eldest have left wives and children, that well demand our sympathies. Their anguish is extreme. They have a sister, who on her last visit to them, was so much overcome, that she uttered shrieks which reach

ed every cell in the prison, and drew tears even in the hard felon's eyes. Their mother, on the same occasion, left them in indescribable agony.

The military who were called out, were Capts. Matthews and Vosburgh's troop of horse, Capt. Crary's company of artillery, Captain Rathbon's rifle company, and Col. H. B. Potter's regiment of militia—among which we noticed Capts. Wilgus' and Palmer's companies. The conduct of the officers and soldiers is spoken of in high terms. The Buffalo Band added much to the solemnity of the occasion.

There are various calculations of the number of people who were present, being differently estimated, from 20 to 30,000. Although the multitude was so great, we have heard of no accidents.



APPENDIX.

Speech of H. B Potter, Esq. District Attorney, on opening the cause to the Court and Jury.

GENTLEMEN,

The cause now to be submitted to you is the most important that can occur in human jurisprudence, a cause which requires the exercise of all your candour and intelligence. It has fallen to your lot to sit in judgment upon the lives of two of your fellow men. The prisoners stand indicted for the murder of John Love, have pleaded "not guilty," and have put themselves upon their country which country you are. The crime charged is one of the deepest die, the most abhorrent and revolting to our nature, it equally shocks the feelings of the civilized man and the savage. We find in every human breast the same horror of the crime, the same dread and detestation of the perpetrators. The crime has been known from the beginning, it is to be heard of in our first records, we are not to look for its history in our statute books alone. It is to be found in every page of the history of man. But for its punishment we look to the laws of the land, the laws of nature and the laws of God. It equally contravenes them all, and all equally denounce the crime and declare the penalty. "Thou shalt not kill" is a law announced by the great lawgiver of the universe, to which nature and human reason, and the wisdom of ages have responded assent.

An essential ingredient of the crime of murder is malice, or the intention of killing. Malice is either express or implied; with the latter we have little to do, or with the implication of law in particular cases of homicide. Every killing of a human being is not to be accounted a murder. Malice aforethought, or a determination to kill, is essential to constitute this crime. Judge Blackstone defines murder to be "the unlawful killing of any reasonable creature in the king's peace with malice aforethought, by a person of sound memory." Express malice is now the grand criterion which distinguishes murder from other killing. It is defined to be a sedate deliberate determination of the mind, and a formed design to do the injury, which formed design is evidenced by external circumstances, as lying in wait, previous menaces, former grudges and concerted schemes.

From these definitions I apprehend no difficulty as to the evidence of express malice in the case before you. As to John

Love's death, it will be shown to have been most awfully and too successfully premeditated. We are next to make out by whom the crime was perpetrated, or rather that it was done by the prisoners, or that they were instrumental in it. For if more than one person be engaged it is no matter which gave the fatal blow, or discharged the fatal bullet; so as the others were present aiding, abetting or assisting in the act. The law in such a case makes them all principals. This inquiry will involve an examination of a long and tedious train of circumstances. And to this investigation I must invite your particular attention, and solicit the fullest exercise of your patience.

When crimes so flagrant and so universally abhorrent as the one charged are committed, witnesses to the fact are not often called upon. The murderer hides his head from humanity and the light. The deed is done in darkness and in private. The intention is to evade discovery, and resort is had to solitudes, where there is no human ear to hear, nor eye to detect, nor human arm to stay the fatal blow. Such was the case of the murderers of John Love. There was no suicide, as will clearly appear from the testimony. But whether murdered in the day time or the night, the foul deed is enveloped in midnight darkness. It will not of course be expected of me to produce positive evidence of the infliction of the blow, or the discharge of the bullet that launched him into eternity. From the nature of the case, that evidence does not exist for the public prosecutor. But I expect to prove such a train of circumstances, such a connected chain of facts, perfect in every link, as to remove from your minds every reasonable doubt, and possibly every vestige of scepticism that the prisoners are the murderers.

If you find satisfactory evidence of the prisoners guilt, you are bound to act and I trust will independently decide them to be guilty.

