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OF

MUNROE COLCORD, ELIHU COLCORD, JOHN A. WEBSTER, JOHN SILLOWAY, STEPHEN EATON AND NATHAN EATON, FOR THE MURDER OF DOLLY SEAVER.

Court of Common Pleas at Portsmouth, for the County of Rockingham,

HON. ANDREW S. WOODS, PRESIDING.

FIRST DAY—Tuesday, Sept. 2, 1845.
10 o'clock, A. M.

Present—HON. A. S. WOODS,
HON. IRA A. EASTMAN,
HON. BRADBURY BARTLETT, } Judges.
HON. JAMES PICKERING,

The Prisoners were arraigned and the following indictment was read to them, to which, they severally plead *not guilty*.

THE STATE OF NEW HAMPSHIRE.

ROCKINGHAM ss :—At the Court of Common Pleas holden at Portsmouth, within and for the County of Rockingham aforesaid, on the fourth Tuesday of August, in the year of our Lord one thousand eight hundred and forty five.

THE JURORS for the State of New Hampshire, upon their oath present, That Munroe Colcord, Elihu Colcord, both of Kingston, in said County of Rockingham, cordwainers; John A. Webster and John Silloway, both of Kingston, laborers; and Stephen Eaton and Nathan Eaton, both of East Kingston, in said County of Rockingham, laborers; and Samuel Woodman, of Kingston, in the County of Rockingham, aforesaid, laborer,

on the nineteenth day of July, in the year of our Lord one thousand eight hundred and forty five, at East Kingston, in the County of Rockingham, aforesaid, with force and arms, in and upon one Dolly Sever, wife of one Elisha Sever, in the peace of God, and said State, then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said Munroe Colcord, Elihu Colcord, John A. Webster, John Silloway, Stephen Eaton, Nathan Eaton and Samuel Woodman, a certain stone of no value, which they the said Munroe Colcord, Elihu Colcord, John A. Webster, John Silloway, Stephen Eaton, Nathan Eaton and Samuel Woodman, in their right hands then and there had and held, in and upon the right side of the head, above the right ear, of Her, the said Dolly Sever, then and there feloniously, wilfully, and of their malice aforethought, did cast and throw, and that the said Munroe Colcord, Elihu Colcord, John A. Webster, John Silloway, Stephen Eaton, Nathan Eaton and Samuel Woodman, with the stone aforesaid, so as aforesaid, cast and thrown, the aforesaid Dolly Sever, in and upon the right side of the head, above the right ear, of her the said Dolly Sever, then and there feloniously, wilfully, and of their malice aforethought, did strike, penetrate and wound, giving to the said Dolly Sever, by the casting and throwing of the stone aforesaid, in and upon the right side of the head, and above the right ear, of Her, the said Dolly Sever, one mortal wound of the length of three inches, and of the depth of one inch, of which said mortal wound, the said Dolly Sever, from the said nineteenth day of July, in the year aforesaid, until the twentieth day of the same month of July, in the same year, at East Kingston, aforesaid, in the County aforesaid, did languish, and languishing, did live, on which, said twentieth day of July, in the year aforesaid, at East Kingston, aforesaid, in the County aforesaid, of the mortal wound aforesaid died, and so the Jurors aforesaid, upon their oath aforesaid, do say, that the said Munroe Colcord, Elihu Colcord, John A. Webster, John Silloway, Stephen Eaton, Nathan Eaton and Samuel Woodman, Her the said Dolly Sever, in manner and form aforesaid, feloniously, wilfully, and of their malice aforethought, did kill, and murder, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State.

LYMAN B. WALKER,

Attorney Gen'l.

This is a true Bill,

GILMAN RICHARDSON, Foreman.

The Grand Jury before whom the respondents were indicted, were Gilman Richardson, of Candia, Foreman; Albert Noyes, Atkinson; Jonathan Robinson, Brentwood; Jacob Chase, Chester; James B. Edgerly, Deerfield; Benjamin Eastman, Derry; Jonathan Sanborn, Danville; Charles Norris, Epping; Retire H. Parker, Exeter; John P. Rundlett, East Kingston; George W. Davis, Greenland; Tristram Little, Hampstead; Jonathan Marston, Hampton; John Brown, Hampton Falls; Jeremiah Poor, Kensington; Moses Sanborn, Kingston; John P. Young, Londonderry.

Hon Lyman B. Walker, of Concord, the Attorney General, and Henry F. French, Esq., of Exeter, the County Solicitor, appeared for the State, and the Court assigned as counsel for the prisoners, at their request, Hon. Levi Woodbury, of Portsmouth, and James Bell, Amos Tuck and Gilman Marston, Esquires, of Exeter.

The Court then proceeded to empanel the Jury for the trial, when the following were empanelled and sworn, making the Jury complete.

George W. Knowlton, Northwood, Foreman; John Bean, Deerfield; Caleb Tilton, Hampton Falls; Simeon B. Shaw, Hampton; Jonathan Palmer, Kensington; James Hoyt, Newington; John Page, North Hampton; James Martin, Poplin; Benjamin Cram, Raymond; Asa Woodbury, Salem; Samuel Jones, Stratham; Peter French, Kingston.

The Court ruled that *each* respondent had a right to challenge 20 Jurors peremptorily. Before the Jurors were sworn, the following questions, were put to them by the respondents' counsel. Have you formed or expressed any opinion as to the guilt or innocence of the prisoners at the bar? Have you heard the case much talked about? If either of these questions was answered in the affirmative, the Juror was objected to for cause and set aside.

After the Jury had passed the first ordeal, the Counsel for the State put the following questions to the Jurors. Have you such conscientious scruples in regard to the right of the government to take the life of an individual, in the course of the administration of the laws, that you could not in any case, whatever might be the evidence, render a verdict against the prisoner, which would subject him to the loss of life? Are you related to either of the prisoners? If either of these questions were answered in the affirmative, the Juror was set aside. Many of the Jurors who did not approve of the existing law, said they could do their duty under the present law.

The Court ruled that one Juror, who was related to one of the respondents, in the seventh degree, must be set aside.

All the forenoon was occupied in empannelling the Jury.

AFTERNOON.

Remarks of HENRY F. FRENCH, Esq., Solicitor.

GENTLEMEN OF THE JURY:—The prisoners have been indicted, and are now upon their trial for an offence of the highest class known to the laws of our country—for the violation of a law so consonant to human reason, that it is acknowledged and adopted throughout the world, wherever government exists—not only among enlightened nations, but even among the savages of the wilderness—a law which lies at the very foundation of all government—a law for the protection of life—and a law, too, gentlemen, which not only has the approbation of every rational *human* being, but bears also the seal of the sanction of that Being who cannot err, in the commandment that he has given us “Thou shalt not kill.”

The indictment, containing the specific charges against these unfortunate persons, has been read to you, and it is unnecessary that I should repeat them.

To investigate the *truth* of those charges, is the duty in which you and I at this time, are called upon to assist—a task, Gentleman, from which, were it *not* a duty, we who act as State’s counsel, and you who hold here a still more responsible position, would gladly be excused.

You, Gentlemen are sworn “to render a *true* verdict according to law, and the evidence given you,” and it is the duty of the counsel for the Government, to endeavor that the *truth*, and the truth *only*, both as it respects the law and the facts, be “given you” as the foundation of your verdict. It is our duty to aid you in the investigation of *truth*—not to attempt to defraud you into the belief that innocent men are guilty—not, if it were possible, to wrest from your prejudices or feeling a verdict of condemnation which your sober judgment could not sanction—not to persecute the innocent to their destruction—but to prosecute the guilty, to justice.

As counsel for the State, we in some measure represent the State, and stand in the place of the community whose rights are supposed to have been violated, and whose laws are supposed to have been infringed.

The object of a *trial*, Gentlemen, is to vindicate the law—and this object is attained as well by the acquittal of the innocent, as by a conviction of the guilty.

The law is as anxious to protect, as to punish, and to this end, so carefully are the rights of prisoners charged with capital offences secured, that in addition to the many other safeguards set about them, “counsel learned in the law” are, at the charge of the State, assigned them to aid in their defence, and the process of the State put into their hands to compel the atten-

dance of all witnesses whose testimony they may desire to use in their behalf.

The object of *punishment* is not the infliction, but the prevention of suffering. It is in part to protect the poor, the feeble, the down trodden of the earth, from wrong and outrage and oppression. It is, in part, to secure to those who cannot stand up in their own defence, the blessings guaranteed to all by our constitution—"life liberty and the pursuit of happiness.

It is inflicted in no spirit of retaliation or revenge, but in the mild spirit of love and mercy, which overlooking present and temporary suffering regards only the ultimate and general good.

Punishment is inflicted not only to reform the offender, but to prevent the repetition of his offence by himself or others—and the Law in her sternest severity acknowledges no principle of discipline inconsistent with the gentle spirit of christian love and charity.

We stand alike here, Gentlemen of the Jury, as I have before remarked, all engaged in the same great object—*THE investigation of truth*, You, Gentlemen—the Court; the Counsel for the prisoners—the State's Counsel. The parts assigned us, it is true are different, but they are all designed, and I trust will be faithfully executed, for the same great end. My own peculiar duty at this stage of the trial is to make known to you briefly and distinctly as I may, the *facts* which, on the part of the State we intend to lay before you in evidence, and to state to you the principles of law as applied to those facts so far as to make the whole proceedings intelligible to you, as the trial progresses.

And in the first place, I will briefly state to you the *facts*, as we expect they will appear to you, on the evidence which we shall submit.

It will be proved to you that prior to the nineteenth of July last, Elisha Sever resided in a small house in East Kingston, about two and a half miles from Kingston Plains—that his wife the person whose death is alledged in the indictment, and their two twin children of about the age of seven years, composed the family—that on the day before named, their daughter Adeline, with her husband Jonathan Davis, were with them, upon a visit—and that these six persons, at an early hour, peaceably retired to rest, unconscious of any danger near, and confiding as we all do in the helpless hours of sleep, in the protecting, ever-watchful guardianship of the law for security.

At about nine o'clock on the same evening, the prisoners, and three or four others who are not now on trial, assembled at the Plains, for what purpose may not perhaps clearly appear, and it was proposed by one of their number to go and tear down Elisha Sever's house, and the proposition being acceded to, they

proceeded on their way in the street a short distance in the direction of Sever's residence, and stopped to make arrangements. It was proposed by one that a person should go on and inform Sever's family of their intention, and tell them to clear the house, or it would be torn down upon their heads.

They coolly put the question to vote, and elected one of their number a messenger for this purpose—but he declined acting saying he should be known by Sever's family, and after other fruitless attempts to find one who would act in this capacity, they abandoned the idea of notifying the family, and again proceeded on their way.

They again stopped, and one of their number procured two axes, and some blacking, and before they reached Sever's house they disguised themselves by blacking their faces, and by putting on false whiskers.

