



THE  
**TRIAL,**  
 CONVICTION & SENTENCE OF  
**JESSE STRANG,**  
 FOR THE  
**MURDER**

OF  
**JOHN WHIPPLE,**

AT ALBANY, ON THE 7th OF MAY, 1827.

*Containing all the Evidence as given on the very interesting Trial,*  
 WITH THE

**TRIAL & ACQUITTAL**  
 OF

**Mrs. Whipple,**

AS AN ACCOMPLICE TO THE

**MURDER OF HER HUSBAND.**

TOGETHER WITH A BRIEF SKETCH OF

*The History of Jesse Strang;*

**AND ALSO, THE HISTORY OF MRS. WHIPPLE.**



NEW-YORK :

*Published by E. M. Murden,*

No. 4 CHAMBERSTREET,

*And Sold Wholesale and Retail at the Printing-Office of E. M. Murden & A. Ming, Jr. No. 1 Murray-street, and in Albany, at S. W. Johnson, Jr's, Market-street, and A. Rasey's, opposite the Eagle Tavern.*

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 1827.



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and A. King, opposite the

High Church.

1837



# PARTICULARS

RELATIVE TO THE

# **Trial**s of Jesse Strang

AND

**MRS. WHIPPLE.**

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THE circumstances and incidents connected with the murder of Mr. John Whipple, of Albany, have produced an intensity of interest scarcely ever before witnessed in our country, and certainly never equalled in this city. The stations held by the parties in society, would almost forbid us to believe the facts that were disclosed in the Examinations, Confession, Trial, &c.

It will be impossible for us within the limits of this pamphlet to enlarge on many of the minute circumstances of this case, but every fact shall be clearly stated, and the trials of both the implicated given at full length.

The following is a brief history of Strang. It appears that some time previous to his residing in the family of Mr. Whipple, he had wished, for what reason has never yet been explained, to impose a belief upon his friends and the community, that he had probably been murdered, or had perished in a wood somewhere in the western part of this state—as the horse on which he rode was found tied to a tree, his saddle-bags cut open—his clothes torn and scattered about in several directions. His plan succeeded so well that it was by all supposed that Strang had certainly been murdered; and a lake in the vicinity was dragged for the recovery of his body.

It appears that sometime after this circumstance, on the 23th of August, 1827, he was employed by Mr. Whipple as a labourer on his farm, under the assumed name of Joseph Orton. Here it was (according to the evidence on the trial of Strang) that an improper intimacy was maintained between him and the wife of Whipple; and no other cause can be assigned for this mur-



der than that it was committed by Strang for the greater security of the illicit amour.

On the fatal day of Mr. Whipple's death no suspicions were attached to Orton: he was even chosen as *one of the Coroner's Jury that sat over the murdered body of his victim*. His conduct here was remarkable—his earnestness apparent to fix the crime upon some person by name, &c. He was shortly after recognised by one who had formerly known him as the Jesse Strang whose mysterious disappearance occurred at the westward, and who ever since had been, numbered with the dead.

Strang was committed to prison on strong suspicion of the murder, where, on Thursday evening, the 14th of June, he made to the Jailer, Mr. Becker, a full confession of the murder. On the next day he repeated the confession to the Grand Jury, giving the horrid recital with much minuteness, and accompanied by such circumstances as leave no doubt of *his* participation in the crime. A bill had been previously found against him by the Grand Jury.

It appears that a rifle was used in the perpetration of the crime, and that he had made experiments as to the effect of a shot through glass. The experiments, he stated, were made in a ravine, within about twenty rods of the house, and he described the place where the glass and rifle were secreted. There they were found; and the rifle was recognised as the one purchased by Strang. In his disclosures, Strang implicated Mrs. Whipple. He charged her with having instigated the murder, and as having acted with him in all its stages, by furnishing the means of purchasing the rifle, the glass for the trial of the effect of the ball, &c. &c. Previously, however, the Grand Jury had found a bill against Mrs. Whipple, and she was arrested on a bench warrant.

A Court of Oyer and Terminer was appointed by special commission of the Senate, and was organized for the express purpose of the trial of Strang and Mrs. Whipple.

On the morning of the 24th of July, the Court took their seats about half past 10 o'clock; Judge Wm. A. Duer, presiding. About 11 o'clock, after the proclamation of the Court was read, the prisoner, Strang, was brought in. He is of small stature, and apparently not more than twenty-five years of age: his face does not express that strength of passion which might have been expected from the determined atrocity of his acts. He sat with his head leaning on his right hand, frequently wiping the perspiration from his face with a handkerchief. His hair was combed over his forehead, and added much to the dogged indifference of expression which marked his countenance. He was decently dressed in a new purple mixed coat, and a brown striped vest. His face is thin; nose prominent, and rather aquiline; his eyes somewhat sunken, and rather sinister in their expression, but not



malignant. He watched the Court with quick, inquiring glances; but showed no trepidation. His appearance was healthy, and his cheeks were considerably flushed. The bill of indictment against Strang was then read. He stood leaning on the railing, with his head on his left hand, and seemed a little daunted. The colour in his face also faded for a moment: but he seemed to recover himself, and looked firmly at the District Attorney, who was reading the document. When that portion was read, in which the participation of Mrs. Whipple was noticed, there was a sensible change in his colour. He pleaded *Not Guilty*, notwithstanding his confessions. His counsel stated that he would not be ready for his trial until the next day.

Mrs. Whipple was then brought within the Bar by a constable, from an adjoining room, unattended by any male or female, habited entirely in black, and a thick crape veil falling down so as to hide not only her face, but much of her figure. Through the veil, a white handkerchief, held to her face, could be perceived. When ordered to stand up she seemed to do it with difficulty, and was allowed to sit down. On being called on to plead, her voice was altogether inaudible—but it was a plea of *Not Guilty*. In appearance she is small, and rather well made—quite youthful, and particularly interesting—her features were considerably inflamed, and altered by incessant weeping—her trial follows that of Strang.

Judge Duer, at the close of the arraignments, remarked, that as the attendance on the trial of Strang seemed to be so large, it did not appear that the audience could be accommodated in the Supreme Court room; and that, therefore, the Court would meet, in future, in the Representatives' room.

The following historical sketch of Mrs. Whipple will be found interesting:

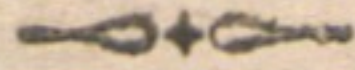
The grandfather of Elsie Lansing (now the wretched Mrs. Whipple) was a wealthy man, and had, long before his death, apportioned his estate in such a manner as to leave each of his children possessed of a handsome property. To the father of Elsie he had been somewhat more liberal than to the others. While her father and mother lived, he had been particularly kind to her, and seemed to take much interest in her welfare. In this, he had to combat the weakness of an indulgent mother. Elsie was an only child, and had such winning ways, that a tender mother could exercise but little authority over her. She was particularly averse to study; nor could her parents induce her to apply to it that labor which might have made her acquirements respectable. Her grandfather saw this with regret; and finding that while at home with her mother she was likely to remain an ignorant, since she had passed her thirteenth year as such, he made use of strong arguments, and even commands, to induce her mother to send her to some distant seminary. Con-



sent was at last obtained; on condition that the old gentleman should take her mother to see her every Saturday. She accordingly went to Troy, where she had remained but three months when her mother died. The care of the orphan then devolved upon her aunt, and she was sent to Waterford school for a quarter. At its close she returned to the house of her father, to spend a vacation of two weeks. Her aunt felt a degree of compassion for Elsie, who was very pretty, and apparently docile—and did not think it proper to exercise over her any greater restraint than had been used by her mother. She therefore permitted her evening visits to a neighbor's house, between their's and which lived the brother of John Whipple. With the family of Whipple they then had no intimacy, nor did Elsie's aunt, or father, know at that time of the existence of her after husband. Elsie was gone every evening during the vacation, and generally returned in time to hear prayers, at which her father was in the strict habit of joining his family at ten o'clock each night. She said, on being asked where she had been, that she had spent the evening at the house of Mr. B. The vacation ended, she returned to Waterford, and remained another quarter, at the end of which her grandfather came for her. The term had closed on Friday; but she prevailed upon the old gentleman to remain until Monday, and again until Tuesday. But on Tuesday morning the bird had flown, and her grandfather returned without her. The whole family were alarmed and excited on the occasion, and the more so, since no one knew of any individual with whom she could have cultivated sufficient intimacy to lead to an elopement. This remark was one day made by her aunt, in the presence of her neighbor, Mrs. B. to whom she observed, that during the vacation Elsie had visited no house but her's; though Elsie, it was true, had gone out every evening. This led to an explanation, in which it appeared that Elsie had been at the house of Mr. B. but a few moments each evening, and that the remainder of the time, until the hour of prayer, had been spent in the house of their intermediate neighbor, the brother of the deceased, where the lovers had been allowed to enjoy each other's society alone. John Whipple, the deceased, was then a man without property—he worked as a common hand on board his brother's sloop, for which he received ten dollars per month. How this courtship began is not known. That the marriage of Elsie could not have been acceptable to her friends will certainly not be surprising, when it is considered that she was but a child, being then only fourteen years and five months old—that she had married a man without property or standing, and that she had in doing so shown a total disregard to the wishes of her relatives. Both Whipple and herself were for a long time exiled from the family. Her father died; and to aggravate the breach, Whipple filed a bill in chancery against Elsie's grandfather, in relation to some part of the property which he had given



his son, and from whom it fell to her. The kind old man could never forgive this act, and to the day of his death, which happened a short time after, he never saw his granddaughter or her husband. Time, at length, eradicated much of the feeling which this precipitate match had excited. The deed had been done, and could not be undone. Whipple proved a good husband, and an enterprising man; he was careful of his wife's property, tender of her person, and always solicitous with regard to her health. She wanted intellect and education, and he seemed to look upon her as a child, who needed kindness and care, rather than as a woman arrived at the full possession of her intellect. Many instances of tenderness on the part of her husband, evinces this. That Mrs. W. was frail, no one denies; and it may be fairly argued, that her frailty was not unknown to her husband.



## **TRIAL OF ORTON, ALIAS STRANG,**

FOR THE

## **MURDER OF WHIPPLE.**

ALBANY COURT OF OYER AND TERMINER.

Present, Hon. W. A. Duer, their Honors the Mayor and Recorder, and Aldermen Treat & Esleck.