As the evidence will be of the kind called presumptive, I will read an authority as to the nature of such proof. Mr. P. here read from 1 Phillip's Evidence 117, Dunlap's edition, as follows:—

“The proof is positive, when a witness speaks directly to a fact from his own immediate knowledge; and presumptive, when the fact itself is not proved by direct testimony, but it is to be inferred from circumstances, which either necessarily or usually attended such facts. It is obvious, therefore, that a presumption is more or less likely to be true, according as it is more or less probable that the circumstances would not have existed unless the fact, which is inferred from them, had also existed; and that a presumption can only be relied on, until the contrary is actually proved. In order to raise a presumption, it cannot be necessary to confine the evidence to such circumstances alone, as

could not have happened, unless they had been also attended by the alleged fact,—for that in effect would be to require in all cases evidence amounting to positive proof:—but it will be sufficient to prove those circumstances, which usually attend the fact. If the circumstantial evidence be such, as may afford a fair and reasonable presumption of the facts to be tried, it is to be received and left to the consideration of the jury, to whom alone it belongs to determine upon the precise force and effect of the circumstances proved, and whether they are sufficiently satisfactory and convincing to warrant them in finding the fact in issue. However, for the purpose of trying the weight and effect of such presumptive proofs, it will often be of the utmost consequence to consider whether any other fact happened which might have been attended by the same circumstances, and with which of the facts they are more consistent.

“It has been very justly observed, that when the proofs are dependent on each other, or when all the proofs are dependent upon one, the number of proofs neither increase or diminish the probability of the fact; for the force of the whole is not greater than the force of that on which they depend; and if this fails they all fall to the ground. But when the proofs are distinct and independent of each other, the probability of the fact increases in proportion to the number of the proofs: for the falsehood of one does not diminish the veracity of another.”

Mr. P. observed—That positive proof, if unimpeached, precludes all possibility of error. Circumstantial leaves a possibility of mistake. But the latter is often more satisfactory and convincing than the former. A single witness may swear false. A number of unconnected and distinct circumstances, each depending on itself and proved by different witnesses, all bearing upon the same point and tending to the same result, must together speak the language of truth. If circumstances are shown which the prisoners might rebut, but neglect or decline it, they must be taken strongly if not conclusively against them; and the conduct and efforts of the prisoners in such case being assisted by able counsel, will materially affect the force and influence on your minds of the circumstances which I am about to produce. Mr. Potter here observed that he would not go into a detailed statement of the facts as he expected to prove them. The facts would present a horrible picture of human depravity, and the terrible effects of human passions, when urged on by vengeance or cupidity, and must necessarily rouse every breast to indignation.—But he wished to give no occasion for the complaint that the jury had, in the outset of the trial, been prejudiced by the statements of counsel. He said the jury ought to be cautious and diligent in the investigation in proportion to the heinousness of the crime. The cause was an important one. The life and death

of the prisoners were in their hands, and for the sake of justice and the peace of their own consciences, the jurors should discharge their duty with caution and fidelity. Try them on the law and evidence, not on the rumours or stories that are afloat. They had doubtless been tried over and over again in this county, and particularly in the circles in their neighbourhood, and perhaps generally pronounced guilty. But this was the first time they had been arraigned for a legal trial. This is the first time you hear of them or their offence.—If they are guilty you must so find them.—If so, they are unfit for human society. It will be urged to you that there exists great excitement in the public mind against the prisoners. There is excitement undoubtedly. But that there is, or has been, undue excitement on this occasion, I deny. On the announcement of so flagrant a murder as appears here to have been perpetrated, is it strange that excitement should prevail? The whole community ought at once to arm and turn out for the discovery of the felons. The alacrity and vigilance of the people of Boston is an evidence that their moral sense still exists, and that virtue still prevails amongst them. With such a people your life and property may be considered safe. But prejudice or excitement cannot alter guilt or innocence: Truth is and will be the same.

Mr. Potter here closed. But upon an intimation from the Court that an outline of the evidence as expected to be given would assist both Court and Jury in their apprehension of the facts, he proceeded and gave a succinct statement, of which the testimony was but little more than a repetition. It is not, therefore, worth while to insert it.

Speech of Thomas C. Love, Esq. on opening the defence for the prisoners.

GENTLEMEN OF THE JURY,

The embarrassments under which I rise to address you, on the subject of this defence, is beyond the power of language to express.

On the one hand is a rigorous prosecution for the most *damning* of all offences, conducted by an able, industrious and persevering prosecuting attorney, assisted by two associate counsel of distinguished ability, and great professional skill; and on the other hand, the lives of two fellow beings, in some measure committed to my charge, and staked upon the result of the issue I am called upon to defend.

May I not with propriety express myself in the language of inspiration, and ask, "who is sufficient for these things?"

I have not unfrequently addressed a jury of my country from this place, on subjects involving the pecuniary interest, character, and in some instances, the personal liberty of an anxious and confiding client; but it is the first time, it has ever occurred in the course of my professional pursuits, that the *life* of my client depended upon the verdict to be taken.

