Henry F. Dument Esq.
with the best regards of
G. A. Somerby

FULL REPORT

—OF THE—

No. 13.

TRIAL

CORNELL UNIVERSITY
APR 13 1927
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—OF—

SAMUEL M. ANDREWS,

FOR THE MURDER OF

CORNELIUS HOLMES

PLYMOUTH:
MEMORIAL AND ROCK PRESS.
1868.

REPORT.

The tragic event that wrought the quiet village of Kingston to the highest intensity of excitement and horror are fresh in the public mind. On the morning of the 26th of May last, the body of Cornelius Holmes was found horribly mangled, and life extinct, by Caleb Bates, Esq., lying across the pathway in a secluded wood, on his premises, near the Cemetery. The circumstances pointed unerringly to Dea. Samuel M. Andrews, a well-known and highly respected citizen of that town. His social position and high connection in the Congregational Church, with long and intimate relations with the best citizens of the place, staggered suspicion, but the almost inseparable companionship with the deceased at the time of the murder, the existence of strong mercenary motives, and the discovery of the bloody clothes of the accused, swept away all hope of innocence, all claim to sympathy, fastening conviction on him as the perpetrator of the foul crime. Day after day following his arrest and imprisonment brought new and convincing proofs of his guilt. At his

PRELIMINARY EXAMINATION

before Justice Mason, he waived an examination, pleading not guilty, and was committed to await the action of the Grand Jury. Messrs. J. H. Bradley, and D. E. Damon, Esq., appeared for the defence. After the examination of a large number of witnesses, the Grand Jury presented a clean bill for murder in the first degree, committing the accused for trial at the October term of the Supreme Court. Judge Devens of the Supreme Court held a special session at the June term to receive the same. At the

OCTOBER TERM

of the Supreme Judicial Court, he was again presented at the bar. After the reading of the indictment charging him with the murder of Cornelius Holmes at Kingston, on the 26th day of May last, he responded to the usual question in a low husky voice, "Not Guilty." The Clerk of the Court, not understanding his plea, requested him to repeat his answer, when he again responded in a louder and firmer tone. He was then asked by the Chief Justice if he was provided with counsel, when he stated that he expected Chas. G. Davis, Esq., to appear in his behalf, but that he was not then present. In a few moments Mr. Davis came in, and after some consultation, the Court assigned Messrs. G. A. Somerby of Boston, and C. G. Davis of Plymouth, as counsel for the prisoner.

The Chief Justice then asked the counsel if they could be ready for trial the first week in December. Mr. Davis stated that he knew of no reason why they could not be prepared at that time, unless prevented by the nature of some evidence which it was rumored was in possession of the Government, and to which he had been denied access. The evidence referred to was understood to be the skull of Mr. Holmes, various implements, articles of clothing, &c., which the defence might wish to submit to the examination of experts, a knowledge of which might materially affect the line of defence to be pursued.

The Court stated that a decision in regard to the matter would be given at another time, and the prisoner was then remanded to his cell.

Andrews was rather pale, probably from confinement, but otherwise appeared calm and even cheerful.

ARRANGEMENTS FOR THE TRIAL.

Under the superintendence of Major Bates, our model Court House has been put in thorough order. New steam apparatus for heating has been introduced. A new "Prisoner's Dock," designed by the Sheriff and executed in bronzed ornamental iron work, has been placed in the rear of the "Bar," fronting the main aisle of the audience room, which will probably remain a permanent fixture, there having been much complaint that with usual accommodations, prisoners could with difficulty be distinguished from members of the bar.

Last evening's train brought an efficient corps of "deputies," who have been busy in preparations for the trial. Tables for the accommodation of the Press are placed within the bar. Wm. H. Whitman, Esq., Clerk of the Court, has been engaged early and late at his office near the jury and counsel for several days, systematizing the business for the docket. Chas. G. Davis, Esq., of the prisoner's counsel, and District Attorney Edward L. Pierce were busy in the ante-rooms at a late hour last evening with the preliminaries of their responsible position. The Court, with Attorney Gen'l Allen, and G. H. Somerby, Esq., of Boston, arrived n the morning train, and convened at 11½ A. M.

THE JURORS.

Nearly a hundred substantial and intelligent citizens of the County have been summoned from which to empannel a jury, whose verdict is to continue a miserable life or award an ignominious death. The following is a list furnished by the courtesy of the Clerk of the Court:

Bela Alden,	Abington,
Silas B. Allen,	Marion,
Charles H. Alley,	Rochester,
Edwin C. Ames,	No. Bridgewater,
Samuel D. Bartlett,	W. Bridgewater,
Andrew H. Bates,	Hanson,
Hira W. Bates,	Hanover,
Ezekiel Bemis,	Pembroke,
Eleazer C. Bennett,	E. Bridgewater,
Resolved W. Bowles,	Mattapoisett,
Lemuel Bradford,	Plymouth,
George Bradford,	Duxbury,
Hershel E. Briggs,	Plympton,
Cyrus P. Brown,	West Bridgewater,
Mark H. Cahoone,	Wareham,
Nathan S. Cary,	No. Bridgewater,
Edward S. Carnes,	Carver,
Nathan Chandler,	Kingston,
Henry H. Chubbuck,	Scituate,
Joseph Clapp,	So. Scituate,
Thomas Clapp,	Scituate,
Sylvanus Clapp,	So. Scituate,
Oliver Cobb,	Marion,
John Cook,	Halifax,
John B. Damon,	Scituate,
Seth Drew,	Kingston,
Solomon K. Eaton,	Mattapoisett,
Samuel H. Elder,	Marion,
Davis R. Eldrick,	No. Bridgewater,
Willard Ellis,	Plympton,
Geo. W. Folsom,	Bridgewater,
Geo. W. Ford,	Duxbury,
Marshall Fuller,	Halifax,
William F. Harden,	Hingham,
Jesse Harlow,	Plymouth,
Stephen Harlow,	E. Bridgewater,
Geo. W. Haskell,	Rochester,
Judah Hathaway,	Rochester,
Rufus F. Hathaway,	Wareham.
John C. Hayward,	Bridgewater.
Henry F. Hersey,	Hingham.
James S. Holmes,	W. Bridgewater.
Freeman Holmes,	Plymouth.
S. Bradford Howard,	No. Bridgewater.
Joseph B. Howland,	Hanson.
Martin Howland,	Halifax.
Chas. Humphrey,	Hingham.
Edwin Jackson,	Plymouth.
Ebenezer Jones,	Mattapoisett.
Cyrus Josselyn,	Hanover.
Benj. F. H. Keen,	Marshfield.
George M. Keith,	E. Bridgewater.
Andrew Kent,	Marshfield.
Martin Knight,	Hull.
Ezra S. Leonard,	Lakeville.
Lewis Leonard,	Middleboro.
Seth Leonard,	Bridgewater.
John Lincoln, Jr.,	Hingham.
Charles S. Loud,	Abington.
Charles H. Merritt,	So. Scituate.
Francis Merritt,	Pembroke.
Bela T. Nash,	Abington.
Micah Nash,	Abington.
Zebulon T. Nash,	Pembroke.
Edward O. Noyes,	No. Bridgewater.
Alfred Peterson,	Duxbury.
Otis Perry,	Hanson.
Ezra Phillips,	Hanson.
Simeon M. Pratt,	Middleboro.
John Ransom,	Plympton.
Watson W. Ryder,	Wareham.
Nath'l M. Sampson,	Lakeville.
Thos. W. Sampson,	Middleboro.
George Shaw,	Carver.
Amos Sherman,	Marshfield.
James South,	Lakeville,
Lothrop Thomas,	Middleboro.
Augustus Tillson,	Carver.

Eleazer E. Waterman,	Kingston.
Cyrus White,	Abington.
William B. White,	Middleboro.
Albert Whiting,	Hingham.
Wiilard Wood,	Plymouth.

THE PRISONER

has been under the constant and special care of Capt. J. Harmon, the model turnkey of the prison. To his kind but firm and judicious treatment the guilty man owes in a great measure the preservation of his health and regular habits. Since his first attempt at dramatic insanity, which Capt. Harmon effectually cured by showing him the dungeon and turning him into "commons" with half a dozen wild Irishmen, the accused has been uniformly cheerful, quiet and submissive, even grateful for the amenities granted him, and the care of the officers for his health and exemption from unnecessary intrusion or irritation. At an interview with which we were favored by the kindness of Maj. Bates, this morning, he appeared in unusual good spirits, having remarked too triflingly, in view of the day's proceedings, that he should need an extra breakfast. He expressed himself as enjoying usual health, and as not having lost flesh much during confinement,—remembered distinctly days, dates and incidents occurring several months previous. Busying himself carelessly with preparations of the toilet for the day, for anything that appeared to the contrary, we should scarcely realize but what we had made a surprise call on some comfortable bachelor at his hotel lodgings. And this we are assured by Capt. Harmon has been the ordinary appearance and conduct of the criminal.

COUNSEL.

Able counsel of long experience and reputation are engaged on both sides. Attorney Gen'l Allen, so well known in Boston, acquired a marked reputation for keen, pungent analysis of testimony and sweeping eloquence at the recent trial and conviction of the James brothers for murder, at Worcester. A piercing black eye and compressed lip, indicate peculiar self-reliance and reserved powers. No amount of "bluffing" can disturb his equanimity, or sophistry muddle his clear, quick, decisive thinking. Edward L. Pierce is well known among us, and has a zeal united with familiarity with details, that will render him a valuable aid to his associate.

For the defence, the accused is fortunate in retaining the able services of Chas. G. Davis, Esq., of Plymouth. He is well known throughout the State as a lawyer of quick perceptions, correct conclusions, and full of resources, never missing an opportunity for a point, and generally well sustaining them. He formerly practiced in Boston, where he gained a favorable reputation for so ably defending the colored people in an action against the Boston Theatre for ejecting a colored woman from a seat on account of color, after having sold ticket. The decision of the court broke up the entire system of exclusion from public audience from the disability of color. A splendid work of art in the shape of a painting adorns his drawing-room, as a present from his clients, commemorative of his legal championship. He also conducted the defence to clear himself from persecution for resisting the Fugitive Slave Law. In the celebrated trial of Mrs. Gardner, for the murder of her husband, his legal abilities were of special notoriety. Ready, able, and of indomitable pluck, the accused will have every advantage the law can give.

G. H. Somerby, of Boston, the associate in the defence, has a reputation as an able criminal lawyer by no means confined to State limits, and will give every aid of a powerful advocate and successful forensic orator to be derived from legal counsel.

OPENING DAY.

The Court convened with the following Judges on the Bench: Judges Chapman, Foster, Colt, and Wells.

The prisoner was brought in and placed within the dock. He was dressed in a neat black suit, looking rather cheerful than otherwise, a little pale but not otherwise noticeable from any of the interested spectators. The impression left on facing the Court and assembled company was rather favorable than otherwise.

List of Jurors was read by the Clerk.

Bela Alden, was called and challenged.

Silas B. Allen was called and sworn.

Judge Chapman read the statute respecting questions to be asked witnesses, and disabilities of Jurors: "Are you related to the prisoner? Have you any bias or formed any opinions? Or have you any conscientious scruples against capital punishment?"

Answer, "No". Witness was then accepted.

Charles A. Allen was called and challenged.

Edwin C. Ames was called and sworn.

The same question was asked by the Court. Witness had formed opinion from reading newspapers. Court instructed witness as to nature of opinion and prejudice, and Juror announced they were such as to exclude him.

Samuel D. Bartlett was called and challenged.

Andrew H. Bates was called and challenged.

Hira W. Bates was called and sworn.

In answer to question of court as to disabilities, he thought he had no bias or prejudice, and was accepted.

Ezekiel Bemis was called and sworn. No disabilities, and accepted.

Eleazer C. Bennett was called and sworn. No disabilities, and accepted.

Resolved W. Bowles, disqualified by law, he being a Constable.

Lemuel Bradford was called and sworn. No disabilities, and accepted.

Geo. Bradford was called and challenged.

Herschel E. Briggs was called and sworn. No disabilities, and accepted.

Cyrus P. Brown was called and challenged.

Mark H. Cahoon was called and sworn. Rejected on account of conscientious scruples.

Nathan S. Carey was called and sworn. No disabilities, and accepted.

Edward S. Carnes was called and challenged.

Nathan Chandler was sworn.

Mr. Davis, counsel for the prisoner, asked the court to excuse jurors residing in the same town as the prisoner. The court excused the juror without challenge.

Henry H. Chubbuck was called and challenged.

Joseph Clapp was called and sworn. No disabilities, and accepted.

Thomas Clapp was called and challenged.

Sylvanus Clapp was called and sworn. No disabilities, and accepted.

Oliver Cobb was called and challenged.

John Cook was called and sworn. No disabilities, and accepted.

John B. Damon was called and challenged.

The next juror being from Kingston, was excused.

Solomon R. Eaton was called and sworn. No disabilities, and accepted.

Samuel H. Elder was called and challenged.

Davis R. Eldridge was called and challenged.

Willard Ellis was called and excused as being over sixty-five.

Geo. W. Folsom was called and challenged.

Geo. W. Ford was called and challenged.

Marshall Fuller was called and challenged.

Wm. F. Harding was called and challenged.

Jesse Harlow was called and sworn. No disabilities, and was accepted.

LIST OF ACCEPTED JURORS.

The Jurors accepted were as follows:—Silas B. Allen, Marion; Hira W. Bates, Hanover; Ezekiel Bemis, Pembroke; Eleazer C. Bennett, East Bridgewater; Lemuel Bradford, Plymouth; Herschel E. Briggs, Plympton; Nathan S. Carey, North Bridgewater; Joseph Clapp, So. Scituate; Sylvanus Clapp, So. Scituate; John Cook, Halifax; Solomon K. Eaton Mattapoisett; Jesse Harlow, Plymouth.

Solomon K. Eaton was chosen foreman.—The remaining jurors were dismissed for the term.

The Jury was sworn in, and the prisoner being called, the Clerk read the following

INDICTMENT:

Commonwealth of Massachusetts.

PLYMOUTH, ss.

At the Superior Court begun and holden at Plymouth, within and for the County of Plymouth, on the second Monday of June, in the year of our Lord one thousand eight hundred and sixty-eight:

The Jurors for the Commonwealth of Massachusetts on their oath present: That SAMUEL M. ANDREWS, of Kingston, in the County of Plymouth, on the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and sixty-eight, at Kingston, in the County of Plymouth, aforesaid, in and upon one CORNELIUS HOLMES, feloniously, willfully, and of his malice

aforethought, did make an assault; and that the said SAMUEL M. ANDREWS, then and there, with a certain stone, him, the said CORNELIUS HOLMES, in and upon the back part of the head of the said CORNELIUS HOLMES, then and there, feloniously, willfully, and of his malice aforethought, did strike, giving unto the said CORNELIUS HOLMES, then and there with the stone aforesaid, by the stroke aforesaid, in manner aforesaid, in and upon the back part of the head of the said CORNELIUS HOLMES, one mortal wound of the length of three inches and of the depth of one inch; of which said mortal wound the said CORNELIUS HOLMES, then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said SAMUEL M. ANDREWS, him the said CORNELIUS HOLMES, in manner and form aforesaid, then and there feloniously, willfully, and of malice aforethought, did kill and murder; against the peace of the said Commonwealth and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present: that the said SAMUEL M. ANDREWS, at Kingston aforesaid, in the County of Plymouth aforesaid, on the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and sixty-eight, in and upon the said CORNELIUS HOLMES, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said SAMUEL M. ANDREWS, certain stones in and upon the back part of the head of the said CORNELIUS HOLMES, then and there feloniously, wilfully, and of his malice aforethought, did cast and throw; and that the said SAMUEL M. ANDREWS, with the stones aforesaid, so as aforesaid cast and thrown, the aforesaid CORNELIUS HOLMES, in and upon the back part of the head of the said CORNELIUS HOLMES, then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate and wound, feloniously, wilfully, and of his malice aforethought, then and there giving to the said CORNELIUS HOLMES, by the casting and throwing of the stones aforesaid, in and upon the back part of the head of the said CORNELIUS HOLMES, one mortal wound, bruise, fracture, and contusion of the breadth of three inches and of the depth of one inch, of which said mortal wound, bruise, fracture, and contusion, the said CORNELIUS HOLMES then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say that the said SAMUEL M. ANDREWS, him the said CORNELIUS HOLMES, in the manner and by the means aforesaid, feloniously, wilfully, and of his malice aforethought, did kill and murder; against the peace of said Commonwealth, and contrary to the form of the statute in such case made and provided.

And the jurors aforesaid, upon their oath aforesaid, do further present: that the said SAMUEL M. ANDREWS, at Kingston aforesaid, in the County of Plymouth aforesaid, on the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and sixty-eight, in and upon the said CORNELIUS HOLMES, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the same SAMUEL M. ANDREWS then and there, with some instruments and weapons to the said jurors unknown, him the said CORNELIUS HOLMES, in and upon the back part of the head of the said CORNELIUS HOLMES, then and there, feloniously, wilfully, and of his malice aforethought, did strike, giving unto the said CORNELIUS HOLMES, then and there, with the instruments and weapons aforesaid, by the stroke aforesaid, in manner aforesaid, in and upon the back part of the head of the said CORNELIUS HOLMES, one mortal wound of the breadth of three inches and of the depth of one inch, of which said mortal wound the said CORNELIUS HOLMES then and there instantly died; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said SAMUEL M. ANDREWS, him the said CORNELIUS HOLMES, in the manner aforesaid, and by the instruments and weapons to the said jurors unknown, then and there feloniously, wilfully, and of his malice aforethought, did kill and murder; against the peace of the said Commonwealth, and contrary to the form of statute in such case made and provided.

JOHN H. BOURNE,
Foreman of the Grand Jury.

EDWARD L. PIERCE, *District Attorney.*

OPENING BY THE PROSECUTION.

District Attorney Pierce opened the case before the Jury by a statement of the facts as they appeared on the discovery of the body, and asked who could have done the deed? It did not seem to be a case of self-defence or robbery. He was a retiring citizen, without enemies. It did not seem to be a case of hot blood but rather a cold-blooded one of rare atrocity; one that was intended to be complete with no victim's tongue to reveal the secret. No suspicious characters were known or resided here, and every neighbor looked in each others' face, asking with silent speech, Who is the man?

Cornelius Holmes, with the prisoner, lived as neighbors on the Bridgewater or Village road. Holmes was accustomed to aid the prisoner financially and give him the free use of real estate. Holmes was last seen in company with the prisoner. On Holmes'

body was found a note from the prisoner requesting Holmes to come to his garden.

Holmes left the store at 7½ o'clock, crossed the Cemetery through the secluded path at the rear of prisoners garden. Mr. Delano, a neighbor,meets them in the garden, half an hour later. Mr. Holmes, with two other neighbors, heard noises of distress in the vicinity.

Not coming home next morning, Mr. Sproul went to the house of prisoner, thence to mill and saw Andrews. Told him that Holmes was missing, and as a true friend he ought to look him up. He continued work carelessly with no apparent interest; stated that he had sent a note for Holmes, who came to his garden and returned to the store after the interview; prisoner soon after went home, and complained of not being well, feeling faint.

Caleb Bates, who found the body in the cart-path, was on his way to work at 7½ o'clock A. M., with his hired man. Found the body face down lying across the pathway.—He goes away to make it known: Called Messrs. Sever, Symmes, Adams, Delano, and soon after a large number flooked to the scene of the terrible event. The pockets were examined and $740 found, with a note of Andrews for $150.

Dr. Jones examined the body.

The contents of the pockets were given to Edward Holmes.

Mr. Bates first met Mr. Andrews near by, and the State Deputies being at work, suspicion soon pointed to Andrews, who was arrested on Friday forenoon, against the general opinion of the public, his previous character in his business, in the church, and in the community being above suspicion.

The first causes of suspicion were his note to Holmes: his company with the same; the time of working in the garden and the vicinity of the scene of murder; blood was found on his vest and on the rails of his front fence where ladies saw him resting at 9 o'clock. He was seen coming in a suspicious course by girls with a bundle under his arm passing into fields near the mill. Ten minutes later he was seen by Joseph Beals on his premises coming from the stream with no bundle.—The bundle was found in the stream at the spot where he went and clearly identified.

Mr. Holmes had $20,000.