Mr. Livingston, District Attorney, having opened the case, the prosecution proceeded to call the following testimony:

Abraham Van Rensselaer, sworn. Resided at Cherry Hill on the 7th of May. At about 9 o'clock, he was in the room with Mrs. Whipple. Some of the other family were in the room previously. Between nine and ten o'clock, Whipple was busy with his accounts. Witness was sitting near the table at which Whipple was writing. They were in the south-west room. Whipple was seven or eight feet from the windows—heard the report of a gun. Whipple sprang up and exclaimed "Oh Lord!" Before the rifle went off, witness saw a man near the window, with something shining in his hand. Witness made an exclamation on seeing this. Thought it was a gun or pistol; had hardly made the exclamation when the piece went off. It was a moonlight night—but the window was shaded. Immediately ran down stairs—Whipple went a few steps down, and fell. He died instantly. Was going out of the door with a gun in his hand, but was prevented, as Orton had said there was a gang lurking about the house. Heard Whipple fall after witness was down. Returned to the top of the stairs a few moments after.



Whipple was gasping, and nearly dead. The man he saw at the window was a white man. The shot came through the north-west corner pane of glass. The ball went into the left shoulder. Previous to this, perhaps for a fortnight, Strang told witness that there was a gang lurking about the house, for no good. He said he did not think they were after witness: but as Whipple came home often with money, he thought they were after him. He said they were lurking about the Court yard gate, in front of the house. He did not tell witness to keep it secret; but advised him not to tell the family, lest they should be alarmed. Witness did tell the family. Strang said two or three times that he saw people about the house. It was uncertain then at what time Whipple would come home. It was generally expected in the house that Whipple would shortly return. Does not know that Strang knew this fact. Had a conversation with him (Strang) about the murder a short time since.

Cross-examined by Mr. Pepper. The shed extends a little past the window through which the shot came. The shed is two or three feet lower than the window. A man could stand on the shed and look directly into the window, by bending a little. The table sat rather south east of the whole window; but was opposite the pane through which the shot came. Whipple sat with his left side towards the window, on the west side of the table. Witness sat on the east of the window. A man might have seen Whipple without seeing witness. Pretty confident the man he saw had a hat on. Could not have been able to recognise Jesse Strang. He had lived with witness about nine months. Had no suspicion from the appearance, face, figure, or hat, that it was Strang.

Cross-examined by Oakley. The next-door clock strung 9 a short time before he went into the room. Should think that the rifle was fired about three quarters of an hour after. Had been writing during that time. Did not make any observation at the time whether the report was that of a rifle or a musket.

By E. Livingston. The residents at Cherry Hill, on the 7th May, were his mother, Catharine, Maria, Elsie, and Harriet Van Rensselaer. Elsie B. Whipple, Henrietta Patrick, — Fortune, William Wilson, and Diana Jackson. Some other individuals lived in the other part of the house. Strang was a labourer on the farm. Witness' father hired him first. He came there on the 23th August, under the name of Joseph Orton. Never went by any other name in the family but a nick name—the Doctor. Cherry Hill is a mile from Albany. Orton stated that he was a single man. Went with Strang into this city in May, to sell some old iron. He inquired at Edward Fay's the price of rifles. Edward Fay lives in Beaver-street. Inquired also at Moore's. Strang said that he meant to buy a good rifle. That was about or less than a fortnight before the murder. He had often boasted



ed to witness that he was a good marksman. Saw Strang have a piece of lead in his hand on the morning of the 7th of May. He said it was the softest piece of lead he ever had in his life. On or about the 14th April, Strang went away and was gone all night. He said he was going to Troy. Returned next day about noon. Could not say of his own knowledge that Mrs. Whipple was absent from home on the night of April 14th. Did not know of Strang having a rifle before the murder. Slept with prisoner on the night of the murder. Had had conversations lately with Strang in prison. The counsel for the prosecution here interrogated the witness as to the purport of those conversations.

Oakley objected to the questions. He objected to the testimony in relation to confessions. He considered that it was the right of the defence to inquire into the circumstances under which the confession was made, and whether it would be admissible as testimony. He therefore wished to know whether this was the first confession; because if the first confession was made under circumstances which would exclude it, any subsequent confessions would also be excluded. This was a question for the Court. The books of authority went far on this head, and used strong language. They even established that if the slightest hope was held out to induce confession, or that if the accused were induced to suppose the testimony full against him, and his case desperate, either case would exclude this declaration; and in such a case all after confessions were to be treated in a similar manner. [Mr. O. here read in corroboration from 2d Starkie on Evidence.] The court would therefore see that the counsel were right in demanding to know whether this was the first confession or not. The prosecution could not, on this principle, be allowed to choose their confessions, and thus prejudice the right of the prisoner to the exclusion he had mentioned.

Mr. Foot remarked, that as it was in the power of the counsel for the prosecution to show prior confessions, they would waive the examination of this witness on this head, reserving the right to examine him hereafter on this subject.

By Mr. Oakley. Strang said he wished to buy a rifle previous to his going to Ohio.

By the Court. Generally had guns loaded in the house.

By the District Attorney. Strang was away from home the night of the murder. He said he was going to buy a pair of pantaloons. Saw Strang fifteen or twenty minutes after the murder. He stood at the foot of the stairs. He went to town about sunset. Witness owns a dog. He would not allow any stranger to come near the house in the night. Sometimes he kept away the hired men. Not those who were acquainted with him. Saw the dog after the report of the rifle. He lay on the kitchen stoop, on the south side of the house. Heard the black woman



call to the dog—but he did not stir. Strang was well acquainted with the dog.

By Oakley. Strang was coming up the stairs where Whipple lay. Witness stood at the top, and saw him coming up. He looked at the body, and turned as white as a ghost. Witness suspected him then, although he said nothing. The dog lay outside of the door. Does not know whether Strang had heard before he came up stairs that Whipple had been shot. Does not recollect that Strang said any thing. Witness was examined before the coroner, and said that he did not know who did it. Does not know whether he said then that he had no suspicion or not. Strang being one of the family would have been the last person he would have suspected. When Strang went to town witness asked him to get some oil of spike. Saw it next morning in the kitchen before Strang got up.

Joel A. Wing, sworn. Examined the body of the deceased next morning after the murder. Is a physician. The ball went in just beneath the left shoulder. On opening his chest, the ball was traced across the left lung, just under the heart—severing one of the large vessels of the heart, and passing into the right lung, where it lodged. Witness extracted the ball. It was smaller than a pistol ball. Not as large as the common rifle ball. The length of the wound was twelve or fifteen inches. Whipple had a broad chest, and it passed more than half the width. Thinks a pistol would throw a ball about as far as a rifle, under the same circumstances. A pistol shot might have made the same wound. Strang remarked in the morning to witness that he thought it was done by some men down the river, as Whipple had had difficulty with some of the canal men; and he had seen a man skulking about the house once or twice in the night. Shown the ball—identified it.

Dinah Jackson, (a coloured woman,) sworn. Lived at Cherry Hill on the 7th May. Was at home on the night. Heard the gun when it was fired. Heard before that a noise like a person shoving a window. This was in the back part of the house. Was in the kitchen at the time. Endeavoured to set the dog on the person. He would not stir. He lay in his usual place. Thinks Strang was away when the gun was fired. He came home after. He came in at the front door. Don't know how long after it was. They sent for the neighbours, and Strang came in company with the people who were sent for—Milligan and others. Had heard Strang say that there were people about the house, and thought they meant no good. Heard Whipple say, what is the meaning of people being about the house at night? Why don't you shoot them? Strang said, what if I should shoot you? Whipple said, he would not come at such a time as to be shot. Did not hear any thing about shooting people before Whipple came home. Strang asked witness, she thinks in joke, whether she would poison Mr. Whipple? she said, not for the whole world—no, not for



the whole State. This was sometime before the murder. He laughed, jumped up, and went away. Never had any other conversation before or after, on the same subject. Remembers when the prisoner was away one night in April. There was a thunder shower on the same day. He went away in the morning. He came home the next day in the morning, before breakfast. Mrs. Whipple was gone away the same night, to Mr. Fobes's. She went away at four o'clock in the afternoon. She came home after eleven o'clock on the next day. The prisoner always ate in the kitchen. Did not know before the murder that he had a rifle about the house. Heard no conversation between Mrs. Whipple and prisoner about their going away.

*3 o'clock, P. M.*

Thomas Pemberton, coroner, sworn. Examined the premises the next morning. The person who fired the rifle must have been on the south end of the shed, on the west side of the house, directly opposite the north side of the window. Found marks showing that a person had climbed up on that shed the night before. Appeared to have climbed up by means of a box about four feet high, which stood on the north side of the shed. By the tracks on the ground should have supposed the person who jumped on the box must have been barefoot, or in his stockings. There were two prints on the box, both of the right and left foot. The print on the ground was of the left foot. There were similar tracks on the roof from the place where the box was to the window. There was a mark of powder on the window sash. Two thirds of the pane of glass was blown away by the discharge. Saw the tracks also which led away from the house. The direction was first north, then west, and then towards the woods. Appeared that the foot had slipped in going up an eminence. Could trace the bare foot or stocking no farther than the edge of the woods. There were in the woods a great number of tracks. There is a road, commonly called the Whitehall road, that comes down from the west about a quarter of a mile from Cherry Hill. The distance from the house to the woods is not over two hundred yards. Summoned a jury on that morning. Strang was on the jury. Thought he did not behave as the others did. He told witness a great many stories about the persons he had seen about the house, and said that Mrs. Van Rensselaer had also seen them. Witness stated that that was not true. His conduct was strange; it was almost indescribable. He manifested an unnatural degree of anxiety to fix suspicion upon some person. He told witness that the man he had seen about the house looked like Mr. Arms. There were a number of people in the room when the ball was extracted. When it was taken out they were anxious to see it, and were making remarks on its appearance. All seemed desirous of examining it but the prisoner. He seemed rather to avoid it. When Maria Van Rensselaer was examined, Strang seemed to be considerably agitated.



The blood came and went in his face frequently. He mentioned during the time the ball was extracting, that he had told Whipple of the appearance of persons about the house; and that Whipple said he must shoot them if he saw them again. Had a person run from the point to which he traced the footsteps in the edge of the wood to the road that comes down from the west, he would have struck it about three hundred yards from South Pearl street. The road comes into South Pearl street about the same distance from the house, and it is about sixty rods across the fields; so that to get from the edge of the woods to the road, and then round the house, would take two hundred and twenty rods. Witness took the rifle from the place where it was hid. The rifle was not far from the place where the foot slipped at the edge of the woods. Not distant more than ten or fifteen paces. It was covered in the mud. There were many tracks about that point. Shown the rifle, identifies it.