In aid of this prosecution, the honest prejudices and prepossessions of the whole community, in which the crime charged against the prisoners at the bar was perpetrated, have been strongly enlisted: and each individual in order has been called upon the stand, with his recollection scourged and his memory quickened by the ingenuity of counsel, until he has been enabled to detail in the minutest manner, every suspicious act and thoughtless expression, that have escaped these unfortunate men during the whole course of their eventful lives; and in each word, thought and deed these witnesses are made, clearly to discover, an index, as legible as the hand writing upon the wall, pointing to the prisoners as the murderers of John Love.

That so bloody a deed, as the one portrayed by the learned counsel for the prosecution, at the commencement of this trial, and which, it will not be denied, his proof has fully established, should create sympathy and produce excitement, is creditable to the moral character and humane feelings of the citizens of Boston. God forbid that my lot should ever be cast upon a community so dead to the feelings of humanity, or so accustomed to the scenes of human butchery, as could remain passive and unmoved, amid such slaughter as has been disclosed in the evidence. No, gentlemen, the possession of our property, the preservation of our character, the enjoyment of our liberty, and even life itself, must always depend, in a greater or less degree, upon the notions and opinions, which the community in which we are located entertain of personal rights; and in proportion to the correctness of their estimate, will the honest indignation of that community pursue the hardened villain who attempts their violation.

That John Love was most brutally mangled, butchered and murdered, at or about Boston, in this county, some time during the course of the last winter, through human agency, we shall not attempt a denial; the proof already adduced, fully establishes that fact, as also that the body found on the 23d of February last, was the body of the deceased.

[Mr. L. here recapitulated the evidence of Love's sudden disappearance, the time he was missing, manner in which he was found, the marks of violence that appeared, and the identity of the person, &c. &c.] and then observed:

But, gentlemen, while we freely indulge the most laudable feelings of our nature, which the mangled and lacerated body of the unfortunate Love is well calculated to inspire, let me caution you against substituting that sympathy, in the place of proof, for the purpose of fixing that murder upon the prisoners at the bar.

Does their case find no sympathy in your benevolent bosoms? Was a more solemn and interesting occurrence, ever before presented to the consideration of a Jury? A Father and three sons, including a whole family, put upon their trial for the most aggravated of all offences, and if convicted, the consequences of that conviction, is to obliterate the recollection of their existence, leaving not even a name behind. But with this, you have no more to do, as Jurors, than with the cut and mangled remains of John Love; the question submitted to your consideration, and which you are called upon to determine is, whether the prisoners at the bar were, or were not the perpetrators of that horrid deed.

This fact you are to decide and determine, upon the legal evidence to be produced on this trial; and not upon the conjectures and suspicions of witnesses, that have been called before you to testify, nor upon any opinions you may have formed by hearing the fatal story a thousand times repeated, before you took your oaths and your seats, as Jurors in this cause.

A correct definition of the crime charged in this indictment, has been given by the prosecutor, in his opening remarks; and the different species of homicide, has been by him correctly stated and defined—and as was premised by him, no question will arise, in the progress of this trial whether the *killing* charged is *murder* or *manslaughter*. It is conceded by the prisoner's counsel, that if the killing, in this case, is fixed by the proof upon the prisoners at the bar, it is *murder*. I shall therefore pass to the nature of the testimony upon which this prosecution is attempted to be sustained, and read to you from the books something on the subject of circumstantial testimony and the rules by which it is to be applied.

[Mr. L. here read copious extracts from Phillips' treatise on the nature and application of circumstantial evidence.]

He then observed, if, gentlemen, it is better that ten guilty men should escape, than that one innocent man should suffer, agreeable to the long established and well settled maxim, in the history of criminal jurisprudence; it will not be denied that in a case where three or four persons are suspected of an offence, in which all are not necessarily inculpated, and from the nature of the testimony, a difficulty should arise in fixing with legal certainty, the offence upon the actual offender, it is better that all be acquitted, than that the innocent should suffer with the guilty.

This just, humane and benevolent doctrine is sufficiently illustrated in the cases that have been read to you.

Again, gentlemen—I shall assume another position in sustaining this defence, and if I succeed in satisfying you of its correctness, I trust you will hear and apply the evidence in this cause, agreeably to the doctrine it inculcates.