The prisoner had two confidants—his clergyman and physician. Soon after the murder, he began to talk of a will by which the property was devised to him. He enjoins Dr. Jones earnestly to keep silence about that will; goes to Plymouth the same afternoon and leaves the will with D. E. Damon, Register of Probate, for record.

At this point the Court adjourned with the usual instructions to the jury.

AFTERNOON SESSION.

The court convened at one-quarter past 2 o'clock. The room was again crowded, a single lady, Miss N. B. Sever, a witness, being present.

The District Attorney resumed his remarks.

The prisoner talked much for that and the succeeding day about Mr. Holmes' kindness and friendship to prepare the public mind for the history of the will, with unseemly haste to administer upon the estate before the deceased was scarcely dead. The movements of the prisoner are to be remembered.

Mr. Delano saw him in the garden for five minutes, after which he was not seen till 9 o'clock, when he meets the ladies, to whom he excused himself from a meeting at his house by planting potatoes. At 9½ o'clock he converses with Mr. Wormell, Principal of the High School, in his rooom, who discovers he has been taking ether. At 10 o'clock, P. M.. he accompanies Mrs. Peckham, the pastor's wife, home. No more is seen of him that night.

The next forenoon he takes some whiskey and ether, and Thursday attends the funeral; on Friday is arrested at his home, and on Saturday conveyed to jail.

During intervening conversations he suggests that Holmes died in a fit; that he had been robbed; then by instituting suspicions against Mr. Leach with whom Holmes lived, and lastly by attempting to proving an alibi.

The District Attorney then read Chief Justice Shaw's legal definitions of murder, manslaughter and its varying shades of criminal guilt. No provocation of words is sufficient to change the crime from murder to manslaughter. Murder is the highest crime known to the law, and the only one on the statute requiring the august presence

of the Judges of the Supreme Court here to-day.

All society is interested in the discovery and punishment of the murderer. Life is precious. Home, family, friends, fortune, all surround it with sacred veneration. So was it the right and privilege of the victim to live, and all these considerations demand that the guilty author be punished. Precious as is life and only to be taken in self-defence, if the prisoner is guilty, every instinct of society demands the expiation of the crime. Moral certainty of his guilt peyond a reasonable doubt demands of you a verdict of guilty in the faithful discharge of your duty.

On the close of the counsel for the government, Mr. Davis, of the defence, asked the court to excuse the witnesses from hearing each other's testimony. The request was granted.

All witnesses were ordered to retire, having been remanded to separate rooms for those on the part of the government and defence.

Alden S. Bradford, of Kingston, was called to the stand and sworn.

Made the drawings as surveyor of the premises; presented two maps, one 10 rods to the inch, smaller 20 ft. to the inch. The maps were generally examined by the court, giving the village street, Andrews' house, garden, Bates' house and pathway, woods and ravine skirting the rear of lots along the street, some two hundred feet distant, the pathway from Andrews' garden and Bates' barn, running northerly down the ravine to west line of cemetery and the spot where the murder was committed, some fifteen rods from the street. The road from the depot and store (Burges & Bailey's) so often referred to, runs southerly some forty rods till it intersects at right the main or village street, running westerly about the same distance or forty rods to Bates' house, and Andrews' house ten rods still farther. In the angle lies the cemetery, across which diagonally the pathway leads from the depot to the west end of the cemetery and beyond to Holmes' house and the street.

Witness testified that the distance from the scene of the murder to the cemetery fence was about three rods, and to the stile about five rods; on the west side of the pathway at the spot where the murder was committed were pines fifteen feet high with an abrupt rise outside and close to the rut.

The path beyond the scene of the murder extends northerly to the railroad a distance of some eighteen rods to swamps or muck and tillage land.

Caleb Bates of Kingston, called and sworn.

Witness owns the land on which the murder was committed, and first discovered the body; am a farmer and mechanic; left home on the morning of the murder, at 7.20 A. M., with team and man for ploughing; was driving cow also at the corner of cemetery; horses stopped: saw hired man look forward and say "are you asleep?" Horses jumped out of path; asked "what is the matter?" he said: "there's a man asleep or dead." Went to the body which laid across road, head to right on bank, face downward; body partly on right side in creeping posture; face discolored; though it was a negro murdered; We rolled over the body to see if there was any life, and recognized him as Mr. Holmes, whom we had always known Witness here showed the position of the body by laying on the floor in similar position; left the body as found; saw the stones in the road scattered from a pile with much blood on one large stone which laid by the side of the head covered with brains; another with blood and hair; had piled up the stones the day before to clear the path for carting manure, throwing them out on the west side; went to Edward Holmes' after stopping three minutes at the place; drove up to the road and saw Andrews going from his house easterly to the village one hundred yards from his house; was walking slowly; called out to him that Cornelius Holmes was murdered; he seemed unmoved, and replied, "He is missing? I expected it!"

Went on to Holmes's and returned in half an hour with Holmes; found ten or twelve there, among them Messrs. Cobb, Dunham, Joseph Stetson and Cook. Went down to a pool of blood a rod below the body; found another pool intervening half-way with plain heel marks the length of a body from the blood; noticed clothing as in perfect order, except outside coat thrown back outside,

showing shirt between vest and pants; back of head crushed, with brain crushed out on both sides. Took up one stone having the brains on it, (witness showed the stone to the court and jury,) weighing 7½ lbs., the other stone beside the head covered with blood weighed 9 lbs; all other stones were smaller, weighing 4 or 5 lbs; saw the pockets emptied; Geo. F. Willis and Azel Sampson took them out handing the contents to James N. Sever. In conversation with Andrews, and others, Andrews said Holmes left his home at 8.10; told Joseph Holmes he sent the note to deceased; said Holmes had two fits before and probably fell down and broke his scull; the body was cold.

Cross examined by Mr. Davis. Saw many stones added to pile day before, added fifty or sixty in all. Not a hundred stones on the road next day. Question: "Why did you leave stones under the tree on the east side?" Answer: "For safe keeping." Saw stones on left side of road; did not remove stones from road above the body; saw bloody stones on both banks, loose stones; one party evidently threw the stones; the heel marks were near the lower pool down the hill; met Capt. Symmes and Capt. Wm. Adams coming away; noticed the pants below the vest with the shirt; saw a wallet taken out of the pocket, with scrip, roll of paper and knife; the hands were under him and clasped.

Andrews was walking slowly with hands clasped in a meditative mood, which was not his usual gait; thought he was sick. The plan was here shown to Jury. Have taken out peat from the bog near the railroad; left holes in bog; peat bog twenty rods from path to railroad on left or westerly side; farm extends sixty rods beyond railroad with woods beyond; woods come down to railroad in right of path or easterly; between the path and cemetery is open pasture; there is a pine tree near the stile; between it and the body is a common pathway across the stile; there is frequent passing in the pathway; do not come up pathway very much, but continue across it southwesterly across Andrews and Delano's lots to the road towards the Anchor Works; it is a common path to depot and store.

The old homestead of Joseph Holmes is opposite my house across the street; Cornelius lived there; have always known him; have had no conversation with Mr. Holmes for fifteen years; was very marked in his dislikes, and never spoke to those he did not like; he was sociable as a boy; liked children; had money about him; did not associate with young ladies; Holmes was intimate with Andrews before Holmes's father died.

The jury here took a recess.

At the conclusion of the recess,

Mr. O'Hern was called and sworn; worked for Caleb Bates; went down about seven o'clock to plow; saw the body; thought he was intoxicated; stayed fifteen minutes; Capt. Symmes and Mr. Sever were there; Mr. Sever took a bill from Holmes' pocket; lifted up Holmes's head, and when I saw who it was, put it back; saw blood on the stones around.

David Delano was called and examined: saw Andrews in the garden with Holmes; there was an easterly fog; heard voices in the garden; went to pay pew rent; paid him $2 renewal charge; Andrews said he should owe me fifteen cents; did not stay more than five minutes; went directly home; soon after heard a noise; it was about half-past eight; the windows and doors of the house were shut, and lights lit; heard a cry, and thought it was of distress; after the cry heard dull noises, sounding like thumps; had a conversation with Mr. Andrews afterwards about the murder.

Cross-Examined.—Did not wish to say much about it; it was not so dark as to prevent seeing; knew it was Mr. Holmes's voice; when I went down to Andrews' house I saw Mr. George Clark and Mr. Fuller; saw Fuller before I went into the house, and saw Mr. Clark after I came out; was in the house about ten minutes; thought I heard the clock strike eight; should not have thought of the noises again had it not have been for the murder; the sounds were like the pounds of a hammer; heard six or eight pounds or knocks; no words were understood from the cries; have known Andrews seven or eight years; all considered his reputation as good.

To a question of temper by counsel, Attorney General Allen objected.

Mr. Davis argued that the defence proposed to show specific traits of humanity,

timidity, and peaceableness, to prove it impossible for him to commit the deed in cold blood.

Attorney General Allen argued the non-competency of evidence of good character in general terms, though he would not object to specific facts on this point.

Mr. Somerby argued the right to prove to the jury the general reputation of the accused as incompatible with the charges in the indictment, and acquaint them with the character of the man as to specific traits.

The question as to good temper was admitted.

Answer: never heard any one say; attend the Orthodox church; don't belong to the church or society.

By Mr. Somerby. "Did Mr. Andrews or Mr. Holmes probably know you?" Couldn't say. Andrews did not know I knew Holmes; never had seen me with Holmes.

Rebecca Holmes called and sworn. Am wife of Joseph Holmes, and reside in Kingston, opposite Mr. Andrews' house, a little to the west; am not related to the deceased Mr. Holmes; heard noises that evening; was at my door in the yard alone; it was about half-past eight; thought it was boys fighting towards the depot; sounded like a howl or wail; had a conversation with Mr. Andrews; he said he did not know as he wanted to go down to the place of murder; told him I heard the noise; said he thought it strange he did not, as he was at work in his garden.

Carrie F. Ripley called and sworn. Reside in Kingston; saw Andrews on that evening in front of his house, about half-past seven; was walking by; said he could not go to sing because he had some work to do in garden; Mrs. John Cobb was with me; did not see Andrews until he came to the fence; live near the depot; came up the street to walk.

Sophia H. Jones called and sworn. Am wife of Dr. Jones; was at Andrews' house that evening; went about quarter to eight; Mrs. Andrews and her sister were present in the sitting-room, on the side of the house looking out to the east; Miss Sever, Mrs. Ames and Mrs Peckham came in; left about 9:15; Mrs. Ames and Miss Sever went way with me: Mrs. Peckham remained; did not see Andrews in the house; when we came out, he said, "Good evening;" asked if meeting was through; said his clothes were too dirty to come; said he had been planting potatoes; witness said it was rather dark; said he dropped them before dark, and covered them after; came out of east door, back of sitting-room and east gate; he was near the gate; saw him next on Wednesday, at 7 A. M.; live ten minutes' walk from Andrews' house; had heard of Holmes's death; was sitting at the window when Andrews came to the office of Dr. Jones; he went in and spoke to my husband; stepped into the office and saw him; witness said, "how awful it is!" Andrews said he should not have carried so much money and talked so much; asked if we had ever said anything about the will; told him had not: he said, "you will not, will you?" My husband asked him to ride to the cemetery; said he must go home to see how his family were; he was urged to ride, and rode part way; have heard about the will before; a short time after it was made, at my house; my husband was present; Andrews said Mr. Holmes had made a will in favor of himself and Joseph Holmes; did not wish them to speak of it; Dr. Jones is his family physician; about a year before the murder the conversation took place: the morning after the murder, Andrews appeared agitated and faint; held ammonia to his nose.

Cross-Examined.—My husband and sister were present; did not ask about the will; he told it of his own accord, and requested them not to tell; some time before he said he had silver ware belonging to Cornelius Holmes; Holmes wished him to keep it for him some months before the murder; don't recollect his saying anything afterwards; never told prisoner not to let the Holmes's know of it; did not joke with him about it; heard afterwards Mr. Sever had the silver ware; have been on friendly terms with prisoner; known him by sight always; called once or twice a week; always thought him a very good man; his general reputation was very good; never heard anything against him; he was deacon of the church; was teacher in the Sunday School, and sang in the choir; attending church constantly, and evening meetings; knew his wife and visited

her; she has been in feeble health; has no children; his wife's mother, sister, and Miss Turner were members of his family; the meeting that evening was of the Ladies' Social Circle; they usually met at his house, and there were generally more present than on this evening; it was half-past nine when I got home; went out of the east gate; Andrews was at the west gate; we were thirty feet apart; have been at meetings there before during the winter; am not a member of the Good Templars; they meet at Fuller's Hall; do not know anything about their meeti igs.

The witness was very prompt and clear in statement, and self-possessed under a severe cross-examination.

Emeline J. Ames called and sworn. Am wife of Benjamin F. Ames; saw Andrews that evening; went to his house with Mrs. Peckham: he was in the yard near the sidewalk, on the west side of the house: he said "Good evening, ladies;" I asked why he did not come in; he said he had been at work in the garden; witness said, "shouldn't think you could see;" could not see his face; it was about half-past nine; at quarter to eight saw him near George Holmes's, near the Patuxet House; he went towards the cemetery; I was behind him; he went across the cemetery, I went round the street; live below the hotel; never crossed the cemetery: have known Mr. Andrews five or six years, his reputation is very good; always spoken of as very and pleasant; attended the Orthodox church; was teacher in the Sabbath School; very regular in attendance or meetings.

Witness was most amiable and thoughtful in her answers, making an excellent impression for unbiased statements.

Nancy R. Sever called and sworn; was at Mr. Andrew's house the evening previous to the murder; did not see him; heard him near the house between the front door and the gate; he said, "good evening, ladies;" asked if we had got through with our business; told him we had but little to do; Mrs. Jones said, "I should think you would want a lantern:" saw him twice before he came to Plymouth; went to his house and stayed two hours; there were many persons present; officer McCoy was in charge; Andrews told me he should want a little help; told him I would render it readily; wished me to think over the interview of Tuesday evening; asked me if I thought he appeared natural; told him he certainly did; said he was leaning on the gate; wished his examination to take place in Klngston; told him I should not believe he committed the deed until he confessed it; said he should not do that if they strung him up; said he did not go to the funeral because people gazed at him so; people never looked at him so before.

He expressed anxiety to have other lines of inquiry instituted; wanted officers to investigate stories abont Holmes being attacked before; witness paid money to Mrs. Andrews belonging to prisoner; he wished had gone out to the garden and paid it to him; he made no reply; spoke of will, of his being remembered in it; said, "God did not intend me for a murderer;" it was no advantage for him to do such a deed; Holmes' property was accumulating; it would be better for prisoner had Holmes lived longer.

He explained his not going to the store, because he wanted a barrel of flour, but Mary Johnson did the errand for him; saw him on Saturday; Mr. Peckham and Mrs. Reed were present; he seemed in a hurry to go to Plymouth; was not afraid to go; thought he had better not have an interview with his wife, as it would be too much for her.

Cross-Examined—Said he was afraid the matter of the will would go against him; his wife was up stairs; she was down on Tuesday evening; heard no noise that evening; do not belong ta the Good Templars; they met that evening nearly opposite in Fuller's Hall.

At seven o'clock the Court adjourned until nine o'clock Wednesday morning.

SECOND DAY.

MORNING SESSION.

The Court came in at 9 : 05 o'clock.

The court room was again crowded to its utmost capacity with a deeply interested audience. Admirable order is the marked feature of the room, under the perfect arrangements of Sheriff Bates and his gentlemanly deputies. No noise, or words, but nothing escapes the vigilant eye of the Major, and nothing goes amiss. Deputies, with batons, one at each door, at the foot and head of each staircase, and in file down the aisle to the dock and bar, ready to give any facility to court, bar, and spectators.

Dr. Henry N. Jones sworn. Lives in Kingston; saw Andrews that morning; he came to my office; looked as though something ailed him; he sat down on a lounge; gave him ammonia to revive him; he said something dreadful had happened; asked him what it was; he said Cornelius Holmes had been murdered down back of Cemetery; I said to him let's go right down to Cemetery; he said he must go home; finally got in and rode part way; then he got out; he asked if we had said anything about the will; told him we had not; he told us not to; after he got out, I went to Cemetery: it was about seven o'clock; Mr. Edward Gray summoned a coroner's jury then and there; I was on it; Mr. Sampson raised the body up; took things out of pocket; looked at the body; the head was broken in places, bruised, and bloody; the blood on face was dry; blood was flowing as the body was carried along: did not notice whether clothes were buttoned or not: body was cold and stiff: many stones about there bloody: as many as 15 or 20: followed the body to the house of Mr. Holmes, and went in: after the jurors were brought into the room: did not notice anything particular about the clothing: unbuttoned some of the clothing about the neck; proceeded to dress the wounds: arms drawn up and clenched: muscles rigid: left forefinger bruised, small piece of skin knocked off: no wounds about the body except the head and face: head badly bruised; upper lip cut through: jaws set, tongue protruding through the teeth; right eyebrow cut, to the bone: right ear slightly bruised and cut: there was a wound on each side of the head, near the top; jagged wounds, as if made with an axe or some such instrument; near the crown of the head, scalp torn and lacerated; bone denuded 3 or 4 inches; brain oozing out; took 3 pieces of skull from the wounds, about an inch in diameter; fracture extended from ear to ear, near as I could judge, without removing the scalp; returned the pieces which I had taken out; body was then prepared for funeral; saw the body several times afterwards; saw it after the funeral at the Town House; Dr. Russell and Dr. Henry J. Bigelow, of Boston, was there, with an assistant to attend to the dissection; they took part of the head away; saw Andrews at Holmes' house the day the body was found; he stated to the jury about the presents Holmes had made to him; he said Holmes was in his garden the night before the murder, said Holmes went down through the Cemetery, and supposed he went home; saw him afterwards at his house; don't remember whether any one was there or not; talked about the will; asked me if I wanted

to see it; told him I did not, he said Mr. Newcombe told him to carry the will to Plymouth to Mr. Damon; Andrews spoke of going over in the cars; after that he said he guessed he would have a powder, and I gave him one; don't remember who introduced the conversation about the will; he first asked me for the powder, and said he felt bad; did not see him again that day; Thursday he came to my office in the afternoon; asked for something to take; gave him some whiskey; said he felt bad; before the murder had some conversation about the will; some six months before: he said he expected to be a rich man some time, as Holmes had made a will, and remembered him liberally; said Holmes came to Plymouth, and Mr. Damon wrote the will: told me not to say anything about it; was family physician of Andrews; did not call very often: he came to my house frequently.

Cross-examined.—Have given him morphine powders before; have left them at his house; have prescribed ether for him two or three times; gave it to him for headache; when I called upon him, the trouble was generally headache; first visited his house in September, 1857; in March 1858, first visited his wife; have no charges against him from March, I858, to January, 1867,; Jan. 16, 1867, and Sept. 19, 1867, visited him; did not know his eyes were affected; conversation about the will too place at my house; heard Mr. Ellis Ames read notes of Mrs. Jones's testimony last evening; read them at Alexander Holmes's house; do not recollect my wife's urging Andrews to tell us all about it; this conversation took place in the evening; don't think there was anything said about silver ware then; have heard him say he had some silver ware to keep for Holmes; don't remember what date it was; did not tell Holmes anything about it.

When I first saw the body it was lying in the cart-path; there was a sharp stone lying near it; not very large stones; saw many stones in the road, all sizes and shapes; there were stones all around the body; was a member of the jury; I examined the body before it was buried: the crown of the head was crushed in; have known Andrews fifteen years; think he is of a nervous billious temperament; naturally rather nervous; his reputation was good; considered a very humane, kind-hearted man.

By Mr. Somerby. How many distinct pieces did you remove?" Answer. Removed three, there were five or six pieces: might have been more;

Re-examination. — Attend Mr. Alexander Holmes; called there last evening; Mr. Ames was reading notes of the trial yesterday to Mr. Holmes; after the verdict of the coroner's jury.

Francis Sproul sworn. Live in Kingston; about two rods from Mr. Andrews; Mr. Leach first spoke to me about the murder, about quarter to six in the morning; went to Andrews' house; did not find him there. but found him at the factory; there were others in the room at the time; told him Holmes was missing, had not been in all night; called to see if he knew anything about him; he seemed surprised to hear he was absent; said Holmes had requested him to come and see him, but Andrews sent him a note asking him to come to his house; he did not stop work while I was talking with him; asked him if he wouldn't go and see where Holmes was; he said "Certainly;" we went down and saw Mr. Newcombe, and I told him Holmes was missing; Andrews said he did not know where to find him; Newcombe said the Holmes's ought to hunt him up; Andrews went up stairs, and I went home; when I got home, Andrews came to my house, and said it was strange what had become of Holmes; said Holmes carried much money about him; Holmes had carried him to Boston, and thought a great deal of him.