When they arrived at the house of Mrs. Buswell, which was the house nearest Sever's, two of their number who had left the Plains together stopped, and the others went on. David Buswell and Henry Crane, were the persons who stopped. They seem not to have been fully implicated in the transaction and you will have their testimony on this trial. Soon after Buswell and Crane parted from the others, they heard the noise as of a window dashed in—and it will be made to appear to you that one or two of the windows of Sever's house were at this time broken in, and the inmates of the house aroused from their slumbers by the crash. Sever and Davis went out, and pursued the assailants who ran away and did not return for some time. And it will be proved to you that one of them then said that Sever's folks were not drunk enough that night to have their house torn down, but they would break in one window more, and two of their number, Elihu Colcord and Silloway, went back towards the house, and again a window was broken in. It is not possible to describe accurately the occurrences of the night, but it will be proved that after this, most of, or all, the prisoners were together in the road near the house—that the inmates of the house were most of them at and near the door of the house, and in sight of the prisoners—that the prisoners commenced throwing stones at the house in great numbers and with much violence—that the stones were of as large size, many of them, as could conveniently be thrown, and that they struck upon all parts of the house. And it was then that one of the stones struck Mrs. Sever upon the temple and inflicted the wound of which she afterwards died.

It will appear, that when she received the blow, the unfortunate woman cried out in her anguish "Oh Lord they have killed me" and put her hand to her head to indicate the place of the injury. Finding their lives in danger, the family left their

house, and fled under cover of the darkness into the woods for safety, and remained concealed, listening to the noise of the axes used in destroying their dwelling, until they heard the crash of its fall to the ground. After the noise had ceased, they returned to what had been their home,—the wife complaining constantly of her suffering from the wound,—and found themselves without a shelter, and there the poor victim of lawless violence, overcome by the pressure of her life blood flowing internally, upon her brain, lay down upon the damp ground, and for a short time slept. Her friends aroused her, and placed her upon a bed partly sheltered by the fallen roof, and again she slept, till about the hour of sunrise, when without awaking she sunk to the deeper sleep that knows no waking—and so Gentlemen of the Jury, in the manner alledged in the indictment, *she died*.

These, Gentlemen, are the main and substantial facts, which we expect to lay before you, and I shall undertake to state to you the law, so far I suppose it may be applicable to this trial.

The prisoners are indicted for murder, in the usual form of indictments for that class of crimes. Under this indictment, the jury may legally render a verdict of murder in the first or second degree, or for any less offence of the same nature, according to the evidence submitted to them. I shall undertake to define to you the crimes comprehended under this indictment.

All killing of a human being is homicide, and of homicide less criminal than manslaughter, there are two classes.

First—justifiable homicide, where there is no blame whatever attributable to the person who takes life—as in the instance of an executioner who takes life under the process of the law.

Secondly—excusable homicide, where there is no authority of law, but life is taken by accident, as when a father intending merely to chastise his child, unfortunately takes its life.

So where one in self-defence, takes the life of another, it is *excusable* homicide. And the law only *excuses* the acting in self defence, where there is no time to call in the aid of the law, where the danger is so imminent that the election is between ones own life, and that of another. In such cases, a man is excused from punishment, if he saves his own, at the expense of another's life.

So in defence of his house, a man may take the life of another, and go unpunished. The law attaches a peculiar sanctity to the dwelling houses of our citizens. A man's house is called his *castle*—his sanctuary, and may not be profaned by the violent intention of any person, except an officer of the law, under the process of the law against an inmate, for some crime, and the occupant may defend his house against all others, even at the expense of human life.

And, Gentlemen, it is not any excuse or justification for killing another, nor does it in any wise palliate the crime, that the person destroyed is of bad character. The law extends her protection alike over all. Her influence falls, like the dews of Heaven, upon the evil and the good, upon the just, and the unjust. No man is so high as to be above her reach, and none so low as to be beneath her protection—and it is as much murder to slay the veriest outcast from society, aye, even the condemned criminal on his way to execution, as to slay the judge who pronounced his sentence, or a juror, who rendered a verdict of condemnation.

Manslaughter is the unlawful killing of another, without malice expressed or implied. It may be *voluntary*, as in the usual case, where one upon a sudden heat of passion, kills another. In such case, the law making allowance for the frailty of human nature in some measure extenuates the act, and lessens it from murder to manslaughter.

Manslaughter, again, may be *involuntary*, but in the commission of some unlawful act, and to this kind of offence, I shall again call your attention.

Murder is where a man of sound mind kills another with malice aforethought, expressed or implied.

Malice is the distinguishing mark between manslaughter and murder, and I shall attempt to define and illustrate the *legal* meaning of the word—and here, it may not be improper to remark, that many words and phrases have a legal meaning somewhat different from the common idea conveyed by them, and this arises not from any want of clearness in the law, but directly the reverse. The forms of indictments now used, are the same which have been used in England and this country for centuries, and the words essential to the definition of crimes have remained unchanged. They mean the same now *in the law*, that they always meant, while in common use, their significations vary with the changing ages and circumstances of nations. The word *malice*, has a *legal* meaning, differing, perhaps a little from its common meaning, as used among us. It is said in the law as applied to murder, to be “not so properly spite or malevolence to the individual in particular, as an evil design in general, the dictate of a wicked, depraved and malignant heart.”

It is not essential to *malice*, that there should be an evil intention against the person destroyed.

As a common illustration, may be given the case where one puts poison into a public fountain, where he knows persons are accustomed to drink, and one is killed thereby, it is malicious murder, though the parties are entire strangers to each other.

So if one shoots at one man and kills another, against whom he had no ill will, it is malicious murder.

Malice is said to be *express* or *implied*. This is a distinction rather in the mode of proof, than in the moral or legal quality of the act done. Implied malice, is malice taken to be proved by the nature of the act done, or the means employed. For instance, if one deliberately discharges a gun at another, and takes his life, the law, without any other evidence of intention, infers a malicious intent to destroy.

Where death ensues in the pursuit of an unlawful act, the consequence of which, might *probably* be death, it is murder.

Every man is, and should be held answerable for the *natural* consequences of his acts. He is bound to use the reason he possesses, and to foresee and answer for those consequences.

This is a principle essential to the very existence of civil society.

Again, it is laid down as a principle of law, that where there is an intention to do an unlawful act, amounting in law to a *felony*, which word denotes a high class of offences, and death ensue, the parties shall be liable for murder, although the death happen *collaterally* or aside from the original purpose.

A malicious intention to commit a high crime, is *malice* sufficient, and if death ensue in the perpetration, it is murder. Even by our own statute, death caused in the perpetration, or attempt to perpetrate arson or burglary is of the first degree, tho' there be no express intention to take life.

We shall contend that demolishing a tenanted dwelling house is a felony in New Hampshire, and that if death ensue in the perpetration of so violent an outrage, it is murder in all concerned in the general purpose—and in support of the positions I have taken, I will read to you from books of acknowledged authority.

(Mr. French then cited, and read from the following books : 1 Chit. Crim. Law 257, note 68; Roscoe's Crim. Ev. 578—9—80; 4 Black. Com. 200 ; 1 Russell on crimes 452 ; Chit. Cr. Law 487—8—9 notes ; Constitution of N. H., article 39 ; State v. Rollins 8 N. H. Rep., 550.

Also from the Revised Statutes of New Hamp., page 433—4 sections 1—3, and 4, which are as follows:

“SECTION 1. All murder committed by poison, starving, torture or other deliberate and premeditated killing, or committed in the perpetration or in the attempt at the perpetration of arson, rape, robbery or burglary, is murder of the first degree ; and all murder not of the first degree is of the second degree. If the jury shall find any person guilty of murder, they shall also find by their verdict whether it is of the first or second degree.

SEC. 3. The punishment of murder in the first degree shall

be death, and the punishment of murder in the second degree shall be solitary imprisonment not exceeding three years, and confinement to hard labor for life.

SEC. 4. If any person shall be guilty of manslaughter, he shall be punished by fine not exceeding one thousand dollars, or by fine not exceeding five hundred dollars, and imprisonment in the common jail not exceeding one year, or by solitary imprisonment not exceeding six months, and confinement to hard labor for life or for a term not less than one year, according to the aggravation of the offence."

Upon the principles stated and supported by the authorities which I have read, we contend that the crime here committed is murder.

1st. Because it was death produced by the prisoners in the perpetration of a *felony*—the demolishing a house being a *felony*.

2nd. Because it was death ensuing in the pursuit of an unlawful act, the probable consequence of which might be death.

If the case falls within either principle, the crime is murder.

We shall ask you to infer from the circumstances of the case, a deliberation which should make the prisoners liable for all the consequences of their unlawful acts. Some of these circumstances have been already alluded to, and should be borne in mind.

Among them are the facts, that they held a consultation upon their intended outrage—that they acted with coolness in voting and electing their messengers—that they disguised themselves, not daring to trust the obscurity of night, even for their concealment. They procured axes with which to destroy the house—they again and again attacked the house, persisting in their acts of violence for many hours, and never ceasing till their purpose was fully completed. There is nothing in all this that tends to rebut the legal and natural presumption, that they intended to effect their purposes, whatever might be the consequence, and there is no injustice in holding them to a strict accountability for the awful but natural result of their acts.

If you believe, Gentlemen, that your verdict should be murder, you are then to say further, whether it be of the first or second degree. If in this case it be of the first degree, it must be upon the ground that it occurred in the perpetration of Burglary—Burglary is the breaking and entering a dwelling house in the night, with intent to commit a *felony*.

If the Court instruct you that demolishing a dwelling house be a *felony*, you will find whether there was a breaking and entering here with intent to commit a *felony*, and if you find there was, and that death occurred in the perpetration of that act, you must render a verdict of murder in the first degree.

If, however, Gentlemen, after patiently hearing our evidence, and the evidence on behalf of the prisoners, and such arguments as the learned counsel shall lay before you, under the instructions of the Court, you shall find the prisoners not guilty of any crime with which they are here charged, we shall all rejoice at so happy a result.

All we ask, all we desire is, that your verdict may be such as to render our lives and our property secure, as shall preserve the integrity of the law, and the purity of its administration, and that it be "a true verdict according to law and the evidence given you."

Dr. William Perry, sworn. In July, 23d., I went to Kingston, to examine the head of Mrs. Sever. We found her with a large wound on the head. On dividing the integuments more, we perceived a small fracture. The injury was very small, such as in ordinary circumstances would have produced no inconvenience more than an extraordinary bruise, but the fracture raised a scale of bone which wounded an artery, and a large quantity of coagulated blood lay on the brain and produced death.

The scale was very thin indeed. I think it the thinnest I ever saw. The injury to the bone was very small indeed, and the blow must have been very slight. Severer blows are often received on the head without any serious consequences. There was no other place on the skull so thin. The fracture was just above the ear. I have operated in cases where blood has been extravasated upon the brain and the patient recovered. I know no reason why a timely operation might not have effected a cure. Operations are frequently performed with favorable effect, so long after the injury that stupor had taken place.

The amount of the blow itself did not produce death, but the raising of the little spiral of bone which wounded the artery. The wound was upon the right side.

Jonathan Davis, sworn. I married the daughter of Sever. My home is in K—. On the 19th., of July last, I was at Sever's in East Kingston. Mr. S. and wife—his daughter and son twins, 7 years old and my wife and myself—no other persons in during the evening. I retired between 8 and 9—my wife also. There was the front room, bed room and entry. I and my wife and the boy, occupied the bed room. S. and wife and daughter occupied the front room.