Cross-examined by Oakley. The prints of the toes were distinctly marked in the tracks near the box. All the tracks were not so. Saw the tracks at the box about eleven the evening of the murder. Traced the others next day. The toe marks were plain where the person got over the fence, and also on the side hill. When the ball was extracted, prisoner was in and out of the room and seemed uneasy. He first came in about the time the jury was organized. No one of the family expressed, in giving their evidence on the inquest, any suspicion of any person.

By Foot. It is an open field from the place where the rifle was hid to the Whitehall road. It would be fair running, some of the way up hill, and there is a high brush fence to cross.

Edward Fay, sworn. Resides in the city. Is a gunsmith. Does not know the prisoner personally. Had seen him in jail, and at his shop. When witness saw him in jail, had very little doubt that it was the same man. It was on the 3d of May, at 10 o'clock in the evening that he came to the shop of the witness. Does not recollect of his having been there before with A. Van Rensselaer. Sold him a rifle on the 3d of May. This rifle is the same. Prisoner paid him fifteen dollars. Gave him a twenty dollar bill of the Phenix Bank of Hartford. Shown a bill, says he thinks it is the same he took for the rifle. Gave it to Mr. Stafford. The rifle is not of an unusual small bore. Could not compare the ball, as it is not now round. A ball that would suit the rifle would weigh sixty-nine to the pound. There was no one in company with him when he bought the rifle. He did not make the examination which purchasers of guns generally do. It was a very rapid transaction.

Cross-examined by Oakley. Witness cannot positively swear to the man who purchased the rifle. This is the rifle sold on that evening. Has sold many rifles within the last three months. Knows it is a rifle of his own make, because his name is on it.



There is a peculiarity about the rifle in the making of the stock, by which he knows it. Noticed this peculiarity before. The man asked for a rifle worth sixteen dollars. Passed the twenty dollar bill to Mr. Stafford on the next evening. Could not have identified the bill from any other of the same description, because he did not take the number. Knows he gave the same bill to Spencer Stafford.

By Foot. Identifies a bullet mould shown him. Shown a sur-tout coat, says it looks like that worn by the person who bought the rifle.

By Oakley. Saw the coat after the murder for the first time on his second or third visit to the prison.

By Foot. Saw the prisoner dressed in that coat in jail, and recognised him at once.

By Oakley. When I saw him first, should not have known him—but with this coat on I was convinced it was him.

By Foot. Had examined the ball. Thinks it suits that rifle. Is about the right size.

Starr Foot, sworn. Recognises the twenty dollar bill. Is clerk to Fobes, keeper of the Columbian Hotel. Gave a twenty dollar bill to Mrs. Whipple of the same description on the 3d of May. Does not know that this is the identical bill. Does not recollect the time of the day in which he gave it to her. Thinks it was in the afternoon. Got the bill of Mr. Fobes at the time he let Mrs. Whipple have it.

Philander Fobes sworn. Shown the bill, recognises it. It was in his possession, Mr. Foot asked him for twenty dollars for Mrs. Whipple, and he gave him this bill. Never had a bill of the same description before. His recollection is more acute, because it was disputed in his Bar Room. On this account he examined it more closely. Thinks it was betwixt ten and one o'clock in the day when Foot asked him for it.

By Oakley. Is in the habit of receiving much money. There are marks on the back of the bill by which he thinks he could distinguish it. Thinks there was no name on the back of it. [On examination there was a name on it.] Considers that he could distinguish this bill among others. There are some marks on the back which he recollects. Does not recollect of ever having such a bill before. Is sure that at that time he had only this bill of the kind.

John Beeker sworn. Is Jailor of this county. [Looks at the rifle.] Was in company with Mr. Pemberton when this rifle was found. It was on the 16th of May. It was hidden in the edge of the woods in a north-westerly direction from Cherry Hill. It was covered with mud, muck, and leaves. The search for the rifle was occasioned by Strang's telling him where it was. He never could have found it otherwise. Followed Strang's directions in going to the spot. Went once and could not find it. Came back and obtained further directions, and then went and



found it. Mr. Pepper was along with Mr. Pemberton and witness when it was found. Several searches had previously been made. It could not have been found without direction, as it lay in a hollow or ravine, and every shower or freshet washed more dirt down upon it, and covered it deeper. Witness took the poison from the place where Strang told him it was hid. Shown the paper, believes it is the same. Strang said it was arsenic. It was secreted in the back house behind a brace. Does not know that the poison has been examined. The paper was not in such a situation as to be seen from below before climbing up.

John O. Cole, sworn. The paper containing poison was delivered to him. Did not examine it particularly.

Edward Livingston, District Attorney, sworn. This paper has not been out of his possession since he received it.

Samuel S. Treat, sworn. Shown the substance in the paper. Cannot tell what it was.

William Wilson, sworn. Lived at Cherry Hill last spring. Saw Strang one morning before the murder. He said there was a fine place to shoot in—pointing to the shed and the window. Witness told him it was a foolish thing to think of. They stood near the hen-coop. Had a conversation with Strang the morning after the murder. Witness asked him if he did not recollect what he had said about shooting in the window. He said, yes. He then got up from the table and went out doors.

By Mr. Pepper. Breakfasted with Strang, thinks he went away after breakfast. Did not know as to Strang's going after Doctor Wing. Thinks now that it was the second morning after the murder. When witness said it was a foolish thing, he thought it was all a joke. Had at that time heard that some person was lurking about. Alluded to that when witness told him so. Nothing more was said.

Spencer Stafford, sworn. Shown the bill, recognises it: received it from Edward Fay about the 4th May. Paid it to Dr. Townsend. It was the identical bill.

By Oakley. Is sure that it is the same bill. It remained a day or two separate; and was then put into the bundle with other money. It was a Hartford bill, and the only one he had on the Hartford Bank. There was one other twenty dollar bill in the bundle.

Charles Townsend, sworn. Looked at the bill. Received it from Spencer Stafford. Knew it because he had no other 20 dollar bills but what Mr. Stafford gave him. One was of the Harrisburgh bank, and the other of the Phoenix bank, Hartford. Delivered the bill to the office.

Frances Hill, sworn. Lived at Watervliet. Her husband keeps a public house on the Schenectady turnpike to Troy, two and a half miles from Yardsley Four Corners. He keeps a tavern there. Thinks she knows the prisoner at the bar was the one she saw at her house, but is afraid to swear to it. Has seen



him since he was at her house, in the jail. About a week ago. He was shown to her in the jail. There were several persons present. Did not know him at once. Has no doubt in her own mind that this is the same man.\* He came to her house with Mrs. Whipple. Never knew Mrs. Whipple until last spring. They came there just at evening, in a one horse waggon. It had rained very hard that day. Did not know at what hour they went away. They stayed all night, and left in the morning. They represented themselves as man and wife. They went into the same room to sleep. In consequence of what Mrs. W. said, witness conducted them to the same room. There were two beds in the room. Went into the room next morning. Only one bed had been used. The prisoner had on the same dress that he has now.

By Oakley. She had never seen either of those persons before.

By Foot. This happened in April last. About the middle of the month. There was a remarkable thunder shower during that month.

By Oakley. When she went into the jail, she had not been

\* Mrs. Hill, who appeared to be a very respectable woman, when asked if she could not positively identify him as the same, said she did not like to swear that she *knew* him to be the man who came to her house with the lady, but she *believed* he was. The counsel for the prosecution said—"Will you swear positively madam? Look at him!" Here Strang, who was sitting within three feet of her, turned himself partly round, so as to look her full in the face—drew himself up and thrust his face forward towards her, with the most impudently diabolical look that was ever beheld. His eyes became prominent, seemed literally to be lighted up with sparks of hell. Mrs. Hill shuddered and recoiled from him as though he had been a basilisk. "Look at him!" repeated Mr. Pepper, one of his counsel. She was choked with horror, and could not speak, but burst into tears, and a thrill of sympathy for her, and of abhorrence of the conduct of Strang, was manifested throughout the immense concourse of spectators. The Court interposed at this point: "Cannot you answer the question, madam?" asked Judge Duer; "You are an innocent woman, and have nothing to fear. You must not be stared out of countenance." But still she shuddered at her proximity to one of whom she had such a dread. Her seat was thereupon removed across the bar, and next to the bench. Strang turned back again to his usual position, with a demoniacal laugh at the painful scene, which cannot be described, and the testimony proceeded—Mrs. H. feeling herself more composed and safe under the immediate wing of the Court.



told that it was the man who had been at her house. She had been requested to go and see if that was the man. There was no other prisoner confined in the room with him.

Nancy Montgomery sworn. Lives at Watervliet with Mr. Hill. Thinks she knows the prisoner at the bar. Would hardly be willing to swear; but his countenance favors that of the man who was at their house. Has no doubt in her own mind that it is the same person. He came to Mr. Hill's in April in a one horse waggon. Mrs. Whipple was with him. Has since seen Mrs. Whipple, and is positive that she is the same person. The lady who has since been shown to her as Mrs. Whipple, is the lady who was with the person whom she thinks was the prisoner at the bar. Had no doubt of the fact. There was a thunder shower on that day. Does not remember the day of the month. They represented themselves as man and wife. Had never seen either of them before. Prisoner is now dressed as the man was dressed. The coat and pantaloons are the same. When witness rose in the morning they were ready to go. She observed them more particularly than people in general. It was talked of in the family that they looked very young, and appeared very fond of each other. It was thought very strange if they were going to New-York without any baggage, and the gentleman without a great coat. Did not hear the man say any thing about where he was going. The woman said they were coming from Schenectady and going to New-York.

By Foot. Thinks the wagon they came in was a green box wagon. Could not describe the horse.

Charles Conklin, sworn. Lives in Albany. Keeps a livery stable. Knows the prisoner at the bar. He was at the stable on the 14th April, had a horse and wagon, and said he was going to Troy, The wagon had a green body, and the wheels were black. Has never seen the prisoner since until now. He had on the same or a similar suit of clothes to that he has on now. He said his name was Orton or Norton. It was a rainy day. Thinks he took the wagon about 4 o'clock in the afternoon.