Cross-examined.—This occurred before the body was found; there is a path leading from my house to the house of Andrews; witness pointed out to jury, on the map, the spot where he lived, showing the relative position of the street houses, and pathway from the houses; was in my garden night before the murder some time before eight; walked up and down; foggy weather and dark; could hear people talking in Mr. Andrew's garden; could not tell who they were; next morning Andrews told me it was himself and Holmes; saw a man setting down in Andrews' garden, we were some few rods

apart; heard a man using a hoe; no loud conversation heard; knew Holmes was intimate with Andrews; was in my garden about ten minutes; when I went in the talking was going on; (the witness here described to the jury the place where the man was sitting whom he saw;) think the man using the hoe was on the east side of the path; heard no noises after I went in my house.

The jury here took a recess of five minutes.

At the expiration of the recess, Dr. Henry J. Bigelow, of Boston, was called and sworn. Have been in practice twenty-one years; June 1st, 1868, was in Kingston; saw the body of Mr. Holmes at Town Hall; Dr. LeBaron Russell and Porter were with me, and Dr. Jones, of Kingston; the body was in a good state; wounds were about the head, back part, left side; on the face there was a cut to the bone on the right eyebrow; cut through the upper lip; on right side of head, above the ear, wound of scalp, under which bone was broken on left side of head was corresponding wound; the principal injury was behind; back part of the head was bloody, scalp torn; wounds of scalp were in line of neck, up and down body; the left side back of the head was open, so that loose bones could be felt; the skull was largely broken up; counted eleven pieces, inch or more in length; blood was found all over the surface of the membranes of brain; brain largely torn; beneath the skull on the other side was lacerated; on the thumb and fingers of left hand were contused wounds; face black and blue; internal organs were healthy; removed top of skull; the skull was here shown to the jury, and the different fractures were described by the witness; there was a hole in the skull, and the piece of skull found with the stones was applied to the hole by the witness and found to fit exactly; should think half a dozen blows would had been sufficient to have caused the fractures.

A question was here introduced to show how the blow which caused the fractures, was given, which was objected to.

Think from the extent of the injuries the blows were given when the skull was below the point from which the stones came; blows received upon a man's head sufficient to cause the fractures before named, would stun him; a man could have his skull fractured and still have his senses; should think the body was alive when it fell into the position in which it was found upon the morning after the murder; I examined the brain, found it healthy; the blood found resulted from the injuries found upon the head; a man could cry out with such injuries; such blows would reduce his strength, and might knock him senseless; should think death ensued soon after the wounds were given.

Cross-examined—Don't know whether the left thumb was broken or not; the tendons were bruised and torn; there was a separate wound on each side of the head, which seemed to be separate from the main fracture, and one of them was a fracture; I think there were two distinct blows; if the person were partially stunned, there might or might not have been any cries; think there was a half-teacup full of brains ejected from the wound; found a bruise upon the top of the shoulder; found no bruises upon the body, other than those upon the head, excepting that on the hand; cannot tell whether the blows were all given at one time or not; never saw the piece of skull which fits the fracture until I came here.

Benjamin Wormell, called and sworn.—Live in Kingston; am a teacher; boarded with Andrews at the time of the murder; Andrews came into my room on the evening of the murder, between half-past 9 and 10 o'clock; there were ladies below in the sitting-room; heard a noise outside during the evening; sounded like striking with a stone; heard the ladies when they went out, and heard Andrews say something to them; heard a rap on my door; I said "come;" unlocked the door, and Andrews came in; said he came to see if I was in; sat down at my right hand; don't remember reading him any composition that evening; he leaned forward, and I smelt ether; I said "how you smell of ether;" I went on writing, and Mr. Andrews appeared to go to sleep; I said, "you had better go to bed;" he said, "I think I'll do the same:" had smelt ether on him before; not so much as on this occasion; he was in my room about twenty minutes; heard him when he went home with Mrs. Baker; he was dressed in light pants, dark coat and slippers; saw him the next morning at about 7 o'clock.

The court adjourned to 2:15.

AFTERNOON SESSION.

The court came in at 2.20.

Examination of Mr. Wormell continued.

Saw Mr. Andrews in the dining-room at 7 o'clock Wednesday; seemed to be in distress; Mrs. Andrews and Miss Reed were there; made some remark about Mr. Sproul coming to the factory to see him about Mr. Holmes; said he felt faint and came home; he shortly after went out of the house; I went out into the sitting-room; he went out, and I did not see where he went; I went down the street, saw Mr. Andrews riding with some one; asked him if he knew anything about Holmes; he said they had found him at the cemetery murdered; I went after Mrs. Peckham; saw Andrews when I came back coming from his house; I went into the house, and saw Mrs. Andrews lying on the sofa; I took some money out of the pocket of Mr. Holmes, and passed it to Mr. Sever; Holmes's coat was torn in one or two places; went into the school-house, and then went to the house, to my own room; went into the sitting-room, and saw Andrews; asked him to go to the cemetery with me; said he did not want to see any such horrid sight; saw him Thursday P. M. after he had returned from Plymouth: Andrews said to me that evening at the house, that Cornelius was up to the house last Saturday, damning the Orthodox church: Friday morning Andrews introduced me to Mr. McCoy, and I had a conversation with him about the murder.

Saw Andrews Friday noon about 10 o'clock; he asked me to go to Mr. Peckham's with him, told him I could not, had no time; he went out, and shortly returned; he said to McCoy "I suppose you will have to go with me:" he told me I had better adjourn the school, which I did, and went to Mr. Peckham's with them; then went to Mr Newcombe's with them, to see about getting counsel: Mr. Delano was passing, and some one beckons to him: he and Andrews had some conversation about the time when he left him in the garden; Andrews told me he hoped I would say something in his favor; told him I would do what I could conscientiously; asked if I remembered his coming to my room; told him I did.

Thomas Newcombe called and sworn. Live in Kingston; have known Andrews 17 years; have employed him that time; he was an overseer of one room in my factory; he was at work Tuesday, May 27th, saw him said he came to Plymouth the night before to get some alcohol, and took the will to Mr. Damon: never advised him to take the will to Plymouth.

Wednesday morning at half-past six, talking with Sproul; they were talking about Mr. Holmes' being missing; Andrews said Holmes was in his gardhn the night before, and left at five minutes past eight: asked him what he should do; he said he did not know as he should do anything about it; told him I thought he ought to look him up; he said Leach sent Sproul to see if he knew anything about Holmes; he told Sproul the last he knew of him was where he left him the night before; I asked Andrews which way Holmes went when he left him; he said he went across the Cemetery; I said if anything had happened to him, he will be found there; he then spoke of his having fits; also said Holmes had made a will which he had in his possession; began to tell about the will; told him I did not want to know anything about it; told me that he had silver ware belonging to Holmes, and also a silver watch: he said he did not think they would attempt to break the will, because if that was done, Joseph would not get so much; the conversation was held before the body was found; he said Holmes wanted him to come to his house, but he wrote a note asking Holmes to come to his garden; he said he wanted some one to know about the will; after the conversation above stated, he start- for the house; saw him next at the Coroner's inquest; said he thought he had better carry the will to Plymouth: told him he had better keep the will until after the funeral: saw him in the mill that afternoon: said he did not feel well, and should not work any more that day: saw him the next morning and he

Cross-examined.—Andrews used to work extra hours; he received thirteen shillings per day for his wages, besides his extra hours; the conversation about the will was in the room where Andrews worked, near one of his machines; a small boy named O'Brien stood near, with the usual help who worked in the room; don't remember that he asked me what he should do about the

wrote to Holmes: Andrews said he wrote it: went down to Andrews house in the forenoon: told him this was a horrible murder, and no doupt the murderer would be found out; he made no answer: tried to elicit something about Holmes, but Andrews did not seem willing to talk about it: next saw him Thursday afternoon; asked me if I would go to Plymouth with him, told him I wanted to be present at the citizens' meeting that evening: told me he wanted to go to Mr. Watson's, and also to Mr. Damon's.

He asked me to see Mr. Damon and ask him not to say anything about his going with Mr. Holmes to have the will made out: told him I would not do any such thing; the conversation about Mr. Damon took piace in Plymouth: in a subsequent conversation, he told me Holmes seemed solicitous about his health, feared he should die in a fit, as his brother had died in that manner.

Have known Andrews for some years; have known Cornelius Holmes many years; Mr. Joseph Holmes died six years ago; will; he mentioned about the will himself first; smelt ether when he was in the mill; have smelt it about him often; in speaking about the will, I told him if he had it, to keep it and say nothing about it.

Rev. Joseph Peckham called and sworn. Live in Kingston; am pastor of the Congregational Church; have known Andrews ten years; he was a deacon of my church; was at Andrews' house Tuesday evening; saw ladies there: was there when the ladies went out; went out five or ten minutes after: came out of the east gate: saw Mr. Andrews next morning at 7 o'clock: he was talking with my wife: I was up stairs: they were out of doors: saw him an hour and a half afterwards at his house, lying on his sofa: he said he had been working in his hen-house that morning: asked him about seeing Mr. Holmes in the garden: he did not seem inclined to say anything about it: said he would not go and see the body for anything.

Saw Mr. Frank Fuller with others coming, and said to Mr. Andrews they are probably coming after you, as there is to be an inquest: he went away with Fuller: saw him next at the inquest: he spoke about Holmes having fits: others said something about fits: the note was produced which Andrews Cornelius Holmes resided with his father until his father's death; and after that he boarded with Mr. Andrews; have known Cornelius Holmes twenty-six years; Andrews' reputation good; kind-hearted, humane, and good tempered; was deacon of my church two years before the murder; was also treasury.

Thomas Newcombe re-called.—Never advised Andrews to see Mr. Damon and ask him not to say anything about his coming to Plymouth with Cornelius Holmes when the will was made.

Mary McCreight called and sworn. Lived in Kingston; work in Newcombs' factory; know Mr. Andrews; saw him on Wednesday: went to dinner at twelve; I got back from dinner at twenty-five minutes past twelve; saw Mr. Andrews coming down the path; he came along the path; he had a bundle under his right arm.

Ellen O'Brien called and sworn. Lives in Kingston, work in Newcombe's factory; have a sister Margaret; saw Mr. Andrews Wednesday, I was in the middle of the road; he was coming down the path; had a bundle him.

Margaret O'Brien called and sworn. Lived in Kingston; work in Newcombe's factory; know Andrews, saw him about half past twelve, coming down the path; had a bundle with him.

Silas W. Ripley called and sworn.

Lived in Kingston; looked after clothing on Jonès river, in Kingston, in company with the others.

The jury took a recess of five minutes.

Examination continued.—Witness identified the clothing exhibited to the jury as being the same found by the party which was found in different parts of the stream lodged against the bushes, the articles were found at different times: took charge of the clothing, and gave them to Edward K. Holmes.

Cross-examined. Was present when the pond was drawn off, which was several days after the murder: have been down to the place where the body was found: saw a large pile of brush there: witness described to the jury the exact place where the brush was.

Samuel Soule called and sworn.

Live in Kingston: reached after clothing in Jones River on Monday after the murder; witness identified the clothing shown to the jury as being the same the searching party found.

Cross-examined:—Did not mark the clothing to identify it. I gave the clothing to Mr. Macoy, and have not seen it since until now.

David D. Drew—sworn. Edward K. Holmes and I were in a boat and saw some clothing found. I took what I supposed was part of a shirt, and afterwards a collar to a coat.

No cross examination.

Eli Wilson—sworn. Live in Kingston. Work in Newcombe's factory. Have worked there 23 years. Andrews has worked there 16 or 17 years. Andrews has worn a black coat in the factory, and that was the last coat I saw him have on before Mr. Holmes' decease. Witness examines the parts of the coat and identifies it as that of Andrews, by paint on the sleeve and other marks. Talked with Andrews once about this paint on the sleeve. He held up his arm, said he had got paint on his sleeve, and asked me what would take it off.

Cross-examined.—Have worked at Newcombe's for the last nine years. As often as once a week I should think. Did not work in the same room with him. Was not until after this coat was found that I thought particularly about this paint on the sleeve. Will not say positively that this is the same sleeve.

Henry Simmons—sworn. Live in Kingston. Have known Andrews 15 years. Have had a talk with him about a coat at his house. I had been at work for Mr. Andrews painting, and noticed some paint on the sleeve of his coat. The paint was on the right sleeve, nearly from the shoulder down. Identifies the coat sleeve as that which he saw Andrews have on from the peculiar shape of the spots.

Cross-examiued:—Knew Cornelius Holmes, was on speaking terms with him, but not he with me. Knew Andrews, his reputation as a humane person was good so far as I know. Saw this paint on Andrew's coat at his house there might have been half a dozen spots. Know of no reason why I should have noticed these paint spot particularly, but I know I *did* notice them.

John Smith—sworn. Live in Kingston. Work for Thomas Newcombe. Have known Andrews for fifteen years. Knew that he wore a black coat with a velvet collar. Examines the coat and other pieces. Think I recognize coat as one I have seen Andrews wear. Have seen him wear India Rubber shoes. Identifies a pair of rubbers as a pair he had seen Andrews wear. Know them by the slippers inside.

Cross-examined: — Have worked in the factory with Andrews fifteen years. Have worked in the same room with him portions of the time for the last four years. My father worked there also. Cornelius Holmes called frequently. Have seen them talking together frequently, and have spoken to Andrews about Holmes giving him his property. My boy occasionally worked for Andrews in his garden. Remember Holmes and Andrews going away one 4th of July. Have heard Mr. Andrews say that he and Holmes had been to Plymnoth together.

To Mr. Somerby:—I never said I identified this coat. I identify the slippers but not the rubbers. Have no other mode of identification of the slippers except by the nails and a hole in one of the slippers.

Uriah McCoy called and sworn. Am a Deputy State Constable; went to Kingston after the murder; first officer there; first saw Andrews on Friday morning, at his house, where I arrested him; he asked me why he was arrested; told him on circumstantial evidence; told him I saw Mr. Damon the day before; he says what Mr. Damon told you would not convict me, I said "how do you know what Damon told me;" he said, he told you about the will; I asked him what he knew about the will; said he went with Holmes when the will was made; said he never saw the will; said Mr. Holmes told him what he knew

about the will; asked him what Holmes told him; said that with the exception of a part, the property was divided between him and Mr. Joseph Holmes; he did not see why Joseph was not implicated as much as he; told him he was not arrested on account of the will; told him I wanted to see the clothes he wore the night he worked in his garden; (witness here showed to the jury the coat, pants and vest Andrews brought to him;) the under clothes he said he had on; looked at the vest first; discovered blood on it; told Andrews I would keep the vest; he said, "what do you find on that vest?" I told him I found something I wished to keep the vest for; he took up the vest and began to rub a place on it; told him to put it down; he said "Mr. McCoy, don't get me into a scrape; I'm an innocent man;" I examined the pants, and told him they looked as though they had been washed; he said they had not; examined the coat; did not see any blood on it; asked him if he was sure he wore that coat; said he was.

The hat was spattered with blood on the lining inside; put the clothes together to take to Boston; next saw the hat in Plymouth with Maj. Bates; went to walk with Andrews over to Newcombe's; asked Andrews if he had been over to the scene of the murder; said he had not, could not bear to go; asked him to show me where Holmes went when he left me in the garden; said he went alone, toward the cemetery; went into his garden, and found the tracks of two persons who had been walking the same way; asked him to go with me the same way Holmes went when he left me; came to the place where the blood was; he said nothing; we walked down below the scene of murder and came back to the house; I asked him if he sent the note to Holmes; said he did; went down to Holmes' house: he was anxious to see Joseph; had some talk with Joseph about the funeral; Joseph said he hardly thought under the circumstances the friends would consent for Andrews to take charge of the funeral; Joseph asked him if he had got the silver ware belonging to Cornelius; Andrews said it was at his house; we then went down to see the corpse: he kissed the corpse: he then turned and went out; said he wished to see Dr. Jones: went to Andrews' house; others came in; Mr. Peckham wished to have a little conversation with; told him he might in my presence, said he wanted to ask him if he had done the deed; if he had he wanted him to confess; Andrews said, "God did not intend me for a murderer;" several more came in during the evening, and wished other inquiries instituted.

Later in the evening, Mr. Peckham came in; and I read a chapter in the Bible; Mr. Peckham and Mr. Andrews each made a prayer; Peckham left the house then. I went up stairs with Andrews, and locked him in his room; next morning went up and he came down stairs; he seemed very anxious about the matter; told him I must go to Plymouth with him; he said he would go after 2 o'clock; wanted to know who I though he had better get for a lawyer; named several, and finally concluded to get a good lawyer from Boston; on Friday he spoke to me about the large pocket-book which Holmes carried about him; told him it was strange that no one else knew of his carying so much money; he said there were others who knew of it; spoke of the many presents Holmes had given him; brought him to Plymouth and committed him to jail; I left the pants and coat which Andrews gave me with Dr. Hayes; was engaged in the search on Jones River; witness identified the clothing shown to the jury as being the same found; when I asked Andrews for his clothes he showed me a pair of shoes which he said he wore the night when he worked in the garden. [Witness identified a shoe shown the jury as one of those shown him by Andrews.]

The Court here adjourued until 9 o'clock Thursday morning.

THIRD DAY.

The interest in the trial increases as the days roll on. The space allotted to spectators were filled this morning a long time time before the opening of the Court.—Among them were many ladies, who seemed to take a deep interest in the proceedings.

The Court came in at 9:5 o'clock.

Mr. Davis, counsel for the defence, wished the Court to allow the jury to visit the scene of the murder for examination of the different localities. The Court announced that the matter would be taken into consideration.

Mr. Macoy's examination continued. A piece of fence was here shown witness, who identified the same as being that which he took from the fence of Andrews, and carried to Dr. Hayes, of Boston, for examination; have had possession of the same since it was examined.

Cross-examined.—Was with Mr. Pratt when he arrested Andrews, at his house; did not ask him to show me his every-day coat; asked him for the clothes he wore the night he worked in his garden; I went into the garden with him afterwards; found two rows of potatoes nearly covered; (witness here described the different parts of the garden of Andrews; showing the paths, trees, and the tracks of the two persons which were in the garden.)

I went with Andrews to the house of Cornelius Holmes, he wanted to see Joseph, and they had some conversation about the funeral; am sure that the conversation between Andrews and Joseph Holmes about silver ware took place Friday: Andrews told me in his room shortly after the arrest, that he knew nothing about the will, only what Mr. Holmes told him; I had spoken to Mr. Damon about the will some time before; and wished to see what Andrews said about the will; did not know at that time that Andrews had carried the will to Mr. Damon; had some conversation afterwards about a copy of the will which I heard had been made; heard on Thursday that a reward had been offered for the arrest of the murderer; arrested Andrews at 6 o'clock for the purpose of securing certain evidence, which was the clothing which he had worn within a few days; did not carry him to Plymouth because I wished to wait for further developments; do not think that Andrews was informed that Mr. B. W. Harris was engaged for the government, for the prosecution of the case; Andrews told me that Holmes often came to the mill and told him that he had large sums of money about him, he spoke of a large pocket-book Holmes carried about him; when I went to the scene of the murder my attention was called to some tracks in the pine needles; could not make out any heel marks; was first at the scene of the murder on Thursday forenoon; saw many stones about there; there were many loose stones about the body; the most of the others were in piles.

George C. Pratt sworn. Am a Deputy State Constable; went to Kingston May 26, 1868, about quarter to 5 P. M.; visited

the scene of murder; noticed stones about there with blood on them; one of them had grey hair on it; (witness here showed to the jury clothing which he said he received from Mr. Macoy;) took the clothing to Dr. Hayes for examination; received the clothing since from Dr. Hayes; saw Andrews on the day of the arrest; saw him afterwards at the jail on Sunday and Monday; saw him Monday at 5 o'clock with Macoy, and Mr. Harmon, the turnkey, told Andrews I had come to talk with him about the murder; he said he did not pass around the old building near the mill on Wednesday; took pieces of the coat to Dr. White; have possession of the note which Andrews wrote to Holmes; was handed to me by Frank Holmes; have had some conversation with Andrews about the note; the note was here shown to the jury; also shown to Andrews, who admitted it to be genuine;) the note was now read, which was as follows:

KINGSTON, May 26, 1868.