Mrs. S. was in usual health and about the room in the evening. I was awakened by part of one of the front windows being stove in. It was in Sever's room—don't know that a door was opened between my room and S.

I got out of bed and put on my clothes. I saw some people

going up the road towards Buswell's—some talked in a vulgar way. I could not understand what. I did not overtake them. I came so near that I saw S. Woodman. I followed them towards Buswell's. Then I went back. Soon others came round I saw some going towards E. Kingston. I followed them down and told them to go away. Then some one passed by me toward the house with a weapon. Then I heard Mrs. Sever say O Lord, they have killed me, or about killed me. I was in the road. I then went back to the house where my wife and Mrs. S. were. She said they have killed me, or about killed me, or hit me on the head, and I examined the head. Could not tell on which side. I then told my folks I thought it best to go away from the house, as we might be killed. I asked them what it was best to do. Some stones had been thrown from the bushes. I went out and threw some back. Some hit a boy near me.

When I was getting my things, some one stove through and hit me several times, and said g—d d—n you go away or I will kill you. He struck me across the bowels twice, and across the hands once. Then I and my wife and Daniel went off into Mr. Buswell's pasture, and then into the woods. Soon after we got into the woods, Mr. S's daughter, we heard hollowing for Adaline. Soon Mr. S., and wife and the daughter came to us. We went further into the woods. We heard a noise like cutting and tearing off boards—and then we heard something fall, which we supposed was the house. Then we went back to the ruins—saw Mr. Sever at the honse. The house was down, the posts were cut off.

Mrs. S. said this looks so bad I can't stay here. She then went back towards the bushes and lay down. I told Sever I would not risk my life there. Then my wife and I went down and helped Mrs. S. up to the house—don't recollect whether she strove or not. We put her on the bed—then my wife and I and Daniel went over to Dowse's. We returned the next morning about daylight. Mr S. was standing at the end of the house. Mrs. S. and Polly Ann were on the bed. My wife went to Mrs. S. and put her hand on her stomach and spoke to her, but she did not speak. She breathed and swooned. Then wife and I and brother went into the woods and got our things. It was daylight when we were at the house in the morning. Don't know that I saw any stones in the house that morning. In the afternoon I went to the house again. Then I saw stones on the floor, 12 to 20 big as a hen's egg, and so up as large as a quart dish—saw pieces of cedar stakes about the house.

Elisha Sever, sworn. There were a dozen boys about when the two pushed me down. The window was first knocked in. After she got up from the grass, she said, "Oh dear! how this looks to me!" Then she lay down on the bed partly

under the roof—I lay down with her. She never spoke again.

When I first went out of the house, there were near a dozen men about the house—they were 4 rods from where I went out first.

Should not think I was as near then as 20 rods to them out of the house. I saw no one that I knew. I heard no one say any thing.

No stones were thrown till we came back from Buswell's

I saw a person when I was at Buswell's. I saw a person stave in the east window—that fellow went into the woods. I did not see that fellow come back. It was not a very light night—it was cloudy. I could not tell people that night for it was cloudy, and sometimes overcast.

It was 10 minutes after I came back from Buswell's, that my wife said she was hit. I saw them come back from Buswell's before my wife was hit. There were no stones thrown till after I came back from Buswell's, and then Davis and I went out and all of us.

We were all in the house when they began to throw stones, and we all went out together.

They began to tear down the house *after* we all left the house.

There were no boards torn off, till we all went out and went off. Heard nothing that night of Davis being struck. None of my family went to Kingston that night.

Henry Crane, sworn. I live at Kingston—came there last Nov.—live with Dr. Bartlett—am 20 years of age.

On the 19th., of July, 1845, I went over to Caleff's store, and met Augustus Webster, who said, how are you Crane? Don't you want to go to New Boston to night? There are some folks at widow Hunt's, and we are going down to have a little sport. I asked him if they were going to tearing down houses, for if they were, I would not go? He said no. Then we went to the store, and he and I, and James Morrill went down towards Badger's corner. Before we got to the corner, Munroe Colcord and Elihu, and John Silloway, and a fellow they called Eaton, overtook us.—can't say as it was Mr. Eaton one of the prisoners. Silloway said they are sick at widow Hunt's, and it won't do to go there. M. Colcord said, we must go to Sever's. Before we left the corner, saw Woodman, Daniel Buswell and another Eaton come there. We then started on the road to Sever's, and went as far as Silloway's hill. Here they concluded to tear Sever's house down. They wanted some one to go and inform them that they were coming to tear the house down. They wanted Daniel Buswell to go—he would not. Then they put it to vote to see if M. Colcord would go. He said he had no

particular objection to go, only they would know him. Then some one said, Webster would be a good one to go. He said he had as lief go as not. He went ahead, and all followed to Mrs. Woodman's. Sam'l Woodman went in and got a couple of axes—and one of the Eatons got a box of blacking. Then they went to the brook—there some of them blacked their faces with box blacking. Silloway, E. Colcord, S. Woodman, A. Webster, Morrill, and one of the Eatons blacked their faces. The other Eaton blackened his face I believe. Monroe Colcord put on a pair of false whiskers.

We then went on to Buswell's—then Dan'l Buswell and I stopped and got over the fence on the side towards Buswell's house. This was 15 or 20 rods from Sever's.

The rest then went on towards Sever's. There were very few clouds—it was a light night. When we got down, we were in sight of Sever's. In a few minutes I heard the glass rattle as I thought at Sever's house. Soon I saw some come out of Sever's house.

I thought I saw them chase them off. I think they chased them towards the woods. In a few minutes Daniel Buzwell went into his house and I saw no more of him that night. Then I went down back of Buzwell's barn and got over the wall into the road and then into a field, the same side of the road as Sever's house. I started to go towards Sever's to see if I could see any of the fellows, and I heard some one whistle in the bushes. I went where he was and found it was E. Colcord.—He said when he saw me, he did not know but it might be some stranger and he thought if it was, he would go back into the bushes. Then we started and went towards Sever's house.—When we got opposite Mrs. Buzwell's in the road, we met the rest of them standing there.

I asked E. Colcord if he was'nt going home. He said he was as soon as they stove in another window. He said the reason they were not going to tear it down, they wan't quite drunk enough.

Then we went down by Sever's house—all but Silloway and E. Colcord. We got over the fence on the side Sever's house was. In a few moments I heard glass rattle again. Then all went with me but Silloway and E. Colcord. Then we went into the road towards Sever's house. Then they began to throw stones towards the house. I heard something shake the house. M. Colcord and Augustus Webster threw. Several threw stones. Don't recollect who I saw that did not throw stones. Don't know whether E. Colcord and Silloway had then found us. I went to Augustus Webster and tried not to have him throw stones, as I was afraid he would hurt some one. He said he would be careful. I thought some of the inmates of the house were about the door.

I said the same to M. Colcord. Don't know that he made any reply. I then left them and went towards the plains to a wood pile and set down there till they came up.

Wednesday, Sept. 3rd.

Henry Crane, continued.—I went part way home with prisoners—some of us went across the field to a spring—some of them washed their faces. John Silloway and I and Webster went home and we left the two Colcords there. Webster went home with me and left me there. I can't tell what time we arrived home.

Cross examined by James Bell, Esq.—When we first started they said they were going to Widow Hunt's—but John Silloway said Widow Hunt was sick. Then for the first time some one suggested that we should go to Sever's. They said they were going to Widow Hunt's to have some sport. I was not particularly acquainted with A. Silloway, Webster and some of the rest. I was a stranger in the town

It was about nine o'clock when we got to Silloway's hill. It was moonlight. Daniel Buzzell and I went into Buzzell's field and we sat down near the house. I did not know Buzzell before. I did not put any blacking on my face. Some of them were with blacked faces. John Silloway, E. Colcord, Woodman and Morrill, and some others blacked their faces. I heard no throwing of stones before I joined the others near the house. Did not see Davis throw stones. I saw him around the house. I first saw Davis between Buzzell's and Sever's house in the road. I saw him standing at the end of the house before stones were thrown. Women were with him—two women and two children. I think all but Sever were out of the house before stones were thrown. They were at the south east end of the house. When we first passed the house towards the depot they were in this position. We heard a window crash and when we came back, the family were standing in the same position.—They stood there until we went off. As far as I know the family stood near the end of the house while I was there.

I saw Webster and Munroe Colord throw stones and others, but could not tell who. They stood backs towards me. I went nearer Buzwell's house than they did. We faced Sever's house. I was not more than a rod from them. I spoke to Webster and M. Colcord and when I was speaking they threw stones. I heard them hit the house. I did not throw stones. The stones, I thought, were aimed at the house. I don't know whether stones went into the windows or not. Webster said he would be careful and not hurt any of them with the stones. I don't know that Davis and Sever took stones into the house to throw. The Sever house was near the road—not more than

a rod. The young men, when they threw the stones were in or near the road. I think Webster stood in the trodden road and M. Colcord stood on the side next Buzzel's. I should think M. Colcord was two rods from the house when he threw the stones—about a rod and a half up the road.

Here a plan of the premises was exhibited to the Court and Jury and to the witness.

Re-examined by H. F. French, Esq.—While I was there, which was but a very few moments, I saw most of the family around there. After I walked down by and returned, I saw Davis and the women there. The centre of the road is about two rods from the house.

James T. Morrill, sworn.—I reside at Salisbury Mills—I then lived at Kingston Plains when the affair took place. I came to Court a week ago last Monday. I had resided at Kingston until a week ago last Saturday. I went to Salisbury then and staid until Tuesday, when I came to Court. My parents live at Salisbury Mills and I consider it my home. (Mr. Bell objected to the witness, on the ground that the witness did not reside at Kingston as was pretended upon the list of witnesses furnished to the prisoners, agreeably to the Revised States.) The Attorney General contended that witness was as much of Kingston as of Salisbury.) Witness withdrew for the present for the Court to consider objection.

Daniel T. Buzzell, sworn. I am sixteen years old. On the evening of the 19th of July I saw the respondents at Badger's Corner. I heard them talking about going down to Widow Hunt's to have some sport. I saw Samuel Woodman, James Morrill, Henry Crane, Augustus Webster, Stephen Eaton and Nathan Eaton and both of the Colcords and John Silloway, at Badger's Corner. Monroe Colcord says, "Let us go down to Widow Hunt's and have some sport," but Silloway said they were sick there, and we better go down to Sever's—we all went ahead till we got to Silloway's hill. We stopped there and Monroe Colcord says let us send some one ahead and tell them to clear for we are going to tear down the house over their heads if they don't. They moved that I should go. I told them I did not want to. Then they moved Monroe Colcord should go. He said he should as lief go as not but he was afraid they would know him. They then moved that Webster should go, and he said he would go and he went on a little ways and stopped for the rest. Then we all went together till we got to Woodman's. Samuel Woodman then went and got a couple of axes and Stephen Eaton got a box of Blacking and we all went along till we got to a brook,—then some of them blacked their faces. J. Silloway, Sam'l Woodman, Webster, E. Colcord and I believe Stephen Eaton blacked their faces.