By Oakley. It was in the morning that he bespoke the wagon. He said he lived with Mr. Whipple. Witness knew Whipple.

James Hill, sworn. Knows the prisoner at the bar. He was at the house of witness in April. Did not remark the horse and wagon. Took particular notice of the man, and is satisfied the prisoner is the same. They went away about sunrise. One statement of the man and woman he noticed, which was, that their child was sick, which was a reason why they came without baggage, and were in haste. He said their baggage was to go another way.

Maria Van Rensselaer sworn. Lived at Cherry Hill. Is acquainted with a riding-habit of Mrs. Whipple. It was nearly



the same colour as the clothes witness now wears. Remembers a thunder shower about the middle of April. Mrs. Whipple went out that afternoon to stay all night at Mr. Fobes'. The prisoner was also absent that night. Recollects that the prisoner was speaking with Mrs. Whipple and others about shooting persons who lurked about the house. He asked whether, if he were to shoot at those villains, and by accident shoot Mr. Whipple, would they stand the law against him? This was occasioned by some one saying that he ought to shoot the men who were lurking about the house.

John S. Van Rensselaer, sworn. Examined the prisoner on the 11th *May*. He made no confession; but denied every thing. I went afterwards to the prison to converse with him, and told him to make the best use of his time. He said, if they hang me they'll hang an innocent man.

By Oakley. The prisoner was telling various falsehoods, and we found it necessary to use stratagem. I told him that he need not attempt to deceive himself, or to deceive us. I told him that Mrs. Whipple had let the whole out. He was obstinate and the persons examining him were obliged to use art to induce him to tell the truth. This was on the first examination.

By Oakley. Witness assumed, to obtain the truth, facts which he did not actually know. Told the prisoner that it would do no good to disguise the truth. There were a number of gentlemen present on the first examination, among others the Recorder and *Mayor*. This was the only examination witness was present at. Prisoner admitted nothing. Had heard that there was a previous examination.

James McKown, (Recorder of Albany,) sworn. Cannot recollect the last witness' saying to Strang that he had better confess, as there was no use in denying it. Does not know that he made these declarations, but did remember that Judge Van Rensselaer became excited. Does not particularly recollect his words to him.

By Foot. Does not recollect that any threats or promises were made to him.

By Oakley. Only remembers one fact. To convince Strang of what Mrs. Whipple had disclosed, part of her deposition was read to him. Knows of no statements made to him as to the disclosure of Mrs. Whipple, which were not read to him.

John O. Cole--Recollects that Judge Van Rensselaer said to Strang, that it was of no use for him to deny his guilt. Judge V. R. spoke of some disclosures made by Mrs. Whipple, and the prisoner expressed a desire to know what they were. Knows of no threat being made to the prisoner by Judge V. R.

By Foot. On the first examination, which was previous to that mentioned by Judge Van Rensselaer, I told him that his statements were to be free. The day after the murder, the 8th, witness swore Strang as a witness. He was not then arrested. His



first examination, after being arrested, was on the 10th. The examination alluded to by Judge Van Rensselaer was on the 11th.

John S. Van Rensselaer called again by Oakley. On Sunday the 13th, went again to see the prisoner. There were two other persons present—Mr. Lush and Mr. Cushing.

Samuel S. Lush, sworn. Was present on the 13th, when Judge Van Rensselaer went to see the prisoner. Thinks he said to Strang that there were satisfactory proofs of his guilt, and that it would do no good for him to deny it. Judge Van Rensselaer was probably a little excited by the extraordinary circumstances of the case.

—Cushman, sworn. Was present at the jail on the 13th, when Judge Van Rensselaer said to Strang he had better confess, as it would all come out. Witness being questioned whether on this occasion the prisoner did make a confession—Mr. Oakley objected to any evidence being entered into with regard to any confession of the prisoner to Judge Van Rensselaer. He read authorities to show that when a confession was produced either by promises, threats, or misrepresentations, it could not be given in evidence.

John S. Van Rensselaer called again by Foot. Remembers that at the Jail on Sunday, the 13th, some person present said to Strang that he had better confess. Witness said it would be of no consequence, as there was enough known to convict him. His object in calling was not to obtain any confession. On Friday no confession was made. He said, "I'll confess nothing."

Asked by Foot whether the prisoner made any confessions on Sunday. This question was objected to by the counsel for the prisoner. The Court said one of two courses must be pursued. Either there was no confession made on Sunday, and this question led to some future confessions, or there were confessions made; in which case an inquiry was proper into the circumstances under which they were made.

John Becker called by Foot. When Mr. Van Rensselaer was at the Jail on Sunday, thinks that he told prisoner that he had better confess, as his atrocity had come out, and that he was a tyger in human shape. Witness does not recollect to have made any statement to the prisoner. On the evening of the 15th of June, witness had a conversation with Strang alone. Does not recollect that he had but one conversation with him that evening. Conversed with him the next morning—also alone. Had no other with him that day. Was often in the habit of talking with him. Does not recollect whether Mr. Russell was ever present when he conversed with Strang. Does not recollect that he (witness) sent for Mr. Russell. On the morning after the first conversation, witness went down to search for the rifle, and could not find it. Returned, and got further directions, and went back and found it. No inducements to confess were ever held out by



witness to Strang, on the 15th and 16th, or at any time. On the 15th the turnkey came down and informed witness that Strang wished to see him. He then went up.

Questioned by Oakley. Never held out any inducement to the prisoner; but told him he did not wish to hear any confession. Did not say on the 15th that there was abundant proof to convict. Might have said that such was the general opinion.—Thinks he said, it would be vain for him to deny the fact, or make any defence—after he had confessed the facts. Told him that he thought after he had confessed all, that he had done right, as it was useless to hold out any longer. This was after the whole confession. Knows that Mr. Russell was a member of the Grand Jury. Thinks Mr. Russell had been in to see Strang, with some other members during the evening. Does not know that the Grand Jury swore Strang as a witness. On Thursday afternoon the whole of the Grand Jury were in the prison to see him. Thinks on one morning witness said to one or two of the members of the Grand Jury that they had better call up and see Strang. Does not know whether Russell was one of them or not.

James Russell sworn. Was one of the Grand Jury that found a bill against Strang. The whole body went to see him in prison. He was not sworn as to his guilt; he was sworn as to Mrs. Whipple. The Grand Jurors said something to him as to his guilt at one time, when a committee of six went to him, in consequence of his sending for them. A bill was found against him before the Jury went into jail. The Grand Jury then went in a body. He was questioned by all the members; and he was examined on oath as to Mrs. Whipple. He was reading the bible when they went into the room. On the subject of his own guilt, nothing particular was said at that time, or that his case was desperate. He was not informed that Mrs. Whipple had sworn against him. One of the members spoke to him on the subject of the Bible in very handsome terms. In the course of his examination on oath, does not recollect that he made any statements as to this transaction. Saw the prisoner on that day, (Thursday the 17th) in the afternoon, alone. Told Strang nothing as to the proof against him. Said nothing as to his guilt. Went by his request. Saw him afterwards, on the same day, when the committee of six called on him. On this occasion something was said to him about confessing. Mr. Moore said they had sufficient proof that he was guilty—and added: mark my words, you'll confess it before you go to the gallows. Was not told that Mrs. Whipple had sworn against him. Some of the gentlemen said that if he was guilty he had better confess; that it would be better for him, both in this world and the world to come. He did not make any confessions at that time.

By Foot. David French was the foreman of the Grand Jury. He gave the prisoner precautions as to criminating himself; and



told him they did not come to get any thing from him against himself.

William B. Lacy, sworn. Visited the prisoner in jail before his indictment. Told him it was not witness' object to draw any confession from him, but if he were guilty, he knew it, and it would be better for him to confess it. This was shortly after the apprehension of prisoner.

By the Court. As a Minister of the Gospel, and in that capacity alone, witness called on him. His advice to confess was made in reference to a future state.

Abel French, sworn. Was the Foreman of the Grand Jury which found a bill of indictment against Strang. He would submit to the Court, whether a grand juror, sworn to keep the secrets of the jury, was bound to divulge those secrets. The Court decided that a grand juror was bound to testify so far as might further the ends of justice; he was bound to keep secrets that they might not suffer.

Questioned by Foot. No statement was made to the prisoner by the Grand Jury as to the declaration of Mrs. Whipple, and no threat was held out to him to induce him to confess.

Stephen Van Rensselaer sworn. Heard the testimony of Mr. Russell. Was one of the committee of six mentioned by him. Heard no one state to prisoner that he was guilty. No promise or threat was held out to him. Did not hear any one advise him to confess, as stated by Mr. Russell.

Mr. Russell explained that the statement was not made when the committee of six were present.

Oakley said, the question now was, whether the confessions of the prisoner to Mr. Becker might be brought forward as evidence. He would admit, that there seemed to have been nothing in the conduct of Mr. Becker, to invalidate the admission of the confession to him as testimony; but he would proceed to examine the whole subject, and the whole of the impressions under which the confession was made. Mr. Oakley then referred to 1st Phillips, page 86, in which it is declared that a public confession must be voluntary. He quoted Starkie on evidence, which lays down the doctrine, that there can be no admission of a confession produced through the influence of threats or promises; such as, that it would be better to confess, or worse not to do it; and that if such influence existed in the first examination, it shall invalidate all subsequent confessions. He held therefore, that, any degree of influence held out to the prisoner to induce him to confess, was sufficient to exclude it from being evidence. Besides it was declared to be illegal to put the accused upon oath. Yet the magistrate had done it: and exposed him, if guilty, to the necessity of criminating himself or committing perjury. He thought this practice was capable of very great abuse. When the prisoner has been accused, the magistrate has subject matter to act upon, and he may examine witnesses. But to put the prisoner on oath,



would be to expose him to confess his guilt or commit perjury; and if the man was guilty, the crime of perjury must be charged to the irregular proceedings. He considered that the testimony as to the examinations on the 11th and 13th, showed that the influence to which he had alluded had been used. The statement that he was put on oath by the Grand Jury as to the guilt of Mrs. Whipple, appeared of the same irregular character. What was the guilt of Mrs. Whipple? Why the guilt of Strang. If he were not guilty, she certainly was not. It appears that conversations were continually had with him by the Grand Jury, and by many of them he was advised to confess. And finally, after all these conversations, he confesses to Becker in the evening. He would put it to the Court whether the influence must necessarily be exerted at the moment of the confession? Whether there would be any sense in the rule that should confine them to any particular time. It was true that the influence might be weaker or stronger, as it was recent or distant. But he thought such influence should always be considered in some degree to operate.

