

TRIAL  
OF  
**JOHN BLAISDELL,**

ON AN  
INDICTMENT FOR THE

**MURDER**

OF  
**JOHN WADLEIGH,**

AT THE  
SUPERIOR COURT OF JUDICATURE, HOLDEN AT EXETER,  
SEPTEMBER 1822.

—♦—  
REPORTED BY A MEMBER OF THE BAR.  
—♦—

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# ARRAIGNMENT OF JOHN BLAISDELL, CHARGED WITH THE MURDER OF JOHN WADLEIGH.

At the Superior Court of Judicature, holden at Portsmouth, within and for the County of Rockingham and State of New-Hampshire, on the third Tuesday of February, 1822.

PRESENT.

Hon. WILLIAM M. RICHARDSON, *Chief Justice.*

Hon. LEVI WOODBURY, } *Associate Justices.*

Hon. SAMUEL GREEN, }

The Grand Jury returned into Court, the following Indictment.

*State of New-Hampshire Rockingham ss.*

At the superior Court of Judicature holden at Pourtsmouth within and for said county of Rockingham on the third Tuesday of February in the year of our Lord one thousand eight hundred and twenty two.

The Jurors for the State of New-Hampshire on their oath present that John Blaisdell of Kensington in said county of Rockingham, husbandman, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the eighteenth day of February in the year of onr Lord one thousand eight hundred and twenty two with force and arms at Exeter in said county of Rockingham in and upon one John Wadleigh late of Exeter aforesaid, husbandman, deceased, in the peace of God and of said State, then and there being feloniously, wilfully, and of his malice aforethought did make an assault; and that he the said John Blaisdell with a certain large stick of the value of ten cents which he the said John Blaisdell in his right hand then and there had and held him, the said John Wadleigh in and upon the left side of the head near the left temple of him the said John Wadleigh then and there with force and arms feloniously, wilfully and of his malice aforethought did strike penetrate and wound, giving unto him the said John Wadleigh then and there with the stick aforesaid in and upon the left side of the head near the left temple of him the said John Wadleigh one mortal wound of the length of three inches, of the depth of one inch and of the breadth of one inch, of which said mortal wound he the said John Wadleigh from the said eighteenth day of February in the year aforesaid until the nineteenth day of February in the year aforesaid at Exeter aforesaid in the county of Rockingham aforesaid did languish and languishing did live; on which said nineteenth day of February in the year aforesaid the said John Wadleigh at Exeter aforesaid in the county aforesaid of the mortal wound



aforesaid died ; and so the jurors aforesaid upon their oath aforesaid do say that the said John Blaisdell him the said John Wadleigh in manner and form aforesaid feloniously, wilfully and of his malice aforethought did kill and murder contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

And the jurors aforesaid upon their oath aforesaid do further present that the said John Blaisdell not having the fear of God before his eyes ; but being moved and seduced by the instigation of the devil on the said eighteenth day of February in the year of our Lord one thousand eight hundred and twenty two with force and arms at Exeter aforesaid in the county of Rockingham aforesaid in and upon the said John Wadleigh in the peace of God and of said State then and there being feloniously, wilfully and of his malice aforethought did make an assault, and that he the said Blaisdell with a certain large club of the value of ten cents which he the said John Blaisdell in his right hand then and there had and held, him the said John Wadleigh then and there feloniously, wilfully and of his malice aforethought divers times did strike and beat, giving to him the said John Wadleigh then and there by the striking and beating aforesaid of him the said John Wadleigh with the club aforesaid in and upon the left side of the head of him the said John Wadleigh one mortal bruise of which said mortal bruise he the said John Wadleigh from the said eighteenth day of February in the year aforesaid to the said nineteenth day of February in the year aforesaid at said Exeter did languish and languishing did live ; on which said nineteenth day of February in the year aforesaid the said John Wadleigh at Exeter aforesaid of the mortal bruise aforesaid died ; and so the jurors aforesaid upon their oath aforesaid do say that the said John Blaisdell him the said John Wadleigh in manner and form last aforesaid feloniously, wilfully and of his malice aforethought did kill and murder contrary to the form of the statute in such case made and provided and against the peace and dignity of the State.

Geo. Sullivan Attorney-General.

This is a true bill,

Enoch Clark Foreman.

On the second week of the term the said John Blaisdell was brought into Court when the Clerk read the foregoing Indictment and addressed the prisoner—

What say you John Blaisdell, are you guilty of the crime whereof you here stand charged, or not guilty?

*Prisoner.* Not Guilty.



*Clerk.* How will you be tried?

*Prisoner.* By God and my Country.

*Clerk.* God send you a good deliverance.

The prisoner was then remanded into custody to be tried at the next term of the same Court to be holden at Exeter.

## SUPERIOR COURT OF JUDICATURE.

*September Term, 1822.*

Holden at Exeter within and for the county of Rockingham and State of New-Hampshire.

### PRESENT—

Hon. WILLIAM M. RICHARDSON, Chief Justice.

Hon. LEVI WOODBURY, } Associate Justices.  
Hon. SAMUEL GREEN, }

The court by agreement of Counsel, appointed Tuesday of the second week for the trial of the indictment *State v. John Blaisdell*.

*Counsel for the Government.* Hon. GEORGE SULLIVAN, Attorney-General, and JONATHAN STEELE, Esq. Solicitor.

