

# 13

# TRIAL OF HILAIRE LATRIMOUILLE,

BEGUN ON THE 3D DAY OF JUNE, 1879, AT THE ALBANY OYER AND TERMINER, SUCH COURT BEING HELD BY THEODORIC R. WESTBROOK, JUSTICE OF THE SUPREME COURT, AND JULIUS THAYER AND ANDREW C. WOOD, ASSOCIATE JUSTICES.

---

On the 26th day of June, 1879, Judge Westbrook charged the jury as follows :

GENTLEMEN OF THE JURY. — The prisoner, Hilaire Latrimouille, is charged with having willfully and premeditatedly, on the 5th day of April, 1879, at Watervliet, in the county of Albany, within this State, taken the life of Miss Catharine Dunsbach, a maiden lady of about the age of fifty years.

The statute law of this State has thus defined the crime of murder : “ Such killing, unless it be manslaughter or excusable justifiable homicide, as hereinafter provided, shall be murder in the first degree in the following cases : First. When perpetrated from a deliberate and premeditated design to effect the death of the person killed or of any human being. Second. When perpetrated by an act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual. Third. When perpetrated, without any design to effect death, by a person engaged in the commission of any felony. Such killing, unless it be murder in the first degree, or manslaughter, or excusable or justifiable homicide, as hereinafter provided, shall be murder in the second degree, when perpetrated intentionally, but without deliberation and premeditation.”

In other words, murder in the first degree consists of one of the three characteristics : a deliberated and premeditated

killing ; a killing by an act regardless of human life, or the taking of life when a person is engaged in the commission of a felony. The second degree is when there was an intent to take life, but the act is not marked by that deliberation which marks the crime of murder in the first degree.

I shall not refer to the various other degrees of homicide, because, as I understand from the evidence in this cause, and from the arguments of counsel, there is no claim that, if this prisoner be guilty of the homicide, it is not of the degree of murder.

No more solemn issue, gentlemen, than this, can be given to a jury. While, on the one hand, you are to be careful that the accused shall not suffer unless the crime be proven upon him beyond any reasonable doubt ; so, on the other, if the evidence does satisfy your minds beyond such reasonable doubt of his guilt, no mawkish sensibility or tender regard for the prisoner should prevent you from declaring your conviction in the form of a verdict of guilty.

At the outset, then, disabuse your minds of all bias and feeling, and approach the consideration of the cause with pure and honest hearts, realizing your accountability to the Supreme Tribunal, and may He, who controls all events, guide your minds to a correct result. It has been this feeling of responsibility resting upon the court which has caused us to be as careful and deliberate as we have been. We have not deemed it wise to curtail counsel in the examination of witnesses, nor in their remarks and comments upon the evidence to the jury. We wished you to have every fact, every circumstance, and every argument on both sides presented, so that you might be enabled thereby to reach a correct and true verdict.

The first question for your consideration in this cause is, was Miss Catharine Dunsbach murdered ? In other words, to use the language of the law, has the *corpus delicti*, the body of the crime, the murder, been shown ? On the 5th day of April, 1879, the deceased lived with her father. The family consisted of the father, Martin Dunsbach, an aged gentleman of seventy-eight years, a young man by the name of George Nichols, who labored for Martin Dunsbach, and the deceased

lady, Catharine Dunsbach. About eight o'clock in the morning of the fifth of April last, young Nichols harnessed the horse and wagon for Mr. Dunsbach to go to Cohoes, a distance of one and a-half miles. Nichols left for Crescent, in Saratoga county, at a distance of about three and a-half miles, at the hour of about eight o'clock and ten minutes. Old Mr. Dunsbach left his home with his horse and wagon, at nine o'clock, for Cohoes, leaving the deceased person at the house. He reached Cohoes, transacted his business there, and started again for home not far from the hour of one o'clock in the afternoon. On his return he met Nichols and took him home with him. Mr. Dunsbach must have reached his house not far from a quarter to two o'clock in the afternoon. He did not find his daughter. The ashes had been removed from the stove, preparations for baking had been made—they were visible upon the table in the kitchen—but the daughter could not be found, and the bed in her room was apparently undisturbed. Somewhat alarmed at the absence of his daughter, Mr. Dunsbach sent Nichols for Mr. Van Vranken, a neighbor, and the next neighbor, I believe, who came to the house and aided in the search. The bedroom of the deceased was again visited, and something hard being felt in the bed, the clothes were drawn down, and the dead body of Catharine Dunsbach was discovered. Part of a dress was twisted tightly around her neck; her throat cut, severing jugular, carotids and wind-pipe, and baring the bone. The body was emptied of blood, which had soaked through the clothes and had dripped upon the floor. Assuming the truth of the facts given to us, the facts I have narrated, it is reasonably clear that Catharine Dunsbach was, on the 5th day of April, 1879, feloniously killed and murdered. The question is, however, submitted to you, as all questions of fact must be, but upon it, as it seems to the court, you can have no difficulty. Who did the deed? is the important question. Was it the hand of the prisoner which took that mortal life and sent a human soul so suddenly and swiftly before the bar of God? This is a most solemn inquiry. I approach it with dread, but with a firm purpose to give you the facts fairly, in order that justice may be done, leaving, however, all questions of evidence and conclusions

therefrom to you. And let me say here—I may as well say it now as at any other time—it is not important what the court's view may be of this evidence and of the result to which it leads. You are to ask yourselves the question, not how does the court think; each one for himself must ask: How do I think and feel upon this most momentous issue?