FRIEND CORNELIUS:—

You asked me to come down to see you before you went to Boston, but it was not so that I could come down last eve, and don't think that I can this eve, as I shall have to work out in the garden as long as I can see. If you wish to see me for anything in particular, you can take a walk up. Shall be round until half-past eight. Shall then go down to the store.

Yours truly. S. M. A.

Edward K. Holmes sworn. Am a nephew of Cornelius Holmes; had some conversation with Andrews about the murder Wednesday P. M.; asked him who he supposed could have done the deed; said he had no idea; told me that my uncle was the best friend he had; said Holmes had a fit at his house once, and fell on the sofa; helped search Jones River with others; (witness identified the clothing shown to the jury as being the same found by the party.)

Joseph A Holmes sworn. Am nephew of Cornelius Holmes; first heard of the absence of Holmes Wednesday morning; heard the body was found at twenty minutes past seven; went to the scene of murder at twenty-five minutes to eight; there was a number of people there; saw the body lying on the ground; looked at the face; after the jury was named the body was put into a cart and carried away; I left the spot before the body was carried away; saw Andrews at Holmes's house, after the body arrived; complained of pain in his stomach; he wanted to go up stairs; told him we would go out in the yard; we went out and had conversation about the funeral; he thought we had better take charge of the matter, as Holmes thought so much of us; told him others had more to say about it than I did; showed him the note, which he said he wrote; he asked me if I found anything wrong in it; I then left him, and saw him again on Thursday P. M. at half-past two; he came to Leach's house; said he felt bad; people asked him so many questions; he did not know what they could think of him; he said he was sorry I did not send for flowers; told him I did not think flowers were appropriate; asked him when Holmes left him Tuesday night; said before eight o'clock; said Holmes came up through the cemetery to where he was hoeing potatoes; Cornelius said to him after a few minutes, "I guess I'll go," and he left; said of course he did not know which way Holmes went; he said he thought it strange people began to talk about the will so soon; asked him if he knew Holmes had made a will; said he believed he had; said he was in Plymouth day before, and heard Sheriff Bates was a witness to the will; asked him if he was positive about the will; he gave me no direct answer; he mentioned Mr. Damon's name; told him I heard he said Holmes had a large pocket book, which he carried about him; said he had said so; had known him to have $1200 at one time; asked me if I had not paid Holmes a large amount of money the Monday before; told him I had not paid him the money, and had it now; said Holmes had done a great deal for him; this conversation was on Thursday; said when Paraclete Holmes's property was divided, he had influenced Cor-

nelius to buy a piece of land adjoining his (Andrews') house for him; told him people had heard a noise the evening of the murder; said he did not hear anything; said when the ladies left the house he was leaning on the fence in front of his house; said he planted two rows of potatoes that evening, and any one could go and see his work; said if the pocket book was found, a note would be found in it which he gave Holmes for $150, which was overdue; thought Holmes might have been robbed when we went to the house where the corpse was, he remarked how dear the deceased was to him.

Had a conversation with Andrews afterwards in Leach's house; he told me he had been to Plymouth and got the flowers: he went up stairs with the officers; saw him again on Friday morning at Leach's with Macoy; said he came down to take charge of the funeral if we wanted him to; told him the family did not desire him to assist; he regretted that, and wanted to do all he could for Holmes; said God Almighty never meant him for a murderer, made him for a higher purpose; I said, I have no doubt of it; told him if he was innocent, the arrest would do him no harm; asked him about the silver ware; he said it was at his house; said Holmes brought it there after he bought it; he did not wish him to bring it there; had seen the pocket book within a week before the murder; said he wanted to see the body once more; went up to the coffin, put his hand upon the cheek of the corpse, and then kissed it, said "good bye", and said he had lost the best friend he had in the world; said Holmes told him he was going to the store when he left him in the garden; have seen the clothes which Holmes had on at the time of the murder. [The clothing was here shown to the jury.] Examined the clothing on Thursday morning; we had put it in Leach's barn before; saw some white hair on the coat, with pine needles, in the pocket; showed the clothing to Hollis and Morse, State Constables; also have shown it to Attorney General Allen; took the coat to Dr. White, and he returned it to me; gave the clothing to Constable Pratt about three weeks ago; Holmes at the time of his death had property to the amount of $16,600 in stocks and cash; with the income of $10,000 which he received from his father; also a garden lot; and owned the house where Leach lived, with whom he boarded.

[The jury here took a recess of five minutes.]

Cross-examination.—First saw the clothes which Holmes wore on Thursday afternoon: they were in the wood-shed back of Leach's house, on a pile of shingles; did not examine the clothes then; put them in a basket and carried them to the barn, and put them on the floor, from which I carried them to Dr. White afterwards; the shoes, stockings, boots and shirt, I left at Leach's house; they are in my uncle's room now, and I have the key; several notes were found from Andrews to Holmes; do not think they have been destroyed; think Mr. Beals has them now: last saw them in June: think my uncle had a large pocket book: don't know whether he had two or not: in speaking of the will he mentioned Mr. Damon's name: did not tell me he knew there was a will: he thought I knew as much about the will as he did: Cornelius told me he wanted me to make his will for him in May, 1867:

I told him on Thursday P. M., a memorandum of the will had been found; have seen the memorandum since; think it was in Andrew's writing; think Mr. Beals has it now; compared it with the note written by Andrews to Holmes which was found; Holmes was a large man, six feet high, weighed over two hundred pounds; [testimony was here introduced about the arrangements for the funeral, which elicited nothing of any importance;] I had $500 in my hands on Monday belonging to Cornelius, paid his board bill, generally attended to his business; went to the scene of the murder as soon as I heard of the facts; saw many persons there; [witness here gave the name of most of those present.]

Dr. S. Dana Hayes, of Boston, sworn.

Am a chemist and State Assayer; have examined articles at various times to find blood; May 30th, received a vest from constable Pratt, purporting to be the vest of Andrews; [witness identified the vest shown to the jury as the same one examined.]

Dr. White came to my office, and we analyzed pieces of the vest which had blood upon them; made a careful examination and found the blood to correspond with blood taken from Holmes' body; 3d of June, officers Pratt & Hollis brought me more articles of clothing for examination; [witness identifies the pieces shown the jury as being the same brought to him:] found blood on pieces of coat; found blood on pants; [the pieces were shown the jury:] 6th of June pieces of fence were shown me, on which I found blood, same as on the clothing: slippers were also brought to me: took a gray hair from one of them, which the witness here showed to the jury: and also hair taken from the head of Holmes.

Dr. White, of Boston, sworn.

Am a chemist and physician: have had experience in searching chemically for blood: on the 6th of June, clothing was brought to me, with pieces of fence:] witness here identified the clothing:] found blood on vest, which was that of a human being.

Witness went on to give a very lucid description of the chemical examination as conducted by himself and Dr. Hayes, which commanded the undivided attention of the Court and spectators, and was the most interesting testimony which has yet been given in the case.

Some portions of the clothing gave evidence of having been sponged; the spot on the over-shoes gave positive evidence of dried blood, also white hair adhering: the rail also gave evidence of having upon it particles of dried blood: July 2d, received from Joseph A. Holmes clothes of Cornelius Holmes: right pocket had sand in it: two blood stains were found on it also: the outside of the coat was heavily stained: the lining of the left pocket of the pants was stained at the entrance, with marked evidence of blood: the right pocket was not stained: the inside band of the pants was stained with blood.

The Court here adjourned until 2:15 P. M.

AFTERNOON SESSION.

Court came in at 2:15.

The Court room was densely crowded, many of the spectators being ladies; but under the excellent system of order by the officers of the Court, an unusual quiet prevailed.

The cross-examination of *Dr. White* was commenced: found blood on the pants only in the left pocket, by chemical tests: there were other stains which had the same appearance: [witness here gave a clear account of the manner in which the corpuscles of blood are detected and measured.]

Dr. Hayes re-called.—The evidence that the substance found upon the rail is blood is entirely upon microscope testimony.

James N. Sever sworn.

Live in Kingston: first knew of the murder Wednesday morning: went down with others to the scene of the murder; there were many others present: saw the body of Holmes, with many stones around it, some of them bloody: saw a bill sticking out of his left vest pocket: there was $2:10 in the pockets, which was taken out: things were taken out of the other pockets including a large pocket-book, with a large amount of money in it: saw Andrews that day, at his house, at twenty minutes to twelve: he said he sent a note to Holmes by the Newcombe boy.

Cross-examined.—The cemetery is not much frequented in the evening; the road near the body was covered with stones, of various sizes; some of the stones were bloody; [witness here showed to the jury on the map the spot where the hat of Mr. Holmes was found;] saw a small spot of blood near where the hat was, on the west of the road; a roll of bills was found on the body; general reputation for humanity and kind heartedness.

Azel H. Sampson sworn. Live in Kingston; am postmaster; went to the scene of murder Wednesday morning; body lay upon the right side, face down; body was turned over by myself and several others; took the following things out of the pocket —snuff-box, wallet, roll of bills, pieces of coin; passed them to some persons on the bank; opened none of the things; there were a number of pools of blood, and fifteen or twenty bloody stones; found pools of blood ten or fifteen feet from the body on the west side of the road; the body was carried to Holmes's house; I was there when the clothes were taken off, helped take the pants off; saw no blood upon the shirt; saw Andrews at the house of Holmes; he said such excitement affected his stomach and not his brain; said Holmes had always been a good friend to him; said he wrote a note to Holmes the night before the murder; saw him again Thursday night; said Holmes used to go to Boston, and always wanted him to go to; Holmes used to come down to the factory and see him, and make him presents; Holmes had been down there at one time and said he had large sums of money about him; said Holmes came to see him in his garden Tuesday night; stayed awhile and then went away.

Cross-examined.—Went to the scene of the murder in my wagon; saw no pool of blood on a pile of stones; saw pine needles on the bank which had been disturbed; saw heel-marks in the road, as if a person was bracing back; judged that a scuffle had taken place on the west bank above the body, within twenty feet of it, near the hat: this was twenty feet from the pools of blood in the road: went to the house with the body, in my wagon: have known Andrews ten years: never heard anything about the will.

Joseph S. Beals sworn. Live in Kingston: was brother-in-law of Cornelius Holmes: first heard of murder Wednesday morning: went to the scene of the murder: the body was lying on the east side of the cart-rut, face partly down: head crushed in: brains scattered, and bloody stones around: some one took a bill from vest pocket: wallet taken from left pocket of pants: snuff-box was taken from left breast coat pocket: large amount of blood near the head: twenty feet from the body, northerly, there was a pool of blood on some stones; went down to the cemetery in the afternoon, and counted twelve stones from three to ten lbs. each, bloody with finger marks upon one or two of them: there were fifteen other stones, smaller, with blood upon them. [Witness here showed to the jury a stone with blood marks upon it which he took from the ground at the scene of murder:] went home at twelve o'clock: went out into my garden, and saw a man come up through my grounds, and tried to come through: told him he could not get through there as it was locked: went to Mr. Trabant's house, asked who the man was: Mrs. Trabandt replied, "Mr. Andrews." "What Mr. Andrews?" says I. "Mr. Andrews that works at the factory," she replied. Just then Mr. Andrews appeared behind Mr. Trabandt, and I said I was glad to see him, for I wished to know about a note it was said he had sent Cornelius. He said, "oh! that's easily explained. I sent it by Charley Newcombe, one of Guilford Newcombe's boys. I asked him the contents, and he said that Cornelius also wanted him to go into the house, and he said, no, he knew he would not want to see the ladies, and he told him there was a committee meeting of ladies of their Social Circle in the house, as an excuse for not asking him in.

I asked, "what time did you leave off work?" Says he, "a few minutes before nine o'clock. It was so dark that I had to quit, and I then went out in front of the house and leaned over the fence until 9 o'clock, when the ladies who met at my house came out and I spoke to them and they to me." I asked who they were, and he said, "Miss Nancy Sever, and others." I then asked him again how long Cornelius was there, and he said about ten minutes. I asked him if Cornelius did not come and see him when he was going to

Boston, and if he had not written him a note asking him do so. He replied, "I wrote I couldn't come down last evening, and I did not think I could that evening, as I should work out in my garden as long as I could see: that if he wanted to see me for anything in particular, he could take a walk up. I should be about home until about half-past eight."

[At this juncture of the trial the prisoner gave a scream: upon inquiry, he said he thought some one had just struck him: he seemed faint: an officer handed him some water, and he revived.]

I then asked him if Cornelius did come up and he said he did: that he got there a few minutes before eight o'clock, sat down on a box in the garden that I turned and placed for him, and when he had sat about ten minutes he got up and said he must go as it was so cold and wet he should catch cold, and that he was going to the store, and went that way. I asked him which side of the lot he went off, and he said by the opposite corner from the one he came in, on the back side of the lot. I asked him how long he remained out there, and he said until nine o'clock. I then asked him if he heard nothing from all the struggle it was evident there had been there where Cornelius was found, and he said "nothing." I asked him if it was possible he could have remained in his garden until nine o'clock and hear nothing of Cornelius' screams or groans? He repeated "nothing."

I then said, "Mr. Andrews, are you certain that you were in your garden all that time?" "Yes," says he.

"What were you doing all that time? it must have been quite dark." "I was planting potatoes, beans, and other garden seeds." I replied, "I cannot believe you." and again asked the question whether he remained back of his house all that time? when he said that he was there all the time except when he got through planting one kind of seed, he went into the house and got another, or got more of same kind if he wanted."

He said Cornelius was very kind to him, had often made him presents, that he never came from Boston without bringing him some present, some of small value, some of considerable value, on the whole he considered him the best friend he had in Kingston.

I told him I heard he said Cornelius carried large sums of money with him, and he said yes, he had said so, and that he had seen him have as much as $1000 or $1200 at a time, and had often remonstrated with him for it, and tried to frighten him by telling him he was in danger of being robbed.

On Friday Andrews and Macoy stopped in front of my house, and leaned on the fence. Macoy said "Mr. Andrews says there was a copy of Mr. Holmes's will found in his pocket when the body was found." Mr. Andrews says "yes, but the will gives me more than the copy.'

[The prisoner here spoke out: "Mr. Beals, I never made that statement."]

When we had nearly finished the conversation, Mr. Trabandt came up and addressed him,—"Mr. Andrews, what do you wish?" to which he replied, "nothing in particular, I only wanted to see the flowers."

We then went along my driveway, I into the house, and he toward the main street. I think he left me about ten minutes to ten o'clock.

He had on a low, dark felt hat, blue, light flannel sack, dark vest, with a large spot on the right pocket that looked like lard, and dark pants; his eyes looked badly, as if he had not slept the night before.

I noticed his hands were very clean, and had the appearance of having been thoroughly soaked, and his nails also, there were a few small remnants of dirt under them, saw also three small scratches on one of his hands, they were slightly scabbed over.

Wednesday, June 3d, after the cars came in from Boston, about 11 o'clock, A. M., I went up in front of Andrew's house and saw Capt. Peleg Bradford who called

my attention to the circle round the sun, and while talking about it, it occurred to me that there might be some marks upon the fence where Mr. A. leaned over, if he came fresh from the scene of the murder. On examination of the top of the fence, east of the small east gate, there was a mark that looked like red paint. West of that gate three feet there was a stain that I had no doubt about its being blood, say 16 inches from that another stain that had a similar appearance. On looking under the rail there were finger marks of blood, color and all. Major Macoy, John A. Fuller and Mr. Peckham saw the marks. I said I should take the rail, and when Mr. Macoy came out of Mr. Wormell's room we took hold of the rail and lifted it from the fence, and Macoy carried it to his office, riding with me.

On account of the severe indisposition of Herschel E. Briggs of Plympton, one of the jurors, the trial was here suspended for the day, and the court adjourned to half-past eight o'clock Friday morning.

FOURTH DAY.

MORNING SESSION.

Court came in at 8:35. The court room was not so full as usual, owing probably to the early hour at which it convened.

John B. Hollis sworn. Am a Deputy State Constable: went to Kingston shortly after the murder: saw Andrews at Leach's house Thursday evening, in Holmes's room: told him we were officers, and wanted him to tell us about his connection with the affair: said he did not think he could tell all he had said about the matter: he asked who I suspected: told him we were after the facts in the case; asked me if I had inquired where Capt. Leach was that night: told him I had some conversation with him, but did not find out much: he then went on to tell me his story: said he knew Holmes was going to Boston on Wednesday: thought he would be disappointed if he did not see me: went to Newcombe's and sent a note to Holmes by Newcombe boy: was looking for Holmes to come by the road, as he usually came that way, as he was timid: he came about half-past 7, stood side of me when I first saw him: got a box for him to sit on: Mr. Delano came up while he was there: said Holmes left five minutes after Delano left: Holmes said he was going to see some one: Mr. Morse asked if he saw any one going down the path, he said not any one: heard no noise in the cemetery: worked long as he could see: couldn't tell what time it was: then said that was all he knew about it: told him I wanted to see him in the morning to look over his garden to see where Holmes was when he left him: said he wanted to go now, as he was nervous: said he first knew Holmes was missing by Capt. Leach coming to his house in the morning and telling him: Andrews told him he would probably find him down by Stony Brook, as he went that way when he left him: he heard of Holmes's death before he went to the factory, by meeting Mr. Bates down that way: said he did not wish to go down to the scene of the murder, it would kill him: said he had seen Holmes have a pocket book with him with large sums of money it it: have examined Cornelius Holmes's coat: it was in a barn back of Leach's house: found pine needles in inside left breast pocket, with stains on the coat: left hand pant's pocket had stains, apparently of blood on it.

Cross-examined.—Left the pine needles in the pocket: am not mistaken about which pocket the needles were in: don't know whether the note written by Andrews to Holmes was found on the body or not: think I did not hear on Thursday evening that a copy of the will had been found: first heard of the reward being offered on Friday or Saturday: went shortly after I arrived in Kingston to scene of the murder: saw many stones, some of them bloody with hair on them: made search around the spot: saw bushes and limbs of trees broken: I was with Mr. Morse, another constable: was there again on Friday, when Andrews was there: don't recollect any spot where pine needles were stirred up.

George H. Morse sworn. Am a Deputy State Constable: went to Kingston shortly after the murder: on Thursday evening, was at Leach's house, with Hollis: Andrews and Joseph A. Holmes were there: Hollis

asked Andrews to tell him about the matter: [witness went on to tell substantially the same facts as appeared in Mr. Hollis's testimony, in regard to what Andrews said, about the matter.]

Cross-examined. — Andrews told me in Holmes's room on Thursday evening that Holmes used to carry his large pocket book in his left breast coat pocket: went down where the body was found, on Friday, with Hollis: on the west side of the road there were signs of some disturbance among the pine needles and bushes: pointed out no heel marks to any one: have had some conversation with Hollis about my testimony: made memorandum at the time of the investigation: made it in my tablets, and copied it on paper: [the paper was here produced and identified by the witness: the counsel for the defence wished to put the paper into the case, but the court ruled it out so far as cross-examining the witness upon the facts contained in it was concerned.]

Mrs. Mary H. Peckham sworn. Live in Kingston: am wife of Rev. Joseph Peckham: was at Andrew's house on Tuesday evening: there were other ladies present: they went away before I did: I gave Mrs. Andrews ether after they went away: saw Andrews when I came down from his wife's room: he was in the sitting room: said he had been in his garden planting: he went home with me: saw him at seven o'clock next morning, passing my house, going to his house: saw him a short time after front of my house: went out to see him: he said there had been a horrid murder in the cemetery; saw him on Wednesday; said he did not want to see Holmes, as he wanted to remember him as he saw him last; think he told me afterwards that Newcombe advised him to send the will to Mr. Damon, and said he had done so: never had any conversation with Andrews about the will before the murder:

Cross-examined.—[witness here showed by a plan, presented by Mr. Davis, of the counsel for the defence, the relative positions of the different rooms of Andrews' house.] Late in the spring, Mrs. Andrews spoke to me about the will: said Holmes wanted Andrews to get the will made out in legal form, and that Andrews had a memorandum of it: she brought it to me; Andrews wanted Mr. Peckham to see about the matter and he declined to do it, as Andrews was more intimate with Holmes: have heard Andrews speak of the will since then: Mrs. Andrews has been in feeble health for a number of years: is a confirmed invalid.