*Counsel for the Prisoner.* ICHABOD BARTLETT, and WILLIAM SMITH, Esquires.

On Tuesday morning September 24th, agreeably to appointment *John Blaisdell* was brought into Court.

At half past 8 o'clock the clerk proceeded to call the jurors present and forty-eight answered.

The clerk then addressed the prisoner as follows:—

“*John Blaisdell*, These good men, who have now been called and have answered to their names, are those who are to pass on your trial. You have a right to object to twenty of them without giving any reason, and more if you can show sufficient cause. If, therefore, you wish to object to them, or any of them, you must challenge them when they are called to be sworn and before they are sworn, and you shall be heard.”

The Clerk then called the jurors and the prisoner objected to several until twelve were called to whom he did not object---viz.



James Poor	Sworn.	Stephen Clay	Sworn.
Wm. H. Underhill	do.	Jesse Gordon	do.
Samuel Patten	do.	Daniel Gage	do.
Joseph Hoit	do.	Joseph Godfrey	do.
Caleb Peaslee	do.	Moses Hook	do.
David Gage	do.	Samuel Anderson	do.

The Court appointed *Stephen Clay* Foreman.

*The Clerk then addressed the Jury.*---Gentlemen of the Jury, hearken to the Indictment found by the Grand Inquest for the body of this County against *John Blaisdell*. [Here the Clerk read the indictment.] To this Indictment the defendant has pleaded *not guilty*, and has put himself on his country for trial, which country you are---and you are now sworn to try the issue, may God send him a good deliverance---Good men and true, stand together and hearken to the evidence.

The Solicitor then opened the trial on the part of the state.

The prisoner at the bar is indicted for the murder of *John Wadleigh*. His innocence or criminality is the important question which you are now to decide. In your decision of that question, not only the prisoner, but the commonwealth is deeply concerned. It is the duty of the government to guard the lives, the liberties, and the property of its subjects. This object can be obtained in no other way than by the enactment and prompt execution of such laws as will deter the bad from infringing the rights of the obedient subject. For this purpose government was instituted: and so soon as protection ceases to be extended to the subject, the government is at an end. It is not for the purpose of revenging, nor is it to obtain satisfaction for the injury which the prisoner has committed, that the State, demands his life, but it is to deter others from the violation of the laws. Every favour is extended to him which he could reasonably demand. He is permitted to select the jury who are to try this issue; and he has a right to require of the State such evidence as will leave no reasonable doubt of his guilt. If you, then, gentlemen, shall entertain any reasonable doubt of the guilt of the prisoner, you are bound to acquit.



I would not be understood from this observation, to admit that a bare possibility of his innocence is to prevent you from convicting. You are not to conjecture upon this or that hypothesis that he may be innocent. You are to judge as reasonable men—And if you are satisfied that the evidence is such as would convince reasonable men that the prisoner is guilty, you are bound to convict. In the trial of this issue, Gentlemen, you are the judges of the law and the fact. It might be thought my duty to state to you those principles of law which are to govern you in the decision of this case. But it is not apprehended that any questions will arise in this case which are not familiar to you. If this act was perpetrated by the prisoner it is clearly murder. I need, therefore, only give you the definition of that crime. Here Mr. Steele read from Blackstones Commentaries the legal distinctions of the crimes of murder and manslaughter.

We expect to satisfy you that this crime was committed with a deadly weapon and without the least provocation.

To convince you of the guilt of the prisoner at the bar. we do not expect to produce any positive testimony, No witness was present when the deed was committed. It was done in a dark and tempestuous night, in a remote and solitary situation—At a time and a place well suited for the perpetration of so foul a crime. But, Gentlemen, we do expect to prove circumstances so strong as to produce the most entire conviction that the prisoner is guilty.

We expect to show you that on the evening of the 18th of February last, the prisoner and the deceased were at a store in Exeter—that they left that store in company with each other about dark—that the deceased carried an axe, and the prisoner an axe-handle.

We expect to trace them to the place where the murder was committed. We shall show you that they were together after the wound was inflicted which caused the death of Wadleigh, the weapons which they carried from Exeter were found near the place where the murder was committed, and that the prisoner immediately after the decease of Wadleigh absconded. It is not the duty nor the wish of the government to press a conviction. But,



Gentlemen, if you shall be satisfied from the evidence which shall be laid before you, that he is guilty, you will not from pity or compassion suffer him to go unpunished.

NATHANIEL WEEKS—*Sworn.*

I was in company with Blaisdell and Wadleigh on the afternoon of the 18th Feb. It was so dark that I had just lit a candle. B. & W. came into my shop, which stands near the bridge, W. brought with him an axe and a rough axe-handle, which he laid down upon a barrel. The handle was of white oak and very large. They left my store together one taking the axe and the other the axe-handle, which either of them took I know not, and I saw nothing more of them. They were both perfectly sober. *Cross Examined.* While in my store they drank perhaps, a glass a piece. W. bought a pint of rum and put it in his bottle, and afterwards told me to put a half pint more in the bottle. The bottle held a little more than a pint. How much they drank I cannot certainly say. They appeared friendly.

LARKIN TAYLOR—*Sworn.*

I was at Weeks' store at the time he mentions, and saw B. & W. there. Saw the axe-handle which B. took up, and W. took the axe when they went away. Saw nothing further. They were both sober. Cannot tell at what time they went. *Cross examined.* Did not see that they were unfriendly.