From the absence of all the other inmates of the house and from the further fact proved by Mr. Dunsbach, that the drawer of the bureau in which he kept his papers had been opened and two two-dollar bills and a ten cent postal currency note taken therefrom, you will naturally conclude, and whether you do or not is entirely for you to say, that the person, if any, who went to the Dunsbach house during the absence of Nichols and Dunsbach and disturbed the drawers and papers and took the money, if you find the drawers and papers were disturbed and the money taken, is the person who perpetrated the crime; I submit, however, that question to you. Naturally, you would conclude if a person visited that house during the absence of the inmates of the family and undertook to rob and to rifle the house of its contents, that person was the one who committed the crime. Did any individual go to the Dunsbach house during the absence of the head of the household? What are the facts upon this point? On the morning of April fifth, last, a person of pale complexion, smooth face, about twenty-five years old, clad in dark clothes, with an overcoat around his person also of dark color, and a black soft hat, was seen from about half-past seven to half-past eight in the morning by various persons from their houses and by others traveling on the road, going westerly towards the Dunsbach house. One witness, Jane Maxstedt, saw a man of that general appearance and dress go into the Dunsbach premises, remain there fifteen or twenty minutes, then come out the gate and go down the Dunsbach ferry road, fifteen or twenty panels of fence beyond its junction with the Boght road, jump over the fence, and then proceed in a direction parallel with the Boght road and in the rear of the Van Vranken mansion. It is also shown, that is if Mr. Dunsbach is to be believed, that a man of the same general appearance with the person seen traveling in

the direction of the Dunsbach house, actually entered the house of Mr. Dunsbach at about half-past eight o'clock in the morning and asked Mr. Dunsbach for work. He was told that he might possibly obtain employment, and he was further told to meet Mr. Dunsbach at the Miller House, in Cohoes, at twelve o'clock, when a decided answer would be given. He promised — that is, the man who came to the Dunsbach house — to be at the Miller House, at Cohoes, but he didn't keep that promise.

A man answering this same general description, and as Miss Maxstedt thinks, the same person whom she saw go in upon the Dunsbach premises and come out an hour before, was seen from half-past nine to ten A. M., by Miss Maxstedt to return to the Dunsbach premises, remaining there about an hour and then go back on the Boght road. There seems to be no dispute anywhere in the evidence that these facts occurred as I have mentioned; that is to say: A person was seen to go west towards Mr. Dunsbach's, to go upon the premises, was actually in the house, came out of the premises and went back in the rear of the Van Vranken mansion and returned again to the same house, being there about one hour and then departed in an easterly direction towards Cohoes. Who was that man? The answer to that question seems to solve the problem submitted to you. The prosecution claim it was the prisoner. They claim so, first, because his complexion, the smoothness of his face, the age, the dark clothes, the dark overcoat, the soft hat corresponded with the complexion, size, age and clothing of the prisoner. In addition to the deduction to be drawn from the general similarity of the appearance, the prosecution, by several witnesses, undertake to identify that man as the prisoner. William Roff met him near the bounds of Cohoes, and he thinks it was the prisoner. Mr. John L. Vandenburg met him on the road. He walked by his side some hundred feet, and he says he has no doubt in his own mind that that person was the prisoner, though he further says he may possibly be mistaken. Elias Lynk, who sat in his own house which is about 100 rods from that of Mr. Dunsbach, about half-past eight o'clock in the morning, was reading a newspaper and he saw a man going

west, and about half-past ten o'clock go back, and he describes his general appearance the same way as the other witnesses, and he thinks it was the prisoner. It is true that this person looked through a window, but the court knows of no rule of law which would prevent full force and effect being given to his evidence on that account. The question is, could he see him through the window? You must test that for yourselves. You know what objects are around your own house; you know what is without and what is within. You have seen them oftentimes when you did not look through a glass; you have seen them oftentimes through the glass and you recognized them in the same way and just as well as when no glass intervened between you and the object of your vision. The law is not guilty of the absurdity of saying that a man must look not through a window, not through a glass, for the purpose of being able to testify. I make this charge because I was requested by one of the jurors to charge upon that subject.

John Cox, who lives opposite Lynk, saw the man going west about eight o'clock in the morning, and return about half-past ten. He described the appearance, the same as the other witnesses. He was a young man of twenty-five years of age, of pale complexion, light hair, dressed in dark clothes and a soft hat; but whilst he gives this general description, agreeing with that given by the other witnesses, he says that he cannot say that the prisoner is the individual.

Henry Fonda, a painter, who lives on the south side of the Boght road, was sitting by the window, and he saw a man going west. He also described him, and he has no doubt in his mind that the person who traveled upon that road whom he saw was the prisoner at the bar.

Catherine Lynk, the wife of Elias Lynk, was getting breakfast, and she looked through the window about eight o'clock and saw a man coming towards her and go past their house. She gives the same general description. She has no doubt that the person she saw is the prisoner at the bar, though she, also, says she possibly might be mistaken.