The Counsel for the prosecution then called,

John R. Williams, who was sworn. Had conversed with the prisoner frequently. On one occasion witness asked him why he had not made a confession before.

The Counsel for the prisoner objected to further questions, and Mr. Foot proceeded to address the Court in opposition to Mr. Oakley. He considered that the confessions which the law allowed were to be considered the effect of a guilty conscience, while that the objection to confessions must be grounded upon some hope or advantage of reward. It was then necessary to inquire whether the prisoner could hope from his confession any better issue to his cause. He here quoted Chitty and Philips in support of these arguments, and cited a case in Starkie where, although a constable told a person that he had better confess, yet being warned by the magistrate not to criminate himself, his confession was taken as evidence; and several similar cases where confessions were admitted as evidence. Hence he argued that the rule was not so strict as the learned gentleman would imply. He defended the conduct of Mr. Cole, in examining on oath the family in which the murder was committed. Besides the statement that there were individuals around the house, and Strang having even pointed out the individuals on the Coroner's inquest, made his examination on oath most natural. He did not think the examination made on Sunday, the 13th would be looked upon as inducing the confession of Strang; thinks the time too remote to have operated on the mind of the prisoner.— The gentleman has said, that the first confession having been induced by undue influence, would operate on all subsequent confessions. But those confessions must be of the same facts. Now the counsel of the prosecution, had not contended that the confessions were the same facts.



Judge Duer observed, that the only question before the court was, whether the prior inducement had influenced the subsequent confession; as it did not appear that at the first, any confessions were made.

Mr. Foot said, if that was the extent of the question, he thought they might rest on the decision of the court. It was not for the court to speculate on the effects of anterior influences. He challenged the counsel to point out a case where a confession was rejected as testimony, in which they did not come out immediately upon the conversation in which the inducement was offered. He knew of no such case, and called on the counsel on the other side to show such. Besides, no motive of fear or advantage was held out to Strang. It could not be supposed that such a remark as—if you are guilty it would be better for you in this world and the world to come, to confess, held out any temporal advantage. There could be, in this case, no inducement to confess other than the truth; the design for the rule was to protect an innocent man from confessing against himself, by some inducement held out to him. He considered that it was admissible for the Grand Jury to examine Strang in relation to Mrs. Whipple—that she was a *particeps criminis* was no reason against it; for even principal, as well as accessaries, had often been called as witnesses against each other; and even now, if the prosecution were so disposed, Mrs. Whipple might be brought into court to testify in this trial, or Strang might have been called as a witness in the trial of Mrs. Whipple, had she been first tried. The counsel therefore held, that the proper caution having been given to the prisoner not to criminate himself, that the influence spoken of having been of so long standing that it could not set aside the confession; and that there being no evidence of a false fact told to the prisoner, the confessions were legal evidence. If those grounds failed, they offered to show, by the declaration of the prisoner, that the influence mentioned was not his motive.

Oakley replied. He thought it had been shown that the confession of the Jailer was immediately subsequent to the inducement placed before Strang by the Grand Jury. Read Starkie to show that a confession was not evidence where it was subsequent to the inducement held out. He argued that two positions had been established; that there was proof of inducements to confess, which, in some circumstances, would make the evidence inadmissible; and that the declarations made to him by the Grand Jury caused the confession to Mr. Becker. As to the offer of the prosecution to show the declarations of the prisoner as to his motive, he held that these declarations of the prisoner were not admissible as evidence. The court was by the law to decide whether the influence has been used, and were the declarations of the prisoner to be brought in to oppose that decision? The law is that any previous influence sha<sup>ll</sup> operate to exclude



a confession, unless an admonition of a magistrate putting a prisoner on his guard, shall have intervened. There was no evidence of any such admonition; and he was therefore of opinion that the confessions must be rejected.

The court, under an impression of the importance of this question to all parties, deferred its decision until to-morrow morning. Adjourned at ten minutes past eleven.

*Friday, July 27.*

John O. Cole called again. Testified that no threat or promise was made use of to induce confession in the examination made by the witness; and that the prisoner was on such examination warned not to criminate himself by witness.

Alderman Eisleek sworn. Testified to substantially the same, so far as he was connected with Strang's examination.

Judge Duer then expressed his opinion on the question at issue, as to producing the confessions of Strang as evidence. It was a rule of law that any consideration of fear, favor, or interest, would make confessions inadmissible, when the confessions were consequent upon those inducements. It was also a rule that future confessions of the same facts were equally inadmissible, because this would probably be produced by a continuation of the impressions which first induced them. But the question now before the court was, whether inducements held forth at a former time, where there was no confession, could be said to have induced a future confession. The method of testing the question was to inquire whether, in view of all the facts, the confession was consequent upon the statements producing inducements, or such as to raise a clear belief that the inducements held forth were the direct and immediate cause of the confession. The learned Judge here examined the authorities which had been adduced by Messrs. Oakley and Foot. In all cases it appeared that where advice had been given to the accused, and a subsequent admonition had been rendered, the confessions were admitted. Viewing the cases which were referred to, it did not appear that a previous influence was considered liable to the operation of the rule of law for the rejection of the confessions in evidence. The inducements held forth to Strang must have been those held forth by Judge Van Rensselaer, or by the Grand Jury. If those inducements were sufficient to produce the confession; yet the testimony of Messrs. Cole and Eisleek that he did have admonitions not to criminate himself, would produce an impression sufficient to do away the previous influence. As to the examination by the Grand Jury of the prisoner as a witness in the case of Mrs. Whipple, it was clearly right. It did appear also that the questions put to the prisoner by the Grand Jury were legal, and attended with no threats or promises. And although the individual members of the Jury did express themselves, yet it was on the same ground of the Constable's wife, in one of the cited cases without authority, and with none of that importance.



attached to their advice, which their collective characters as Grand Jurors would have given them. On the whole view of the case the court thought the confessions of the prisoner did not come under the objection made by the counsel for the prisoner. They therefore decided that those confessions were admissible in evidence.

John Becker called by Foot. On Wednesday evening, the 15th May, was sent to by prisoner, who wished to see witness.— After he got into the room, Strang said that “he was so full, that he must confess or burst of the crime he had committed against Mr. Whipple.” He then stated that he had purchased a rifle for the express purpose of shooting Mr. W. that he had that plan in view for about six months, and that he had formed the plan so that the public should not suspect him. He bought the rifle and took it home, loaded it, and kept it in the stable. On the evening of the murder, he went to town to keep the public mind from him, and purchased some cloth for pantaloons, and some Oil of Spike. He said that within ten minutes after he left the Apothecary’s shop, he shot Whipple. He saw a light in Whipple’s room, concluded that he was there, and went to the stable for the rifle. He went to the house for a box, and sat it up on end against the shed. Said he pulled off his boots, but cannot recollect where. He mounted the box, and laid his rifle into the eaves-trough of the shed. When he got upon the shed, he stepped to the window, and saw Mr. Whipple sitting. Went back to the place where he had left his rifle, brought it with him to the window, cocked it, took deliberate aim, and fired. He heard Whipple exclaim “Oh Lord!” He ran to the place where he got up, threw down his rifle, and jumped after it. Took it up, and ran to the woods, where he hid it. He then crossed to the Whitehall road, fell in company with others who had been apprized of the murder, and went with them to the house. He also states that he had purchased some arsenic, and told witness where it was concealed. It was the same as mentioned before. He generally stated in his confessions that Mrs. Whipple was at the bottom of the whole of it. He admitted he took off his boots, and picked them up when he jumped down. He said he bought the rifle with money borrowed from Mrs. Whipple.

John R. Williams sworn. After Strang had confessed, asked him why he had not confessed before? He said that he had delayed because he hoped that Mrs. Whipple would bring it out rather than him; but that his feelings became such that he could refrain no longer.

Josiah Sherman sworn. Had a conversation with the prisoner since the confession spoken of by Becker. It was on the 19th June. Was informed by one of the jury that Strang was in great distress. Mr. Platt said that he found him in tears, with his bible in his hand. Witness found him in the same condition. He upbraided himself severely for the confession he had made of his



guilt. He said he should not have made it had it not been for extreme weakness and loss of appetite.

The counsel for the prosecution here rested. Mr. Oakley said he had nothing to say. Mr. Pepper said the counsel for the prisoner were of opinion that they had done all that the nature of the case would admit.

The judge then charged the Jury, who retired, and after an absence of fifteen minutes brought in the verdict of Guilty.

### THE SENTENCE.

At half past nine o'clock, this morning, (Saturday,) Strang was conducted into court. He came in between two constables, his head inclined forward, his eyes downcast, and his whole appearance indicating a sense of guilt and the apprehension of punishment. He had been sustained hitherto probably by the excitement of the occasion; by possible lapses in the testimony, and by the prospect of appearing as a witness against Mrs. Whipple. But the decision of the court which excluded his testimony, and the abrupt termination of the trial in the acquittal of Mrs. W. had removed any unreal expectation that had been indulged in, and with them had flown all the previous assumptions of confidence and composure. He was much agitated and wept aloud. During the interval between the coming in of the court and the passing of the sentence, the prisoner sat leaning forward upon the table, frequently weeping and applying a handkerchief to his face.

At eleven o'clock the district attorney said, I now move for sentence of the court, in pursuance of the verdict against Jesse Strang.

The court addressing the prisoner, said:—You have been indicted by the grand inquest of the county of Albany for the crime of murder, the murder of John Whipple. To that indictment you have pleaded not guilty, and for your deliverance put yourself upon your country. A jury of your country have passed upon that issue, and by their verdict have convicted you, and have found you guilty of the murder of the said John Whipple. It now remains for you, if you have any thing to say why the sentence of the law should not be pronounced against you, to offer it for the consideration of the court. [The prisoner remaining silent, Judge Duer proceeded to address and sentence the criminal; which painful duty he discharged in a very solemn, feeling, and appropriate manner; adding that from respect for the feelings of his aged and respectable parents, which he had so deeply lacerated by his crimes and misconduct, his body would not be delivered over to the surgeons for dissection but would be given into their charge for burial; and concluding with the following sentence:]



That you, Jesse Strang, be taken hence to the place from whence you came, and there remain in the custody of the sheriff, until *Friday the 24th day of August, instant*; and be then taken hence by the said sheriff to some convenient place, and there, between the hours of 12 at noon and 3 o'clock in the afternoon, be hung by the neck until you are dead; and may God your Creator, God your Redeemer, and God your Sanctifier, have mercy on your soul!