The position is this—It is better that a guilty man escape the punishment due to his crimes, than that he should be convicted of an offence upon incompetent proof. The end does not always justify the means—in a system of laws for the regulation of society, where every offence is clearly delineated, and its punishment distinctly known, the rules of evidence and mode of proof in determining upon the guilt or innocence of the accused, forms the most important part of those laws, and is to be as strictly regarded by all Courts and Juries, as the law that defines the offence, and prescribes the punishment. And it is more dangerous to the rights of individuals, to vary the well known and long established rules of evidence, with a view to meet a particular case, than it would be to suspend the operation of a statute, to favour or oppress a particular citizen. And as it regards the security of society, it matters not whether the suspension or variation of the known rule is to convict the midnight assassin, or oppress the unoffending child of misfortune, wretchedness and want. For, let it be remembered, that if courts and jurors should quietly suffer the salutary rules of evidence to be violated, in their mistaken zeal to punish a supposed offender, the only legal refuge of conscious and unsuspecting innocence is invaded, and the lives and liberties of our citizens become subject to the whim and caprice of a corrupt and profligate Judge. This doctrine, gentlemen, if correct, I desire you should bear in mind, while the testimony is unfolding before you, as well as in your final deliberations upon the fate of the prisoners.

The testimony on the part of the accused, will not detain you a great while; it was impossible for the prisoners, or their counsel, to anticipate one of the thousand circumstances that has been given in evidence on this trial, to establish their guilt. They are necessarily unprepared to give the explanation in many cases, where it might have been very easy for them to do so. I will barely mention one circumstance on which I discover much stress is laid by the prosecution to inculpate Israel Thayer, Jun. in this business, and where he must necessarily be taken by surprise, and wholly unable to explain the circumstance, although an explanation the most satisfactory might have been given; had he been advised that such an occurrence would have been urged as an evidence of his guilt. It is this—It was proved by Mr. Ives that Isaac paid him a judgment he had against Israel, Jun. of about \$8. This is adduced to show that Israel, Jun. shared in the spoils of which John Love was rifled; first presuming that the money paid, was money obtained by the murder of John Love. Now although this prisoner, Israel Thayer, Jun. might have sold his last cow to obtain this money, and have sent the proceeds of that sale by his brother Isaac to satisfy the claims of this

honest creditor, how, I ask, is the prisoner to prove that fact, without the least knowledge that it could become material; and tried as he is, at a distance of at least 20 miles from where the transaction happened, and where the purchaser of his cow at this moment resides.—I give this one instance, gentlemen, of the difficulty attending a satisfactory explanation being given by the prisoners at the bar, of every circumstance that has been detailed in the evidence, even in simple cases, and where they are susceptible of explanation the most satisfactory, and hope you will judge leniently, and in no case construe so simple an occurrence into a presumption of guilt, merely because no explanatory proof has been given, where your own reflection can easily account for the absence of such proof.

I shall now close these remarks, gentlemen, by charging you upon the solemnity of the oath you have taken, so to divest yourselves of prejudices and conjectures, which the often repeated story of murder and barbarity necessarily engenders, as that when you shall meet the prisoners at the bar, on the confines of eternity and in the assembly of a congregated world, where neither mystery, suspicion or doubt, can exist in relation to the transactions of mortals, that there in the awful presence of *your* God, and of *their* God, yours will be the felicity of knowing that you heard the testimony in this case with an impartial ear, and found your verdict upon the evidence given on the trial.



Speech of Sheldon Smith, Esq. on behalf of the people.

MAY IT PLEASE THE COURT. GENTLEMEN OF THE JURY.

I rise to address you on this occasion, under a peculiar sence of inability, to do justice to a cause of such magnitude. After an incessant and laborious investigation of two days, I find myself too far exhausted to enter upon the discussion of a cause embracing such a vast variety of circumstances, and involving interests so deep and so vital. I feel conscious that in attempting to perform the part, which falls to my lot in this matter, I must fall far short of what the public have a right to expect, and what my duty seems to require. But relying on your candor and your indulgence, I shall proceed to reply to the able and eloquent arguments which have been offered on the part of the prisoners, and to which I must acknowledge I have listened with equal pleasure and respect. And while I attempt to lay before you the nature and merits of this prosecution on the part of the people, and to illustrate those principles of law and rules of evidence, which I consider as applicable to this case, and which are usually made to govern such a state of facts as are before you, may I be permitted to hope that I shall be able in some measure to facilitate your inquiries, that my efforts, feeble as they may be, will afford you some little aid in performing the arduous, painful, and solemn duty, that devolves upon you. The station which you occupy to-day, is the most exalted and