Martin Dunsbach, the father of the deceased, describes the man who came into his house and who asked for work.

The man sat between him and the window, with the light striking fair upon his face. The man was at his house for five or ten minutes. He talked with him about work, about wages, about his meeting him at Cohoes, and he says positively and without hesitation that the prisoner is the man who came there to engage work.

James A. Van Vranken, the next neighbor to Mr. Dunsbach, the person who discovered the body, and who was sworn near the close of the trial, testifies that he saw a man go toward the Dunsbach house about 8.30 o'clock in the morning, and he thinks it was the prisoner.

This is the evidence of identity given by the prosecution. Seven witnesses all concur in saying that the individual who was seen going in the direction of the Dunsbach house and return was the prisoner. And the question is, are they all mistaken? Not how much force may be due to the identification of the prisoner by a single person, but is the concurring evidence of all these witnesses at fault?

The next step in the process of identification brings us to the saloon of John Eagan, on the corner of Columbia street and Simmons avenue. Columbia street runs parallel with the Boght road, and it can be reached from the Boght road by a cross road. The prisoner came to this saloon between twelve and half-past twelve, and came, it would seem, from the general direction of the Dunsbach premises. He was dressed as the man was dressed who was seen by the other witnesses. He cleansed his clothes and shoes, and while there entered into a conversation with Mr. Eagan, who asked him whether he worked up in that neighborhood. He said he was working in that neighborhood, but he had forgotten the name of the individual for whom he worked, but claimed that he was "a big milkman." I give you the language as given by Eagan. Eagan repeated over the names of several dealers in milk, and among others he mentioned the name of McDermott, and upon mentioning the name of McDermott the prisoner said that he was the man. In point of fact he did not work for McDermott. If Eagan is to be believed the prisoner falsified the truth.

Frank Moshan and Moses Padeneau met the prisoner near

the arch. They met him about half-past twelve. They fix the hour because they had gone out on that day to gather palms for the next day, which was Palm Sunday, and they left their homes shortly before twelve o'clock. Moshan knew the prisoner and identified him.

Edward Bowler keeps a saloon east of Eagan's, and east of the arch near which Moshan and Padeneau met him. The prisoner, it is claimed by the prosecution, visited this saloon. Bowler describes his general appearance and dress, and such description answers again to that which has already been given, and which I need not here repeat, and he thinks that the prisoner is the man.

James Moore, who was one of the two persons in the saloon, also thinks the prisoner is the man. Now, the claim of the prosecution is this: The man who was seen going up and down the Boght road, though then not known, is traced by the dress, hat, overcoat and complexion, to Cohoes, where he is known to be Hilaire Latrimouille. You are asked to take that complete identification to aid that of the witnesses to whom the prisoner was unknown, thereby to remove any doubt in regard to his identity. In short the argument is, whilst the prisoner is traveling along the road where he is unknown and where the witnesses describe his general appearance, some of them thinking he is the accused, that the same person coming down further into the city and reaching the saloon is known, and thus it is claimed that the complete identity of the person who traveled on that road with the prisoner is established.

The next species of evidence given for the purpose of connecting the prisoner with the crime, and to prove him to be the party who traveled up and down the road, is of this character: In the Dunsbach bedroom there was a bureau, in a drawer of which the private papers of Mr. Dunsbach were kept. There were also in that drawer two two-dollar bills and a ten cent fractional note, and two fractional notes of twenty-five cents each. The three former—the two two-dollars and the ten cents—were gone upon Mr. Dunsbach's return. On Friday night, April fourth, the prisoner was in a saloon of Louis Shepard, at 48 Canvass street. He was

drinking, and, as Shepard claims, without money to pay for the drinks which he purchased there. He was trusted to the amount of forty, fifty or sixty cents. One Joseph La Boeuf says—and whether he tells the truth or not is for you to determine; I am simply repeating to you his evidence—that the prisoner went home with him, and on his way home he told him he knew where he could make \$3,000 or \$4,000. It was not in the city; it was a couple of hours walk from the city. When he got opposite the bank, he also said if he had a couple of good fellows with him he could go through it. This evidence is very important, if true. How much reliance is to be put upon it is not for the court, but for the jury. At all events, it is reasonably clear that on the night of April fourth the prisoner, when in the saloon of Shepard, claimed to have no money, and was there trusted for his drinks. At Eagan's saloon—and this is proved by Eagan and Shields, who both knew the prisoner—between twelve and half-past twelve of April fifth, the prisoner, who had had no money the night before, if Shepard spoke the truth, got a glass of ale and gave a two-dollar bill in payment. He got silver to the amount of one dollar and ninety-five cents, all silver except a five cent nickel piece. The prisoner was dressed in the dark clothes, which have been so often described, a soft black hat, and an overcoat was upon his arm. In a short time he took a second drink at Eagan's saloon, and asked Eagan to drink with him, who accepted, and then in payment for these two drinks he offered a second two-dollar bill, which Eagan could not change. Thus it is shown beyond doubt, if Eagan is to be believed, that the prisoner had at that saloon, between twelve and half-past twelve on that day, two two-dollar bills corresponding in magnitude with those lost, though the night before he claimed to have no money.