JOSIAH G. SMITH—*Sworn.*

I saw Prisoner & W. pass my house on the 18th Feb. about half past five. They were going towards Kensington. My house is opposite the Stratham road about 30 rods from Weeks'. Blaisdell carried the axe-handle on his shoulder and W. the axe. It was between sunset and dark and there was a violent snowstorm. They were both apparently sober.

WILLIAM DOLLOFF—*Sworn.*

I saw Prisoner & Wadleigh the same evening about half way between J. G. Smith's house and Lane's shop five rods perhaps from Smith's. Wadleigh had an axe



and B. an axe-handle. It was near dark when they passed and the night was very stormy.

NANCY Y. FOLSOM—*Sworn.*

On the evening of the 18th I saw two persons pass my father's house, one of whom I knew to be Wadleigh, Blaisdell I did not know. W. carried an axe and the other man a axe-handle. I have no doubt that prisoner was the man who passed with W. My father was absent, and I was looking out for him. They went together towards Kensington.

JUDE HALL, (*a coloured man*)—*Sworn.*

Between 8 and 9 on the evening of the 18th, somebody knocked at my door. My house is near the Exeter line and about a mile and a quarter from Folsom's. Told my children to open the door. Blaisdell came in and appeared frightened, and asked where the Captain was, (meaning me.) He said, he wanted me to help lead W. in, that he was drunk and had been fighting with a sleigh. Blaisdell said that he would not have carried him into his (W.'s) own house for ten dollars, that he would have died if he had not taken him up, and that he had led him from the Cove bridge. Wadleigh's house is between the Cove bridge and mine, about 30 rods from mine. I heard heavy groans, found the deceased, lying on his side. I lifted Wadleigh up and led him home—he appeared to shudder with the cold. I got a fire which he seemed to need. Blaisdell offered to take his hat—he drew back—then his handkerchief he still drew back—he next offered him a chair but he *stood stiff*.

Blaisdell went to take Wadleigh's hat and Wadleigh shewed great horror whenever Blaisdell came near him—after about five to ten minutes Blaisdell went away and wanted me to go home with him—I said don't go, and Blaisdell said he must go to take care of his catle—Wadleigh died about three quarters of an hour before day—I was with him at that time—Blaisdell's house is in Kensington about a half a mile from my house. *Questioned by Attorney General*—Did Wadleigh say any thing? After Wadleigh got over his chill and shuddering he said



“Captain (meaning me) how long have you been here”—and then he gave another deep *sithe* and was gone again.—(*Any further answers to the Attorney General’s question on that point were objected to, it not being in evidence that the deceased was in that state of mind which rendered his declarations admissible.*) Questioned by same—Did you ask Wadleigh any questions?—I was *flustrated* but remember that Blaisdell said that Wadleigh would say *he had done it*.

MRS. WADLEIGH, (*widow of deceased*)—*Sworn*.

Jude Hall and Blaisdell brought my husband home between 8 and 9 o’clock—I was alone. My husband seemed faint and overcome and so was I—I could not for some time come near him or speak to him—I asked Blaisdell where he found him—He said—near Cove bridge—B. turned to go—I asked him not to go—He said he must—I asked him a second time and he then said he must go and take care of his cattle—He then left us—I went to my husband and took off his neck cloth—It was very bloody—The blood began to run dreadfully and I exclaimed to Jude “here is something more than a fall, here is a blow and somebody has given him his death wound.”—My husband then appeared to hear me speaking and groaned out “O Lord, I’m done”—then was gone, but a minute groaned again “O *that fellow*.” He fainted again for a moment but soon repeated frequently, “O *that fellow*.”—He then said “where’s a bed”—we laid him on a bed and in a few moments he said “O Lord, I’m done.” These were the last sounds he uttered.—Blaisdell staid in the house from five to ten minutes—not longer than ten at farthest.

JAMES ROBINSON—*Sworn*.

On the evening of Feb. 18th I was coming from Newbury to Exeter in a sleigh with Richard Smith—It was quite stormy. Near the Cove bridge and on this side of it we saw two men standing near the side of the road—I said to them it is very stormy—One of them said—yes, and I then asked how far is it to Wedgewood’s? and was answered—I was acquainted with John Wadleigh and think the voice was not his—This was between 7



and 8 o'clock—We had no difficulty or quarrel with any one on the road. We met but one sleigh before we reached Eastman's tavern (about 6 miles from Cove bridge) and none after that.

RICHARD SMITH—*Sworn.*

I was with Mr. Robinson as he mentions, and his account is correct except that it seemed to me that we met the two men the other side of the Cove Bridge, I did not know either of the men—I think we met a sleigh at the foot of the hill near Wedgewood's going toward the Bridge and about a quarter of a mile this side of the Bridge.

JOSEPH BROWN—*Sworn.*

I was travelling from Exeter to Kensington on the evening mentioned and saw two men standing by the road side near the Cove Bridge—Before I got up to them one of them said "drive on" and when I came up to them, the same voice said,—“take this man aboard, he is drunk and has been fighting with a sleigh”—I asked his name and the man said it is John Wadleigh. I knew where Wadleigh lived and then said “come John, get in, I am going by your house and will carry you home.”—He gave me no answer—I put my hand on his shoulder and again asked him to get in, he said nothing but I observed he breathed very hard—I then said to the other “He don't seem to care about getting in, and I'll go along if you will take care of him.”—He said he would and I drove on. This was about one third of a mile from Wadleigh's house—It was quite dark—stormy and slippery—we had no quarrel on the road—Philip Cheney was with me walking by the side of my sleigh.