awfully responsible of any, in which you ever have been, or can be placed. The duty you have to perform is thrown upon you by your relative situation as members of society ; and although it be laborious and painful, yet the consolation you will derive from a faithful discharge of that duty, will, I trust, yield you an ample reward. Such has hitherto been the state of society, in this highly favored country, that our courts have rarely had to sit in judgment upon crimes of so foul a nature as the one detailed before you ; and it is to be hoped that the day is distant, when another transaction like this, shall occur to disturb the public peace, to agitate and shock the public feeling. But it is to be feared, that the age in which we live, is becoming more and more corrupt ; that the perpetration of crimes is becoming more and more frequent. If this be so, it adds much to the responsibility of those, who are intrusted with the administration of public justice, and the preservation of public peace. Every thing that we possess, or consider as worth possessing, in this life, depends essentially upon the purity, vigilance, and firmness of our courts and our juries. They are the guardians of society. It is to them that we look for protection against all those overwhelming evils, that flow from human depravity ; and without their protection our very lives are insecure. You cannot, therefore, fail of being deeply penetrated with a sense of the importance of the trust confided to you, and I will not doubt but that trust will be, by you, faithfully and conscientiously executed. If unfortunately you have imbibed prepossessions, respecting this transaction, it will be your duty to discard them, so far at least, as the frailty of human nature will admit. The remarks of the Counsel for the prisoners on this point, are highly worthy of your consideration. And do not, I entreat you, gentlemen, consider this caution as a censure upon you ; for prejudice is incident to all human nature. No man can boast an exemption from it. And the little experience I have had in courts of justice, has taught me that prejudice, particularly on the minds of a jury, is a most formidable foe to the administration of public justice. It exerts an insidious and powerful influence ; and the mind the most under its bias, is often the least conscious of its power. We wish you to try this cause, gentlemen, upon the naked facts that have been laid before you, since you entered that box ; and if these facts alone, and independent of all other considerations, are not sufficient to convince you, beyond a rational doubt, of the prisoners' guilt, we entreat you to acquit them. But if these facts and circumstances, are sufficient to satisfy you, beyond a reasonable doubt, that they did commit the crime with which they are charged, it will be your imperious duty to pronounce them guilty.

The prisoners at the bar, as you have already heard, together with two others, are indicted for the murder of John Love. With the charges against Israel Thayer, Sen. and Nelson Thayer, you have nothing to do. Your inquiries are to be confined to Isaac Thayer and Israel Thayer, Jr. and them only ; and the grand question for your consideration will be, Were they, in any manner, engaged or concerned in the murder of John Love ? For it is perfectly immaterial who gave the fatal blow ; whether they, or any other person, known or unknown, provided they were actually present, aiding and assisting, when the blow was given : for in that case the law makes the blow of one, the

blow of all; and all who are present, aiding and assisting, when a murder is committed, are equally guilty. [Here the counsel read the law, from Russel's Criminal Law, &c. he then proceeded.]

The fact that there has been a murder committed, and which is necessarily made the foundation of all prosecutions of this sort, is established by the most unequivocal testimony, and is in fact, conceded by the counsel for the prisoners. It will therefore be unnecessary for me to read you the law defining the crime, or showing the distinctions between murder and the other kinds of homicide.

The murder of John Love being established, to fix the crime upon the prisoners at the bar, we have recourse to a train of circumstances disclosed in the testimony. But here we are met, by the counsel for the prisoners, with an objection to this species of testimony.

The learned counsel have strenuously contended against relying on presumptive evidence in capital cases; and to show you the danger of resting a conviction on circumstantial testimony, they have read several cases from the appendix to Phillip's Treatise on evidence. But, gentlemen, before you yield too far to their persuasions in this particular, I trust you will pause and reflect, for a moment, on the *danger of rejecting this species of testimony*. The essay on circumstantial evidence, contained in the appendix to Phillips' Evidence, from which the counsel for the accused have read several extracts, is not the law of the land. It has never been adopted by this or any other country; and to show that it is scouted by the courts of this state, I will read you a case from one of our own reports. [Here the counsel read from the 2d Wheeler's Criminal Cases. The People vs. Howe, and then proceeded.] The principles of presumptive evidence, as recognized by the courts of this country, is not a novel doctrine. It is a doctrine coeval with civil society. It has been matured by the wisdom and experience of ages; by men of the greatest learning and acquirements; by judges whose lives were an ornament to the age and country in which they lived, and whose names will be remembered, so long as time shall last, or virtue and wisdom be considered praiseworthy among mankind. This doctrine, thus matured and perfected, has been incorporated into, and become a part of, the law of this country. It is too salutary, and too firmly established, to be assailed with success at this day. It cannot be overthrown, and it is well that it cannot. To explode it, would be to prostrate the barriers of personal security, and uproot the very foundations of civil society. High crimes are generally perpetrated with secrecy and caution, usually in the dead of night, as in this case, when the world is wrapped in silence and sleep, when darkness covers the wretch and his deeds from every mortal eye. To require the testimony of eye witnesses to convict in such cases, would be to give all felons full license to extend their ravages at will, to prowl upon community, undetected and unrestrained.