Direct examination continued.—Mrs. Andrews handed me the memorandum of the will, for Mr. Peckham to revise.

Edward Holmes sworn. Live in Kingston; am a brother of Cornelius Holmes: received some of the articles which were found on the body when it was searched. [The articles were here produced and identified.] Did not see them taken from the body; there were about a dozen persons there; received these articles about fifteen minutes after I arrived there, from James N. Sever; there were $740 among the articles; saw Andrews on the same day at Leach's house; at the inquest.

Cross-examined.—Did not wish to see the things taken from the body; saw a memorandum of the will at the time of the inquest; Joseph A. Holmes showed it to me; said it was taken from the coat of my brother; first saw it about 10 o'clock A. M., Cornelius visited my house frequently: I did not call upon him very often; never said anything to me about making a will: never heard of his saying he would not give me or my brother anything in his will.

Margaret Daly sworn. Live in Kingston; live with Alexander Holmes; have known Cornelius Holmes since I came to Kingston in May, 1867; know he had a large pocket book; have seen it twice; once in the kitchen, and once out of doors.

Cross-examined.—The pocket book was open when I saw it in the kitchen; he said there were bad folks around it, and he did not want to carry much money around with him; saw some money in the pocket book when he opened it: heard Alexander Holmes say something about a pocket book, and then I told him I had seen Cornelius have one.

Lysander Bartlett sworn. Live in Kingston: saw Andrews on Thursday between 2 and 3 o'clock, at Leach's house; went up into the chamber of Cornelius Holmes, with Edward Holmes, Joseph A. Holmes, and Andrews; Edward Holmes asked Andrews if he had seen Cornelius have a large pocket

book, and he said he had, and went on to describe it: talked about the funeral: Joseph asked him if he knew about a will, said he did: he was over to Plymouth that day and heard that Maj. Bates was a witness to it: asked him which way Cornelius went when he left him, said he did not know.

Cross-examined.—Live on the Landing road; Holmes was a frequent visitor to my house, day and evening; heard from my wife that he had made a will; have heard her speak of it often to other people: I think I have mentioned it to others; knew that he had given something in the will to the Baptist church; never heard Holmes say that he should not give any of his property to his family relations: knew that Andrews and Holmes were friends: never saw them together.

[The jury here took a recess for five minutes.]

Mrs. Eliza Bartlett sworn. Am wife of Lysander Bartlett: had a conversation with Andrews about Cornelius at Andrews' house after the murder: he said Counelius carried a large pocket book about him usually,

Cross-examined.—Holmes was a frequent visitor at my house; he told me he intended to make a will: this was in the spring of 1867: he said afterwards that he had made a will, and had given the Baptist church $1000: he has often said he should not give his brothers or sisters any of his property, as they did not need it; never heard him say anything about giving Andrews any of it: saw the clothes of Mr. Holmes after they were taken off; they were under the bed: I carried them to the wood-house, and put them on some loose shingles: I found a handkerchief in the coat pocket, and a piece of waste paper: Mrs. Fuller told me afterwards that she handed me a paper which was taken out of the coat pocket: I do not remember the fact: think there were some pine needles and sand on the coat: did not see any hairs on it: in the conversation with Andrews about the pocket book he used the words "pocket book:" first heard that a copy of the will had been found, the day after the inquest.

Re-examination.—Cornelius told me in our conversation that his brothers and sisters were well provided for, and should have none of his property: I understood he meant *some* of them. told him I thought he had not given the Baptists enough: said he could alter it at any time: said Mrs. Tilton had told him the same thing before.

Richard Smith sworn. [The testimony of this witness was unintelligible to our reporter, the witness being a foreigner, and the language broken, which together with the distance of the reporters' table from the witness stand, made it difficult to understand.]

D. E. Damon sworn. Live in Plymouth: am Register of Probate, and Attorney at Law: was at one time counsel for Mr. Andrews: he sent for me Saturday after his arrest: I wrote the will of Cornelius Holmes, on the twenty-ninth of June, 1867: Andrews came to my house, and said there was a gentleman at my office who wished me to write a will for him; he told me on the way to my office who the gentleman was: introduced me to Holmes when we arrived; Andrews went out: Holmes took out a memorandum and said he wanted a will in accordance with that: I made the will: Maj. Bates and Capt. Harmon were present when I made the will: [the will was here read to the jury, the principal items corresponded with the memorandum published this morning.] The will was executed that evening: I gave the will to Mr. Holmes: don't think I saw Andrews again that evening: May 28, 1868, came home from Boston in the last train: saw Andrews at my house: he gave me the will which I had made out for Holmes: we had some conversation about the provision of the will: said some of his friends advised him to bring the will to deposit in the Probate Office; think he told me the will and silver ware were left with him: the will was not sealed up when I gave it to Holmes:

Cross-examined.—Read the will over to Mr. Holmes, after I had made it out:

Mrs. Maria Leach sworn.

Live in Kingston, Cornelius Holmes lived with me; had some talk with Andrews after the body was brought to my house: told him it was a horrid thing; he said we little thought of this;" he said Holmes had been in the habit of carrying large sums of money with him in a large pocket-book; Holmes had lived with me two years; Andrews used to come to my house frequently, always in the evening; was in my room often with

Holmes; used to go into Holmes' room the last part of the evening.

Cross-exa nination—Used to get Holmes' washing done; sometimes done it myself; never knew of his washing any portion of his clothing before it was handed to me; never noticed any dirt on the shirts he slept in; he made his own bed, and took care of his own room; told me twice last Spring he had made a will; never told me what was in it.

Re-examined.—Holmes asked my husband at the breakfast table if he could alter his will: my husband told him he could.

[The Court then adjourned until 2:15 o'clock.]

AFTERNOON SESSION.

Court came in at 2:15.

George T. Adams sworn. Andrews came to borrow money of me the last Saturday night in April, 1868; wanted $100; was very urgent about it; he did not want me to tell of it; did not wish the Society to know he hired money May 2d, 1868. I let him have $100 on a note signed by him: spoke about a meat bill: would see that bill and the note paid before October: saw him the morning after the murder near his house: he said his wife was in convulsions.

Simeon W. McLaughlin sworn. Live in Kingston: Andrews came to me April 16, 1868: to borrow money: said he wanted to pay a subscription of $200 which he had put down to make repairs on the church: he gave me his note for $100: which I let him have.

Wm. H. Burgess, sworn.—Live in Kingston: keep a store: never loaned Andrews money.

Cross-examination.—There is a path leading from the railroad near my store towards and through the Cemetery, which is generally frequented: [there was introduced by the Counsel for the defence a memorandum for payments made to witness by Andrews, on account of goods received at his store,] He told me once he had advanced money towards paying Mr. Peckham, and would like to have his month's bill lie over.

William S. Adams sworn. Live in Kingston: Andrews borrowed $100 of me April 9. 1868: it was in small bills: took his note for the amount, for one year: told me not to say anything about it to any one: told him to go to Cornelius: he said he did not want Cornelius to know he borrowed money of any one: went to the scene of the murder Wednesday morning: saw several stones about the body: and below the body were pools of blood, and stones: three stones a little way from Holmes's head had what I called finger marks upon them: on the east side of the road there was a stone with clots of blood on it, which was different from any around it: forty feet below the body there were heel marks in the ground: eight or ten feet above the marks there was a large pool of blood: the heel marks were inside the ruts. Thursday afternoon I saw Andrews, and he asked me if the big pocket book had been found.

Cross-examined.—There were pine needles in the wood, near the heel-marks: saw no disturbance of pine needles or leaves near the hat: Holmes visited my house often: never knew he made a will until after his death.

Addie Reed, sworn. Live in Kingston: am sister of Mrs. Andrews: live with her; examined the cellar of the house, and found money: the money was in the corner of a closet: $190 was found.

Cyrus W. Ripley, re-called. [witness identified a piece of skull shown as being a piece of which he found within two feet of the head of Holmes.]

Ezra Fuller sworn. Went to the scene of the murder Wednesday morning; there were three persons there: the pants on Mr. Holmes were buttoned: there was an impression under the head on the ground.

Henry Cobb sworn. Went to the scene of the murder on Wednesday morning.

Cross-examined.—The head of the body laid close to the outside of the rut: did not see any holes under the head.

Benj. Dunham sworn. Went to the scene of the murder Wednesday morning: saw no one move the body until they put it in the wagon.

Cross-examination.—It was bloody about the body: several stones about there on the road: helped put the body in the wagon.

Elizabeth H. Holmes sworn. First heard Wednesday morning that Holmes was killed: saw Andrews that day.

Rev. Joseph Peckham recalled. — After April 1, 1868, I received $319 from Mr. Andrews at various times.

Cross-examined.—Received $82 from Andrews between Jan. 1, 1868, and April 1, 1868. There was about $2000 subscribed towards making repairs on the church: Andrews subscribed and paid $200 towards the amount.

At this time, 4.15, the counsel for the government announced that the case for the prosecution was here rested.

[The jury here took a recess of a few minutes.]

At the conclusion of the recess, Mr. Somerby wished to know of the counsel for the government what they claimed had been proved to have been found upon the body: there were some things produced by one witness which had not been fully identified. Does the government claim that all the things produced by said witness were on the body? The Court ruled that it was for the jury to decide whether the articles were on the body or not.

At eight minutes past four, Mr. Davis commenced the

OPENING FOR THE DEFENCE.

He proceeded to trace for one hundred years back the lives of the ancestors of the prisoner, showing that many of them were afflicted with insanity, and some of them died insane. He proceeded to state that the mother of the prisoner was insane when he was conceived, also when he was born, and that he was nursed from her breast: and when he was 4 years of age, his mother was sent to an insane asylum. The Counsel traced the lives of the different branches of the family very closely, and apparently faithfully, up to the time of the birth of the prisoner.

The character of the prisoner was here portrayed vividly, as being very kindly, humane and timid. The defence might claim as a strong point the moral impossibility that such a man as the prisoner was proved to have been, could have committed such a deed—the killing of the acknowledged best friend he had in the world. We say that the prisoner was almost the first young man whom Cornelius Holmes had ever met who treated him with respect; and that they formed a strong attachment towards each other. They visited each other frequently; visited different places together, and were as firm friends as are ever seen.

Mr. Holmes was not an idiot; he had a will of his own: he had very strong animal passions; never seemed to be anxious to marry; used to seek occasions to sleep with the prisoner; on one occasion he had some trouble with him after they were in bed, and the prisoner got out of bed, and remained some time; afterwards in Boston, the same indignity was attempted, but he failed; on several occasions the same thing occurred.

The prisoner seemed to be trying to correct the morals of Mr. Holmes, and it is evident that it was one of the great aims of his attachment to Mr. Holmes to endeavor to correct these evil habits.

We admit that the prisoner wrote a note to Holmes on Tuesday evening, May 26th, that Holmes was going to Boston the next day, and he knew Holmes wanted to see him.—We shall also show that the prisoner made an engagement with a neighbor to take some hens away from his garden that evening. We admit that Holmes was in his garden on Tues dayevening. We admit that the prisoner saw Mr. Sproul in the garden adjoining. When he had got through work, Holmes asked the prisoner to go down and look at some stumps; after looking at the stumps, it was proposed to go down to the Cemetery, and see some particular lots; after looking at the lots they came back to the stile, and had some conversation about the visit of Holmes to Boston; as they were starting to go towards the house, Holmes leads the prisoner down into the Cemetery further on, to a knoll of white pine trees; as they arrive at the knoll, Holmes seizes the prisoner, throws him down, unbuttons his pants, and gets on top of him; the prisoner struggles with him and they roll down the bank together; from that time the prisoner does not remember anything until he revived and found two stones in his hands; began to think what he had done, and goes to the Cemetery pond to wash himself, and cool his

brain; he then starts for home, and finds the body of Holmes.

Now we claim that it is not in human nature that the prisoner committed the deed in cool blood.

The Counsel proceeded to show to the jury that there was no adequate motive for committing the deed; that the prisoner had every inducement to protect the life of his benefac.or and friend.

We claim that no sane man would have left his garden, in the sight of his neighbors, within a few minutes of the time; we say, we claim no sane man would have deliberately left his garden under these circumstances and committed a murder of this kind.

Gentlemen of the jury, you are to decide whether the prisoner was guilty of deliberate murder or not; second, was the murder one of extreme atrocity; then whether it was a case of manslaughter; then whether it was a case of justifiable homicide.

The counsel here proceeded to give the different legal phases of murder, showing the degrees which the law recognizes. Rules of law relating to circumstantial evidence were here read to the jury from "Starkie on Evidence," in regard to making up a verdict in capital cases; and the counsel proceeded to show the jury their relation to the points in this case. The counsel closed by showing the financial standing of the accused, which was found to be on an average with that of other men in his position.

The opening argument for the defence consumed two hours and five minutes. An intense interest was manifested throughout the whole. The court-room was densely crowded, every seat being filled, and all the standing room occupied.

Alden White sworn. Live in Duxbury; formerly lived in Kingston; Andrews owes me over $1000; I hold a note for a part of the amount; have never pressed him for the payment of it; considered the debt good; Andrews told me Holmes had made a Will, and said he (Andrews) was used well in it; lived with Joseph Holmes seven or eight years; Cornelius lived there a part of the time; he and Andrews have been intimate for a number of years; he was a frequent visitor at his house; the general reputation of Andrews for humanity and kindness of heart was good.

The court here adjourned to 9 o'clock, Saturday morning.

FIFTH DAY.

MORNING SESSION.

The interest in the trial appears unabated, large crowds pouring into the court room a long time before the opening. There were not as many ladies present as usual.

Court came in at 9 o'clock.

Examination of *Alden White* continued. In the conversation about the will, I told Andrews that I thought Cornelius was failing in health; Andrews said he thought he was too; this was at Edward Holmes' house.

Cross-examined.—This conversation was in the evening; think Andrews told me not to name the matter of the will to any one; on the morning after the murder saw Andrews in the street, and he got on my wagon; he said Cornelius talked hard about folks of late; never have seen him since until I came to court.

George Clark sworn. Live in Kingston, near Mr. Delano; Monday night, May 18, had some conversation about purchasing hens, and also Monday 25; told him I would come down Tuesday night and get them; went after them at that time, and found him in the garden hoeing; got the hens, and went home; I partly paid him, and he told me I need be in no hurry about it: the hen house is at the foot of the garden; when I got home, I changed my clothes, and went to a meeting of the Good Templars, about 8 o'clock; the path over the stile to the cemetery run through my land, and I had put up a notice that no one should be allowed to pass over it on my premises; have known Andrews five years; attended the same church, and sang in the choir; there was a committee appointed to raise funds for the purchase of property adjoining the church; Gershom Bradford, Andrews and myself were that committee; we were each to raise $500 by our notes towards the amount necessary; the reputation of Andrews for kindness of heart and humanity was good.

Charles Newcombe sworn. Live in Kingston; Andrews has given me three or four notes to carry to Holmes; carried a note from him to Holmes Tuesday evening, May, 26; gave it to me at twenty-five minutes of seven, at night; have seen Frank Newcombe carry notes from Andrews to Holmes.

Frank Newcombe sworn. Live in Kingston; have carried notes from Andrews to Holmes several times.

Catherine O'Rourke sworn. Knew Andrews; have carried a note from him to Holmes.

Mary Reed sworn. Am the mother of the wife of the prisoner; live at the house of Mrs. Andrews; have lived there a number of years; lived there when Holmes boarded there: was at home Tuesday evening, May 26, 1868: did not see Andrews in the garden that evening: used to do the washing for Holmes when he boarded with us: [counsel for the government here objected to the admission of certain evidence which the defence proposed to introduce showing the evil habits and propensities of Holmes for several years past. The objection was sustained by the court] Andrews used to visit the cemetery often; remember one Sunday about a month before the murder he went down to the cemetery three times, and I remarked something unusual about him:

thought he seemed dull and sober: he was subject to severe headaches and sometimes his eyes were affected: he used to take ether as a remedy for headache; have heard Holmes say he was going to make a will, and that when he made it, he wanted Andrews to fare well: this was at our house.

Mrs. Andrews showed the will to me once, it was kept in our house; heard Holmes say he wanted Andrews to have his gold watch; he said he had spoken to his sister about the matter, and she told him to do as he pleased; he said he told her he should not give his brothers any of his property, as they had enough now; Holmes called at our house often; he came there Saturday before the murder, and brought Andrews a boquet of flowers; they used to go off together often: knew Andrews' mother; lived in the house with her; have noticed something peculiar about her; lived in the house with her when she was removed to the insane hospital at Worcester; saw her there afterwards.

Cross-examined. — Heard Mrs. Andrews read the will over; she took it from a long envelope which was in a box in her chamber, among the papers of Mr. Andrews; this was within a year of the murder; have heard Holmes talk about the will several times, at our house.

D. E. Damon re-called. When I made out the will for Holmes we had some conversation about compensation, and he at first said he would not have it made out; and then asked me if there would be any less charge if the will was changed; he went out of my office, and after a few minutes he came back and told me to make out the will.

Mary D. Johnson sworn. Live in Kingston; have boarded with Andrews four years: boarded there when Holmes did; heard a conversation about the will between Holmes and Mrs. Andrews: he said Andrews should fare well, and the Holmes's should not have any of his property; this was shortly after his brother Paraclete's death; was at home Tuesday evening, May 26, 1867, in Mrs. Reed's room; between 9 and 10 I went to Mrs. Adams's to stay all night; did not see Andrews after he ate his supper; he was subject to headache, used to take ether for it; went to the store for Mrs. Andrews on Tuesday afternoon, and bought flour and potatoes.

Cross-examined.—Andrews said something Tuesday about going to the store for potatoes.

[The jury here took a recess of five minutes.]

Mrs. Bethia C. Austin sworn. Live in Plymouth, am a school teacher: knew Andrews' mother fifty years ago; lived next to her at that time; knew her when Andrews was born; she had been insane for a year before the time of his birth; known Andrews ever since he was born; have seen him and Holmes together. [Evidence was here introduced to show that at the violent death of a nephew of Andrews some two years ago, while he was in Plymouth, he showed signs of being in an unusual state of mind. rather light-headed.]

Cross-examined.—Andrews' mother was not treated for insanity before his birth; used to see her occasionally.

Hannah McDaniel sworn. Am sister of Samuel M. Andrews; live in Newmarket, N. H., remember my mother the last day she was at home before she was carried to the hospital; she was tied on to the bed because she was so furious; [at this juncture, the witness was faint, and allowed to leave the stand.]

Mrs. Eleanor Robbins sworn. Am sister of Samuel M. Andrews; am forty-eight years of age; think my mother would have been seventy-five years old if she had lived; my mother tore out the family record from the Bible when she was insane; first remember how my mother was when I was ten years of age; she used to imagine people were talking about her, and thought she heard people talking under the windows; remember my great-grand-mother when she was alive; knew there was something strange about her; know that my grand-mother's brother, George Robbins, was insane five years; my grand-mother once told me that I could never go through what she had; that all the children but her were insane; have often seen my mother act very singular in the night; Samuel was brought up by his grand-mother, after his mother died.

He was at my house when my son was killed some two years ago; he was very

lively and seemed unnatural at the time; he was much attached to my son; Samuel was at my house the night Holmes's will was made by Mr. Damon; he said Holmes was making his will then; in October, 1867, he told me at the factory that Holmes had made his will and left him a part of his property; he said the will was at his house, as Holmes wanted him to keep it; they have been to my house a great many times together.

Smith Fuller sworn. Live in Kingston; worked for George Adams last spring and summer; used to pass over the path through the cemetery often; have been over it as late as half-past nine, and have frequently noticed people on the path and in the cemetery; went through the cemetery Tuesday evening, May 26, at 7½.

The court here adjourned till 2.15.

AFTERNOON SESSION.

Court came in at 2.15.

Mrs. McDaniel re-called. My brother and Holmes last came to my house in April, 1868; the conduct of my brother was very singular at this visit, so that I noticed it particularly; he did not treat me as usual; did not seem natural at all.