Monroe Colcord had a pair of false whiskers.

We all went along till we got to our house, which is about 17 rods from Sever's. Then Henry and I got over the fence and went out in front of our wood shed and the rest went towards Sever's house. In a few minutes we heard some glass rattle near Sever's house. In a few minutes Davis and Sever came out swearing and the boys ran for the woods, Davis and Sever after them. I got up and went into the house and looked out of the window and soon heard some more glass rattle. Davis and Sever followed them about up to our house. Then the boys would follow Davis and Sever, when they went towards the house. I stopped some time looking out of the window and heard Davis and Sever *jawing*. Then I went to bed. Then I went to sleep and my brother waked me just before the clock struck 12, and he told me they were tearing down the house. I looked out the window and heard some one throwing stones as I supposed at the house. In a few minutes Sever's folks came out of the house and went down the road—I don't know how far. I then heard cutting as I supposed. I heard them cut boards and tear them off nearly half an hour. Afterwards I saw the roof fall over towards the road—then a lot went up the road by our house. I don't know who they were. I went to bed and went to sleep about one o'clock. I did not see them when they were cutting.

Cross examined by Mr. Bell. The east part of the house was in sight from my window, but a tree and a wood house prevented the sight of the west end of the house. At one window where I slept, I could see the whole of Sever's house. I was at one window part of the time and part at the others. I did not know who those were whom I saw go down the road. I could not distinguish any of them. I heard Davis and Sever talk. They were very profane—swearing at somebody. I did not see any body throw stones. I was not certain whether it was stones that I heard or something else striking against the house. When my brother awoke me he told me they were tearing down the house. I could see the women come out of the house, but could not distinguish Davis and Sever, except by their voices. I saw them go down the road before I heard any cutting. My brother looked out of the window with me. I suppose I saw them come out the door, but they might have passed out the east end of the house. There was not anybody in the road when the stones were flung.

Adaline Davis, sworn.—I am the wife of Jonathan Davis.—Mr. Sever is my father. On the 19th of July I was at my father's house. Father and mother, Mr. Davis and myself, Polly Ann and Daniel were there. We retired to rest at between eight and nine o'clock. I slept in the south room, (the bed

room.) The first I knew I heard some glass rattle. I looked up and found squares of the glass in my room were broken. I tried to wake Mr Davis and then I heard some more glass rattle at the north window. We all got up and dressed us.—Father and Mr. Davis followed them up the road. They came back again and went down the road. I stood in the door and saw some one come up the road with an axe in his hand and stave in the front window. I hallowed to Mr. Davis and he came back. A short time afterwards they began to fire rocks at the windows. Mother and I stood in the entry with the little children. Mother says they have killed me, I believe. Mr. Davis came and said, we had better go off or they will kill us all. He went into the bed room and took a band box and trunk of mine. He and I and Daniel went down the road and turned into Buswell's pasture. He hid the things in the bushes and I then heard Polly Ann scream and I went out to the bars and she and mother stood there. We all went to the woods and sat down. We heard them tearing down the house. After we could not hear any noise we went back to the house and saw it was torn down and mother laid down in the bushes near the house. Mr. Davis and I went and got her up and got her on to the bed under the roof of the house, and father and Polly Ann lay down beside her. Mr. Davis and I and Daniel went over to Mr. Davis' brother's. We left Daniel at his brother's and came back to the house—father was up. I tried to wake mother and could not. I thought she was beat out and did not wake her, and we went back to his brother's. I never saw my mother alive after that. My mother was in good health the day before. She was up during the evening—she had walked with father to "the Falls" the day before in the forenoon.

Cross examined by Mr. Bell. I suppose it was an hour or more from the time I heard the glass rattle to the time mother complained she was hurt. The entry was in the South end—I and the children were standing there—Mr. Sever was in the house and could not pass out without my knowledge. A door opened from the entry into the large room only. From where I and my mother stood, a person standing in the road could see us. Mother complained of being struck at this time. We supposed the stone came in the North window. The door leading from out of doors into the entry was high. The story of the room was not very high. Mr. Davis came into the house very soon after mother was struck. Mother said something about her head—and he passed into the bed room. They were at work upon the house at this time tearing off the back side. I heard quite a number of stones thrown—they came in all round the windows, after mother was hurt. We were in the entry all the time the stones were coming. The ground at the north end of the house is uneven and lower than the house.

I was at home all day Saturday. Father and mother were gone nearly two hours down to the Falls. I was not at Carter's shop that day. We had no rum in the house to my knowledge till my husband got some at Carter's: he got home between sunset and dark. Mother lay in the grass a very few minutes before I got her on the bed.

Dr. Thomas Bassett, sworn. I am a physician—I know Dolly Sever, wife of Elisha Sever. I saw her on the 20th., of July last. I was called upon by Samuel Woodman, early in the morning after breakfast. I went directly down and ascertained she was at Mr. Buzwell's. I stopped and went into the house—did not know she was dead or had received any injury at all. I went into the room to see her, and asked Mr. Currier and Mr. Rundlett to go in with me—she was laying on a board supported by a couple of chairs, covered up. I found after examination, that she was dead, and I wished to find the cause, but could not find any mark of violence except on the right temple. There was a tumor about two inches long. I took the scalpel, and cut through the integuments and found considerable blood—I put my finger under the scalp and discovered a slight depression of a part of the skull bone, which I took to be the cause of her death. I came to the conclusion that there must have been a rupture of the artery of the *dura mater*. I have no doubt that this wound caused her death, but I have known an injury four times as great in the same place which did not produce death. The reason I came to the conclusion that she came to her death by this wound was, by what followed the injury.

Cross axamined by Mr. Bell. There were some women at Mr. Buzwell's. Mrs. Woodman was there—Sever was asleep in the bed room. I had had no intimation that she came to her death by that wound until I made the discovery myself.

I was not present when Dr. Perry examined the subject. The skin externally was not broken, and the swelling was no more than a half an inch high in the centre. The part of the skull which was depressed, was not thicker than one's thumb nail. I have known ten times as great depression of the skull in the same place, without producing death.

George P. Smith, sworn. I was at Sever's house Sunday morning, July, 20. I saw the house was torn down. It appeared to me that the boards on the sides of the building were first taken off, and then the studs taken out or cut off—then I saw the posts of the house were cut off from 8 to 12 inches from the bottom of them. It had the appearance of having the roof pushed over and covered about two thirds of the floor. I should think they must have stood at the south east corner, and pushed

it down. I saw stones lying about the floor—I should think one of them was as large as a two quart measure. There were a good many stones of nearly all sizes from the one I have mentioned, down to the smallest. I noticed a number of stones under the edge of the building. I did not see any implements that appeared to have been used in tearing down the house—the crockery, chairs, desk &c., were broken. I am one of the Selectmen of East Kingston.

Cross examined by Mr. Bell. If there were any bedsteads, the beds were not upon them.

I signed the original complaint, upon which the prisoners were arrested. I served on the Coroner's Jury.

Rachel Hale, sworn. I reside at Kingston. On the evening of 19th of July, I saw prisoners pass my house about 9 o'clock in the evening. I think there were four—they went towards Badger's corner. I knew the two Colcords, but the other two I did not know. I heard Elihu Colcord say, that he would do all he could to clear them out. Some one made answer that there was some one there with his wife, and another made answer'd—n it, let him take his wife and clear out.

Cross examined by Amos Tuck, Esq. I live about 30 rods from Badger's corner. I am not personally acquainted with John Silloway. I do not know that he was among them. I don't recollect that I said I would like to be a witness against the boys. I don't recollect that I told Louisa Bean on the day of Mrs. Sever's funeral that I wanted to be a witness against them, but if she will make me sensible of it, I will own it. I had no unfriendly feeling against any of the respondents, for I cared nothing about them—I did not know them.

Elizabeth Philbrick, sworn. I reside in Kingston, on the plains. Prior to tearing down of Sever's house, the two Colcords boarded with me. They were home at tea on the evening of July 19. I saw them pass the house afterwards as usual. I know they were not in between half past nine and ten o'clk. I went to their chamber. I heard them come in, in the night and go up chamber and converse in a low tone of voice—did not hear what they said, and could not tell what time it was—I had been asleep. Before I heard the Colcords come in, I heard a noise. Sunday noon, I made the remark to them, that Mrs. Sever was dead, and Elihu Colcord said she was. I then said that whoever were engaged in pulling down the house, were guilty of her death, and Elihu Colcord said yes.

The subject was brought up again at the supper table, but I don't know what was said.

In the evening of 19th of July, the Colcords left my house in their working apparel.

Cross examined by Mr. Tuck. I was on friendly terms with the prisoners, as much so as I ever was before. I had not as good feelings towards Elihu then, as when he came to board with me. I had seen more of them.

D E F E N C E .

MR. BELL'S REMARKS :

May it please the Court and gentlemen of the Jury ;—The prisoners are charged with the crime of murder, and the prosecuting officers, in their opening, probably because they could not foresee the aspect, which the case would bear upon the trial, have urged their conviction of that offence. They have said, that however free the accused may have been from actual malice towards the deceased, yet as she received her death wound at their hands, while they were engaged in the commission of an unlawful act, they are upon the ancient principles of the common law, to be presumed, without other evidence, to have acted from malice, or upon a depraved and reckless disregard of consequences, which is equivalent to malice prepense, and which gives the character of murder to the homicide, which was the result of their acts. Without stopping to consider, whether these are in their full extent principles, which we are at this age and in this country, required to adopt, which if necessary for our purpose, we might well question. We insist, that they are always to be received, keeping in mind a distinction, which has been recognized both in the courts of England and of our own country ; important in its bearing upon the facts in the present case, which is, that if the transaction in which the prisoners were engaged, though unlawful, was a mere *trespass*, and not of that aggravated character, which falls within the class of *felonies*, then the killing is not murder, unless the accused employed such means as would ordinarily endanger life, or deprive the deceased of it directly and immediately in the prosecution of their unlawful purpose. If they employed no weapon, and resorted to no measure, which they could suppose would put human life in jeopardy, and if the loss of life resulted from some chance blow, inflicted accidentally, and rather as a deviation from their purpose, than in its accomplishment, no guilt of blood attaches to any person, except the individual, whose hand caused the unfortunate result. And under such circumstances, we conceive, that even that individual cannot be convicted either of the crime of murder or of manslaughter. And if the crime should be held, in regard to him, to reach either of these degrees, still in the complete uncertainty in the present case, even upon the evidence of the government, as to which of the prisoners threw the stone, which caused the death of the deceased, if indeed her death is to be attributed to any

such cause, the law acting upon the humane principle, that it is better, that many guilty parties should escape, than a single innocent individual should be punished, will not permit the conviction of any of the number. You cannot in such a case select at hazard one or more as victims to the violated majesty of the law, but each prisoner, until his individual guilt is proved, has a right to demand an acquittal.