At Bowler's saloon a man who was dressed as the prisoner was, and whom Bowler and Moore think was the prisoner, got a small glass of ale and put down a two dollar bill to pay for it. He got in change a silver trade dollar and ninety-five cents in small change. That person, after he had drank himself, asked the two men in the saloon, Moore and Mooney, to drink. They did, and he then put down a ten cent frac-

tional postal note to pay. These three bills, the two twos and the ten cents, correspond in magnitude with the three bills lost from the Dunsbach house, if Mr. Dunsbach's statement is true.

The evidence of identification does not depend, as the counsel for the prosecution argues, upon the possession of a single bill, nor does the identification depend merely upon the possession of three bills, but one of the three bills is of a character somewhat unusual now, and all are in the hands of the prisoner on the very day that three bills corresponding in amount were lost from the Dunsbach house.

At two o'clock P. M. the prisoner comes to the Shepard saloon, where he is known, and he paid the bill which he had contracted the night before, in coin, and he also pays out a silver dollar. Bowler, you will remember, does not know the prisoner, but he says when he changed the two dollar bill he gave him a silver trade dollar. Shepard says when the prisoner, whom he knows, came to his saloon, he paid out to him a silver dollar, and from this circumstance the prosecution also argue that the man who was at the Bowler saloon must have been the prisoner.

Another circumstance, perhaps, is worthy of note. I don't say how much weight it is entitled to, or how much truth there may be in the evidence given to establish it, but it is claimed that whilst the prisoner remained at Shepard's saloon throughout the afternoon, playing cards, he wanted to sit so that he could face the door, and though the keeper of the place also desired to occupy the same position at the table, he surrendered it to the prisoner.

From the fact that a person answering the description of the prisoner in complexion, smoothness of face, age and color and kind of clothes, was seen to go toward and upon the Dunsbach premises, come out and return; from the fact that seven witnesses identify him as the prisoner; from the fact that the prisoner came from the direction of the Dunsbach house; from the fact that he passed two two-dollar bills and a ten cent note, which answered, all three of them, to the money lost; the people ask you to believe that the prisoner is guilty, and that he was the person who went to the Dunsbach house dur-

ing the absence of the owner for the purpose of robbery and actually robbed the premises.

I have summarized these facts to you, and in stating them I desire to draw no conclusion. You must draw the conclusion upon your own judgment. In addition to the facts I have given, the prosecution also ask you to consider the after conduct of the prisoner — that is, his conduct after the homicide — which they say is indicative of guilt. First they argue his guilt from his flight. It is the law that flight is a circumstance to be considered by the jury as indicative of guilt. The weight due to it is not exactly defined in the law, and never can be, because it must depend upon the circumstances under which the flight took place. The prisoner did leave Cohoes about the seventh of April, on Monday. Why did he leave? The mother says that she told him that his father did not wish to have him remain about home; he must go out in search of work; and it is argued he went abroad for that purpose. A week before the homicide he had been to Burden's, as the agent of Burden's works says, and asked for work, and he was told that probably he might obtain it on April the seventh, depending upon the completion of certain machinery, which, if then completed, would require a blacksmith, and he was told to come the last of the week, which would be the week of the homicide, and ascertain. He did not come. On the seventh of April, two days after the homicide, he went again to Burden's for work, and was told that he could have employment probably on the next Monday as a blacksmith, and he could have laborer's work then from that time on, and he would surely then be on hand when the machinery was ready for the blacksmiths. He declined to work as a laborer, but promised and agreed to work as a blacksmith if word was sent to him during that week, and he was to come on receiving a postal card from the agent. The postal card was sent but the prisoner did not come; he had gone. Why? At this time, it is also worthy of note, that no accusation, so far as this case discloses, had been made against the prisoner. It was during that week that the charge was first made, and as he had obtained work at Burden's to begin the fourteenth, and

as there was no accusation against him, naturally we ask ourselves the question, what is there in the case to account for his departure? The theory of the prosecution is that the criminal is always fearful. He sees the officers of the law in every passer-by, and an accusing witness in every visible object. The defense, upon the other side, claim that he left by his mother's orders to seek for work. The court has no theory which it can disclose to you, and the conclusion is for the jury and not for the court. On the seventh of April the prisoner has already disappeared from Cohoes. On the ninth or tenth of the same month he was at Johnsonville, Rensselaer county, and staid all night with one Gilbert Gayette. On April thirteenth, some three or four days afterwards, he was still lingering around Johnsonville, and he went to the house of one Albert Brothers, and professed at that time to be looking for work. On the fifteenth of April he obtained work of Robert Becket, a railroad contractor, and also hired board at the house of Henry J. Brimmer, who boarded a number of other railroad hands. He worked there one and one-quarter days under the name, if Becket understood him right and he had the same written down in a book, of Mat Moore. On the night of the sixteenth, he suddenly disappeared, leaving his own clothes and taking those of Michael T. Grady, not even stopping to collect his wages. He had secured work, it appeared to be at a place which afforded steady employment. He had secured work at his trade. He had secured a comfortable boarding house. He had actually earned the wages of a day and a quarter and then left in the night, unknown to the occupants of the same room, leaving his clothes behind and taking those of a fellow boarder.