Cross-examined.- I have three children, one 13 years, one 3 years old; have lived in Newmarket 17 years; my brother has been there twice within five years; have not been in Kingston or Plymouth for four years; my brother seemed to be cheerful when he was last at my house.

Mrs. Hannah Bearce sworn. Am a sister of Mr. Andrew's mother; my mother's name was Jerusha Robbins; are 69 years of age; my grandmother was insane; I was fifteen years of age when she died, and I always remembered her as insane; Mr. Andrews was brought up in my mother's family; he lived there until he was twenty years of age; then he went to Kingston; he used to come home Saturday nights; after he was married he went to housekeeping; after awhile he boarded, then bought the house where he lives now; remember that Samuel's mother was insane before his birth: she was very nervous, and complained much of the head; four or five months before he was born, she showed plain signs of insanity; after he was born, she grew worse, until she was carried to the hospital; we were afraid of our lives, and had her carried away; she was carried to the hospital at Worcester; after a while, she was brought to Plymouth, and as she grew no better she was sent back again, and finally sent to Attleboro; she died there, and was buried in Plymouth; Samuel paid the expenses of her funeral.

Remember my uncle Samuel Robbins; he was insane; my uncle George Robbins was insane; have heard that my uncle Benjamin Robbins was also insane; my aunt Betsey Robbins was also insane; heard my mother say that all her brothers and sisters were insane but her; my grand-mother was insane; Samuel came to my house the first of April; he acted very singular, so that it attracted my attention.

Cross-examined. My mother died twelve years ago; she was never insane; my father died when I was quite young; he was never insane: Samuel's mother was the oldest of my brothers and sisters; among the families of my brothers and sisters, not including Mrs Andrews, there was no insanity; can't remember that Mrs. Andrews was insane until four or five months before Samuel was born; as far as I am concerned, I don't remember that she was insane before that time; Samuel's mother nursed him until he was two years old.

[The jury here took a recess of five minutes.]

Ada Reed re-called.—Have boarded in Mrs. Andrews' family for some years; was present when Holmes said something about a will; he said Edward Holmes's family should not have any of his property; have seen the will; Mrs. Andrews showed it to me; did not examine it particularly; [identifies the will;] Mrs. Andrews read it to me; remember a part of the provisions of the will; have heard Mr. Holmes say that Andrews would fare well when he (Holmes) died; Andrews gave me a $50 bill before he came to the jail; this was on Saturday forenoon; within an hour or two, he gave me a pocket book, with about $40 in it; knew he received a check for $50 from Boston for repairs on the church, some time previous.

Thomas Bearce, sworn. Live in Plymouth; am sixty-two years old; am a brother of Mr. Andrews' mother; forty-three years ago I boarded with her, and she was very gloomy at spells, and acted very strangely; five

years before Samuel was born, she was treated for insanity; she was insane when he was born; her husband was at sea when Samuel was born; she used to imagine she heard noises about the house: we did not consider it safe to leave Samuel alone with her; she came to Chiltonville once in the night, I think with no clothes upon her; she finally came with Samuel to my mother's, and grew worse; Samuel is thirty-eight years old; she was brought back to the poor-house, after a while; after staying there a while, she was carried to Worcester, and from there to Attleboro, where she died.

[The witness here proceeded to trace the ancestors of his family, and to show that several of them were afflicted with insanity.] Lived in Chiltonville when Andrews was a boy; he went to Kingston when he was about 21 years; hil general reputation for humanity and kindness of heart was always good.

Calvin Bearce sworn. Am a brother of Thomas Bearce; knew Mrs. Andrews, the mother of Samuel, when she was about 40 years of age; I first noticed signs of insanity; [witness here proceeded to describe the signs of insanity for a number of years;] after Samuel was born, she showed stronger signs of insanity, and attempted to take the life of my mother; [witness here gave the particulars on one occasion when she left his house where she was visiting, and wandered off alono;] the general reputatlon of Andrews was good.

William S. Robbins sworn. Am a nephew of Andrews; had a conversation within a year with him about a will; he wanted me to go into a back chamber, and there showed me a will' which I was given to understand was a will of Cornelius Holmes; he handed it to me, for me to read; glanced over it, but did not read it at all; did uot notice the signature; did not see him the night the will was made; he came over with Holmes that night; he has purchased two pounds of ether from me; one pound in January last, and one pound May 27, the day after the murder.

Guilford Newcombe sworn. Am interested with my brother in the factory; have worked there ten years; [witness here read a memorandum of the amounts he had paid Andrews since Jan. 1, 1868, amounting to $229.77.] Am a deacon of the church to which Andrews belonged; he was the treasurer; knew that Andrews was engaged in collecting a subscription for repairs upon the church; Holmes used to come to the factory often; heard him say that he was going to make sure where his property went when he died; said it was going to those who needed it; Andrews' general reputation for humanity and kindness of heart was excellent; he was very generous; considered a religious man; have been in the habit of seeing Andrews nearly every day since I worked there; never have seen any signs of insanity exhibited by him; never advised Andrews to carry the will to Mr. Damon; do not know how much money Andrews had on hand at the time of the murder.

Dr. Benjamin Hubbard sworn. Know Samuel M. Andrews; he has bought ether anq morphine several times of me within a year from last May.

Richard Smity sworn. Have worked for Andrews in his garden; worked for him Tuesday morn, May 26, and Thursday morning May 28, 1868, digging holes for potatoes.

Elijah Sherman, sworn. Live in Plymouth, at Chiltonville: always known Andrews; his general reputation for humanity and kindness of heart was good.

The court here adjourned to Monday morning, at 9 o'clock.

SIXTH DAY.

The interest in the trial seems on the increase, as it was generally understood that prisoner would testify this morning. We notice a considerable decrease in the number of ladies, probably owing to the fact that "washing-day" calls them to other duties.

Court came in at 9 o'clock.

Joseph A. Holmes re-called. Knew that Cornelius had gold coin at some time; have seen some of it, since his death; saw it at my father's house, from $200 to $300, I think; he had some paid to him in January last, and in the July previous.

Mr. Wormell recalled. Andrews was in the habit of sitting up late, and getting up early; he has told me that he generally slept five hours; paid him for board during my winter term, about $12; paid Mrs. Andrews at same time $70; on Tuesday evening, May 26, I heard a sound like something striking; it sounded as though it was in the cellar; boarded with Andrews from May 10, 1867, till July, 1868; was usually in good spirits.

Cross-examined-—Never saw anything indicating insanity in Andrews while I boarded with him.

Addie Reed re-called. Have lived at Andrews' house fifteen years; he retired late at night, and was up early in the morning; I have purchased articles at Burges & Bailey's store on Andrews' account, for which I afterwards paid him.

Rev. Joseph Peckham re-called. I made a draft of the will of Cornelius Holmes; in the spring of 1867, Mrs. Andrews brought my wife a memorandum, which I was requested to draft into a will, which I did; think the memorandum was returned with the draft of the will; there were rewards offered for the detection of the murderer to the amount of $2,500; never have seen anything indicating insanity about Andrews.

Josiah D. Baxter sworn. Am a Deputy State Constable; heard a conversation between Macoy, Andrews and others about counsel; think Andrews said something about B. W. Harris; and that Macoy said he thought Harris was engaged; I was at the scene of the murder on Wednesday morning; saw a large stone near the spot where the hat was found, with blood on it; there was also a pool of blood near by; there were pine needles disturbed.

TESTIMONY OF

Samuel M. Andrews.

Samuel M. Andrews sworn.

I was married sixteen years ago; purchased my house in Kingston thirteen years ago; $1,100 was the price, which I was to pay in installments; it is all paid but $100; when I bought the house, I had $300 in cash, the house was partly finished, and I had suitable repairs made; these repairs amounted to $500; the house as it is was in May last, cost me $2,700; on the 26th of May, 1868, I owe debts to the amount of $1,950; to Alden White $1,000; $400 to Mrs. Adams; $100 to William Evans; $100 to Mr. McLaughlin; $100 to George Adams; $150 to Cornelius, Holmes; and $300 on mortgage; owed Dr. Jones about $40 for services; my house was well furnished; I owned some silver ware;

[witness here gave a list, they were small articles.] 1st of January, 1868, I had about $150; $110 of it was from Mr. Tobey; November I received $150 from Mr. Tobey; I paid Mr. Peckham a part of it for his salary; I have since re-placed the money; between Jan. 1, 1868, and May 26, 1868, I have received money to the amount of $1,059.14; have paid out between those dates $790.59; on the 26th of May, 1868, had on hand $290; $160 was subscriptions for church repairs; $30 I put in of my own money to pay Mr. Bartlett's note; of the balance $50 was sent me for the minister's salary, and the balance was my own; $190 I buried in my cellar; when I arrived in Plymouth I told Mr. Damon it was there, and asked him to go over and get it; it was church funds, and I thought it might be taken from me.

I first knew Holmes sixteen years ago last March, when I was twenty-one years old; had just gone to housekeeping; he first called to my house, before I became acquainted with him; about nine years ago, I first received presents from him; they were a pair of pants, and a circular coat; I have since received from him a hat-tree, carpet, marble slab, vases, what-not, easy chair, pictures' doxen silver forks, two silver spoons, silver sugar spoon, napkin rings, gold chain; most of my clothing for ten years he has given me; about five years ago, Holmes came to my house; my wife was absent; it was stormy; he went home, and came back again, we went to bed; after laying there awhile, he turued towards me;

[The jury here took a recess of five minutes.]

[The witness here gave a minute description of the indignities offered by Holmes towards him at this and other times, which were of such a nature as to exclude it admission to our columns.] Holmes used to visit the factory often; he came to see me; he came to the factory once, and told me when he made his will his money should go where it was needed; about the time his will was written, he came to the factory with a paper, and he made a memorandum of his will; afterwards gave the memorandum to my wife to give Mr. Peckham; we came to Plymouth together; I went after Mr. Damon; and he wrote the will for him; about two weeks after, he gave the will to me, and I kept it until after the homicide, and gave it to Mr. Damon; think Emeline told Holmes to give his property where he wished to; have told Dr. Jones, Alden White, Wm. S. Robbins, and perhaps Mrs. Robbins about the will; don't know that Holmes has ever told any one about it; have been in the habit of visiting Holmes; have been home with him; sometimes he has been home alone when I was not at home; gave him a note of hand for $150; I got the money to pay other bills with; have seen the note since; he said when I blinded my house, he would give me back the note; and he has frequently opened his pocket-book, when we were talking about the note, and shown it to me; the pocket-book was the same which has been shown in court; he had three pocket-books, one he gave to Mr. Barnes, one to me, and one he kept himself; there were no straps on them, and Mr. Barnes put some on, these were small ones; he bought a pocket-book of Hunt & Sampson which was larger than these; Saturday, May 23d, Holmes came to my house; he showed me a boquet, which he told me not to carry to the Orthodox church; asked me to come down to his house Monday or Tuesday evening; Monday night I had business which kept me from going down to see Holmes; [witness here gave an account of where he was during Monday evening;] saw George Clark on Tuesday at noon, and he agreed to come for some hens at my house that evening; bought some potatoes that day for planting; I wrote to Holmes that afternoon, saying that I could not come down that evening, and asked him to come to my house; sent the note by Frank Newcombe, about 6½; I then went home and ate supper; went into my garden to plant potatoes; shortly after George Clark came and got the hens; then dug nearly two rows of potato hills; was at work next to the path, near the apple tree, when Holmes came up; got a box for him to sit upon; he came from the rear part of the garden; he said he had been up to Frank Holmes's; Mr. Delano came shortly after, to pay his pew rent; I went to him, and he paid me, and went away; Holmes said he was afraid he should catch cold; he wanted to go and see some stumps; we had some talk about a piece of land adjoining mine, which belonged to him, upon which these stump

were; he wanted to get something out of the stumps to put in flower pots.

He told me previously that I might have the land for five years; we went down to the stump; I sat down on the one next to my garden; he asked me if I was going to the store; told him I was not, as Mrs. Johnson had been for me; he spoke of some new lots in the Cemetery; we went down that way together, and looked at the lots; we sat on the stile about fifteen minutes; talked about his visit to Boston; left the stile; he took my arm, and pressed me to walk; we went to where his body was found; he went under the pine tree, and called me; I did not go, and he came to me; [here the witness described the indignity offered.] I took a stone in my right hand, and struck him; we rolled off the bank together; I cannot remember what occurred here; it is a blank to me; I last remember of striking him when we rolled off the bank together; I had two stones in my hands. I went down to the Cemetery pond, bathed my head, then went back; I went home the same way I came, through my garden; I sat down at the east gate on the fence near the front of my house; I had no strength to stand; my side was injured when we rolled off the bank; I had other bruises; while I stood at the fence I saw some ladies, and bid them good evening; I went into the house, and found blood on my clothes; changed them, carried them into the cellar, and buried them; went up stairs, into Wormell's room; after some conversation, went down stairs, laid on the sofa, went home with Mrs. Peckham; then went to my room; took some ether; did not go to sleep; laid there awhile, thinkiug the matter over; I did all I could until I went to jail to conceal the matter; I got up at 3 o'clock and went out to clean out my hen house; at 5½ o'clock I went to the factory; saw blood on my under shirt, tore it off, and threw it into the race; Sproul came to the factory, to see if I knew anything about Holmes; Newcombe said the Holmes's had better turn out and hunt him up; I went home shortly after; saw Caleb Bates; he said "If ever I saw Cornelius Holmes, he is down in the Cemetery, murdered!" I said "It must be him: he is missing!" I went into my house.

[Here followed a relation of the particulars of the subscription for repairs on the church, showing the part the witness took in the affair, the amount he paid, and how the money was raised.]

Saw Sproul in his garden Tuesday evening: his garden joins mine; did not take anything from Holmes' body, and did not examine his clothes; have been subject to headache for years; [witness was here obliged to discontinue his testimony, from exhaustion.]

Guilford Newcombe re-called. When Holmes was talking about his will to me he spoke of talking with his sisters about it, and that they were willing he should do as he pleased; this conversation was a year ago last July.

Edward F. Tobey sworn. Have seen Andrews twice or three times; the first time was in Kingston, two or three years ago; the next time was in Boston, about a year ago; when he applied for money to aid the church. I gave $100; subscribed also $50 in behalf of my mother, and $10 for my aunt;

Philander Cobb sworn. Live in Kingston; have known Andrews five or six years; his pecuniary credit was good; his general reputation was good.

The memorandum of Deputy State Constable Morse, which was made at Leach's house when the conversation between himself, Macoy and Andrews took place, was here read.

The Court here adjourned till 2.15.

AFTERNOON SESSION.

Court came in at 2.20.

Samuel M. Andrews re-called. Am troubled with headache most of the time; have used ether for two years, as a remedy; also have taken morphine powders; have had headache for the last five years; my head has sometimes been so sore outside that I could not bear my hand on it; have had buzzing sounds in my ears; thought on Thursday in the court room that some one struck me; there was a peculiar feeling in my head, as if something had broken there; my exclamation at that time was involuntary; a few weeks after I was confined in jail my head troubled me a great deal; had ringing and buzzing sounds in my head; imagined that people passed my cell, when

they did not; thought I heard at one time Mr. Thomas Newcombe say something about rope to hang me with; when I was near the cemetery with Holmes I heard no outcries.

Cross-examination.—On Tuesday night, when I was in bed, I first thought people would say I killed him for the will; in the morning I made up my mind to conceal the fact; I suppose I told some lies about the matter, within the few days that followed; have no recollection of trying to throw suspicion upon any one else; don't remember of telling Wormell that the judgment of Heaven would fall upon Holmes for d—ning the Orthodox church; I offered to take charge of the funeral; Mr. Peckham made a prayer at my house on Friday evening; don't remember that in his prayer he expressed the wish that the murderer might be brought to justice; I don't remember making a prayer after him; don't remember of telling Mr. Peckham that Newcomb told me to advise Mr. Damon not to say anything about the will; I told Dr. and Mrs. Jones not to say anything about the will; think Mrs. Peckham, Mr. Newcombe, and Mr. Jones were mistaken in their testimony about the will; Macoy told me if he had not arrested me some one else would have done so; the idea of concealing the matter first occurred to me when I was in front of my house on the night of the affair, before the ladies came out of the house; there was no particular object in my going out to the fence before I went into my house; I suppose the ladies were in the house at the time; that the testimony of the ladies was correct.

I think I sent for Mrs. Sever on Friday to come and see me about seeing me at the fence; think I sent for her to prove that I was at the fence at that time, and that I could not have been the person who committed the deed; it did not occur to me to tell either of the persons I saw that evening that I did the deed; I went into Mr. Wormell's room for nothing particular; I first decided to tell about the affair on Monday evening after the deed; it was after I heard about the girls seeing me with a bundle.

On Tuesday night, Holmes got my pants down, my suspenders were not unbuttoned; they were pulled out; my pants were partly unbuttoned; after the affair, I tied my suspenders around my waist; I never told any one that his pants were unbuttoned; I don't know that his pants were so; I did not button his pants up; I never told any one it was a hard struggle, and I did not know who would conquer; remember that I took my hat with me when I left Holmes: it never occurred to me that if I killed him in self-defence that I should not be hung.

Dr. Edward Jarvis sworn. Am a physician; have lived in Dorchester, and practiced for thirty-nine years; have had considerable experience in cases of insanity.

[Withess here proceeded to give an outline of the causes and evidences of insanity in their different phases.] Think that where ancestors have been afflicted with insanity, the person is more liable to be suddenly attacked, than where no insanity has ever existed; sudden outbreaks of insanity take all sorts of turns; sometimes one way and sometimes another; these outbreaks sometimes happen where no cause seems to have existed; they sometimes leave the mind calm and self-possessed; sometimes there is no loss of memory; while under the paroxysm the moral sense is generally obliterated; in cases of hereditary insanity, homicidal tendencies are generally prevalent; the subject may or may not remember anything which takes place.

Assuming that the evidence of the prisoner was correct, in my opinion there were indications of insanity in the prisoner when the deed was committed.

[Recess of five minutes.]

Cross-examined.—I have no doubt of the sanity of the prisoner to-day; I have heard all the evidence in the case, and have seen nothing showing that the prisoner was insane before or after the homicide; there may be cases of insanity where a man may have a paroxysm, who never had one before, and who may never have one again; I have never had charge of an Insane Asylum; my practice has been more of a private character.

The defence here rested their case.

The government here offered rebutting testimony.

Dr. Jones re-called. Never saw any indications of insanity in Mr. Andrews.

Thomas Newcombe re-called. Never saw any indications of insanity in Mr. Andrews.

Eli Wilson re-called. Have known Andrews for sixteen or seventeen years; worked

with him nine years; never saw any indications of insanity about him.

A. M Sampson re-called. Have known Andrews ten years; seen him frequently; never saw any indications of insanity about him.

W. H. Burges re-called. Have known Andrews six years; seen him often; never saw anything indicating insanity about him.

A. K. Harmon sworn. Am turnkey at the House of Correction; have had the prisoner in my charge ever since he was confined; he seemed somewhat depressed when he first came there; he would not speak to any one; I went to his cell, and told him I should put him in with the other prisoners, and they would stir him up; he then said he was better; that he had a hard time with his head; there has been nothing in his behaviour since to indicate insanity.

Rev. Joseph Peckham re-called. In the prayer which I offered at the house of Andrews on Wednesday night I don't remember that I expressed the hope that the murderer of Holmes might be detected.

Cross-examined.—Visited Andrews in jail; I noticed a change in his demeanor; when I first went in he refused to speak to me; finally, on leaving I asked if he had any message for his family; he said "Tell them I am a murderer, but not a thief."

Mr. Macoy recalled. Remember that Mr. Peckham in his prayer at the house of Andrews, prayed that the guilty might be punished.

Dr. Geo. C. S. Choate sworn. Live in Taunton; am superintendent of Taunton Insane Hospital; have thirty-six hundred patients under my charge; have visited often institutions of the kind; I have heard the evidence which has been given in this case. The only fact which tends to prove insanity in the evidence in this case, is the fact of the insanity of the mother, and other ancestors; it may lurk in the constitution; in this case I do not see any evidence of insanity; the fact that there was no insanity before or after the deed would seem to be conclusive in my mind; I have never known or heard of any case of insanity which existed and terminated in so short a time; the impulsively insane do not generally choose time and place for committing crime; we do not expect an insane homicidal impulse to appear when a man is defending himself against an attaek; one of the symptoms of insanity is the entire change of character in a man.