Let us for a moment attend to the inducements which the prisoners had to the perpetration of this crime. Men do not act without a motive, says one of the learned Counsel for the accused. Let us see if they had a motive in the case. It appears that Isaac Thayer, one of the prisoners, had confessed judgments to John Love, the deceased,

to the amount of \$275. This debt had been contracted by the three brothers, whose property had been shifted into Isaac's hands, for the very purpose of securing that debt. Executions had been taken out, and the property of the three brothers was liable to be sold, whenever Love should direct; and as they had no means of discharging that debt, they had no way to save their property from being sacrificed, but to make way with John Love. It is known, too, that Love had about him considerable money, and other property.

In approaching the evidence in this case, the first prominent fact that strikes our attention, is the circumstance of Love being seen in company with the accused, on the evening of the 15th Dec. (which was the last time he was seen living;) and starting with the accused from the house of Nelson Thayer to go to the house of Israel Thayer, Jr. for the avowed purpose of staying all night. This fact is established by the testimony of four witnesses. Isaac Thayer, in his examination before the magistrate, admits that Love was at the house of Israel on that night; and this is the last that is ever heard of Love, until his mangled body is taken from a shallow grave, not 30 rods from that fatal spot. This single fact, unexplained as it is, raises a violent presumption of guilt against the accused. The next remarkable circumstance is, the report of a gun, heard on the same evening of the 15th Dec. at or near the house of Israel Thayer. This fact is proved by a great number of witnesses; and although they do not agree as to the time of night, which was, indeed, not to be expected, yet there can be no doubt of the fact. It may be well here to attend to some evidences of preconcert, by which it will appear most obvious, that this murder was the result of arrangement and premeditation. Sylvester Irish says that about the 15th Dec. does not exactly remember the day, Isaac brought a rifle to witness' house, under a pretence of getting it cut over; and although he was told that the rifle could not be cut, he still left it standing behind the door. The house is only 40 rods from Israel Thayer's. In the afternoon of the 15th Dec. the day preceding the murder, the boy living at Israel's is sent home to his father's to stay all night; and in the evening, the wife of Israel is conducted over to Irish's for an evening's visit. On her arriving at Irish's, she finds Isaac there. Her husband immediately goes back, and soon after Isaac goes out, and does not return for some time. These seem to have been the arrangements; and this particular time chosen, because Israel had been killing hogs that day, and blood would necessarily be scattered about the house. These facts appear to be too plain to be misunderstood. The bringing Israel's wife to the house of Irish, seems to have been the signal for Isaac, who was there waiting, to seize the rifle, previously concealed at the same house, and repair to the house of Israel, and commence the horrid work; which he undoubtedly did, by shooting in at the window, whilst the other two brothers were in the house with Love, ready to give the finishing blow.

The conclusion is rendered the more probable, from the appearance of the body of the deceased when found. The body was found with a ball hole through the head; the skull fractured on the back part; one side of the face cleft off, apparently with an axe; and a