RICHARD SMITH—*called again.*

I sat on the left side of the sleigh with Mr. Robinson.

JAMES ROBINSON—*called again.*

I observed no other person on the road and no other sleigh than the one I mentioned before—I did not notice whether there was more than one person in it—I did not know either the sleigh or horse.



JOSEPH BROWN--*called again*

*Questioned by Mr. Bartlett*—Had you come up to the two men when one of them asked you to drive on? No—we stopped when he said the man was drunk. It was I who first proposed to drive on without him—It was so dark that about two rods off we thought the two men were a double sleigh---It was slippery although a new snow had fallen on the ice---I was not driving very fast.

RICHARD SMITH---*called again.*

I think it was a little beyond the bridge that we met the two persons standing together, and that it was about a quarter of a mile this side of the bridge that we met the sleigh which was probably Mr. Brown's—I did not particularly observe any thing in the hands of either of the two men but think one of them held something—I heard no wrangling—I think we met them between 7 and 8 o'clock. We were travelling at the rate I should think of about 6 miles an hour.

JAMES ROBINSON.---*called again.*

I was on my return home from Newburyport—I did not observe the cross roads particularly—There were I think several roads that turned off this side of Eastman's tavern—one I believe about a mile beyond the place where we met Wadleigh—There were houses all along the road for some miles beyond the place—It was two days after Wadleigh's death before I heard of it.—I did not attend the examination of Blaisdell before the justice.

PHILIP CHENEY—*Sworn.*

I was with Joseph Brown on the evening of the 13th February—I was walking by the side of the sleigh—We met another sleigh but I cannot say exactly where, being a stranger in that quarter, but I think it was near the foot of the hill just out of Exeter towards Kensington—We did not meet or pass any other sleigh—We came up to two men who appeared to be standing in or near the road—when we were within one or two rods Brown said who is there—one of the persons asked us to take the other in our sleigh saying that the man was drunk and that his name



was John Wadleigh—Brown asked him to get in. I think this was about 30 rods beyond the bridge—we met no other person on the road that evening—I saw nothing in the hands of either of the persons.

JAMES ROBINSON—*called again.*

We did not meet any other sleigh near the place where we came up with the two men—we were coming from Newbury-Port—we passed some sleighs in the farthest part of Kensington but none between Eastman's tavern and the place where we met the prisoner—there are roads that turn off between that place and Eastman's and one perhaps a mile from that place—there are several cross roads in that quarter—this matter was not recalled to my memory till about two days after—I think it was not Wadleigh who spoke to us as I knew Wadleigh and should have known his voice.

DANIEL PERVERE---*Sworn.*

I was at Wadleigh's house on the night of his death—Wadleigh's boy came for me about 8 o'clock to go for the Doctor—I went to the house to see if it was necessary and found Wadleigh in bed—I spoke to him but he made no answer—I searched for wounds but could find none, he was so bloody, but soon found one on the temple—Wadleigh seemed insensible—Afterwards I went home and about 4 o'clock I heard that Wadleigh was dead.

DR. WILLIAM PERRY—*Sworn.*

I was called to see Wadleigh on the evening of the 18th of February. From the representation of the messenger, I supposed it to be a case of intoxication; as I had just recovered from a fever, and the night very stormy, I declined going. Being called again the next morning, I went over and found Wadleigh dead. His shirt and bedding were quite bloody. I observed a contusion on the left side of his forehead, but immediately perceived that this was not sufficient to have caused his death. On examining further, I found on the same side of the head another contusion, with fracture and depression of the bone. Blood was still running from the ear. I divided the scalp and found a collection of blood between it and the bone. The depressed piece of bone commenc-



ed under the temporal muscle between the hollow of the temple and the ear, extending upward and backward over the ear three inches, its breadth one inch. The upper end of the fractured piece was rectangular and its edges, as well as those of the scull from which it was broken, were straight and well defined. The scalp was cut at the upper end of the wound, and appeared to have been done by the end of the instrument used, and the edge of the bone from which the piece had been broken. This was the only injury done the skin.

*Question by Attorney General.*—What was the appearance of the wound on the forehead?

*Answer.*—It was a circular swelling larger than a dollar, with the cuticle raised in the centre.

*Q. by same.*—Could the larger wound have been produced by a fall?

*Answer.*—It could not.

*Q. by Mr. Bartlett.*—What is the particular appearance of a wound produced by a fall?

*Answer.*—The skin has often the appearance of being scratched.

*Q. by same.*—Have not wounds generally a more aggravated appearance after death, and do not contusions then grow darker?

*Answer.*—They have not, and I do not think they have relatively a darker appearance.

*Question by the Court.*—Would the appearance of a wound from a fall on the ice be more ragged and scratched than one from a blow from an axe or other instrument?

*Answer.*—It would frequently, but if the blow was fair on the ice I do not think it would.

*Question by Mr. Bartlett.*—Had the principal wound any appearance of one given by a sleigh shoe?

*Answer.*—It had not.

*Question by same.*—Was not the fracture about the width of a sleighshoe, or why could not a sleigh runner have produced such a wound?

*Answer.*—The wound was an inch wide. I could not place a sleigh shoe on a person's head so as to produce such a wound as that on Wadleigh.