Cross-examined.—Think there are no cases of sudden insane impulses, where a man becomes instantaneously, furiously insane, without having some symptoms before; think there are cases where a *woman* might be driven into a state of frenzy so as to lose consciousness, while a man under the same circumstances would not do so.

On a question by the court, the witness thought that under all the circumstances of this case, it was his opinion that the prisoner was sane at the time he committed the deed.

The witness thought that where a child was born of an insane mother, it was not positive evidence that the child had insanity in its blood; it merely rendered it more liable to be so.

George H. Morse re-called. Heard the paper read which purported to be my conversation with Andrews and Macoy; [witness here explained why some of the testimony which he had given was not on that memorandum.]

The evidence being all in, the government and defence both rest their cases here.

The court here adjourned till 9 o'clock, Tuesday morning.

SEVENTH DAY.

The same dense packing of the court marked the unflagging interest in the trial when the court assembled at 9 A. M. The prisoner appeared more calm, and possessed of more physical vigor than usual. The audience was much more select, most of the professional and influential citizens of other towns being present to hear the closing pleas of the great trial.

CLOSING PLEA FOR THE DEFENCE.

Mr. Somerby commenced the argument for the defence at 9.10. Congratulating the fatigued jury, he assured them he should not attempt to tax them farther than showing the reason why Samuel M. Andrews should not be convicted of the crime of murder. You are called upon to weigh a man's life, to say whether he shall live or die. If he be found guilty, there is no alternative but death. I ask your greatest care and solicitude to weigh all, free from prejudice, to consider as for your own life. Man about to take the place of the Almighty should move with extreme care. We approach the case with all care and earnestness, with the responsibility that what I may say or not say, shall affect this man's life. What is the claim? Murder it may be,—murder in the first degree, or second degree, or manslaughter, or nothing. These forms include the entire vocabulary of crime. You have a right to say just what grade of crime,—at which point in the indictment you shall stop,—from murder in the first degree, in the second degree, or even down to acquittal. I affirm there is no murder A fiend only can commit the crime in its highest degree. In the second degree, no such guilt is involved. Both being murder, the difference between the two is the premeditation. Take men as they go, what do they know about murder? If they kill another, they suppose it is murder. If they knew killing was not murder, it would affect their conduct in relation to it.

The question is not, did he kill Mr. Holmes,— that is granted; but did he do it wilfully and with malice? Passion may dethrone reason as well as liquor. In hot blood, a man is almost insane. The law so regards it, and it does not attempt to commit another murder when one is killed. How, it asks, was it done? Was it sudden? was it with motive? was it a friend or an enemy? If it turns out that it was done in anger, the law looks upon it kindly, tenderly. It knows the weaknsss of man in hot blood. If manslaughter has been committed, the law must punish; if justifiable homicide, he must go. Killing, plainly then, is not murder. If you are merely told A. has killed B., is this sufficient to condemn him as guilty, with no more knowledge of facts and circumstances surrounding the deed, time, place and occasion?

A weaker case was never put into court than the charge of murder on Samuel M. Andrews. I do not mean to say the people of Kingston would hang the prisoner; but the Holmes's and Beals's are here to

seek his life, like a grasshoppers, to break a will, and obtain the money. The Holmes's and Beals's who have spurned the brother in life as an outcast, now set upon the prisoner like hounds, with hired coun. sel, State Constables, and great rewards. I say these things because I have seen them here in hot haste blocking up every avenue by which the poor, broken-down, forsaken man has a chance to be heard or a space to breathe.

The victim is found in a public highway, his skull crushed and broken with stones, enough to kill five hundred men. On his body is found $744, sticking out of his pocket. Did the assailant kill for gain? Whoever killed that man, did it in a sudden passion, or must have been hopelessly insane. There is something peculiarly singular is the universal feeling. Why, some mad'man in drunken frenzy has done this say all. He is a fiend when doing it, but not a murderer in planning it, or a robber in executing. Who killed this giant of 225 lbs.? A man of small statue, of all others most timid, most humane, most religious, most generous; not a hypocrite, but a man whose whole life is a credit to religion; who has lived it a lifetime to the admiration of all who feels and breathes the life that has the love and power of God.

Who has he killed? His best and dearest friend! Point out an act of his life at variance with his christian character. Not a mar or a flaw, then he jumped into the bottomless pit of crime. They say he wrote a note. If he had been a friend, wouldn't he had the brains of a friend and forethought of a friend? Do you think he would put in writing this plan twenty minutes before the deed, and send it out to the public in a boy's open hand. Examine the note.—Is there any link in the chain? (Reads the note.) Now, gentlemen, is this a fingerpost to guilt? I say it is *conclusive* evidence of his innocence. Is there a word that has not been corroborated. If guilty, it is a lie; but every word is proved true. We did work in the garden that and other nights; he had worked in the garden as late before. "You can take a walk up, if you wish." Is there any demand to come? could he expect him with any certainty to come? It is proved he intended to go to the store; it is proved that the errand was done unexpectedly by another person. What is their wrong in the note, unnatural or a new thing? Here is a man who works daily for good wages, is industrious, never losing time; owns his $3,000 house; without wants unsupplied, saving even his time to eat supper in his unceasing toil; here is the note; is it not a natural note, a friendly, a simple and honest note, brought forward under the wing of our enemy to prove murder. Here are other notes exactly similar in style, import and object. Gentlemen let us not discard reason. Is this note suspicious as a link in the chain? How did he send it? by the same boy of his employer, accustomed to carry notes from the prisoner to his friend.

Take the note as to time, authorship or object, not a word or particle wrong, suspicious, or convicting. Providence has taken them out of the hands of Mr. Beals, to give them to us as proof of innocence and friendship.

(Counsel here reads the lengthy note,) This note proves his habit of writing his excuses when he could not see him: further let us go, (reads the long note of religious sympathy and exhortation, also the note of similar import of 1862.) All the government witnesses cannot erase the pure unalloyed friendship before any will was executed. Friendship deep and strong, when the Holmes's offered him no extended hand, when he never penetrated their houses deeper than the kitchen. When the Beals's didn't know him on the street. What is it, gentlemen, but the title of friendship, the friendship of an honest mechanic, or religious counsellor. All the wealth of Kingston cannot blot it out, It is sincere and honest friendship. I challenge them to attack it, to shake it. If they fail in this, down goes the chain by which they would have him hung. It is infallible proof of his innocence; every word is truth, sanctified by the deepest, purest, Heaven end[illegible] religion.

Again, will a man write a letter when planning a murder to be found on his body, stating time and place? Did ever a murderer write out his time, plan, giving the victim the time, place and hour when he would be pleased to murder him, and deposit it on the body of the deceased, to be kept by his accusing enemies. I stand up n this note as not an ensnaring note. If not then, Holmes came voluntarily. But then other circumstances stronger than the letter. The place, not in secret, but in the face and eyes of his neighbors. Here his neighbors walk freely. Two came on business. one invited to come to the very spot,—to witness the murder it may be! Did he invite his neighbor to see his skill in committing murder? One for business that must occupy an indefinite time. Premeditation then, to write notes, to take his own garden, with a sociable party within speaking distance, to invite neighbors on business? Absurd logic!

This Sproul did,—this Delano did. Delano came to the house to pay his subscriptien. Only ten rods from Holmes. Can see to make small change. I'll stop here. Is there a sane man who supposes that kind of thing could be possible within ten rods of the place and within twenty minutes of the time of the murder? Yes, the government ask this. They talk all murder, all malice, all deliberation, but prove its absence,—*prove* nothing.

The government do not bring on the most important witness—Sproul—the last, the only man who knows most and nearest the deed. We bring on the facts. Would not a *plan* to kill been consummated by going away, poisoning, shooting, by stab or club, in secret, and buried beyond all sight in Boston or in the deep woods? Not there, not in *my* garden, not on the highway, not when my neighbors are coming, have engaged to come. The note would have been written, the visit made, the neighbors come, the hoeing done, all as it was if the killing had not taken place. What folly to begin under prejudice and say he murdered him, then swear everything up to it. That's mere prejudice, mere unfairness, mere swearing his life away. Look at the facts first. Was it malice? was it a plan? He loved the cemetery as a religious repository, a sacred place of study. He lived there, in interest. It is Kingston's walking ground. That's the last place for such a deed, by such a man.

If we leave it there, the case is at an end. We must, says the government, have a motive. Is this a motive, or has one been manufactured for the deed? He had no motive to kill his friend. What motive *did* they set up? Because a will has been made,— also for the money on his person. I hold them both to be one and the same motive. If one falls the other drops. Did this man do this thing. A fiend only could murder his friend, for such a cause. Such a man,—*man*, shall we say—could possess only damnable guilt, and coolness of intellect. Admitting malice, and for money, would he let $700 go, when money was his object. Did he take money? A more cruel, heartless reason was never put forward in a court of justice,—not a miser's reason, not extravagance, not vice. What reason? what pressure? To help the church! What a reason for murdering and robbing a dead body,—to aid his own beloved church, for which he is charged with being distressed. A man in good credit, as White says, as Cobb says,—a man who can borrow of Kingston's shrewdest men. Murder to help his distress! Cruel, heartless "barbarism, to hint this motive against a man who could borrow of any one on personal credit. Why are his religious acts so damnably misconstrued? Because, gentlemen, somebody believed here wants money,— grasping for money. Not the prisoner, but his heartless accusers. And his man a Christian,-- not a hypocrite. Can a man be a hypocrite thirty years and no living man suspect it? Samuel M. Andrews, on whose God-sealed religion, full of fruits, no man dare breathe a word of reproach, was he ever off his guard? Who disputes his credit? No man impugns it. Will even Mr. Macoy, who swears to everything, including the Lord's

Prayer, swear to this? Cramped for money? It is false. To prove it the government have shown instead, that he is industrious, that he was easy, that he spared money with a liberal hand. The present treasurer testifies that he had not only came short, but had advanced with liberal hand, $93.50 out of his frugal savings in his interest toward the church. One of a committee to move and repair the church. he becomes responsible and raises $500 on his persoual credit to accomplish this object. To meet this he goes to friends for subscriptions. They trust him without security. He saves the money with scrupulous fidelity, Put the $190 away for safe care. The government try to stiffle him in guilt with figures. Let us cipher them out.— We gave you an account of all money received and paid out to rebut the monstrous charge. He received $1,093.19 after January. We give the items. He paid out $781. and has the balance left. Where is the first proof that this is not correct? Not a figure questioned- He had a right to show in hand $312.45. We give you a list of his money, and we have $285. On this discrepency we pity those who are left to stand. Did he take $190 from the body? He had neither *more* nor *less* than his own. Where then is the proof that the man had a dollar of Holmes's money. This is a base charge, because they could have had every fi_ure. Dld not they know how he came by the $312?

Are there no witnesses, no proof, no testimony, to show them? I blame the government not, but I blame their swift witnesses who have foresworn his life, for the insatiable love of money, *more*, *more* money. Illogical testimony. It is not true. You know it is not true. The government know it. Is secreting money, murder? Money, sacred in its use, *may* be hid, if his own and who says it is not? Not a man! The first man he can trust after getting out of Macoy's hands, he told of this money, and charged with the sacred mission of restoring it to the church.

The secretion of that, proves not guilt, but unceasing vigilance in his trust for the church and its sacred friends.

The government come to show guilt,— they show innocence. Not a damaging word, not a well-grounded suspicion, not a financial flaw in the faithful stewardship of this honest industrious, economical man in his own affairs or the highest trust of church interests.

[A recess of fifteen minutes was allowed the counsel for the defence.]

But all this money question is mere idle talk. If the government do not prove an immediate pressure for money, our business with the few hundred dollars of the prisoner's funds is at an end. Somebody ought to know how much and how Holmes carried his money. Had no motive to take it. He did not take it. Holmes had $744. He was to have $500 more the next day.— Isn't there some man that can show he had more money? They do not pretend to show this. Joseph A. Holmes, a fair man, who knows more than others, does not pretend to have more money than was found on his person. He does not intimate this, and he *knows* he did not have any more. If possible they would have proved more money. This is all he had, and there is not only no evidence, but no attempt at evidence, of more. In ready money Holmes never had but $1,600. I challenge the proof that he had a penny more. To elude this, they get a State Constable to talk about an unknown pocket-book, after showing one pocket full of money. Who knows of this pocket-book? He had loose money. Does a man carry a *big* pocket-book empty with loose money, in various rolls in open pocket.

Here is the State Constable's pocket book; (envelope size) if he had another, would not a dozen witnesses be able prove it? who has seen it? who says it exists? why the Constables Morse and Hollis say Andrews told them so, but who ever saw it? Joseph Holmes, Mrs. Leach, his own family, and money managers know nothing of it, no man, *not* Andrews, even heard of it. Andrews referred to his well-known pocket-book, larger than a small wallet, one in which he said you will find my note. In it was found,—Mr. Holmes as a fair wit-

ness gives us full information of all money matters, in a business like manner, knows of no pocket-book, only Margaret Daley, the Irish servant alone saw it, what does she know? do not all pocket-books seem large to ignorant persons with little money? Call your attention to Morse's testimony, (reads from it,) here is his testimony written out in full the same evening, but the word pocket-book is not to be found in it, it was an after thought hatched up to suit later *links* in the "chain." I charge Morse with telling a story to suit the wants of designing men of which he did not think, or write a word in his minute record of Andrew's revelations. It is in proof ,that the "large pocket-book" is, and was this pocket-book found upon him, bought of Hunt & Sampson, and the only pocket-book in the case. The $2,500 glittered in Morse's eyes till *he* saw it, but no other man ever saw it or heard of it.

This and the wallet are all that are known to his friends. Margaret Daly comes in from Alexander Holmes's kitchen *too* handy. Whoever makes a key just to fit a lock with its thousand combinations, made the lock also. Draw your inferences. Beals made the lock, Margaret Daley is the key. It is too nice work. Morse's testimony is recorded. No word or reference in the text, but *others* have transcribed this point on the margin. The attempt to prove robbing by Andrews is a failure. Not prove he *had* money, not prove any was *taken*, not prove Andrews *had* any money. All the proof is subsequent, raked up, and corrupt. All the pocket-book story means robbery. Is any theft proved? As to blood on the pocket, it is of no value. Consider the way he was murdered, the way he was moved, turned over, taken up, carried off, pockets riffled by others, and is it strange that blood is found on, or in his clothing? Is it not strange he was not *covered* with blood?

Was the will a motive? Did it ever occur to you that a will known to exist, proves a motive to kill? Does a man with a son feel he is giving a motive to kill his father by making a will in his favor? Will a husband look upon a loved wife's will in his favor, and think of killing her? Its twisting, again, against the prisoner. The will of his own friend is *not* proof of a motive in Andrews' mind to kill him. Who made the will? A peculiar man. as he a stranger without friends to look after him? No! they would inquire after him when dead, though they *forgot* him when living. Are they shrewd men? Could they not known about the will? It was open, recorded. To whom did he intend to give his property? He says, by common report, "my property shall *not* go to the Holmes's, they've got enough; I'll remember Joseph." Cornelius is a discriminating man, Joseph treats him better, and deserves the remembrance. Andrews proclaims it everywhere, carries it to the Register of Probate, makes record of it. It is *public* as any will, and known as the settled purpose of Holmes so to devise. Didn't Andrews know if Holmes died a natural death even, every other Holmes's eye would be upon him, question every point as to when, how, and where it was made. One thing was inevitable; Andrews must incur every particle of hatred, indignity, and vindictiveness on the part of the Holmes's. Die as Cornelius mihgt, it must stagge along against every legal obstacle, the opposition of wealth and able counsel. Did Andrews open that door through which to enter to this property? Is it natural that Andrews, comfortable, no family but a wife, in health, with steady ways, should jump over all this to the murder of Holmes, his character ruined, all with the hope of carrying it through without suspicion? This man turns from a Christian to a fiend for the certainty of losing the money by murder, that is safely his own by peaceable possession. God so appoints that he who has murder in his heart, sometimes, somehow, and to somebody, will, *must*, DOES reveal something about it. Where is the word or deed that indicates to any mind the existence of this foul plan? Where is the circumstance that points to

the coming deed? Then to do it in his garden, to have forewarned, by his note, of time and place, and that without suspicion. What monstrous absurdity! I submit the adequate motive does not exist in the execution of the will. If Andrews could ever descend to that depth of degredation, to have poisoned, hid, secreted, then might suspicion have been aroused. Put yourself in the place of Andrews, with such a will, opposed by such a family, with such means, how much motive could you be conscious of to kill the man, acknowledge it, and hope to *reach* the money. Killing a man does not secure the money. Property goes to heirs, unless a will is made, proved as voluntary, and of a sane mind. Without all these the p isoner could not hope to receive the proceeds. No motive can be shown, unless he be insane, then motives are out of question.

If there was a motive, it could not be an adequate one, to a man like Deacon Andrews. So loving, so respected. Andrews loved Holmes. He fell down in passionate indignation when Holmes was persecuted. Show one point, one act, previous to his death that was inconsistent with such unselfish friendship. Admitting he did the deed, we deny the malice, the *plan*, the *murder*. The witness swears he never thought or had an idea of harm to Holmes. The charge of murder is no proof of murder. He is yet innocent, and his testimony is competent. You will not hang him speechless. Weigh his testimony. Is it not true? Does any man dispute it? Does any man disprove or shake it by a doubt? No human tongue can prove malice. He denies it. He alone is all the evidence.

Suppose God knows he speaks the truth, how shall we be conscious of this truth unless we let him speak. We *will* hear him. If Holmes had killed Andrews, where is the man whose memory would have been more spotless? Who would have been mourned more sincerely. You must hear his evidence. The Government says circumstances demand his life. We deny it. His living tongue denies it. Nobody proves it. Where is the evidence? In the narration probably, or not? They says he is convicted of falsehood. Admit it, does he speak the truth now? That is the question.

Suppose that Holmes had that secret propensity? It can be proved. The Court objected to *its* admission, but it is a fact. He of all others is just the man to be guilty of a crime, old as the Levitical law (counsel read the sacred law against the abomination of sodomy,) would a man invent such a story. It is no *new* story. He states times and the occasions of its repetition. It is more than probable. The crime always existed.

What is there unnatural about it? God recognizes the crime. It has existed from the beginning so frequent as to require Divine denunciation. Is not this singular stormy passioned man just the man to be possessed of it? Alone in the world, without one to love or gratify his roused passions, would not this soft effeminate man come to him in place of a wife. Do you think it improbable. It is frequent as naval crews exist. Why is it, if ever committed, improbable in this case? Ask us to prove it. It is secret no man confesses it. Take Andrews, soft in voice and eye, with Holmes and his two hundred and fifty pounds of passion, with no wife, no mistress, no woman, but hated by women, hated by his own household, and can a more probable sequence be established. The crime is not frequent. So is rape not frequent, of incest of father and daughter not frequent, but they exist, proved, admitted, and punished by law. Is there any limit to base passion, unhealthy in its development. I ask you then, did not Holmes in some form attack that man's honor. The Government was determined in its opposition, ruled out all testimony on the point.

Admit the fact, what are this man's rights? what resistance might he make? To what extremities might Holmes have gone? Excite such a man as Holmes and resistance is dangerous. In resisting such nameless insult any means were justifiable. Any means or extent of self-defence is admissable under the statute for *less* personal violence.

But who is this man, the prisoner? Begotten, born and nursed in insanity. But fo r

this sudden insanity, could such a soft, genial temper, act with such fiendish extremity? would not such a man be more frenzied than a cold-blooded murderer. He came from Marcia Robbins, a poor, helpless, hopelessly insane woman,—very insane. She married Doten. That child was insane; married Robbins, five children were iusane, some so that they had to be tied and manacled. Neither husband was insane, but all issue of the mother carried her curse. So with Jerusha Robbins. If she was not it will crop out in the line. Insanity will often pass over a generation. It did. Her child was insane. The prisoner's mother is before us a truth to the inevitable law. (Counsel read from authorities on the subject of insanity.) The mother, mild, gentle, soft, winning in youth, advances to maternity a raving maniac. Dissect the brain, and you cannot find the mind. It is too subtle. Who will attempt to confine the limits of its subtle influence; who is not conscious of this man's insane calmness. Can you, or any man, under such pressure, go upon the stand and give such a continued evidence, marked by such unbroken calm. Under arrest, in jail, in court, his insanity is calmness.