The court and auditory were sensibly affected; and the prisoner seemed to feel the solemnities of a moment so awful in reference to himself. The large concourse of spectators then retired; and at a proper time the prisoner was reconveyed to prison.



# TRIAL

## OF MRS. ELSIE D. WHIPPLE,

AS ACCESSARY TO THE

### MURDER OF HER HUSBAND.



*Court of Oyer and Terminer, July 31.*

Present—His honor *Wm. A. Duer*, their honors the Mayor and Recorder, and Alderman *Treat* and *Esleek*, Counsel for the prosecution, *Livingston*, District Attorney, and *S. A. Foot*.—For the prisoner, *Van Vechten*, *Williams*, and *Tabor*.

The Court having taken their seats at 9 o'clock, Judge *Duer*, briefly stated to the jury the nature of the charge which they were impaneled to try.

*Mr. Livingston* then opened the case at some length. In the course of his remarks he stated that it was the intention of the counsel for the prosecution to produce *Strang* as a witness. For doing so, *Mr. L.* observed there was authority, but more particularly a case in point which was tried in *Orange County*. Among the various facts which *Mr. L.* detailed as those which it was the intention of the prosecution to establish, was that of a correspondence having been kept up between the prisoner and *Strang*, down to the time of his imprisonment; and that on one occasion, when he is supposed to have been urging her to participate in the murder, she was heard to say, "John's life (meaning her husband's) is as dear to him as ours is to us,"—and that she said on the day of the murder, that she would write her husband, and warn him not to come home in the night, because some one intended to shoot him. They should also show that, since *Mrs. Whipple* has been confined in jail, the jailor, through a motive of kindness, allowed the door of her apartment to remain open—permitting her to walk in the passage, and that she went repeatedly to the door of *Strang*, and lying down on the floor, held long conversations with him. Most of the other facts which the prosecution stated as depended upon to convict the prisoner, were produced on the trial of *Strang*, or had some immediate connexion with the testimony given in that case.

*Abraham Van Ransselaer*, sworn. Gave similar testimony in relation to his family, residence, &c. as that given in the trial of *Strang*.

*Mr. Van Vechten* then said that the prisoner was indicted as an accessory in the murder of her husband; and the highest tes-



timony was required to show that she was guilty. He cited a case of murder, in which it was stated that the principal must be necessarily convicted before the trial of the accessory could proceed; and it was therefore requisite to commence with the preliminary testimony on record of the trial, and conviction of the principal. This was essential, because if he had been acquitted, there could have been no trial of the accessory. Until he was convicted, he could not be a witness—but the law involved such an absurdity, that he could become qualified to be a witness after conviction when he was not so before. Had this been tried jointly, there would of course be no separate record; but their trials having been separate, there was a record in the case of Strang, and that must be proved. Inferior evidence should not first be brought forward. The principal had been convicted; and it was said that his testimony would be produced. But he was no longer worthy of credit, for the stain of infamy had been fixed upon him. It was argued that this infamy was withheld until sentence. This, however, could not be: it was not the sentence of the court which fixed the infamy. Considerable argument took place between the counsel and the public prosecutor, on the admissibility of the Record, which occupied the Court until after one o'clock, when a recess was ordered for an hour and a half.—Adjourned.

*Three o'clock, P. M.*

Judge Duer then gave the decision of the Court in the argument submitted. Our statute, which has been referred to, was, he considered a transcript—and perhaps went further than the statute of Ann: and it was contended should extend beyond the cases in which principal and accessory are both tried. We contend that it goes to the punishment not only as far as the guilt of the principal is shown, but to cases where the principal never can be convicted. On view of all the authorities, it was the decision of the Court that the trial of the accessory might be proceeded in, without waiting for the sentence of the principal.

Mr. Van Vechten wished the Court to make a note that an exception would be taken to this decision.

Abraham L. Van Rensselaer was then called. [Mr. Foot stated, that, upon the record of conviction hitherto produced, it would be taken for granted that John Whipple was killed on the 7th May, and that Strang shot him with a rifle.] Witness stated that Strang first came to his father's house on the 23th August last, as a laborer. He represented himself as a single man. Mr. and Mrs. Whipple were there as boarders in the family. About the first of May, Whipple was absent, down the river. He had been absent about two weeks previous to the 7th of May. He and his wife occupied on the 7th, and some time previous, the south west bedroom in the second story. When Whipple was absent, the other females of the family slept with Mrs. Whipple. Henrietta Patrick generally slept with her. Whipple was killed



on Monday night. Does not know whether the family expected him home at the time he arrived. It was not known at what time he would come. Was in the room in which he was shot on the night of the 7th. Mrs. W. was there also. Does not know exactly how long it was before he was shot that she left the room. Does not know what she had been doing in the room previous to her leaving it. Does not remember that she said anything of a pistol at that time. Believes that there were other members of the family in the room at the time. Cannot say who they were. There might have been several persons there. Miss Patrick and his sister. There were several alarms given by Strang, as to persons lurking about the house. [The testimony on this subject was the same as on the trial of Strang.] Did not remember any statements of the prisoner to Strang, when he remarked that the persons about the house meant no good to Mr. Whipple. Heard prisoner state that she was going to write to Mr. Whipple. This was a few days before the murder. She was in the cellar-kitchen at the time. Understood that she intended to write a letter and leave it at the Columbian Hotel, warning John not to come home at night, because some person lurking about the house would rob him. Did not hear her say afterwards that she had written such a letter. On the day previous to the evening of the murder, the prisoner borrowed a pencil of witness. She also asked for a piece of paper.— This was in the afternoon, at three or four o'clock. She went to a window, where she had a book of her own. Does not know whether she did write or not. Mr. Van Vechten moved that Strang be removed out of hearing of the testimony, to which the court acceded, and he left court in care of an officer.

Witness proceeded. Lent the pencil to the prisoner in the kitchen. Don't know positively whether she wrote with the pencil or not. Thinks he saw her at the window in a writing position: can hardly say he did. His mind was so agitated when he gave that affidavit, that he hardly knows what he deposed. Is pretty sure she was in a writing position at the window. Strang was in the kitchen while she appeared to be writing. The prisoner and Strang passed by each other continually in the kitchen that afternoon. Shortly after he saw the prisoner writing, Strang left the kitchen. It was not more than fifteen minutes after. Witness went out soon also: perhaps five or ten minutes after Strang. Found Strang a little south of the kitchen door, standing near a wagon. His back was towards witness. He had a paper in his hand, and was tearing it. It was a piece of paper. Could not say how large it was. Does not remember ever to have seen the fragments on the ground. Was at home on Wednesday night, the ninth of May. Don't recollect of any examination having been taken on that night. Recollects having a conversation with Mrs. Whipple as to his having been examined—Thinks it was shortly after the murder. She asked witness what was the meaning of *cross-examina-*



tion. Cannot tell exactly when this conversation took place. Believes that in that conversation she asked him whether he had been examined. Thinks she asked him whether all the family had been examined or were to be examined. Cannot recollect whether they had been. Does not know what answer he gave to the question. She asked also whether Orton had been examined. Strang went at that time by the name of Orton. Does not know whether Strang had been arrested at that time. He was arrested on Wednesday afternoon. When Mrs. W. asked the question the police officers had been down and examined the family, or were examining them. In the night, a day or two after the murder, when witness had been in bed and asleep, in a bed-room, adjoining the room in which Mrs. Whipple and his sister Maria were, his sister came into the room, and Mrs. Whipple after her. Mrs. Whipple said that Orton had not yet come home, and asked whether it could be that he had been examined and cross-questioned, and "*differed any.*" She said, she "felt so bad, that she could take a knife and stick herself to the heart." This was what he recollected, although he was very sleepy. Does not recollect any remark of her's as to Orton's having spoken of her. She never said any thing about witness' taking care of her son Abraham; and he does not recollect that she ever said there was property enough for her son. She asked witness whether he had examined Strang's trunks, and what they had found in them. Told her that they found clothes and a bottle of rum. This was after witness came out of the room into which the trunks had been carried to be examined. She asked whether they had found five hundred dollars there. She or his sister asked him if any papers had been found in the trunks. Told her he believed there was a parcel of papers in the pocket-book. (On refreshing his memory—thinks he told them there were no papers in the trunks.) Does not know which of the females asked the question.

The mother was examined at the same time with the rest of the family. The prisoner fainted on the afternoon on which his mother was examined. She exclaimed, "Orton! Orton! My John! My John!" Thinks this was when Orton was taken to jail. It occurred in the cellar kitchen—she had fainted when witness come in. Several persons were present.

Maria Van Rensselaer sworn. Thinks Mrs. W. was deranged during the night. Mrs. W. is sometimes subject to hysterics. She also appeared to be deranged on Thursday the day on which her husband was buried. Was partially so during a greater part of the week after the death of her husband. Remembers some exclamations of Mrs. W. on the night on which Abraham was awakened. Thinks she was deranged at that time. She appeared so irrational that witness paid little attention to what she said. Recollects that she remarked that she had "lost her grandfather, and father, that now her husband lay a corpse, and that she should not live to see her son grow up." Mrs. Whipple is 25



years of age. She was married when she was a few months over fourteen. Witness' father died last February. Mrs. W. is subject to occasional nervous affections, and will express her feelings by laughing and crying without apparent cause.

Foot. Mrs. W. on the night of Wednesday, among other things in her derangement, said, "Tell me something that I know. Cross question me so that I may know." She said also, "I am going to die to-night, and be buried with John. I am going to-night, and be buried to-night." Recollects no other words of Mrs. Whipple only these which she repeated after witness. Witness said to her brother that Orton not come home yet, and that his supper was waiting. This Mrs. Whipple repeated, after the witness. Either witness repeated the words, "What should keep him!" and Mrs. W. said them after her, or Mrs. W. said them of her own accord.

The Court then adjourned at 8 o'clock.

*Wednesday, August 1.*

The court meet at 9 o'clock. One of the Jurors having complained of illness, Doctors Ray and Townsend were called, and administered to him in the box.