deadly wound across the throat, severing the breath pipe : from which it is evident that two or three persons must have taken each a part in the horrid transaction. Here, gentlemen, I might rest this cause ; satisfied that these facts would be sufficient to warrant you in pronouncing the prisoners guilty. But there are other circumstances which must not be omitted ; one of the most remarkable of which is, the transfer of Love's property, from his possession to that of the Thayers. No sooner is Love missing, than the prisoners become suddenly and unaccountably in the possession of Love's property—even the very horse on which he rode to the place of his death, is found on the same spot, in the stable of Israel Thayer, who claims it as his own. Nor is the means by which they got possession of some of this property unworthy of your consideration. They forged orders, and a general power of attorney, authorising Isaac Thayer to collect all John Love's debts. This power of attorney they produced in courts of justice, and proved it genuine by *their own oaths*, when necessary. One of these forged orders from John Love, bears date on the 16th December, the very day after he was murdered. So that the body of the deceased was hardly cold beneath the turf, before they were ransacking the neighbourhood in search of his property, and eagerly grasping their blood-stained fingers on all they could find. From a state of poverty and distress, harrassed by constables, and unable to satisfy their importunities, the prisoners became suddenly clear of debt, and flush with money ; and even those very executions which Love had a few days before taken out against them, are found in their own pockets. [Here the counsel took a view of the testimony, showing the amount of property belonging to John Love, which they had obtained, and recapitulated the various and inconsistent statements, which they had made respecting the absence of Love ; and then proceeded.] These, gentlemen, are the facts on which we rely to establish the prisoner's guilt. These are the facts, which one of the learned counsel says, are "trifles light as air ;" but which we say, "are proofs as strong as holy writ." With such an uninterrupted concatenation of circumstances—such a train of guilt-proclaiming facts before us, all tending to the same point—all conspiring to establish the same awful truth, who will take it upon him to decry the power of circumstantial testimony, or say that it is not equal to positive proof?

The murder of John Love was one of peculiar atrocity. The corruptest ages of the world hardly furnish its parallel. It was committed under the most aggravating circumstances, and without excuse or palliation. Love was the friend of his murderers. He had lent them money, and shown them many favours ; and on that fatal night which proved his last, they decoy him to one of their houses, as a friend and a guest, and there butcher him in cold blood, as they had done their swine the day before ! They then rifle his pockets, and proceed to purloin all his effects to be found in the neighbourhood ; adding robbery and theft to the crime of murder. Nor does their career of iniquity end here. Ascertaining that he had money in the hands of other persons, they proceed to collect those monies by means of forged papers, and protect themselves by swearing, in the name and presence of that God, whose laws they thus had violated, that those papers were

genuine. What a dismal catalogue of crimes do we here behold!—Murder, robbery, theft, forgery, and finally perjury; all committed in the course of a few days, by the same persons, and to attain the same object; namely, the acquisition of a few hundred dollars in money and property. If there be any part of this transaction more strange and unnatural than the rest, it is the hardness of the heart, the blindness of mind, and the perverseness of soul, which characterized these men in their mad, unhallowed career. It is rare that the perpetrators of high crimes appear so perfectly steeled against all the compunctions of conscience. The murderer is usually supported until he has actually done the fatal deed. But when he has actually given the deadly blow, and sees the victim of his malice fall and gasp beneath his feet, his courage fails him, and he relents. He begins to reflect on the enormity of his crime; and guilt and remorse, with all their soul-tormenting horror, seize upon him; thrill through every nerve, and pierce his heart with insupportable anguish. He flees from society, and shuns the face of man. He hears, or thinks he hears, from frowning Heaven, the awful reproof—"What is this that thou hast done? The voice of thy brother's blood cries to me from the ground!" But the murderers of Love seem to have been beyond the reach of those feelings. They seem to have stifled every emotion of the heart, calculated to arrest them in their wild and fatal career. Without stopping to hear the friendly admonitions of that monitor within the breast, they rushed heedlessly on from crime to crime until they had reached a most awful and appalling climax of guilt.

Gentlemen, as I am to be followed by other counsel, I am not disposed to detain you longer. I have endeavoured to discharge my duty in this matter in such a manner as to satisfy my conscience. If I have evinced more zeal than may be thought compatible with the accusing side of this prosecution, I earnestly ask that it may be ascribed to a habit of speaking, and a sense of duty, rather than any improper motive, or want of feeling towards the accused. For had I been at liberty to indulge my sympathies towards the accused, I could have wept over their misfortunes and fate. But I was not at liberty to do so. The public good is, and ought to be an object paramount to every other consideration.

When we see the very neighbourhood in which we live, infested with crimes, at which humanity recoiles, we ought to feel alarmed; and every citizen who participates in the benefits of the social compact, ought to feel willing to see the offenders brought to justice, and to perform such part as the laws of his country may assign him, with firmness and fidelity. Should such offences escape detection and punishment, the most alarming consequences might well be apprehended. Encouraged by the imbecility and imperfection of human laws, the felon would crawl from his hiding place, and extend his depredations far and wide. A few dollars about the person of the citizen would only expose him to the rude and blood-stained hands of the assassin and the cut-throat. Society would lose all its endearments, and become a prey to fear, alarm, distrust, and crime.

Henry Brown, Esq. then addressed the jury on the part of the people, in an able speech of nearly an hour in length.

The jury retired about 11 o'clock in the evening, under an elaborate and solemn charge from his honour judge Walworth, and in about an hour returned a verdict of "GUILTY," against both of the prisoners.