This is why such a man, such a friend, such a christian, killed his cherished charge, and benefactor. Either he was suddenly insane, or else aggravated passion put him beyond the pale of responsibility.

The Court here adjourned until 2.20. P. M.

AFTERNOON SESSION.

The court came in at 2.20. Counsel for the defence resumed his argument. I come to this fact. Was this man insane at the time of the homicide, not before, not after, but at the time? With this heritage of insane blood, is it improbable that he was frenzied? The experts disagree, but it is in the records of the court that just such acts of violence as this have been the precipitating cause, and initial movement of a lost mind and open frenzy. Insanity is subtle as light, and often comes like the volcano, sudden, fearful, though the hidden fire burned long within.

Within the ruling of the law, I admit we must prove his insanity, but it is an assumption. The law would presume Marcia Robbins, a maniac, to be sane. The jury must judge of the fact in spite of the presumption. The law presumes the man sane; we submit, the evidence proves him insane. The experts differ in some respects, but agree in important facts. A man may be taken with sudden insanity, that the hereditary taint moulded in the parent will be probably shown in the offspring. It does not follow because the five children of the grandmothers were insane, or the mother bore and nursed on maddened milk, that this person is insane as an absolute fact, but it is a *probability*, almost to a moral certainty. The insane mother conceiving, carrying, bearing and nursing this child, it is a miracle if it be not also insane. This is the fact with the prisoner. We respect the opinion of Drs. Choate and Jarvis, but they are not absolute. They cannot know all the ramifications of this disease. Dr. Jarvis appears, acts, and impresses us as an honest man. Dr. Choate has had more patients, but it does not follow that he is a superior judge, (Counsel quotes from the evidence.) Dr. Jarvis says, taking all things into consideration, I believe he was insane, and acted not as Samuel M. Andrews as always known, but under a sudden insane frenzy. In view of the fact of his insane heritage, on evidence that it *may* and *has* broke out suddenly, you will hesitate to send this man to his death.

Dr. Choate does not agree with his associate. Dr. Choate says, I put in, in favor of insanity, his ancestry, his manner of killing,, the antecedent character of the man for thirty years, and they all count with unerring force for insanity. What is there against this evidence? The act?

The act agrees with it in its method of doing. But is this all? The Dr.'s words are only opinions,—*outside* of these there is evidence. It is easy to say a man is sane, but how does one know? We know, all of us, of men, insane for months, known to be so in their family, but never discovered even by neighbors, though seen daily. Is he not more liable than any man you know of be-

ing upon our hands a raving maniac before this is through, Would you be as willing to trust yourself with him as with other men? Rev. Mr. Peckham testifies to the fact that he has seen him in states of mind well nigh convulsed with sudden iusanity. Mrs. Aus tin in April last, says, I saw the man, he laughed, and his eye glistened, I was shocked, and though of his mother. At Newmarket he acted strangely, childish. These are threads and fibers; when wound together give strength. In jail he was speechless for two days, perhaps sullen, but it is not his nature. Look at Mrs. Robbins and Mrs. McDaniels; look at the prisoner on the stand and tell me if you were not impressed with the presence of hidden fires, Of all things to lay upon a man's conscience is to help hang a man, who by reason of insanity was *not* a man when he did the deed. Will you decree that that man shall die, when he may have been, probably was, and likely will be again, a raving maniac?

It may be that Cornelius Holmes provoked, *in*voked, the fatal frenzy. Can you, dare you, say it was not so? If he committed the murder, nothing is so illogical as to say it was with maliee, when no man can point out a fact, a circumstance indicating it. He concealed the deed. Who would not, in weakness, do thus? The better the previous life, the greater the dread of exposure. There is a will, and they will accuse me of it. With this motive I did not mean to kill him. He aggravated the deed. I know I have a wife, a good name, a warm circle of spotless friends,—Shall I sink all to the lowest depths?

Nought but Divine power from on high could save a man on the brink of such a plunge, from fatal duplicity. He lied, but he never did it before, but now systematically. He acted just as if he had done the deed. He was just as afraid of exposure, just as earnest of concealment, we doubt not half crazy, frenzied, he did contradict, but if *after* the deed, and not *before*, no man will say he would have done better. Any man here would not, except he had great nerve, cool head, a lion in courage. "Imperilled on all sides; his will, his silver ware in my house! I, his friend and keeper! I *must* cover up the deed, or I am a doomed, *guilty* man. Guiltless though I am, the Holmes's will hunt me like bloodhounds for the will. What shall I do with it?" He did with it what every honest man would have done,—carried it to the Probate Office. All his knowledge of wills centered there. The adroit counsel made him vary in statement of details, but no man questions his undeviating statements on the main tracks of his conduct.

Another fact, he says, when lying under a tree, he struck a blow. It did not kill. There was blood, a struggle was there; here it commenced; up and down that road it continued, and finally ended near where it commenced. The witnesses say there was a struggle, cries of distress, a terrible scene. *Who proved* who began it? What was the cause? How came it to commence under that tree? How did it continue so lonely? If it had been premeditated, there must have been some weapon besides stones thought of. The government have hunted in vain for those weapons, burned brush heaps, dragged mill ponds, but all in vain. There were none used, and they know it.

Gentlemen, you are to decide whether the prisoner at the bar is guilty or not of MURDER. Under all the circumstances, will not the facts prove that the prisoner was justified in committing the homicide? I think so.

After thanking the members of the jury for the patience with which they had listened to his lengthened remarks, the learned counsel left the case, as far as the defence was concerned, in their hands, trusting that they would consider well the evidence and with the calmest judgment weigh well all the facts in the case, and render their judgment accordingly.

The jury here took a recess of five minutes.

Argument for the Prosecution.

Attorney General Allen commenced his argument by referring to the 27th of May, when the news of the murder first became known; what was it that travelled so fast on the wings of lightning, being upon everybody's mouth? The death of a quiet, inoffensive, well-known citizen among you, gentlemen. When a citizen in this State is suddenly deprived of his life, without his consent, with no warning, the Commonwealth wants to find out about it, and every means will be taken towards that end. The majority of the people are orderly, law-abiding; and when a case like this occurs, we seek to bring out fairly all the circumstances in the case. The counsel here cautioned the jury against entertaining any prejudice or bias, whether formed before or after commencing the case. This is not the case of a minister, but of a deacon of the Orthodox church; who is not charged with the spiritual wants of the people. In all social and religious circles, there are some persons who fall below the level of their associates. The church to which the prisoner at the bar belonged, do not throw the mantle of their religion around him; they want the matter fairly tried, and have acted far above reproach in their conduct in this affair.

The counsel here referred to the fact that the life of a fellow citizen was at stake; but that ought not to effect the evidence; nor the verdict; the laws of the Commonwealth must be enforced; and if the evidence would warrant the verdict of murder in the first degree, that verdict must be given, let the consequences be what they may. We are not the judges of the law; and whether we are in favor of capital punishment or not, the verdict must be rendered according to the evidence, and with the government must rest the responsibility.

Referring to circumstantial evidence, the speaker said that some few cases had occurred where persons had been wrongfully arrested and convicted. But the judge who delivered the charge would define the bearings of such evidence: ten to one had occurred on the other side. Most cases of murder were secret, and circumstantial evidence must have its due weigit, when it was offered. The counsel earnestly hoped that everything would be done by the jury to find out the true facts in the case, and give their verdict accordingly.

Gentlemen, you will have the satisfaction of knowing that everything has been done for the full and clear searching after the truth in this case. Every indulgence has been extended to the counsel for the prisoner, and some of the most able members of the bar have appeared for him, and they have nobly done their duty.

Gentlemen, the first thing to find out in this case, was to find out who done the deed. The prisoner at first denied it; but after being informed that he had been seen to throw away his bundle of clothes, then he had to fall back on his own secret motives for committing the deed; and at last was brought to the extreme of trying to prove that he was not sane at the time, with how much weight, it remains for you to decide.

The speaker here expressed the hope that if he strained the evidence in the case, the jury would discriminate between his statements and the facts of the evidence, and make due allowance.

The counsel here took up the evidence in regard to the insanity of the prisoner, and reasoned that nothing which the defence had offered went to prove that the prisoner had been insane more than five minutes · and if the plea of insanity should be sustained in this case, how unsafe the community would be in the future! Every secret homicide would hereafter be sustained by the same plea. Such phases of insanity are exclusively rare, if indeed there are many such on record; and we know no case has been brought up before us. We should not rely wholly upon experts in our judgments; and then let us exercise our own good sense.

We do not suppose that this deed was committed for any ordinary robbery. The counsel here proceeded to show why, in

his opinion the deed *was* committed; and also showed how Cornelius Holmes came into possession of his property. The evidence in the case shows that Holmes had some thought of changing the provisions of his will, and of giving the church to which he belonged a larger bequest. The prisoner had begun to gloat over the fact that he was some day to be a rich man.—Then the fact crossed his mind that he might lose this sum if the will was changed. The idea became so fixed in his mind at some time, that he began to think the death of Cornelius Holmes would be an advantage to him. We know not when this occurred, but it is evident that it did, The counsel here proceeded to show why these premises had presented themselves to his mind; they were deduced from the evidence which had been offered in the case.

Would you expect, if a man killed his best friend in a moment of insanity, that he would, when he came to his senses, express no remorse? It is contrary to the impulses of human nature. It would be morally impossible for a man, who was really insane at such a time to endeavor to conceal it afterwards. Remorse would seize upon him, and no efforts at concealment would have been made. We have seen no evidence of remorse upon the part of this prisoner.

We find no evidence of the least particle of insanity in the prisoner previous to the committtal of the deed. The defence have gone back about one hundred years to prove that the ancestors of the prisoner were insane. But it has appeared in the evidence that the insanity of ancestors does not necessarily entail upon their offsprings. It only renders them more liable than other children to be insane. Insanity is not transmitted as a disease.

The counsel then dwelt upon the atrocity of the crime, and referred to the fact that the defence had found a point indicating insanity in the atrocity of the present crime; and went on to cite cases of rare atrocity when there was no plea nor evidence of insanity.

How much weight should be given the evidence from the prisoner that this was a matter of self-defence? no weight can be given evidence of the prisoner except that which is credible; there was a reason for the prisoner to search the body; there might be another will in some of the pockets; it is evident that Holmes was the stronger of the two men; and it is difficult to imagine how, if his pants were down as he says they were, the prisoner could secure such an advantage over Holmes, if he was not prepared for defence beforehand, as to come off without a bruise or scratch; if it had been done in self-defence, would he have conducted himself as he did immediately after the affair, so as to try to prove an alibi? His whole course for the few days succeeding the affair was a tissue of falsehoods and dissimulations, which we learn by his own counsel, upon his authority.

The counsel closed by appealing to the jury to weigh well the evidence, and so discharge their duty that in future years they could look back with satisfaction upon their judgment, and know that in this matter they had done their whole duty, and nothing but their duty.

At 6.40 the court took a recess of one hour, in order to give the jury an opportunity to refresh themselves.

At 7.40 the court came in. Judge Chapman then informed the prisoner that according to an ancient custom he was privileged to address the jury if he saw fit. The prisoner said he had no remarks to offer.

Chief Justice Chapman then commenced his

CHARGE TO THE JURY.

He commenced by defining the terms "malice" and "aforethought," giving by illustration a plain statement of their meaning. He then cited from the laws the different degrees of murder, stating what was necessary for conviction of murder in the 1st and 2d degrees.

The chief justice quoted extensively from high authorities, giving full and clear definitions of the crimes of manslaughter and justifiable homicide.

The burden of proof is always upon the government; the law presumes that a man is innocent until he is proved guilty. The proof of guilt must always be clear and satisfactory; 1st, the prisoner must be proved to be the man who done the deed; then the malice and the aforethought must be known; then the premeditation must be shown; these things being proved, this constitutes murder in the first degree. A man's motives are judged by his actions and statements. The whole burden of the verdict does not bear wholly upon the jury; it is partly borne by the officers of the law and by the witnesses; the duty of the jury is simply to draw out the true facts from the evidence adduced, according to their best judgment.

Under the indictment, the prisoner may be convicted of murder either in the 1st or 2d degrees; and you will state which in your verdict; he may also be convicted of manslaughter; if for neither of these, he must go free.

The government is saved in this case the trouble of proving who done the deed. The prisoner admits that he was the man: but claims that he had reasons for doing so; which you are to judge of yourselves whether it has been proved or not. The Chief Justice then read from decisions of Chief Justice Shaw in cases where insanity was set up as a plea, giving the different phases in which insanity might be admitted. In this case, the jury are to consider all the evidence on this point, and decide as they may best judge. If you are satisfied that the prisoner at the bar was insane at the time, then he is not guilty; if it was a mere frenzy or some sudden exhibition of temper, he is guilty. The experts who were called both say that previous to the homicide the evidence shows no signs of insanity.

The opinion of experts is not so valued as in former days. Many experts can be hired for the occasion. You must judge, yourselves, of the evidence offered you. If you do not believe the evidence of the prisoner, then you have no evidence of insanity in the committal of this deed, for the whole proof is with him. You must judge for yourselves whether that evidence is credible or not,

The prisoner says that Holmes attacked him for the purpose of committing an atrocious deed. If you are satisfied that such is the fact, his cause is justifiable, and he may go free. You must judge for yourselves whether all the circumstances will warrant such a verdict or not. If the jury disbelieve the prisoner, then he killed the deceased, and you must decide whether there was malice aforethought or not.

If the prisoner was insane at the time, you must bring in a verdict of "not guilty," if he was justified in killing the deceased by an attempt to commit an atrocious act on the part of the deceased, your verdict must be "not guilty;" if the prisoner used more violence than was necessary to protect his life, your verdict will be for "manslaughter," if there appears to have been malice aforethought in committing the deed, your verdict will be for murder in the second degree, if there appear to have been premeditation in addition to the malice aforethought, your verdict will be for murder in the first degree.

The papers was here given to the jury, and they retired to decide upon a verdict.

reigned throughout the court room and on the street. A large company remained with the hope that an early decision would be reached. The Court returned to their hotel, with instructions to be recalled when the decision of the jury was known. The prisoner was remanded to the cell under charge of constable Torrey. He expressed himself freely, hoping to be soon relieved from his anxiety, as he wanted to know his fate, let it be either way, rather than suffer this suspense. Continued discussion in the jury room indicated a prolonged session, and at 11 o'clock most of the excited spectators had retired.

THE VERDICT!

At fifteen minutes before one o'clock, the unseasonable ringing of the Court House bell announced the re-assembling of the Court to receive the verdict. Many hurried to the Court House to witness the closing scene. The prisoner sat in the dock with Messrs. Somerby and Davis—his counsel—on either side. He was sensibly affected, trembling and rubbing his hands. When the foreman looked upon him he nearly fainted. In quiet, measured tone the verdict: MANSLAUGHTER, was announced. His counsel seized him by either hand, and he seemed electrified with courage.

With unbroken silence, mingled with surprise by some and satisfaction with others, the announcement was received. Others congratulated the prisoner, but the Court looked ominous. It retired ten minutes and returned to announce the sentence.

THE SENTENCE.

Of one day's solitary confinement and twenty years imprisonment was then pronounced. The prisoner returned to the custody of the officer, and the Court adjourned. The verdict was in accordance with general expectation, after the plea of Mr. Somerby on the defence, which was of masterly vigor and searching analysis, and severely taxing the jury's mind against a verdict of murder in the 1st degree. The Judge's charge also indicated the same result.

The plea of the Attorney General was of marked ability, and though brief, yet it cleared away the untenable points established by the defence with an effective rapidity that shook the opinions of all. But there was the initial cause of the immediate struggle enveloped in a pall of mystery which no testimony could penetrate or disturb, no evidence save the prisoner's story, with no human eye or speech to rebut. Over this possible, if not probable, primary element, determining guilt, no juryman could step without grave responsibility and anxious uncertainty to the death penalty. Insanity nor circumstances raised no doubts, but the mystery of that abomination and lack of any weapons save uncertain stones saved him.

The Jury's Positions.

The construction of the jury on the different degrees of guilt was as follows:

On the first poll of opinion, it was unanimous against murder in the first degree; on the vote for insanity, eight were in the affirmative and four in the negative. On the question of murder in the second degree, five were in the affirmative and seven for manslaughter, with two or three tending to acquittal. They could only unite all differences by a verdict of manslaughter.

The following papers were put in by the government, at the reading of the will.

WILL OF CORNELIUS HOLMES.

I, CORNELIUS HOLMES, of Kingston, of the State of Massachusetts, being for the present of sound mind, but premising the uncertainty for the future of my own free will.

1st, I give to the Baptist Church one thousand dollars, to which I am a member, and my pew.

2d, I give to Frank H. Holmes my marble clock.

3d, I give to Mary W. Leonard, of St. Joseph, wife of James A. Leonard, one hundred dollars.

4th, I give to Lucy E. Adams my easy chair that was my mother's.

5th, I give to Joseph A Holmes my silver spoons that were my mother's.

6th, I give to Samuel M. Andrews and his heirs the rest of my silver plate, also my gold watch and chain, also my clothing.

7, I hereby appoint Samuel M. Andrews and Joseph A. Holmes, both of Kingston, the first Executors of this my last Will and Testament, and also bequeath to Joseph A. Holmes and Samuel M. Andrews, the remaining property, to be divided edually after these legacies are paid.

[MARKED "B"]

FRIEND CORNELIUS:—I shall work until nine o'clock this evening, it will be late to make a call at that hour, and I will come to-morrow—leave at an early hour. Shall work a part of the day to-morrow, but shall be at liberty in the evening.

Yours truly, S. M. ANDREWS.

[MARKED C."]

KINGSTON, Mass.

DEAR CORNELIUE:—Don't think that I have forgotten you, for it is not so. I told you that I should come down last Wednesday after meeting, but I had to go of an errand, and when I got ready to go to see you it began to rain, and the next eve I thought you had gone up to John Holmes's,—you said you should,—and Tuesday, I wasengaged, and so were you, and Saturday I could not come, but should have come last evening, but had a caller come in, buf it the Lord spares my life until to-morrow evening, I will come. I have thought of you a great many times, but did not see any time.—When I could come, you were engaged, but will see you to-morrow evening.

Truly yours, S. M. A.

[MARKED „D."]

KINGSTON, NOV. 25.

DEAR FRIEND:—According to promise, I will seat myself to write you a few lines but hardly know what to write, as it has been so short time since I saw you. I have been to church all day in Kingston, but have not been to the Baptist. I thought I would wait. For you said that you thought I ought go. As you were not going to be here I thought I would not go. I think that I should have gone if you had not said that. I suppose that you arrived safe, and having a very pleasant time, at least, I hope you are, but I suppose your friend W. has gone, but I suppose you saw him before he went.

And now, my brother in Christ, one word to you on the subject that concerns our soul's salvation, May the remainder of your stay be spent to your Maker's praise, as it has been some time since you have given your heart to God. I hope you will hold out faithfull, and we both meet at the right hand of God, there to have the Saviour's smile. Will you remember me to the throne of grace, and I will pray to God, the eternal one, that your dear soul in Christ may not fall. Much more might be said, but time will not allow.

I don't know as it will be so that I can stop in Boston. If it is so I will try to find you. I dnt know hw he cars go. Perhaps I shall have no time to stop.

I must close by wishing you a long and happy life. I hope you will have a pleasant visit I should be very much pleased to have a line from you, I wiil close, so good night.

Mary says remember her love.

good time. Was very glad to hear you say that you were to meeting all day last Sunday, for I think it is the most befitting place for a child of grace, and for all and ourselves my earnest prayer is, that the God of all

Please not let any one see this, and when you have read it, burn it. Excuse all bad spelling.

From your friend SAMUEL.

[MARKED "E"]

KINGSTON, April 6, 1862.

FRIEND CORNELIUS:—It is with pleasure that I seat myself to write you a few lines. I received your kind letter, and was very glad to hear from you, and hope you are having a grace may be with and give you strength to bear up under all troubles that God may see fit to send upon you, and may you bow in submission to His will, realizing that it is all for our own good that God afflicts.

I have not any news to write to you. All are the same as they were when you left. I suppose that you are thinking about home by this time. Mrs. Andrews sends her love to you.

I will close by wishing you a long and happy life, and hope that the last days of your life may be your best days.

From your friend

S. M. ANDREWS.