We believe you will in the first place be satisfied from the testimony already given, and that which we shall adduce, beyond all question, that none of the prisoners bore towards the deceased any actual malice—any hostile or malignant feeling; nothing which could lead them deliberately to imbrue their hands in the blood of this unfortunate and wretched female, or even to harm a hair of her head. They entertained no purpose of murder, and the very idea of such a crime would have been as shocking, as revolting to them as to any of us. For we shall show you, that they are not to be ranked among the profligate, the hardenend and abandoned, the contemnners alike of the laws of God and man, but are young men of unimpeachable character—full of promise and hope, and happy in the attachment of numerous and worthy friends. Life, before this great misfortune, held out to them as fair a prospect of a happy future, as to any. They may have had their faults—they may have been hurried into the indiscretions common to their time of life, but we shall make it clear by the testimony of those, who have known them long and well, that they have never numbered with the vicious or abandoned. Possessing many good and generous qualities, they were probably led to the commission of the unlawful acts, in which they do not deny their participation, by a strong but ill judging disapprobation of vice and intemperance. The sad event that followed, filled them as it did others, with horror and consternation, under such circumstances to confound their case with that of the common assassin, would be to lose sight of moral distinctions.

They went to demolish, as they no doubt conceived they lawfully might do, what we shall show to have well deserved the character of a public nuisance—one of the vilest haunts of intemperance and vice. In abating this nuisance, and removing from the community its contagious and corrupting influence, they believed they were violating no law, and doing no wrong.

It will appear by the evidence, that the prisoners first proposed as their object another house of similar reputation, but learning that some of its inmates were ill, at once desisted, and turned towards Sever's, thus clearly showing, that their purpose was not to attack life or person, and that the design upon which they finally acted, was not premeditated, but taken up and carried on in the hurry and excitement of the moment. The Coun-

sel for the government have affirmed it to be clear, that the result was the death of this woman by their act.

We shall contend upon the evidence already laid before you and that which we shall produce, that this essential point in the proof necessary to convict the respondents, is not clearly established, but that there is a stronger probability, that the death was produced by some other cause. For, it will appear, that this house was not only the abode of profligacy and intemperance, but of their usual attendants, domestic dissensions and quarrels; drunken brawls, and brutal personal attacks by Sever upon his unhappy wife, herself vicious and intemperate, were of almost daily occurrence. We speak of her character not to reproach her memory, but because it is necessary for the vindication of the living, that the truth should be spoken. From the appearance of the fracture, and the circumstances, we contend that it is most probable, that the deceased received this fated injury from the hand of her own husband, who had been known to inflict wounds upon her, the marks of which, were visible long after, and whose drunken quarrels with her, had disturbed the peace of the neighborhood at all hours of the day and night. And this does not rest wholly upon conjecture, for we shall call as a witness, a young son of the deceased, who, if he shall be deemed by the Court of sufficient age and intelligence to be a witness, will describe one of their sad and disgraceful scenes, terminating in blows with a club in the hand of Sever, upon the deceased, and which occurred upon the afternoon preceding her decease. And if this boy shall be adjudged by the Court to be of too tender years, or too destitute of intelligence and education to be a competent witness, we shall still rely, upon the intrinsic probability, that this injury, which according to the testimony of the physicians, was not of a nature to produce immediate death, was received in this or some other mode before the attack made by the respondents upon the house.

The fact, that deceased was struck at all, after the prisoners arrived at Sever's house, as we conceive, is not established by any credible testimony. It is true that Sever and Davis testify, that they heard an exclamation from her at the time when the stones were thrown by some of the respondents. But you have heard their contradictions of each other, and must have observed, that they agree in no other single point. Sever represents the blow to have been received in the front room of the house, where he and Davis were present at the time, while on the other hand, Davis would have you believe that the injury was received in the entry when he was in the road and at a considerable distance from the house. But this is not all. We shall prove, that both Davis and Sever have given still other and totally irreconcilable statements of the transaction, and that on

the morning following the unfortunate event, neither of them pretended to be able to give any account of the cause of Mrs. Sever's death. That their testimony is precisely what you would expect it to be, from the character of the witnesses, which so far as their reputation for veracity is concerned, we shall prove to be entirely infamous. You will observe, that neither of their versions of the story are consistent with that of Crane, and in regard to the latter, who is unimpeached, we shall show beyond a doubt, that from the position, in which he saw the respondents, it was impossible in the nature of things, that a stone thrown by either of them, could have passed through the west window, as stated by all the inmates of the house, who testify upon the point, and have struck Mrs. Sever, while standing in or near the entry. Unless you believe the laws of nature to have been reversed in this particular instance, this testimony cannot therefore be true.

One of the grounds, upon which a conviction is asked, is the dangerous nature of the weapons employed by the respondents, or their reckless and dangerous use. But by the only credible evidence of the government on the subject, it is clear, that the family were not in the house when the stones were thrown against it, and the nature of the blow was such as would but for the chance of its taking effect at the particular point exhibited by the surgeons, have produced nothing but a slight and inconsiderable injury. There is nothing indicating great and hazardous violence in the cause or means which produced it, tho' death resulted from the neglect of all attention and remedies; and you have been told by those, who are entirely competent to judge, that the injury was not necessarily fatal, and that timely surgical assistance would have probably removed all danger. Can you then come to any other result, than that this injury whether you look at its cause or consequences, is purely the result of accident, and if it happened through any agency of the defendants, which we utterly deny, there is no possible ground of imputing to them malice, either express or implied.

The only danger they incur is, that a confused and indiscriminate view may be taken of the evidence, and thus, though its several parts when separately examined may appear inconclusive or unworthy of credit, it may be supposed, that the accumulation of worthless or incredible testimony, should produce a conviction of its truth. But the benign and merciful provision of the law, which requires all reasonable doubts of the prisoners' guilt to be removed, before any tribunal can pronounce the charge against them to be proved, cannot be satisfied, so long, as any of the material facts in the chain of evidence are drawn from corrupt and discredited witnesses. In no such case can it be said, that there remains no reasonable doubt. Guilt-

less as the defendants are in thought and intent, the only true test of criminality, even the severe and often sanguinary maxims of the code, which has been so often appealed to on behalf of this prosecution, does not demand, that these young men, some of them scarcely more than children, should upon such evidence be torn from their friends, and immured in the state's prison, or led forth to an ignominious death—that grief and desolation should be carried to so many firesides, where they have been accustomed to meet their parents, brothers, sisters, friends, who are here waiting your decision with the most intense and painful interest.

The following authorities were cited for the defence: Ros. Ev., 664, 560 ; 2 Sum. R., 29 ; 5 Bac. Abr., 141 ; Tit. nui.; 2 Salk. 428 ; 1 Hawkins 364 ; 5 Bac. Abr. 152 ; Ros. Ev. 72, 120, 117, 169, 579 ; Rus. on Cr. 452 ; 1 Chit. Cr. Law 257, Note 68 ; 1 Gall. R. 924 ; 2 Ch. Cr. Law 485, Note B ; 1 Geo. I ; sec. 2 ; N. H. Con. Art. 39 ; 8 N. H. R. 550 ; 5 N. H. 549, Cowp. 415. ; 8 N. H. 562 ; Cro. Char. 182 ; 4 Black. 142.

John Page, sworn. The house pulled down, I built two years ago—21 feet long, 13 feet wide—it was neither clapboarded nor shingled—it was battened—it was not lathed or plaistered. The doors were made very cheap—six or eight studs on a side—two windows in front—posts very small—had only 35 dollars for building the house and finding materials. I talked with Davis on Sunday, the day Mrs. Sever died. Davis told me that when Mrs. Sever cried out, a stone hit her. I asked him if he examined her head, and he said no—he said he did not think her injured badly. I am acquainted with Elisha Sever, the husband of the deceased—his reputation for truth is bad. (Evidence was offered to show the reputation of the house—objected to by the government. Mr. Walker contended that a brothel was not such a nuisance, as the public were justified in abating by force. Mr. Bell contended that it was, and authorities were read on both sides. The Court held that if it was a *tenanted house of ill fame*, they were not justified in tearing it down. They had no doubt on the point.

Evidence was then offered to show what the true purpose of respondents' going there to Sever's house was—that they did not intend murder—objected to by the state.

The Court held, that if men go to commit an unlawful act, and use means in its prosecution which will endanger life, they are guilty of murder, if death ensue. The government conceded that there was no intention to murder when the parties combined and went to tear down the house.

The evidence offered, was ruled out.

Mr. Page's testimony concluded. I never saw wounds in-

fllicted on her, but I have seen, two years ago, a wound on one side of the temple near the forehead of Mrs. Sever, which had been inflicted. I am acquainted with the two Colcords, Sillo-way and Webster. Their character and reputation has stood fair.

Cross examined by H. F. French, Esq. There was a report two years ago against Munroe Colcord. (Mr. Bell objected to this particular testimony—objection sustained by the Court.) I have heard an unfavorable report about Munroe Colcord.

I have heard unfavorable reports about Webster two or three years ago. I have no recollection of having heard unfavorable reports about Sillo-way—he resides three miles from me. About two years ago I saw the bruise upon the head of Mrs. Sever. Elisha Sever resided about three miles from me before he removed to this small house. His reputation for truth is bad—I have heard people speak of him, and they said there was no reliance upon his word. This was at East Kingston Falls—he worked there some two years ago—I heard Mr. Gale at “the Falls” say there was no dependance to be placed upon his word. I have heard Davis frequently spoken of as a man not to be believed. I heard Mr Goodrich on the plains say, that there was no reliance on his word for anything. I have heard Samuel Webster speak of Davis’ character for truth.

Re-examined by Mr. Bell. I would not believe Sever or Davis on oath as soon as men in general. All I heard against Munroe Colcord was, in relation to one transaction—I am satisfied it was a false report. I have known them from children. The report I heard about them, related to the pulling down a horse shed—he was tried for it and acquitted—it was referred.

Judith P. Buzwell, sworn. I reside in Kingston, ten or fifteen rods from Sever’s house—he had resided there two years. I have known Sever strike his wife—they quarrelled most every week—they made such disturbances as annoyed their neighbors. I have seen bruises upon her head—she had a black eye last summer. I have seen Sever chase his wife with a club in his hand, threatening he would kill her—that was a year ago. She came to our house for protection—he said if she came in he would kill her—they were intoxicated. They have been intoxicated three fourths of the time. I have seen Sever drive her out of the house with a large club, threatening he would kill her. I have heard cries of murder from the house frequently. I have known people called there to protect her, and I have known them go for that purpose. I have heard cries of distress this summer. I have heard more fighting there this summer than before. I have heard cries of distress there, when other persons beside the family have been there this summer. The fam-

ily consisted of Sever and his wife, and Mrs. Davis and two children. I have known people stay there weeks, who did not belong to the family. I have seen Mrs. Sever fall down in a state of intoxication. The character of Sever for truth is bad, and so is that of Davis—I would not believe them under oath as soon as men in general.

Cross examined by Mr. French. I was at home on the 20th of July, when the inquest was held, but did not testify, and told some one I knew nothing about her death. I don't recollect how many times I saw Sever chasing his wife with a club—I should think four or five times.