We next hear of him at Port Henry, Essex county, at the hotel of William H. Treadway, where he registered himself under the name of "Levi Eddy, Troy." Perhaps that expression was inaccurate; he did not register his own name; he asked the hotelkeeper, Mr. Treadway, to register for him. The registry is produced and it bears the name of "Levi Eddy, Troy." He told Mr. Treadway he came from Massachusetts. Emmett W. Smith, the officer who arrested him,

describes him, as he saw him there, as peculiar in his conduct and actions, and as nervous; that he watched every one that came in. On the twenty-ninth of April they were playing cards, the prisoner, I mean, and the officers and some persons in the hotel. Smith called one of the party "Sheriff." As soon as the other people had left the card table, and Smith and the prisoner were alone, the prisoner asked who was an officer. Smith informed him that he was one, and the man he addressed — Mr. Hull — was also one. Smith then stepped into another room and the prisoner left immediately, telling the landlord he did not desire supper. The question again comes, why was this? He left when he heard of officers. Did he leave because he was afraid of being arrested for the burglary at the junction, or was it from some other cause or motive? He was arrested April thirtieth, the next day, seventeen or eighteen miles south of Port Henry, and thence he was brought here by Capt. Weidman, who was telegraphed to and came back with him to Cohoes. After his confinement in jail and after this trial had been commenced, the prisoner endeavored to break from his cell, as has been described to you by the witnesses, and I need not repeat it. The flight, April seventh, when work was secured; the flight from his employment after working one and a-quarter days; his assumed name, his sudden departure from Port Henry, and his attempt to break jail, you are asked to consider as circumstances of guilt. They are for your consideration and the weight due to them you are to give. No rule of law fixes the weight; you are to do it from all the attending circumstances, and when I say attending circumstances I must leave that to your common sense. If a person should suddenly leave his home when everything required him to remain, you would say he left for some unaccountable reason and cause. If a person was accused of a crime you might say it was from fear. When a person accused of no crime, and who has secured labor and needs it, flees, the argument of the prosecution is that it was the fear of something terrible befalling him impelled him thus to act. Whether this conclusion is fair or not, or whether you can account for the conduct of the prisoner upon a hypothesis consistent with innocence, is for you.

The prosecution also rely upon the fact that he gave, as they claim, a false account of his whereabouts on the day of the homicide, as a circumstance of guilt. If he has done so you are to consider it; the weight due to it is for you. The law supposes that an innocent man has nothing to conceal, and that truth is his best vindication and shield against a false accusation. Ordinarily, too, it is supposed that every person will speak the truth, and it is only when some object is to be attained that falsehood is to be resorted to. When, therefore, a person accused of crime, to escape the accusation, locates himself where he was not at the time of its commission, the ordinary presumption of the law and common sense is, that he tells a lie because if he told the truth it would make against him. The force, however, of this species of evidence is entirely for the jury. You will give to it such weight as in your judgment it is entitled to, always bearing in mind, however, that this, as every other case of circumstantial evidence, should be determined not by weighing each single fact separately, but by considering the combined weight of all. Confessedly it would seem that the prisoner was in or near Cohoes on the day of the homicide. The evidence of the prosecution tends to show him there, and that of the prisoner is to the same effect. After his arrest and when he was being brought to Cohoes, he said to Captain Weidman: "When did this happen that I am arrested for?" Captain Weidman said April fifth. The prisoner said: "What day was that?" Weidman answered, Saturday. The prisoner, according to Weidman, sat for a moment, as if in thought and then said: "I can prove where I was that day; I was in Troy all that day and wasn't in Cohoes." Miller Hay, the Cohoes jailor, said to Latrimouille: "This is a pretty rough charge to be arrested for." The prisoner lit a cigar and said: "A fellow who is innocent ought not to worry." Said he could prove he was in Troy all that day. He left Corr's shop at eight o'clock in the morning, took a car at Columbia street and went to Troy. Mentioned the persons to whom he had applied for work, and it was between three and four P. M., he said before he returned from Troy. To Kendall Hodgson, a sergeant of the police force, he used sub-

stantially the same language, and, also, to Robert Jones. But when one of the officers offered to go to Troy and hunt up these witnesses for him, he said he was in a place of bad repute and, therefore, did not care about giving names. Now the argument is this: If this man was in Cohoes on that day, why did he falsify? And because, as it is claimed, he did falsify, it is more or less proof of guilt. I repeat, that all these circumstances are for the jury to consider. The exact quantum of weight to be given to them is not accurately defined by the law. It depends upon the good sense of the jury to whom they are given for consideration.

The next species of evidence resorted to by the prosecution is confession. The law regards this sometimes as dangerous evidence. A mistake may be made in the repetition of the words used. Human memory is frail at best, and though we try to remember the past, we can seldom recall it with entire accuracy. The witnesses, too, may willfully tell a falsehood. All these things must be taken into consideration by the jury in judging of confessions. If, however, you believe the witness is neither mistaken or false, then the evidence of confession may become highly important for a jury to consider. These confessions are mostly proved by the evidence of Frederick Dugas, and to that I wish to call your attention for a moment. The prisoner's counsel say he is a man unworthy of belief; that he had a hatred and spite against the prisoner's family because they established a rival blacksmith shop to his, and that he therefore came upon the stand to falsify the truth. You heard the man, and you ought to recall him to your recollection as he appeared here, and you ought to judge, as intelligent beings, having the power to perceive and reflect, whether you can or cannot rely upon his evidence. The evidence he gives is important, and I desire to call your attention to it somewhat in detail. After speaking of the prisoner coming to his place in Mechanicville, he says: "I asked, where have you been to work last. He said at Burden's mill. Said the shop he was to work in was idle, and he was out of a job. I asked where he had been. He had been south and west and all over. I said, I believe I can find you a place with Mr.