Mr. Williams applied to the Court to prevent any person having communication with Strang during the trial. Some conversation then took place, which ended in a direction from the Court, that no one, with the exception of his counsel, his relatives, the jailor, and public officers, be admitted to him.

Maria Van Rensselaer called again. Did not particularly recollect any other declarations or exclamations of Mrs. Whipple than those stated by the witness yesterday. She spoke to Abraham about cross-questioning on the evening of the 9th. Considered this question to Abraham one of the manifestations of her being *flighty*. Her manner was abrupt and incoherent. Her conduct in the afternoon denoted derangement. Her actions were different from what they had been before. Observed these strange actions after her coming out of the room where her husband's body lay. This was about half an hour before she fainted. She spoke of her forlorn condition at that time, and said she had lost her only friend. Almost impossible to specify the singular actions which appeared like derangement, and which were different from what they were before: but noticed them at the time. She spoke also in the afternoon, of her grandmother having died the week before. She showed signs of insanity on Thursday, and spoke of having the grave made wide enough for her and her husband. Witness told her she acted as if she was crazy. She replied "I don't know what I do know." At this time witness observed some singular actions. Witness limits her observations in relation to the insanity to Wednesday and Thursday. She might have been flighty after Thursday—and thinks she did act singularly. Prisoner was always subject to nervous affections, and her mother before her.



Could not describe them ; but when she was troubled she shewed it very plainly. [Mr. Foot complained, when he put the question as to the manner in which her nervous affections were manifested, that the counsel for the prisoner made a remark, in an audible voice, the effect of which was to supply the witness with an answer. Mr. Williams explained that the remark was only in relation to a question put and answered yesterday. The Court said, that those remarks ought to be made in a voice which the witness could not hear.] Prisoner was a weakly sickly person, and when ill her nerves were very much affected. She seemed to conceive her illness to be worse than it really was. She was always easily discouraged, and gave up when troubled. Did not observe any circumstance that immediately caused her fainting. Knew of no reason for her fainting, but the consideration of her forlorn condition. Witness was not near enough to hear any thing said by any person, which appeared to lead to her fainting. At times prisoner was very much depressed, and sometimes in very high spirits. Did not know that Abraham went into the bedroom after Strang's coat. To go into the bedroom it is necessary to pass through the kitchen. When it was mentioned to witness that Abraham had gone for Strang's coat, she cannot tell : it was during that afternoon. As to the articles found in Strang's trunk, heard it said that papers were found there, but did not know the contents. Prisoner made inquiries also about the papers, Abraham said there was nothing found. Don't recollect whether prisoner repeated the question of witness, or asked any question about the papers in the trunk, except it was that she said "Was not the \$500 found?" or some trifling remark of the kind. On the 14th April, in the morning, Strang said he was going to Troy : he went away, was absent the rest of that day, and returned next morning ; at what time she does not know—but saw him in the field at work, Mrs. Whipple also left the house for the city : she left about the middle of the afternoon, was absent the rest of that day and night, and returned next day. When she went, took a dress to be cut, and returned with it cut. Should suppose she came back about noon. She said when she went away, that she was going to have a dress cut, and to Mr. Fobes'. Recollects her saying something about staying until next day, to have the dress cut—but cannot say certain. It rained very hard that afternoon—there was thunder during the night. Could not tell whose bonnet prisoner wore. Did not perceive that the bonnet was wet when she returned.

Charles Conkling sworn. Keeps a livery stable in Albany. He testified that Strang came for a wagon to his stable, as in the trial of Strang. Returned at seven o'clock the next morning.

Getty Sanford sworn. Knows the prisoner from a little girl. Lives on the corner of Patroon and Pearl-streets. Prisoner came to witness' house in April. Came in the afternoon. Remained



there about half an hour. She went away in a one horse wagon, with a man who witness did not know; but as far as she can recollect he had on a mixed coat. Mrs. W. was at witness' house again next day about eight o'clock. She came there on foot.— Said she had been at Troy with Mr. Whipple's brother. Witness does not know Mr. W.'s brother. She ate breakfast with witness, and stayed a short time. When she came to her house the afternoon before, she seemed to be greatly agitated in mind. She said, "Oh, my God, I'm going riding, and I don't want to go; but if I don't go, the devil will kill me." She told witness that afternoon that she was going with Mr. Whipple's brother. She did not say what she was going to Troy for. Does not recollect that she said any thing else. Thinks she told witness to keep her being there a secret from her aunt. She said that she intended to return home the next day. She had on a black crape bonnet. Did not perceive that it was wet next day. She wore a black bombazine dress, and a riding habit over it, which she thinks was a kind of plum color.

Frances Hill sworn. Her testimony as to her residence, &c. was the same as before. Saw the prisoner at their house on the day of the thunder shower in April. Strang was with her. They stayed there that night. Witness lighted them to bed. Conversed with Mrs. Whipple previous to their going to bed. Asked prisoner whether Strang was her brother. She said he was not; that he was her husband. [Testimony as to their sleeping in one bed was the same as on Strang's trial.] They went to bed after nine o'clock. The reason why she asked whether Strang was prisoner's brother, was, that her father told her she had better, because they seemed so fond of each other. Witness observed that fondness herself. Prisoner said that they came from Schenectady, and were going to New York. Heard her say nothing about her children. Is certain that prisoner at the bar was the person. When she came, she had on a mixed riding dress. Strang's clothes were of the same color, and witness thought that they were of the same cloth.

Nancy Montgomery sworn. Saw the prisoner on the 14th April, at Mr. Hill's house. Strang was with her. They seemed very fond of each other. Thought at first they were brother and sister. [Her testimony as to the declarations of the prisoner were the same as on the former trial.] She agreed in the description of the clothes of the prisoner and Strang given by Mrs. Hill. The wagon had a green box.

Catharine Barrington sworn. Lived, on the 14th April, at Hill's tavern. Has not seen the prisoner since. (Mrs. W. partially unveiled.) Thinks her the same person that she saw at Hill's. A person was with her about the size of Strang—but could not say for certain that he was the person. Slept in a room adjoining that in which the prisoner slept. To get downstairs, witness had to pass through the prisoner's room. They were



up when she came down but knew two persons had slept in the bed. Heard no conversation in the prisoner's room. As witness passed through the room in the morning, she saw the prisoner getting up. Had no conversation with her.

Matilda Becker sworn. Is thirteen years old. Lives with her father, who is the Jailor. Knows Mrs. Whipple. Has known her ever since she came to Jail. Witness has staid day and night with the prisoner since she was in Jail. Her room was in the third story, the south-east corner room. Strang was kept in the same story. The doors of both their rooms led into the same hall. Has not carried any notes or papers from the prisoner to Strang. The prisoner has received papers from Strang, since her confinement, two or three times. Believes Strang shoved them under his door; and Mrs. W. took them. Witness has not seen the papers to know how they were written. Does not know that they came from Strang; but does not know how else the prisoner should have got them. Heard prisoner say she was going to Strang's door, and then go out of the door. When she returned she had a paper in her hands. She had no paper when she went out. No other persons but prisoner and Strang are confined in the third story. Witness looked once after her when she went to Strang's door. She conversed with him. His door was locked. She laid down on the floor, so as to converse through the crack under the floor. She remained there a very few minutes. Could not say whether it was over or under fifteen minutes. It was the first time she had been to Strang's door, when witness looked after her. The reason why witness did not look after her the other times, was, that prisoner told her not to do so, because if she did she would be a witness against her. Witness once called the prisoner away from Strang's door, and told her there was somebody coming who would catch her. This was the first time that prisoner went. Did not see the prisoner when she called her.

By Williams. Did not go out of the room after Mrs. Whipple left it, until she called her. When she called the prisoner, witness was in the room and could not see Strang's door. This was the first time.

By Foot. When she saw the prisoner laying down, she stood at the prisoner's door, and was in the room.

By Williams. Could not see Strang's door without going out of the room the breadth of the door. Saw the prisoner at the door of Strang's room. Did not go out of the room.

By Foot. Went outside of the door to look after her.

Henry Schoonmaker sworn. Is a turnkey in the jail. Strang's room was on the north side—the prisoner's on the south side.—Two rooms intervened. Mrs. W.'s door was left open about the fourth of July, in order to ventilate the room. It was left open several days, and closed at night. The door was left open for a few days after the fourth. It was shut on account of hearing



that she had conversed with Strang. Does not know that Mrs. W. and Strang conversed together. Had never heard them.— The door to Strang's room swings about an inch and a half above the floor. The length of his chain and his person would allow him to reach the door. Strang was furnished with pen, ink, and paper. Saw the National Observer lying in his room. Read some lines in it. [Produced a copy of the lines.] Did not know what their title was. They were poetry; and seemed to have been altered in the paper. Afterwards saw Mrs. Whipple have a written paper in her hand. The hand-writing of the paper was Strang's—witness got it from the pantaloons' pocket of Strang. The lines are the same as he read in the National Observer.— Found this copy about a week after he saw the National Observer. Saw a similar paper in Mrs. Whipple's room a day or two after. She unfolded a small part of the paper and read the lines. Could not tell the size of the paper. She did not read all the lines. He first asked her to show them to him, and she refused. Did not see the writing. Told her he thought he had seen them before in Strang's room, and also that he had taken them from the National Observer. She asked whether he copied them.— Witness said he had. She remarked that she knew he did not know enough to compose such lines. When witness first went into the room, she told him that she had received a letter. He asked her where she obtained it. Her reply was that she would not tell. She talked in a free manner. Did not perceive anything peculiar in her manner. Had no other conversation with her at the time. When he heard her read the verses, he thought he had read them before, and on that account he told her that he thought he knew where she got them. Prisoner was committed on the day on which the rifle was found.

Philander Fobes sworn. Keeps the Columbian Hotel, which belongs to the prisoner. [His testimony in relation to the 20 dollar bill was the same as on the trial of Strang.] He delivered it to Starr Foot, to be given by him to Mrs. Whipple; and is sure this is the same bill.

After this testimony, the following persons were called and sworn on the part of the prosecution, viz: John O. Cole, Edward Fay, Charles D. Townsend, John Becker, Abraham Van Rensselaer, Spencer Stafford, Mary Husted. Their testimony elicited no more facts to the crimination of Mrs. W. than were given on the trial of Strang.