Abigail B. Buzwell, sworn. I live in East Kingston, about a dozen rods from Sever's house.

I have frequently seen Sever chase his wife with a club, and say he would kill her, and I have seen the blood run down her face. I have seen her eye bruised this summer. I have frequently seen Mrs. Sever tumble down because she could not help it. She was intoxicated—she has been so three quarters of the time.

I have frequently heard Mrs. Sever cry murder, and heard the children scream "*don't kill mother.*" I have been awakened in the night by these cries. When I heard these cries, sometimes the family were there, and sometimes there were others. I am acquainted with the prisoners at the bar—their reputation is good. I should not think Sever and Davis are men of truth. I would not believe them under oath as soon as men in general.

Cross examined by Mr. French. I cannot recollect who I heard say they would not believe Davis. Sever agreed to help us, and did not. Sever has worked at our house, and so has his wife. I am personally acquainted with the six respondents. I have heard only one report unfavorable to the character of Munroe Colcord about the barn. All I heard about Webster, was about the shed. I was a witness before the Coroner. I could give no cause of her death.

George Buswell, sworn. Examined by Gilman Marston, Esq. I am a brother to the last witness—I live at home. I have seen Sever chase his wife out of doors with a club several times—once or twice this summer. I have seen it at other times. I have seen bruises upon Mrs. Sever. He struck her on the temple once, and the blood ran down her face. I have seen Mrs. Sever fall down drunk this summer. I have heard them cry murder at Sever's house once or twice in the day time. I heard Mrs Sever cry murder.

Moses Tucker, sworn. Examined by Amos Tuck, Esq. I live in Kingston—I knew Sever and his wife. I don't know of any particular fighting at the house. I have been there and seen

Mrs. Sever drunk. Jonathan Davis, Amos Davis and two Davis girls were there then. There was a quarrel when I was there, but not between Sever and his wife.

Elbridge G. Dalton, sworn. Examined by Mr. Marston.—I reside in Kingston—I am the preceptor of the academy—I am acquainted with Webster, the Colcords and Silloway—I know nothing against their character, save the matter against Monroe Colcord and Webster, which have been alluded to.

Cross examined by Mr. French. Have heard only one thing against Monroe Colcord—the one which has been alluded to. (It was proposed to enquire what thing against Colcord—objected to—objection sustained by the Court.)

Luther Silloway, sworn. Examined by A. Tuck, Esq. I have had a conversation with Jonathan Davis, in relation to the manner that Mrs. Sever was hit with a stone. He told me when the first stone was thrown he was in bed with his wife, and soon after another stone was thrown, which hit Mrs. Sever, and he run and caught her just as she was falling to the floor. I have known Davis since I was old enough to know any body—his character for truth is bad, and I would not believe him under oath as soon as I would men in general. One of the respondents is my brother. I don't know but that the reputation of the respondents is as good as young men in general.

Cross examined by Mr. French. Davis never stated to me that the stone did not cause her death. I suppose he did not undertake to tell the whole circumstances. I think I introduced the subject. I asked him what was done, because I did not know—I was not at home—I enquired no further of him than what I have told you. I have heard a little something said against the character of Monroe Colcord, which has been alluded to, and also of Webster, which has been alluded to. I have heard Mr. Clark say he would not believe Davis—I have heard others speak ill of him.

Direct examination by Mr. Bell. What I have heard about Monroe Colcord, was only one report.

Thursday, Sept., 4.

Mr. French read from 5 T. R, 14, to sustain the position that tearing down a house is felony.

Mr. French suggested that Mrs. Davis have leave to correct her testimony in one particular—leave granted by the Court.

John Page, recalled. Examined by Mr. Bell. If a stone was thrown from the road a little above Sever's house into the west window, it would strike the back part of the house. The ground falls off at the west end of the house. It falls from four to six feet in three rods. The story of the house, is only six feet.—

There is no point in the road from which, if a stone is thrown into the west window, it would fall in the front entry. It would strike almost as far from it as it could.

Thomas Bassett, recalled. Examined by Mr. Tuck. When I examined the corpse and awoke Sever, I asked him who, and how many were there when the house was demolished, and he said he did not know—nor did he know how the injury was inflicted upon Mrs. Sever. He said nothing about a stone being thrown. I could get no information from him or any one else with regard to the injury upon the body. Davis testified before the Coroner. I did not hear him. I attended the examination before the Coroner, on Monday. I heard Davis' testimony I think, but am not sure. The first time I heard anything about Mrs. Sever's crying out when a stone hit her, was at the examination at Exeter, July 23.

By Mr. French. I have no recollection of hearing the testimony of Davis or his wife or Sever, until July 23.

Dr. William Perry, recalled. Examined by Mr. Bell.—There was nothing about the wound, by which I could determine how the injury was inflicted. The diameter of the artery in the region of the injury, is about that of a large knitting needle. We found a quantity of coagulated blood. I could not judge by the wound, how long the injury had been inflicted. It was four days after the death. I have performed a number of operations, where there were like injuries, and as soon as the pressure of the bone was removed, the sense was restored, and the patient recovered. There was a little splinter which stuck out from the bone about half an inch long, and 3-8 wide. I could not determine the instrument which inflicted the wound. If the artery in that region was broken, it would not produce sleep immediately. It would come on gradually, depending upon circumstances as to time.

By Mr. French. A heavy blow upon the skull, which fractured it, would produce concussion of the brain, and a consequent sleepiness.

The part of the skull bone which was taken from the head, was here produced to the Jury.

Dr. Bassett, recalled. There was nothing about the wound by which I could determine how it was produced. There was nothing broken, and no appearance of a scratch. The swelling upon the head was oval, and extended from the forehead toward the back of the head. It was in the form of the human ear, and about the size of a common sized ear.

A son of Mr. Sever, about seven or eight years old, was here produced and offered by the defence—seven years old last Au-

gust. The Court examined him, to see if he could be permitted to testify. The Court asked him how old he was, and what town he lived in, and what he came here for ; at which questions the boy was frightened and began to cry. The boy said he should tell the truth, but could not tell what would happen to him, if he did not tell the truth. He could not tell what town he lived in, and said he never heard of a court, or of testifying in a court. He said he never heard anything said about that he would be punished, if he did not tell the truth. He said nobody had told him about telling the truth when he came.

He said he knew it was wrong to tell a lie. The Court permitted a lady who was with the boy to ask him some questions to test his intelligence.

The Court said they did not think the boy had intelligence enough to testify, and permitted that some person might instruct him, and have him produced again. Mr. Christie, was asked by the Court to perform the duty, but asked to be excused. Judge Sullivan, also declined the task. By the suggestion of Mr. Woodbury, Judge Pickering, took upon himself the duty.

Dr. Perry, here exhibited the skull of Mrs. Sever to the jury.

The small boy was again produced, and inquiries put to him by the Court to test his intelligence.

The boy said he never went to meeting, but had heard of Sunday. He said he never heard but it was just as well to tell lies as the truth. He said Judge Pickering told him, if he did not tell the truth, God would punish him. He said if he told lies, he would be punished.

The Court decided, that the boy might be learned if he had an opportunity, but *now* that his mind was nearly a blank, he had hardly an idea.

Testimony of the boy, ruled out.

Abby T. Buzwell, recalled. Examined by Mr. Marston. I first saw Mrs. Davis, on Sunday, July 20, about 4 o'clock. My mother asked her how she came to go, and leave her mother, when she was sick, and she said she did not know anything ailed her. She said nothing about the stone killing her. She said she did not know her mother was dead until that time.

I was at the ruins, before the death of Mrs. Sever. Mr. Sever, my mother, and a little girl were there. I staid till she died. I don't recollect what Sever said in relation to his wife's death. He said nothing about his wifes having been injured the night before.

By Mr. French. I did not know before the house was torn

down, that it was going to be torn down. Benjamin Taylor and Mary Taylor have been at our house this summer together, but I do not recollect of hearing any conversation then, about the house being torn down.

I do not recollect making the remark, that the house would not stand till Fall—nor did I hear it made. I never said that the gang from “the Falls,” had not courage to tear the house down, and that it would take the Plains gang to do it, or anything like it.

I did not hear the testimony of Jonathan Davis, before the Coroner on Sunday, or that of Mrs. Davis or Mr. Sever—nor did I hear their testimony at the town house in East Kingston. I heard a noise the night the house was torn down. I got up and looked out of the window. I saw some men there at the house whom I did not know. I did not know that they were to be there.

Judith P. Buzwell, recalled. Examined by Mr Marston, I first saw Mrs. Davis, Sunday, P. M. 4 o'clock. I asked her how she came to leave her mother when she was so sick, and she said she did not know that anything ailed her. She had been examined before the coroner before this. Mrs. Davis did not state any of the circumstances of her mother's death at this time. I saw Mr. Seaver the morning of the death of his wife and asked him how his wife came to her death and he said he did not know—she might have died in a fit, he said. I did not ask him if she had received any injury. Sever said there were some men round the house the night before, but did not tell me that they threw stones or knocked in the windows.

Dorothy Goodrich, sworn. Examined by Mr. Marston. I reside in Kingston, half a mile from Sever's. I first saw Mrs. Davis at 4 o'clock in the afternoon of Sunday in Mr. Buzwell's peach orchard. She said she did not know that her mother was dead. She said she knew not that anything ailed her mother.

Cross examined by Mr. French. Mrs. Davis had not been examined before the coroner. Judith P. Buzwell was present. Mr. Davis came to the peach orchard before she went into the house. They were talking about the death of Mrs. Sever. I do not know whether Mrs. Davis knew her mother was dead before this or not.

Jacob P. Tucker, sworn. Examined by Mr. Tuck. Mr. Jonathan Davis told me that he stood in the road before the house when Mrs. Sever was struck with a stone and that his wife and Mrs. Sever stood in the door. He said he went to Mrs. Sever after the house was torn down and his wife spoke to her and they concluded to let her lay.

Cross examined by Mr. French. On Monday 21st. July, I

heard this conversation with Davis. I am pretty positive Davis said his wife and Mrs. Seaver stood in the door when the stone was thrown and hit Mrs. Sever.

Elbridge G. Webster, sworn. Examined by A. Tuck, Esq. I live a mile from the Sever house. I lived at Mr. Buzwell's near the Seaver house until last fall. I have seen Mrs. Sever fall down and I supposed her to be drunk. I have seen her so a number of times. I went to the house once when Mrs. Sever screamed murder. Mr. Seaver came to the door. I talked with him and he began to swear at me and told me if I did not go off the ground he would knock me down.

These brawls continued up to the time I left Buzwell's. I have been awakened by a noise from Sever's house in the night time. In the morning I saw some persons go away. I know most of the respondents some. I am acquainted with Stephen Eaton, Elisha Colcord and Silloway. I do not know but that their characters are good.

The character of Sever and Davis for truth is bad and I would not believe them on oath as soon as men in general.

Cross examined, by Mr. French. I have heard Seaver say he would not believe Davis. Neither of the respondents ever told me any thing about tearing down the house before it was taken down. I did not know from either of the respondents that the house was to be torn down. I don't know that the defendants intended to tear it down, from what I heard them say or saw them do. I have heard that people said it would be torn down. The reason why it was supposed this house would be torn down was that it was a bad house.