On Saturday morning, at 8 o'clock, commenced the trial of Nelson Thayer, on a separate indictment, for the same murder. The evidence in this trial was substantially the same as that against Isaac and Israel. This cause was summed up on the part of the prisoners, by T. C. Love, and E. Griffin, Esqs. and on the part of the people, by H. B. Potter, Esq. The jury retired about 11 o'clock in the evening, after receiving a full and impressive charge from the court, and in a few minutes returned a verdict of "GUILTY."



CONFESSION.

Upon the conviction of Nelson Thayer, he was removed to the gaol, where soon afterwards the three brothers made a full confession of the murder of John Love, to U. Torrey, Esq. the under Sheriff, in presence of witnesses. The circumstances related by them were as follows :

They had contemplated the murder of John Love for 4 or 5 weeks, and it was concluded at length, that the deed should be perpetrated on the 15th December. That the boy D. Pierce on that night should be sent home, and the wife of Israel induced to make her visit, as is testified to. The rifle was loaded by Israel and left by a log near the house, of which he apprised Isaac, who was to make use of it in the first instance. They had doubts whether they should be able to decoy Love to Israel's on that evening, but in case they did, it was arranged that Isaac should shoot him through the window while Nelson and Israel were engaged in cutting up the pork in the same room, and they were to despatch him in case the rifle failed to take complete effect. That about 7 o'clock or half-past, and not later, for on this point the witnesses must have been in an error, while Nelson and Israel were in the room, and Love was sitting before the fire with his boots and stockings and great coat off, in conversation with Nelson, his face partly turned towards Nelson and from the fire, Isaac came to the window as concerted, and shot

him through the head, and immediately walked away to Irish's. Love did not fall, but convulsively drew up his feet and shoulders, and sat erect in the chair. Nelson then with the meat axe gave him the blow behind the ear, as described by the witnesses, which sal-
 lied him over a little, he then gave the second blow upon the back of the head, which brought him to the floor, he then inflicted the wound upon the face and neck as he lay upon the floor. Nelson does not recollect of giving but one blow as described on the face and neck, and doubtless the peculiarity of that wound, and the appearance it presented of being the effect of two or more blows, results from the position in which he lay upon the floor. The body was then drawn out of the house by the two, and secreted near the end of the house; they finished cutting up the pork. Isaac then returned and exclaimed, you have been butchering here it seems; to which Nelson replied that there had been butchering done. Isaac then said, well I have done my part, and will do no more, and again went away. The blood upon the floor was then washed up, but there being some still upon the chair in which Love sat, that was partly dried and difficult for them to wash off, a few pieces of bloody meat were put into the chair, which was by Israel's wife on her return laid away and the chair washed clean.

After the second departure of Isaac, the other two brothers took up the body and carried it to the brook, in the ravine, near the place of the grave, with the intention of burrying it in the bottom of the brook; but after digging a few inches they were prevented from going further by rock. They then buried it where it was ultimately discovered. They then returned to the house, and from there went to Irish's; and all three of the brothers were there together, and staid some time, and returned to Israel's together with his wife. The father was perfectly innocent and ignorant of the murder.

Isaac states that when he first brought down the rifle to fire upon Love, his nerves failed him, and his aim was unsteady; but upon endeavouring to rally himself, and reflecting upon some abuse Love had once

used towards his aged mother, he regained his firmness and fired with fatal effect.

Nelson says, that when living, he could carry Love upon his shoulders easily. But in his and Israel's attempt to raise him, and carry him from the corner of the house to the grave, such were their feelings, and the dread, that then for the first time fell upon them, that they found it almost impossible for them both to lift and carry him. That for the whole distance to the grave, they actually staggered under their burthen. The brothers say, that since Love's death, they have felt neither peace nor security; but have been in a constant state of alarm and apprehension. That they have felt an awful, but indefinable dread of being alone in the dark—which feeling they have constantly endeavored, by every means in their power, to shake off; but without effect. They all attest to the justice of their sentence, and manifest no hope of receiving a pardon.

The indifference to their fate, and the hardihood they manifested on their arrest, and even down to the time of the fatal verdict of GUILTY, seems to have forsaken them. Their feelings appear to be softened down and chastened; and it is understood that they are all most assiduously and ardently engaged in reading the gospel of mercy and peace, and preparing themselves to appear at that bar, before which neither testimony nor confession is required.

ERRATUM.—For Pierce, page 5 line 6 from the bottom, read *Thayer*.