*Question by Court.*—Would not a club or cane have



produced a wound of the shape you describe?

*Answer.*—I think neither of them would; a round instrument would probably have broken the bone in the centre and carried in the edge, or split off pieces, but not have cut out a piece like the one in question.

*Question by same.*—Did you examine the hat, so as to recollect its thickness, and discover any fracture?

*Answer.*—I did—it was a firm wool hat and was not injured. The wound on the side of the head could not have been produced with the hat on.

*Question by Court.*—Would not a blow on an empty and dried skull produce a square fracture?

*Answer.*—I think not.

*Question by Mr. Bartlett.*—Is not the part of the skull on which you describe the principal wound to have been, the thinnest?

*Answer.*—It is.

AUGUSTUS WADLEIGH (son of the deceased)—*sworn.*

(An axe being produced by Att'y General) I know this to have been my father's axe. I have not seen it since my father carried it away from the house the morning before his death—I have no doubt this is the same axe.

DAVID WEDGEWOOD—*sworn.*

I found this axe near the Cove Bridge a few days after Wadleigh's death—This is the same axe, I marked it at the time—I found it thrown over the fence by the road side; about 100 rods from my house and about 25 rods from the bridge—The spot where I found it was about 2 rods from a place in the road which was stained with blood, and this bloody spot was about six feet from the fence, about eight feet from the middle of the road and about four feet from the outside of the path. The place was as bloody as if a hog had been killed there—I saw no blood on the axe.

CHARLES PARKS—*sworn.*

(Attorney Gen. shows witness a rough axe handle) I found this axe handle about a week after Wadleigh's death, on the road side, close under the fence, about seven or



eight rods from the bloody place mentioned by Wedgwood. The snow round the spot was still very much stained with blood.

JOHN F. MOSES---*sworn.*

After prisoner was arrested he was brought to my house and I as one of the constables of Exeter took him into my custody. Prisoner at that time declared to me that after Wadleigh left Week's store he did not see him till he found him near Cove Bridge. I asked prisoner what he had done with the axe handle he took from Week's store, he said that he had no axe handle. Some days after that I told Blaisdell in prison that the axe handle was found, he made no reply. I then reminded him that he was not obliged to make confessions and cautioned him not to tell falsehoods—While at my house I asked prisoner where the axe was. He said he threw it over the fence—The axe was not at that time found.

NATH'L WEEKS—*called again.*

(Axe handle exhibited) I think this is the same handle that was taken by prisoner from my store.

ENOCH ROWE---*sworn.*

I conversed with Blaisdell on the evening of his arrest—I heard no one advise him to make confessions--He said he threw the axe over the fence because it was heavy and he could not well carry it and Wadleigh at the same time--He denied having had the axe handle--The distance from Wedgwood's house to the place where blood was found is about 100 rods and the distance from this place to the nearest house on the other side (Mr. Dow's farm house) is about half a mile.

JOSHUA PIKE--*sworn.*

In December 1821, I purchased some trees of Edward Blaisdell which he agreed to cut for me. In the course of the next January, he told me he was ready to go about it. I went to see him on the subject. Edward Blaisdell, John Wadleigh and prisoner were present, chopping wood. Wadleigh asked me what I would give him, to cut the trees. I made him an offer, and at last, agreed to give



him five Dollars for the job. Wadleigh then said to prisoner, 'will you help me?' prisoner declined, and Wadleigh then observed, that his brother would assist him, and accordingly he and his brother came next day to haul the trees.

*Cross examined.*

I heard no bargain between prisoner and deceased, in the matter and never heard prisoner say any thing afterwards on the subject.

*JUDE HALL--called again.*

In January last I heard the prisoner threaten Wadleigh. He was talking about cutting Pike's trees and said he would give Wadleigh a licking for taking away the job, after promising to go halves with him. Blaisdell appeared to be in a passion.

*DAVID WEDGEWOOD--called again.*

The morning of Wadleigh's death, as soon as I heard of it, I rode over to his house. There was a great collection of people there. Capt. Rowe asked me if I would go with others in pursuit of Blaisdell.—I consented, and went first to Blaisdell's house, which was about a mile off. His Grandmother told me he had gone out nearly an hour before.—We proceeded to search the barn and found a pair of mittens under some flax, which were carried to Wadleigh's house, and discovered to be the mittens that he had worn. We next searched prisoner's yard—we found his brother who told us that prisoner had borrowed a dollar of him, and said he was going over to Esq. Healey's.—We proceeded in that direction and soon found prisoner's track in the snow, which we followed about 32 hours, through woods and cross roads, in Kensington, South Hampton and Kingston, and after a pursuit of about 40 miles, we caught him about six miles from Exeter, in a remote place on the Beech road so called near Epping.—He submitted to us without resistance.—There were perhaps, a dozen people who went on the first search, to Blaisdell's house and this was about nine o'clock in the morning.—Many people were collected



about Wadleigh's house.—The rumour of his sudden death, spread very soon and wide.—It was David Kelly who found the mittens.—(mittens produced) These are the same.—

DAVID KELLY—*sworn.*

I found these mittens in Blaisdell's barn(during our search) on the scaffold under some bundles of flax.—I carried them to Mrs. Wadleigh, who said they were her husband's.

*Cross examined by Mr. Bartlett.*—I went to the barn in a sleigh with Mr. Wedgewood, to search for Blaisdell. The hay was pitched over by some others of the party,—I was the first who got up where the flax was.