Henrietta Patrick was called. Found a paper under the pillow of the prisoner, about three weeks before the murder of Whipple; did not know whose hand-writing it was, but it appeared to be Mrs. Whipple's; that paper was burnt by Maria Matilda Van Rensselaer; it was appointing some one to meet her, to go to Lansingburgh; they were to meet at a small yellow house, in the north part of this city. Mrs. Whipple was absent from home in April. Strang was absent on the same night. Mrs.



Whipple made an arrangement with witness to meet her next day at Fobes'. Met her, in pursuance of that agreement, on Kane's bridge; she appeared in moderate spirits, as she generally was. Prisoner said she had slept at Fobes'. The paper found under the pillow of Mrs. Whipple was not an answer to a proposition to go to Lansingburg. The paper said—"I will meet you at the yellow house. You must go there and stay till I come." The note said the yellow house was in the north part of the city. Witness supposed it was near the Patroon's bridge. Strang and Mrs. Whipple both went off the same day on which she found this paper. Asked the prisoner where she was going; she said to Fobes'—where, she said, she was going to stay all night.

The District Attorney then called Maria Van Rensselaer, Dinah Jackson, (the black woman,) Henry Schoonmaker—whose testimony went to corroborate those before examined.

Starr Foot sworn. Knows the prisoner. Lives with Mr. Fobes as his Bar-keeper. Saw her at Fobes' about a fortnight before the murder. She came in and asked if he had heard from Mr. Whipple. She said people had been seen lurking about the house, and she could not think what they were there for, unless it was to waylay John. She said "I'll bet you a hat he'll be killed." Witness asked if she knew any one who would kill him. She replied—no. Witness observed to her that it was a foolish remark in relation to the bet. There was nothing more said then that witness recollected, and she went away. Letters were left at Mr. Fobes' for Mr. Whipple, in his absence. The letter written by Mrs. W. was left in care of witness on Thursday. When Mrs. W. first came in, she asked for \$25—which she said she wanted for her uncle, Doctor Lansing, who was repairing his house, and had been disappointed in getting money. Witness went to the desk, and found he had not \$25. He then went up stairs to Mr. Fobes, and told him Mrs. W. wanted \$25. He took a 20 and a 5 dollar bill from his pocket book, which witness gave to prisoner. She then asked witness for paper, pen and ink—which he gave her, in the presence of Miss Patrick and Miss Otis. When he came down, they were talking about people having been seen the night before about the house.—Went out and returned, when prisoner asked for a wafer, which witness gave to her. She sealed the letter, gave it to witness, and said, "be sure and give this to John as soon as he comes, and if he comes in the night, be sure and keep him all night, and not let him come home." She said people had been seen about the house, and she could not tell what they were there for; and she did not want to have him come home at night.

Joel A. Wing, sworn. Knew the prisoner at the bar. Was at Cherry Hill the day after the murder, to examine the body of Whipple. While he was there she came to him and said that her "poor husband was dead." She was weeping violently. Imme-



diately after she said "Doctor I wish to see you." His inference was, from her looking at those about her, that she wished to speak with him, but on account of the persons present was prevented. Under that impression he took a seat next to her, to give her an opportunity of speaking with him. Believed that she had some suspicions as to the person who committed the murder. She hesitated, apparently on account of the persons present. Witness then said he would call to-morrow morning. Then left the house. Did not call the next day, but went on Thursday morning. Met her in the hall, and walked with her into the back stoop, and sat on the bench. Other persons were in the room. She commenced by saying, "Doctor, what do you think of this? I've been accused of having something to do with my husband's murderer. I wish that I had been shot instead of my husband, for this is more than I can bear." She then mentions that every person seemed to have turned her enemy. She said her aunt told her she was a very bad woman, that she was to be examined that afternoon, and that she might possibly be hanged. She told him that a gentleman came to her while she was sitting in the room with her husband's corpse, and asked her if she could go to the corpse, uncover his face, and kiss him. She said she felt indignant, and asked him if he thought she was afraid to kiss her own husband? She then went to the body, put her arms around its neck, and kissed the face. The man then said, now I am satisfied. She did not say who the man was. She mentioned that Strang had been arrested as the murderer, and in answer to witness' question as to who could have done it, she replied that she thought it was some one down the river, either at Kingston, or at New-York. She asked this question—Doctor, if I am taken up to be examined, what will they say to me, or what will they do with me—which witness does not remember. He told her that she was the person most interested in the detection of the murderer of her husband; and therefore she had better tell all that she knew, and all that she suspected. She said she should—but made the exclamation—"How can I go through with it, or, how can I bear this with my other afflictions!" She then burst into tears, and the conversation was broken off by a lady who came in rather abruptly, and said, "Doctor, what do you think of her?" They then separated, and he has never seen the prisoner since, except in the Grand Jury room.

*Friday, June 3.*

On the opening of the court this morning, Judge Duer pronounced the opinion of the court upon the question raised and argued last night, whether Strang, the principal in the felony, and wherewith the accused stood charged as an accessory, should be admitted to testify against the accused. The Judges stated, that upon an examination of the authorities, the court had come to the conclusion that there was no doubt but that a person, though convicted of a crime, is a competent witness in all cases



until the judgment upon that conviction is pronounced against him. It had been said that the common opinion was, that a conviction alone rendered him incompetent; but that, the court said, was not the law. It is not the conviction, but the judgment, that creates the disability in such cases.

As an accomplice, Strang is a competent witness. Unless the conviction and judgment are proved. A witness is not incompetent from infamy of character, though he may confess himself guilty of an infamous crime. This case then addressed itself to the discretion of the court, not to their judgment as to the competency of the witness, but to their discretion whether on a principal of public policy, and in furtherance of public justice, the person convicted shall be permitted to testify against the accused. From the evidence before the court, it appeared that Strang the principal in this case, meditated the murder he committed for the space of six months; that he had an illicit intercourse with the prisoner at the bar; that he had expressed himself determined to have her if it cost him his life, and proposed to take her with him to Canada. He is a man of about 30 years of age, not deficient in experience, on the contrary artful and deceptive, passing himself off as an unmarried man, and under a false and assumed name. The character in which he appears before the court as to his participation in the crime which has been committed, is not that of a technical but of a real principal, not as an instrument used by the prisoner to get rid of her husband, but as the seducer of the prisoner to obtain possession of her person and property. The prisoner at the bar appears as a young woman, now about 25 years of age, married at the early age of 14 or 15 to her late husband, possessed of property to a considerable amount, of a character light, frivolous, weak, vain, imprudent and wicked, and guilty to a certain extent; a fit instrument in the hands of a designing man, but destitute of those qualities which might be supposed to have swayed the mind or controuled the actions of the person with whom she had had an illicit intercourse. Had the case been reversed, and she presented as a woman of experience, of strength of mind and energy of character, who had lived unhappily with her husband, and expressed a determination to get rid of him, who had selected as her paramour a youth of inexperience, and by the seductions of her person and her fortune had induced him to commit the murder, in the exercise of their discretion the Court would not have hesitated to admit him as a witness, and on a full disclosure of the facts to have recommended him to mercy.

The Judge therefore decided that Jesse Strang cannot be admitted as a witness.

The Judge also added some remarks as to the responsibility which had been thrown upon the Court, and their willingness to assume it, notwithstanding the excitement which these trials had excited. They trusted they could not be influenced by any



consideration other than to see the laws faithfully and impartially administered; and if in the decision they had made they had erred, they would have the satisfaction of knowing that they had erred on the side of mercy.

When the Judge sat down, an expression of approbation, not only of the eloquent and feeling manner in which the opinion was pronounced, but probably also of the conclusions at which it arrived, manifested itself throughout the crowded auditory, but was immediately repressed by the court and the officers.

After a few moments, the District Attorney, (Mr. Livingston,) arose and observed, that upon consultation with his associate counsel, they had come to the conclusion that from the facts which had already been adduced, and the remaining testimony which it was in their power to produce, being of so slight a character as not materially to affect the case, the jury would not be warranted in convicting the prisoner, and inasmuch as under the decision of the court the testimony of Strang could not be admitted, they would abandon the prosecution.

Judge Duer. That is a matter in the discretion of the public prosecutor, and the court will not attempt to controul him in the exercise of that discretion, but they apprise the public prosecutor that if a motion had been made by the counsel of the prisoner, for her discharge on the ground of want of testimony, the motion would have been denied. If the testimony which remained was of a slight nature, it might have been cause for resting the prosecution upon the evidence already adduced, but not for discharging the prisoner.

District Attorney. Under this intimation from the court without having changed my opinion. I wish to be considered as resting the prosecution, and call upon the prisoner for her defence.

Mr. Foot. There is some difference of opinion, perfectly kind and friendly however, between the District Attorney and myself. In consequence of the suggestions of the court he now appears to be willing to put the prisoner on her defence. Satisfied myself that she cannot and ought not to be convicted upon the testimony given, and which is still in the power of the public prosecutor to produce, I have advised that the prosecution be abandoned, considering the intimation of the court only as an expression of opinion that in a criminal case the jury should be permitted to pronounce upon the evidence, instead of stopping the trial by the court, as is done in civil cases when there is a defeat of testimony.

Mr. Van Vechten observed, that after the candid admissions made by the counsel for the prosecution, the counsel for the prisoner would not call any witnesses, though they had it in their power to show strong explanatory testimony, and would submit the case to the charge of the court.

Judge Duer, after adverting to what had just transpired, and without recapitulating the testimony, submitted the case to the



consideration of the jury. He cautioned them to look only at the evidence which affected the guilt or innocence of the prisoner in relation to the charge for which she was upon trial. As to the evidence which had been adduced, showing her guilt in other respects, he advised them to say to her, as the court were disposed to say, and as the Saviour of the world said upon another occasion, "Go, and sin no more."

The jury, without leaving their seats, found a verdict of NOT GUILTY.

Again an expression of approbation was manifested; but it was immediately restrained. The unfortunate prisoner received the verdict of the jury, leaning forward, her face resting upon the table. She neither looked up, nor seemed to be moved by the abrupt transition in the aspect of the trial which followed the decision of the court; nor did she appear to be particularly affected upon the rendering of the verdict, though she held her handkerchief to her face and wept; and when, under the proper and strong admonition of the court, that no unfeeling and curious eye should attempt to penetrate the thick veil which concealed her countenance from general observation, she left the chamber, she seemed to move mechanically and by the attending officers, rather than by any volition of her own.

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