Moses C. Goodrich, sworn. I live about half a mile from Sever's. I have been acquainted with them for six years. I have seen her drunk tumbling about. I saw her so last fall.—She could stand and walk then in a poor way.

Sever's reputation for truth is bad. I would not believe him on oath. I have seen the Eatons a number of times. I never heard anything against the Eaton's.

Stephen Morrill, sworn. I reside in East Kingston. I am well acquainted with the Eatons. Their characters are good and always have been. I know Sever. I would not believe him on oath.

Thomas C. Marsh, sworn. I reside in East Kingston. I know the Eaton boys. I know the others well. I reside a third of a mile from the Eatons. Their characters are good, I know nothing against the others.

I know Davis. I should not consider him first rate, he is not so good as men in general for truth. I know Sever—his reputation for truth is bad, and I would not believe him on oath.

The reputation of the respondents is good, as far as I know.

John Fowler, sworn. Examined by Gilman Marston, Esq. I reside in East Kingston. I am acquainted with the Eatons—their characters are good. I know nothing against the others. I know Sever—do not know whether his character for truth is good or bad. I have heard a report against the character of Webster and M. Colcord—that of Webster, was about a horse shed.

Dr. Levi S. Bartlett, sworn. Examined by A. Tuck, Esq. I reside in Kingston—I am acquainted with respondents. I have heard nothing against them, excepting what has been referred to here. I live near the Colcords, Silloway and Webster. I know the reputation of Jonathan Davis for truth—it is bad, and I would not believe him on oath as soon as men in general. Sever, I would not believe on oath.

Cross examined by Mr. French. I have not heard a great deal about Davis for truth.

Frederick G. Nichols, sworn. I live in Kingston—have always lived there—I have always known all the respondents except the Eatons. Their reputation is good.

I have seen Davis and Sever, but do not know their characters for truth.

Dr. John Dearborn, sworn. Examined by A. Tuck, Esq.—I reside in Kingston, am acquainted with the respondents, all but the Eatons. Their reputation is good—the Colcords have boarded at my house—their reputation has been good. I know Sever and Davis, not intimately. People say they are not men of truth, and I would not believe them on oath as soon as men in general.

Cross examined by H. F. French, Esq. I should think the character of the Colcords were good. I have heard a report about Colcord, but it did not amount to much. It was said to have taken place at Epsom.

James Mc Murphy, sworn. Examined by A. Tuck, Esq.—I was acquainted with Monroe Colcord, at Epsom, in 1842. I heard nothing against his character. I have heard some reports since, but they have been cleared up to my mind, by my own knowledge of the facts, and what I have heard.

Mrs. Davis, recalled. by H. F. French, Esq., to correct her testimony. I stated yesterday, that I did not leave Mr. Sever's on the 19th. July, but I now recollect that I went on Mr. Silloway's hill, to pick some herbs—I had forgotten it. It is a

mile and a quarter. I was gone 1 1-2 hours. Mr. Davis carried a jug to Kingston Plains.

Court adjourned till 2 1-2 o'clock P. M.

AFTERNOON.

REMARKS OF HON. LEVI WOODBURY.

[The report of the remarks of Messrs. Woodbury and Walker, and the charge of Judge Woods, does not do them justice, as the reporter could not take down all they said.]

May it please the Court and Gentlemen of the Jury: You are aware gentlemen, that a most fearful responsibility rests upon us. You hold in your hands, the lives of six of your fellow citizens, or it may be that you hold in your hands, the characters of these six young men, which is dearer to them than even life itself. You are not enquiring concerning the character of ruffians—you are inquiring of respectable young men, and good citizens—they are like your own sons and brothers—they are here surrounded by their fathers and mothers, brothers and sisters. You must weigh well the law and evidence. The responsibility rests on you—you are the power that stands between the state and the subject, and it is incumbent on you to discharge that duty, fearlessly and honorably. You are drawn here by the laws of our free republic. (Here Mr. W. made an elegant comparison between the criminal trials of our own country, and others.) Our fathers emigrated here, to escape from tyranny, and be among men who do not thirst for the blood of the victim. To maintain this position, we must have eternal watchfulness. We have not intimated that the poor should not be protected in their houses, as well as though they resided in marble palaces. *Facts*, and not fictions are to govern. The truth is to govern. If all the evidence had been known to the grand jury, would they have indicted these six young men for wilful murder? It was as foreign from their intent, as it was to emigrate to the moon. What are we here for, unless to try the guilt or innocence of the respondents? There is not a juror that believes one of these young men went there to murder this woman—no, impossible. (Mr. W. read from the

indictment, what is said about malice.) If these allegations cannot be proved true, it must fall—they must prove malice aforethought. When we show the true motive of these boys going there, the government waive all express malice and rely on implied malice. There must be a felonious and malicious intent proved towards the woman, or you cannot find them guilty. It is absurd, gentlemen, to try and get up malice, supported under an old English statute, which has never been adopted here. It comes about as near this case, as playing upon a French horn does to speaking French. This statute is only applicable to other times and other countries, where catholicism reigned.—This old statute is not in force here, it has never been adopted. The emigration of our ancestors, was in 1623, and this statute was passed more than a century afterwards, and has never been adopted here. Are we to have the whole burthen of the English statutes? no gentlemen, only those which were in force, at the emigration, in England, and applicable to our country. This could not have been originally suggested by the attorney general or solicitor, but probably by some pettifogger up in Kingston or East Kingston. The Court will tell you, that that statute is not in force here. You are to consider the transaction as it would be at common law—only a trespass or breach of the peace—did they start with the idea of committing murder? They did not start to do a wrong of any kind. Did they act like robbers or murderers when they refrained from going to Mrs. Hunt's, because she was sick? Is there a particle of testimony that there was a preconcert to strike this woman, or injure her in any way? No, gentlemen, they went for amusement, and not for crime. The matter was not talked about an hour before—a premeditation did not exist—they had neither gun, sword, knife or even club. The axes were got to cut the posts with. They contemplated no injury to the woman. Three or four of them put on some paste blacking, and one of them false whiskers, for sport. If all the evidence had been known, they would not have been indicted for murder, but only for a breach of the peace. They would have been punished by fine for damages. I will show you that all they intended to do was, to pull down this old house, and should be punished for nothing

else—if you go beyond this, you go beyond what the country requires. This is called an age of humanity—of christian sympathy and benevolence. Are you then urged to go beyond what the facts will justify?

The only thing which constituted murder in this state for years, is embodied in a statute passed in 1829. It requires that there must have been express malice—an effort of the will against the victim. We have a subsequent statute, making a distinction between murder in the first and second degree, but you will find that in these statutes, wilfulness is required, and premeditation. Suppose one kills another without design, is he to be punished? No, gentlemen: the scriptures will sustain us in saying, that if killing is done ignorantly, it should not be punished.

(Here Mr. W. read largely from the bible, to show that the avengers of blood should have no power in this case,)

By the bible, this crime is not even manslaughter—it is nothing. There may be an attempt to satisfy you, that malice was implied, but if my voice could reach the Alleghanies, I would tell all around, that our citizens are not to be hung up by legal fictions—legal *lies*. There must be some act to show express malice. If one kills another in anger, it is manslaughter. Death must be produced under circumstances which show that there was malice, or else malice cannot be implied. In the case of Howard, there was no difficulty in convicting, because he went to the door of a woman, and shot her down for her money.

You have run the gauntlet, gentlemen, to get into that jury box, the questions put to you upon the *voir dire* were so close upon both sides. You are persons as anxious to preserve the laws, as the Attorney General, or the Court, and yet you have run a gauntlet, as narrow as that of General John Stark, when he was with the Indians. If one does a thing which will probably produce death, why then malice must be implied, and not else. There is a cry for blood, for vengeance, because a person is killed; but if this was a mere accident, I say there is no cry for the blood of these six victims. We make no bargains, but if there is neither express malice nor implied, they must be

acquitted—if they had no malice aforethought against this woman, they must be acquitted. I read lately in the newspapers, that a father gave a boy a tap upon the head, and he fell from the stool, and broke his skull and died, and in this case was there malice? You must believe there was a murderous intent, or there can be no malice. The question is, is the crime done feloniously? If it is not, there can be no crime.

If you can hang up men by fictions of law, how are you to appear before the Great Judge of all? You must know that it is your duty to God and man to acquit where there is no malicious intent. Let us see if the facts will show malice—you are to commence with the presumption that the prisoners are innocent, and all must be proved beyond a reasonable doubt or you must not set it down against the prisoners. A man is not to be deprived of his life and liberty, unless the proof is beyond all reasonable doubt.

The government must prove beyond all reasonable doubt, that the woman was struck by a stone which killed her, and that stone was flung feloniously, by one of the respondents. Not one evidence swears to this. Davis did not see her struck—nor his wife—she says when they were standing in the entry, Mrs Sever said a stone hit her, but Mrs Davis did not see it.—Sever did not see it hit her, nor did Crane—not a witness saw her struck by any thing. There is a cloud of witnesses that proved she was not struck by any thing. If she had been struck by a stone which produced her death, and they knew it, would they not have said, the next morning, that she had been struck by a stone. Davis and Sever and others, are unworthy of credit, and we have proved them so, and they have conjured up their stories since Mrs Sever was killed. If Mrs Davis had known her mother had been struck with a stone, she must have been a *hyena* to have left her in the manner she did—actions speak louder than words. We have proved that she was drunk three quarters of the time, and might have fallen down a hundred times, and produced the wound which killed her. The wound does not appear to have been produced by a stone—a stone generally breaks the skin—more likely she fell and pro-

duced this wound. The evidence is that Sever was in the habit of beating his wife, so that she would scream murder, and he might have struck her and killed her—the cause of the death might have been inflicted a week before the death—we have shown that it could have been so—the wound shows that it might more probably have been produced by a club or cane, which Sever was in the habit of using—the wound was three inches long.

You have the woman located, by the only witnesses who are unimpeached, in the entry, or at the door. The stones came in at the north window, and could not reach the entry, where Mrs. Sever stood, but must have hit the back side of the house. This circumstance is a strong one. They prove this by their own witness.

The only credible witnesses swear positively to this.—The great fact that she was struck by a stone that produced her death fails.

The indictment alledges that these six respondents took the stone in their right hands, which produced the death. Was it so? do they prove that they all flung it? It should have been alleged that one flung the stone, and the other five aided and abetted, and if then it was proved, that one of them flung the stone, while the others were present; why very good.

It must be proved that one of these young men flung the stone, which killed her, and the others were present, or nothing can be sustained, at any rate—then it must be proved, that this was thrown with a malicious intent, or the indictment must fail. They started for sport, and nothing else—with no arms but blacking on the face—the axes were taken to cut the posts; they took no stones. The first we hear of stones is that Davis flung them at the others, and the only one he saw throw stones was Woodman, who is not here. Crane swears he told Webster to be careful, and Webster said he would be careful, that no one should be hurt.

It is more probable that she died of falling down drunk, or from the blows of a brutal husband, who treated his wife worse than the Cannibals of New Zealand, who devour their wives.