MRS. WADLEIGH—*called again.*

I know these mittens to have been my husband's. He wore them away the morning before his death.—I observed he had no mittens on when he was brought home, and I asked Jude Hall, where he thought they could be. Jude made no answer but shook his head.

The Attorney General here asked the Court if there was any objection to the admission of evidence as to the character of the deceased, no objection was made.

ENOCH ROWE—*called again.*

I was intimate with Wadleigh. He worked several years for me. He was rather remarkable for a mild temper and peaceable deportment.

*Cross examined.*—I have heard that deceased was occasionally intemperate but was always good-natured when in that state—deceased married my sister.—He was a stout and strong man.

JOSHUA PIKE—*called again.*

I knew deceased—worked with him a good deal—his temper was pleasant and peaceable—I never saw him drunk.

JOSIAH ROWE—*Sworn.*

I always knew Wadleigh—He was thought a good-tempered and very peaceable man—I never knew him to be very intemperate.



JUDE HALL---called again.

(*Questioned by Court.*) I saw no bottle near the defendant that night, nor did I see any rum or mittens in his house at that time---Mrs. W. asked me where I thought her husband's mittens could be---I did not see that either W. or Blaisdell had mittens on in the road. After I heard that a broken bottle was found in W.'s pocket I perceived a strong smell of rum about his clothes which I thought at first came from his breath---His sur-tout and coat were wet in one side.

Mrs. WADLEIGH---called again.

I found the pieces of a broken bottle in my husband's pocket---His coat was very wet and had a strong smell of rum about it.

On the part of the prisoner, the following witnesses only were called, and with a view to disprove the existence of any enmity between him and the deceased.

MARY POOR---Sworn.

I remember that some time about the latter part of January last, about a fortnight before Wadleigh's death, he was at my house with the prisoner and Mr. Rowe---prisoner and deceased appeared perfectly friendly and social---They went away I think in the same sleigh.

ABRAHAM ROWE---Sworn.

I remember being at Mrs. Poor's at the time she mentions, with prisoner and deceased. They appeared then on perfectly friendly terms---we were there about an hour.

*The Defence was opened by Mr. Smith of Counsel for the Prisoner.*

May it please your Honours and Gentlemen of the Jury,

You are now called upon, gentlemen, to sit in judgment upon the life of a fellow being, and that fellow being your fellow citizen; and you carry, I doubt not, into that place, *where not one of you sits but by consent of the prisoner at the bar*, the hearts of men. As men, you feel that you are not expected to sit there with averted looks or with cold feelings, but that you are bound to



open your hearts to those just and humane principles of evidence, which have been established for the guidance and restraint of finite limited beings, when called to judge in cases of blood.

It is fortunate for that unhappy man, that instead of a rushing to judgment, time has been allowed for that torrent of excited passion and prejudice (before which the strongest and purest innocence could not have stood a moment) to *subside*, so that he can now see, in those sacred seats, that, upon which alone, the eye of the accused can ever rest without fear, an impartial jury of his country. And it is fortunate for yourselves that you live in a community which has inherited too much of law, of education and of religion from their ancestors to permit any thirsting for the blood of any man, who is standing for life or death before a judicial tribunal of his country. Neither the honorable prosecutor, who displays a humanity and tenderness which reflect honor upon the moral and benevolent people whom he here represents, nor these ministers of justice, whose glorious and solemn privilege it is that into their hands is committed the defence of the fortunes and the lives of their fellow citizens, nor that audience, which is looking down upon the accused with charitable eyes, ask or even expect from you any other verdict than such an one as you can justify, not only to your consciences and country now in this day of excitement, but to your God hereafter.

If there is any one among you, gentlemen, who could wish or even dare to convict on doubtful evidence, let him remove from that sanctuary of justice, for he would commit a wilful and deliberate homicide with the sword of justice and in a temple of justice. And if there is any man in that place who did not join, when he entered upon this trial, in the humane wish which the country sent to that man on the day of his arraignment—"May God send you a good deliverance," in the name of that God I *challenge* him : and if there is any man in that place, who does not believe with his whole heart in that great maxim of the law (which has saved more innocent blood than all the eloquence of counsel) that all the doubts of the jury are to weigh as so many proofs in favour of



the prisoner, in the name of that prisoner by, whose ignorant consent it is that he sits as one of his judges, I *challenge* him.

You are well aware, gentlemen, that the right of civil society to take away, for any offence, the life of one of its members, has been doubted by many wise and good men! And however well persuaded you may be, that the power is given to you by the law of the land and by the law of God, sure I am that no man could sit in judgment in a case of blood without nerves of iron, if he did not feel every moment that it was not only his right, but that it was his duty to acquit where he could doubt. You can well imagine, without any description of mine, how strong and how lasting must be the agony of that man, who under the influence of detestation of the crime of murder, should stifle those doubts which were strong enough to bear up life and should unite in the conviction of a man who may stand innocent in the presence of that God who was called down to sit in judgment along with him. In the moment of cool reflection, those doubts would pursue him like so many avengers of blood—He would see the children of the condemned coming forward into life and looking upon that bar as the grave of their innocent parent—He would see his judgment recorded upon the long and bloody scroll of doubtful convictions, and he would hear eloquent and successful appeals to the mercy and justice of juries drawn from his rash and presumptuous injustice.