Beauregard in the village ; I said come to-morrow morning and I will go with you. He asked where this new railroad went. I said to Hoosac Tunnel. He then said, I have been through there lately ; borrowed a lamp and went through. I asked if he was not afraid to go through there alone. He said no, not as much afraid inside as he was outside." Then he tells a conversation the next morning after breakfast. The witness, who was to have accompanied him to the Beauregard shop, was unable to go, but he says : "I directed him to Beauregard's shop, and he returned and said he could get no job there ; Beauregard had a man. I said, can't you get a job to your father's in Cohoes. He said, no ; he and the old man did not agree ; if \$500 was offered for his head the old man would take it as quick as any one. He said times were dull in Cohoes. Said he had been to work for a milk peddler, and what do you think of that ? I asked him what he was going to do now. Said he was going to Canada. I said, to St. John ? He said no ; to St. E—— across the river. Are you going to start a shop there ? I asked. He said, it takes money to do that ; if I had the money I lost a few days ago I could. I said, how did you lose it, at cards ? He gave no answer. He said, I was just as sure of it as if I had it in my hands. A thousand dollars was the amount he spoke of." Then he speaks about a jack-knife and rat-tail file, and proceeds : "After dinner we were in the shop. I asked him if he knew the man Captain Post arrested on the railroad for that murder of the woman back in the country. He answered, he didn't have the right man, did he ? I said, how do you know ? He said, I know the parties that murdered that woman. The woman who has been murdered, her brother was at the bottom of the whole. He named me two or three others, but I won't be positive. I can't remember the names. The prisoner then said, the one who did it was the one who went to hire out. I said, how could one man murder the woman and two or three be engaged in the scrape. He said, they drew cuts to designate the man who went to murder her ; there was some watching to get the old man off. I said, they didn't make much. Yes, said he, but there was \$1,000 or \$1,500 went into that house from the first of April. I said,

you lost \$1,000, had you not better complain of the parties and get \$1,000 reward yourself. He said, I would suffer the consequences myself. I told him I would not take the chance of traveling alone, as he knew so much about it. He hauled out his revolver and said, if any one takes me, he takes me dead." He further said the next morning: "Who went there to hire out, and who did it, had agreed to meet the man at the Miller House."

Now, gentlemen, I repeat, the truth of the evidence given by Dugas is for you. Was he mistaken in the narration of that conversation? Hardly any one would suppose he could be mistaken. But the more important question is, is it true? If it is true, you are to say how closely it connects the prisoner with the crime. It is true the prisoner does not say "my hand did the deed," but he does profess to know all the attending circumstances of the murder. It was the man who agreed to meet Dunsbach at the Miller House who did it. It was the man who went there for work who perpetrated the crime. Others were concerned, but that person who sought work was the person who did the deed.

This, in substance, is the case of the people. As argued by them, they have identified the prisoner as the individual who went to the Dunsbach house on the fifth of April, such identification depending, not so much upon the positiveness with which any one man identifies him, as upon the concurring evidence of several, and the tracing of a person up to the Dunsbach house and back, dressed in a peculiar way and of peculiar complexion, and of the prisoner's age and appearance, until that person is identified in Cohoes on his return, as the prisoner. As the prisoner passed off on the day of the homicide three bills corresponding with those taken from the Dunsbach mansion; as he fled the locality on the second day after the homicide, when work was secured and no accusation against him as a murderer had as yet been made; as he wandered strangely around the northern part of the State under fictitious names; as he undertook to break jail; as he gave, on his arrest, false statements as to his whereabouts on the day of the homicide, and because, lastly, as by confession and statement, he concedes he knew all about the murder, if

he was not an actual participator therein ; from all these facts combined, the prosecution insist that the prisoner's guilt is established beyond a reasonable doubt. The court does not draw that conclusion. The court has only summarized the facts for you and stated the argument. The force of them and of it you must decide. You must weigh them in the scales of your honest judgment, knowing that the All-seeing eye searches your hearts and knows whether or not you are doing your duty. You are to find the facts from the evidence and draw the proper conclusions.

Having thus sketched the case of the prosecution, I proceed now to state that of the defense. That defense is an *alibi*. In other words, it is claimed that they have shown the accused to have been in some other spot than at the Dunsbach house at the time of the murder ; and as he was not at the Dunsbach house at the time of the murder, but elsewhere, he could not be the murderer. I should state that this defense is oftentimes made, but the frequency thereof is no reason why you should reject it. If it be satisfactorily shown, it is a complete justification. In my judgment, however, the value of an *alibi*, as a defense, consists not so much in locating the prisoner at a different spot at the same hour as in giving the history of his life for several hours before and after, and his absence from the locality of the crime at the time of its commission harmonizing with the events of the day. If an *alibi* is thus proved, it is evidence of high character for the jury to consider. If, however, the *alibi* consists simply in proving his absence from the spot at the hour and locating him elsewhere at the same hour, it is so easily made up, that it requires care before it is accepted as true. Now what is the evidence of the *alibi* ?