There was no pre-concert between the boys. They took no clubs with them, no stones. You must find the individual who threw the stone, which killed her, or you cannot find the guilty one, and can do nothing to condemn the prisoners. We have a fearful responsibility, and it is my duty to say what is proper to be said in favor of my clients.

If these young men were summoned at the bar of God, I have no belief that he would find them guilty of murder. You must find beyond all reasonable doubt, that a stone must have been flung by one of these young men, with an evil intent, or you cannot hold them responsible.

It is important that Jurors should understand their duty. If you convict them of murder, you deprive them of life, or character, and incarcerate them for life. If you convict them, gentlemen, convict them I pray you, upon the same evidence, that you would convict your own sons or brothers. If you convict these young men of murder, the 16,000 who were engaged in the Kentucky riot, are murderers. They are guilty only of pulling down the house, and it will not do to transfer the intent, to pull down the house, to the intent to murder. There was nothing done here which would reasonably produce death. In ninety nine cases out of a hundred, a stone thrown in the manner this was thrown, if one *was* thrown, would not produce death. They went there with no murderous weapons—to use no murderous weapons—they did use none. Sever would be found guilty of her death, much sooner upon this evidence than these respondents. Be true to *yourselves*, and to the *prisoners* and to *God*, and it is *all I ask*.

Mr. Woodbury spoke two hours.

REMARKS OF HON. LYMAN B. WALKER, THE
ATTORNEY GENERAL.

May it please the Court, and Gentlemen of the Jury ;— You have been told of the awful responsibility that rests upon us all, it is truly great, it is great as respects these young men, and their connexions, but it is greater still, in regard to the whole community ; Shall our houses protect us ? shall we feel secure in our homes ? Gentlemen, acquit these men, and you will see what the consequences will be ; return to your homes this night, and will you feel secure, that your dwelling will not be torn down before morning. You have been told, that had the circumstances of this case, been known to the Grand Jury, there would have been no indictment ; this is gratuitous. The charge is set forth in the indictment, as has been customary for years and years. An assemblage of men go to tear down your property, or destroy it, and each one entering into such an undertaking, is guilty of what is done—it is a sort of partnership, in which every one is responsible. You have been told that this was done in sport—but is it sport to tear down the house of another. The family were peacefully retired to rest ; these men, with faces blackened, proceeded to perform their sport, as the learned Council calls it. What was the first act of their sport ? to dash in a window. They drove up the family in the dead of night. While Sever and Davis were out of doors, the stones became thick and violent ; Stones were found there to the number of thirty or forty. Could it be expected that a stone could be traced at her head in the night, when the family were frightened, and fleeing for their lives ? Davis was stricken when he went in to get furniture—this is called sport ! Was this sport deliberately entered into ? Did they take a vote to drive them out of the house ? The law forbids a wrong in the first stages of it. Governor Woodbury says Davis threw stones—he *resisted*, and yet these young men proceeded in their work. Each man is to take care of his own concerns, and mind his own business. He is not to commit a *trespass*, even, upon the premises of another. You have heard learned comments upon the oppression of the English laws, but you are not to be influenced by this. These men should be punished, that the community should be safe. You should not go one step beyond your duty. I do not ask it ; but I *do* ask that the community should be protected. You set there to pass upon the single solitary fact without regard to consequences. You there end your duty.— You are bound to do your duty in this matter.

It is incumbent on the Government to show that Dolly Sever received an injury upon her head of which she died—this we have proved, and although the counsel try to draw your attention, to other ways, in which she might have received her injury. Has any evidence been shown to prove that she could have received her injury in any other way, than from the stones thrown.

Adaline Davis stands unimpeached. And she swears that her mother retired in good health, that night. It is repugnant to common sense, that she died of any old injury. Is it not proved clearly, that she died of a wound, received that night? How was the wound produced? by whom inflicted? Who were there? You have the evidence of Crane, and Buswell, about who were there, and who entered into the combination.

Did the sport require concealment? No one dared to go singly, and give the notice to the family to quit. Why did they put on blacking?

If they were honest in their intentions, why did they conceal themselves—they knew what they were doing was foul. Was it sport to throw stones of all sizes into this house? Where were the stones found? Over the floor and on the bed—a woman had been killed by them, and the spirit had fled to her God.

When they were throwing these stones, Sever begged them not to throw, and did they respect his age and state? They did not respect his age as much as the *Algirenes* do their aged, or even as some *brutes* do, but they pushed the old man down. Mrs. Sever complained that a stone had hit her upon the head. Adaline Davis swears to this, and she stands unimpeached.

The stone did not fracture the skin, because of the hair—the stone might have been smooth and not necessarily produce a fracture of the skin.

Would she have gone two miles to sell her berries while the artery was bleeding, and return in good health? Impossible.—Would you suppose that if your house should be broken at midnight, you would be able to discriminate precisely where the members of the family stood? Was the house nearly surrounded by these young men?—was it dark? Who could tell what stone hit the deceased. Is it not sufficient that these prisoners were there throwing stones and doing other unlawful acts? At that time she received the wound of which she died. They were wrapped in the arms of slumber, and it is proved that they were awakened, driven from the house and the house torn down. It is not necessary to show who threw the stone. Have you any reasonable doubt that these young men went there for the purpose of tearing down this house, and that they threw stones to drive the family from the house, and that the woman

was killed in consequence? If you believe this, it remains with the court to tell you what the law is. I do not thirst for the blood of these young men, but you are bound by your oaths to your God to give a verdict upon the law and evidence given—the world will be looking upon you and expect you to do your duty—not to exercise a sickly winking at offences. If these are excused there is no safety in any part of the country. The country expects you to do your duty, and I have no fears that you will not. The executive alone has the power of showing a pardoning mercy—it is not for you to do it. Whatever I may have omitted I have no doubt the court will supply.

Mr W. spoke one hour.

CHARGE OF Hon. ANDREW S. WOODS, PRESIDING
JUDGE.

Gentlemen of the Jury :

The case which we are about to present is an indictment against Munroe Colcord, Elihu Colcord, John Silloway, John A. Webster, David Eaton, Nathan Eaton and Samuel Woodman, all of whom are before you except Woodman—the charge is the murder of Dolly Sever, by means of a stone and the infliction of a wound of which she died.

This charge embraces murder of the first and second degrees and that of manslaughter—either of which you can find them guilty of under this indictment if the evidence will justify it.

The charge is the highest known to the laws in this state, and you and the court cannot but feel that there is an important duty for us to perform—a duty, above any which never devolved upon you before. It is important that the laws should be administered in their true spirit.

In all your deliberations—in arriving at a result you are to act upon the humane rule of the law—that you are to convict no man of crime unless all reasonable doubt of his innocence has been removed from your minds. The evidence must clearly convince you of the guilt of the respondents or you must acquit them.

Gentlemen—the first fact I will call your attention to, is—did Dolly Sever die by the means alledged to have been used in the indictment?—Drs. Perry and Bassett testify that she had a wound upon the right side of the head, of which she probably died.—Was the wound inflicted by a stone? The defence contends that she died in some other way, and, if she did, the charge is not made out. Did she die of a wound inflicted by a stone? Was she hit on the 19th of July by a stone which produced the wound that physicians say probably produced her death? To this point you have the testimony of Jonathan Davis—he said he went down the road and while there he saw a person with a weapon, pass towards the house.—Soon he heard Mrs Sever say, O Lord you have killed me—he went to the

house—he felt the bunch above her ear.—Adaline Davis testifies that she stood at the door and saw some one come with an axe and stave in the window, and she halloed to Davis—they began to throw stones and soon one hit her mother and she said, I believe they have killed me.—Elisha Sever says stones were thrown by dozens—his wife stood by him and says, O dear I believe they have killed me. Mr Crane tells you they were throwing stones—he was there and saw them. Mr Smith tells you that he was there and saw stones in the house. The government rely on the fact that a stone hit her on the head which produced her death. This is proved by the defence, and they contend that it is more probable the wound was inflicted in some other way. Witnesses have testified that the character of Davis and Sever for truth is bad, and that they are not entitled to be believed on oath. The story of Adaline Davis, is impeached by the fact that the family said they knew nothing about her injury, even the next day. If they had known her in a dying condition, they would not have left her, in all probability. Was it because they supposed she had not received much injury, although they knew she had been hit?

It is said that a stone, thrown in the manner the witnesses say it was, could not have hit the deceased. You are to consider whether it came in at the west window or hit her in some other way.

These are the circumstances—contradictory accounts are said to have been given by these witnesses—this is for you to determine—and if this exist, it is for you to say how much they detract from their credit.

If the wound was not inflicted in the manner alledged, the case is at an end. Are you satisfied that the wound was inflicted in this manner? if not, you must acquit them.

You are to look at the facts in the case and say whether it was inflicted in such a manner as is alledged in the indictment or not.

The law in reference to this we will state, and you will take it as your guide.

Murder is the voluntary killing with malice aforethought.

Manslaughter is the killing without malice, but in the commission of an unlawful act.

The malice necessary to constitute murder is not confined to an express intention to take life—but when an unlawful act is done which will probably produce death, and death is the result it is murder. All persons engaged in this act are guilty of murder.

We will apply the law to the case in hand.

If six persons or more deliberately went to the house of Sever in the night time, to do an unlawful act and used means in the accomplishment of that, which would probably produce death, and death was the result, they are all guilty of murder.

We have a statute on the subject, and we call your attention to that.

(Here the Statute was read.) N. H. Rev. Stat. Chap. 214, Sec. 1, 3 & 4.

This is not pretended to have been murder committed by poison, starving, or torture.

Whether it was deliberate and premeditated killing, is another question.

To constitute a murder of the first degree, it must have been planned before hand. To constitute murder in the first degree there must have been a premeditated design of killing the deceased. Was there a combination to do an act that was likely to produce death, and did death ensue? Did they commit the act of tearing down the house, designedly, by weapons likely to produce death? If so, murder is made out. You must judge of the facts. If you are satisfied that there was a combination, and that weapons were used that were likely to produce death, and did produce death, they are all guilty.

But if the facts will not warrant this, you must consider whether they are guilty of manslaughter. If it was an involuntary killing in the commission of an unlawful act, it was manslaughter. If there was a combination to do an unlawful act and means were used not likely to produce death, if death was the result, it is not murder but manslaughter. But if you do not find them guilty of either of these crimes, you must acquit them.—

The case has been laid before you by able counsel—the case is about to be committed to you, and you cannot but feel that you have an important duty to perform between the Community and the prisoners at the bar.

(The charge was three quarters of an hour.)

The Jury retired at 1-4 before 7 P. M., and at about half past 10 o'clock returned with a verdict of NOT GUILTY in favor of all the respondents. When the verdict was declared there was a universal shout of applause and approbation from the anxious crowd that filled the Court room at that late hour of the night. The respondents who had sustained themselves manfully during the trial, which lasted three days, were deeply affected when the verdict was announced—so much so that some of them could not stand. They were immediately discharged from custody, and left the Court room with their friends amidst, the cheers of the spectators and the congratulations of their friends.