It is of the utmost consequence to the prisoner at the bar, that you should reflect often upon that awful difference between the consequences of a judgment in a case of blood and a mere verdict in a civil action, which demands from you the most anxious deliberation and the utmost solemnity of feeling—You may pronounce verdicts in civil actions tomorrow, which will be talked about for a day perhaps, and will then be forgotten. But the judgment which you will this day render will live as long as the wife, the children, the friends and the country of that man live. Against the errors which you may commit tomorrow, the wisdom of the government has provided ample and effectual remedies, but from the errors



which you may commit to day, he can only appeal to God—You may pronounce an unjust verdict tomorrow which shall blast the fortunes of a whole house, but you cannot then reach life, and there is such a redeeming spirit in suffering justice, that the sufferers may survive all the consequences of your judgment. But the prisoner at the bar, could not outlive your injustice of to day, for it would send him from hence to a dungeon ; and from the dungeon to the scaffold.

Feeling, as I do, that the life of that man depends entirely upon the manner in which you shall perform your duty, I cannot but remember, that there have been times when darkness has rested even upon the jury room, and when there has been no *light* upon that altar of justice : I cannot but remember, that there have been jury-men who have let their own passions and prejudices outrun the evidence, and who have built supposition upon supposition, and supported conjecture by conjecture, not to acquit, but to convict ; and I cannot but remember, that there have been jurymen, not in this court, thank God, (and I would I could add not in this land) who have yielded up their own conscientious and deliberate opinions in favour of an acquittal (in the maintenance of which they should have died in the jury room) to the persuasions and threats of a majority of their brethren ; and who, to purchase a speedy release from a temporary imprisonment, have united in a judgment which has subjected a fellow citizen to the loathsomeness of imprisonment for life. But when you shall retire, the heart of the accused will go with you in confidence, and not in fear, for there is something to support and sustain him beside the consciousness of innocence. He remembers that not one of the many men who have stood, where he now stands, upon trial for their lives, was ever condemned. He can look without fear upon that sword of justice unstained by a single drop of blood, upon that jury room where no verdict of guilty in a capital case was ever found, and upon that bench from which the sentence of death was never pronounced.

Having heard the evidence with a most patient and unprejudiced attention, you are now to determine whether



a homicide was committed by the prisoner at the bar, and if so whether the offence is murder or manslaughter—As to the first point no positive evidence has been laid before you on the part of the State, and the charge rests entirely upon circumstantial testimony—It will be shewn by the learned counsel for the prisoner who will comment on the evidence that all the circumstances from which the government would have you draw an inference of guilt strong enough to fasten a conviction upon, are reconcileable with the most perfect innocence; as to the second point, I would only call your attention to the *facts* of want of motive, friendship between the prisoner and the deceased and the *conduct* of the former, which have been proved by the witnesses on the part of the State, and which have a most powerful bearing on the question whether the death proceeded from a wilful and determined intent to kill on the part of the prisoner, or from a blow given under the influence of ungovernable passion, in a sudden quarrel. Wicked and corrupt as mankind are, a wilful and deliberate murder on a slight provocation is almost unexampled, children have embrued their hands in the blood of their parents to obtain possession of their property, an adulteress under the influence of foul and unnatural lusts has poisoned a husband to enjoy her paramour, and rivals to make way for their ambition have assassinated—But they murdered not for murder's sake. In all these cases there were guilty but great objects to be gained which restrained the conscience with a strong and bloody hand, and which kept the passions in a fiery and ungovernable state. But what motive could that most miserable of men have had to commit a wilful murder? By the death of his friend he could not expect to add anything to his wealth or facilitate the gratification of any lust or passion. When you shall search in vain for any proof, or even suggestion of a motive or inducement, you will then have a right to presume *against* a murderous intent; and when you reflect upon the warm and strong friendship which existed (for we have *proved it*) between the prisoner and the deceased, you will have a right to presume that it is more probable that the homicide was the effect of sudden heat, than of that deliberate malice essential to the crime of



murder. The more of friendship and less of inducement which you shall find, the stronger will be your inference against the presumption of murder : for want of motive and proof of friendship are natural proofs, strong enough in the absence of all positive evidence, to weigh down a thousand conjectures of malice. Before you can pronounce the prisoner at the bar guilty of murder, you must believe him to be a monster who could murder on a very slight or on no provocation, and you must believe him to be a fool who would murder when he must have been sure of detection. You must believe that when he had *struck down the man whom he intended to kill, he relented, and that with those very hands which were sprinkled with the blood which he designed to shed, he carried him to a place where life might* (as he must then have supposed) *have been saved and where he himself would be sure to be recognized*—How can you reconcile the presumption of a murderous intent with the fact that at a time and place so favourable the prisoner at the bar *did not kill*. You have nothing but presumptive evidence from which to infer an intent to kill, but you have the clearest testimony, from four of the witnesses for the State, of an intent to *save life*. You cannot believe that the prisoner intended to kill the man whom, when in his power, he did not kill. You cannot believe that he was so cruel at one moment as to design to murder, and so merciful at the next as to wish to save. You will be told that he relented. But the man who could murder without any motive or on a provocation too slight to push the most hardened offender on to the perpetration of the very smallest offence, would not relent at the first sight of death—The blood which has been kept boiling for a month by the passion of revenge is not, and could not be cooled in a moment. But the manslayer, whom the tempest of passion in which he strikes has swept by, relents, and oftentimes saves. I would rest without fear the life of that man upon your answer to this solemn question, did he act as much like a man who had designed to murder, as like a man who had rashly slain a man whom he had not intended to kill?