The father, David Latrimouille, says when he left the house upon the morning of the fifth of April, the prisoner was sleeping upon a lounge, and he went to his work about seven o'clock in the morning. This fact, if it be true, the prosecution claims, proves nothing, because he might have been asleep upon the lounge at seven o'clock in the morning and yet upon the road at half-past seven, as described by the prose-

cution's witnesses. He did not see him again until the next Sunday morning, which would be the morning after.

Lecuyer, the milkman who delivered the milk, says he delivered milk there at half-past seven o'clock that morning and the prisoner was sleeping on the lounge. I state this evidence without any comment. The counsel for the prisoner and the counsel for the people have both addressed you upon this subject. Whether this story is probable, whether it is likely, whether it is reasonable, is for the jury. He says he remembers looking at the clock that morning because he was complained of always as being late. For that reason he looked at Mr. Valois's clock and he also looked at the one at Latrimouille's, and it was from thirty-three to thirty-five minutes past seven and he cannot, he says, be mistaken. The mother, Eloise Latrimouille, says the prisoner got up about seven o'clock or a little thereafter, he got through breakfast at twenty minutes to eight and went off without any overcoat; she also leaving the house and on her return she found the prisoner's coat was gone. It is argued, from the evidence of this witness, that the prisoner could not have been at the spot of the homicide. It is also argued with some force by the counsel for the people that these witnesses are the father and mother of the accused. They are not, however, to be disbelieved because they are the father and mother; though they are, they may have such a reverence for the truth that they may tell the truth here. But it is a temptation for the father and mother to go upon the stand in behalf of the son struggling for his life. You are to look at the evidence carefully. You are not, I repeat, to reject it as false because of the relationship, but you are only to look at it more carefully for that reason, and see if the story is consistent throughout, and whether it tallies with the other facts and circumstances proved in the case, all of which you are to weigh and carefully consider.

James Maguire says that between nine and ten o'clock the prisoner was at Corr's blacksmith shop. He fixes the time because he says he looked at the clock to see (a short time before) if he could collect his bills before twelve, and having ascertained that it was only a quarter to nine he came back,

abandoned his project of going out to collect his bills, having only six or seven to collect, leaving them over until the next week. He remembers the fact that it was April fifth by the circumstance that Hatcher's horse was shod that day, and it was the first horse in the shop. The account book is produced showing that Hatcher's horse was shod upon that day. But the counsel for the people argue that the same horse was also shod, or a horse for the same man was shod, on the previous Saturday, March twenty-ninth, as the book also shows, and, although, the young man may be honest, yet his attention not having been drawn to the circumstance of the prisoner being there until some days after, he may, perhaps, have honestly mistaken the day and given the wrong day in place of the true one. His evidence has, also, been freely commented upon, and it is for you to say how much weight it is entitled to.

Napoleon Latrimouille, the brother of the prisoner, confirms the evidence of Maguire, and he speaks of the prisoner being at the shop, and, also, states that the prisoner wished to secure another man to work with him at Burden's mills, declaring that his work depended upon it. You will remember that the agent was questioned upon this point, and he did not make the employment of Latrimouille dependent upon his hiring another man, but says he promised him the work whenever the machinery was completed and ready for the blacksmith hands.

Isaac St. Pierre was at work near the Orchard bridge on the fifth of April. He thinks on that day, though he will not be sure, he met the prisoner inquiring the road to Dr. Gratton's.

Dr. Gratton is, perhaps, the most important witness on the question of *alibi*, because, if he tells the truth, the prisoner could not have committed the crime; but whether he does or not, you are to decide. He says the prisoner was there from 10:30 to 11:45; he was there an hour and a-quarter to an hour and a-half. He says he furnished him medicine. He charged him three dollars and twenty-five cents after making a careful examination of his person. The prisoner gave him a ten dollar bill in payment, and he gave him in change three two-dollar bills and the rest in silver. Gentlemen, you will recall

to your minds this witness, the story of his life, what he said as to his college days and his inability to remember a text book he studied at school, and his manner, in determining upon the truth or the falsity of his evidence.

Mrs. Mary Carr says, that on the Friday after the prisoner was brought back to Cohoes, that the doctor said the prisoner could not be guilty, because the week before he had changed a ten dollar bill and given him the three twos in change. The court can express no judgment to you upon the weight of the evidence given to establish an *alibi*. It is important evidence for you to consider. But you are to remember, in passing upon this evidence, how it conflicts with all the other facts and circumstances of the case as told by the people's witnesses. And you are to say whether the evidence of Maguire and the evidence of Gratton and the father and mother and brother, and all the other circumstances, would justify an acquittal of the prisoner.

Mr. Wills, a highly respected author upon circumstantial evidence, says: "The credibility of an *alibi* is greatly strengthened if it be set up at the moment when the accusation is first made and be consistently maintained throughout the subsequent proceeding. \* \* \* On the other hand it is a material circumstance to lessen the weight of this defense if it be not resorted to until some time after the charge has been made." This is not my language but the language of a learned author, and in its soundness the court entirely concur.

When was that *alibi*, to apply this rule, as now proved, first set up? You will remember the statements which were made to Capt. Weidman on the way from Port Henry to Cohoes, and the statements which were made to the policeman in Cohoes. Did he know, when those statements were made, of the fact that he was at Gratton's and at this shop of Corr. If he knew he was at these places would he not have spoken of them? Would the circumstance that he went on that very day to a doctor to consult him about his health have occurred to his mind when the accusation was made; and if it was true would he have located himself as being in Troy on that day, and not at the doctor's house? How

much force there may be in this argument, gentlemen, you are to judge, and in judging of its weight, you will also bear in mind every fact and every circumstance proved by the prosecution for the purpose of showing that the prisoner was in the neighborhood of the Dunsbach house on that day, and not where these witnesses locate him. The court does not weigh this evidence. You ought to weigh it, I repeat, in the scales of honest judgment, with your eyes careful to see where the weight of the evidence is.

I have now, gentlemen of the jury, stated, as it seems to me, the general facts of this case. If I have repeated them incorrectly, your better recollection will correct the narration. If any have been omitted, you must not forget them. The inferences, the conclusions, are also for you. To justify a conviction the evidence must satisfy your minds beyond a reasonable doubt.

This is the rule of law which is mercifully thrown around the accused for the protection of the innocent. The doubt, however, which acquits must be reasonable, that is to say, predicated on reason and judgment, and not on whim or caprice. You must be able to say, after weighing every fact and circumstance, that your judgment is unconvinced, that a doubt, resting on a good reason, remains unsolved. Witnesses may be mistaken, or may willfully falsify without detection. Our reasoning faculties are imperfect, our conclusions may be wrong and mistaken; but you as jurors and we as judges must act upon evidence given to us, and we shall stand acquitted before the great Judge if we decide according to the dictates of honest hearts and pure consciences guided by the intellectual light which He has given us.

In conclusion, gentlemen, let me say the law requires no innocent victim to appease its violation. We shudder at the thought of a judicial murder. But as we look at unprotected homes and families, we also shudder to think that any guilty murderer should go unpunished. Take, gentlemen, this cause into your keeping, reflect upon it calmly, without passion and without bias—just as your oaths require you. Let your verdict express your conviction without fear and

without favor, conscious that the Omniscient Eye reads your thoughts and purposes, and that your act will be judged by One who makes no error, and who can commit no mistake.

The jury then retired to deliberate upon a verdict, and after an absence of about nineteen hours, came into the court and rendered a verdict of guilty.

At the request of counsel for the prisoner, the sentence was deferred to Monday afternoon, June thirtieth, when Judge Westbrook pronounced, as follows :

#### THE SENTENCE OF THE LAW.

Hilaire Latrimouille, after a long and careful trial, in which you were aided by able and ingenious counsel, to whose hands the court committed a considerable sum of money to enable you to prepare for your defense, you have been found guilty of the crime of murder.

It is due to the jury which rendered the verdict, that the court should say, a most conscientious consideration of the evidence has impressed upon our minds a settled conviction, that you are the perpetrator of the awful crime, which, on the fifth day of April last added another victim to the catalogue of those slain by cruel and murderous hands.

The laws of this State commit to us no discretion, and in obedience thereto, as well as the Divine mandate upon which it is founded, we must pronounce the dread judgment of death.

It is an awful thing, Hilaire Latrimouille, for you, in the flush of early manhood, to be told that you must shortly die by the hands of the executioner of the law; it is scarcely less dreadful to announce the sentence which the statute requires us to utter; but it is most dreadful of all to be a murderer, and to be conscious that soon, very soon, you must stand before the judgment-seat of God to answer for the life of an unoffending woman, taken under circumstances of cruelty and violence which are seldom equaled.

It becomes us not to speak of the justice of the Great Infinite — we have no commission to declare His sentence — but as believers in His Holy Word may we not ask you to make

your peace with Him before you enter into His august presence to answer for the deeds done in the body ?

This is no time to harrow your feelings, and, perhaps, we ought to say no more. The living are, however, to be warned by your fate, and when we add, that the drinking saloon and its frequenters have been your educators in crime, we state that which the evidence has made manifest, and which should deter others from following your example. The murderer's life does not begin with homicide, that is the end of an education begun in the haunts of sin and in the association of evil doers. Its commencement may have been sweet in the consciousness of gratified passions, but its termination is bitter with remorse of conscience and the pains of punishment. From your fate, too, criminals will learn that human justice is almost certain. The law throws around the dwelling and its inmates a protecting care, and when its threshold is invaded the whole power of the State will be exerted to discover and punish the criminal. He may flee as you did, and wander from the spot and scene of his violence, but the ceaseless vigilance of officers and people shall track his footsteps and sieze his person, as they have yours, despite all his efforts, and his resolve never to be taken alive, backed by a weapon of death in his possession.

It remains, Hilaire Latrimouille, for us to declare the judgment of the law upon you for the crime of which you stand convicted, and that is: That on the 20th day of August, 1879, between the hours of ten o'clock A. M. and two o'clock P. M., within the walls of the prison of the county of Albany, or within a yard or inclosure adjoining said prison, you be hung by the neck until you are dead, and may God have mercy upon your soul.