You will hear eloquence from the counsel for the prisoner, who has twice plead successfully in defence of life,



and you will hear great eloquence and ingenuity from the learned gentleman who represents the State—As far as the evidence goes you will walk without fear—Beyond that you will not be led by any eloquence through doubt and darkness on to a judgment of death.

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*The Defence was continued by*

ICHABOD BARTLETT of counsel for the prisoner—

*May it please your honours—Gentlemen of the Jury.*

The attention with which you have listened to the testimony, and arguments of the counsel with whom I am associated, has rendered but little duty necessary for me to discharge. Even that little, were my own impressions to govern me, I am conscious might safely be left unattempted. But, Gentlemen, I am reminded that the charge you have to pass upon is one touching human life—I cannot forget that a death has happened under circumstances which have fixed suspicion upon the prisoner at the bar. That this has happened too in a land where the offence of murder is so uncommon and excites such horror, that he may not be beyond the reach of danger upon whom even suspicion rests—The solemn forms of this enquiry, and the more solemn feelings, which cannot but affect all concerned in the investigation, constantly exhibit to my view the demand Government now make, that the unfortunate young man for whom I appear should be hastened to an untimely and ignominious death. While the prisoner, declares his innocence, he clings to you for life. His anxious relatives and friends with entreaties and with tears supplicate your protection—Under such circumstances, however unnecessary may seem any effort of mine in his behalf—they are not to be neglected—counsel are not to rely upon their own convictions or belief of innocence—they are not to consult their own wishes or convenience—Nor will the jury grudge the time we may claim for him, who is now in your hands, and who lives or dies as you shall this day pronounce. From the anxiety which oppresses me in the humble duty I have to perform, I learn something of the awful responsibility of your situation;—deliberating to take, or not the life of a fellow being; that life which is the immedi-



ate gift of Jehovah——Many have reasoned and with much force, that such a power has never been delegated by heaven to man—and that in the exercise of it we do assume “to be as gods.” But the organization of our government has so ordained, and in the course of events, this most solemn decision rests on you—and I would suggest no considerations, which should deter you from a faithful discharge of that duty—I come not to ask protection for crime—I come not to ask you to clear the guilty—I ask only your cautious examination of the facts, circumstances and principles connected with this enquiry.

In the most trifling questions of property you have witnessed with what anxiety the parties listen to every breath, as you pronounce your verdict—You will then require no apology for the feeling—the interest—which the prisoner may exhibit, while his all of this world—perhaps his condition through eternity is this moment at stake——Before men like you in a christian community he has nothing to fear from *wicked prejudices*—But who has observed the human mind and has not been convinced with what scrupulous attention its operations should be examined?

How imperceptibly are we influenced by suggestions which we believe we have discarded? How often are we affected by ideas and associations, unaware of their existence, and even governed by impressions at the consciousness of which we should shudder with horror?

It is from the operation of the very principle of virtue that much caution is required—such is the abhorrence of crime in every virtuous mind, there is danger of attaching all the aversions connected with it to the person of the *accused*. Whenever the report of a crime like that charged in this indictment is abroad in the land, and when public clamour has connected it with the name of any individual—it is too often, imagination supplies the want of proof—credulity assents—reason is silenced, the heart becomes callous, and the accused is thought of only in connection with the halter and the gallows. Rumour with her hundred tongues repeats the tragic tale at every cottage—at every corner—and every repetition adds new horrors.

Under such circumstances—Angels could hardly be



expected to come uninfluenced to the investigation. The very proces of law, tho' innocently, may contribute to the delusion. The accused is arraigned before a magistrate—And however slight may be the pretence, publick opinion demands his commitment for trial—An indictment is almost a matter of course, when only one side is heard—Then with all the opprobrium of publick opinion against him—with all the epithets of crime which the forms of law can heap upon him—He is six months in chains, while all who delight in the marvellous are imagining or making evidences of guilt against him and no voice is heard in his favour—When publick opinion is thus made to demand the sacrifice—The intended victim is stationed in yonder place of infamy, where no man tho' spotless as a saint in heaven, can ever be looked upon, but with some feelings of abhorrence necessarily connected with that situation—But we have a tribunal who are required to dismiss every thought unfavourable to the accused—and to judge him only by the proofs exhibited in court—that tribunal you are—and for that uprightness and impartiality in the discharge of its duties, which the law requires, reason urges and religion demands, we need not the bond of plighted faith before heaven in the solemn oath upon which you have supplicated favour or dared the displeasure of Almighty God—And under such responsibility we mistake much if we suppose the prisoner at the bar as the most interested in the result of this trial. He may be convicted and he may be executed, and yet would I much prefer his situation, to that of a Juror who should suffer a verdict against him upon insufficient testimony.

Upon a charge of this character the prisoner is not to be convicted because it is possible that he may have committed the offence—No! nor even if it may have been probable. Whatever suspicions or conjectures may be indulged in other places and on other occasions—here every step you move toward a conviction, you must *feel* the ground you stand upon. If you for a moment suffer yourselves to ride upon the wings of imagination—if for a moment you wander in the wide field of conjecture, you may require a sacrifice of the prisoner's life—



but it will deserve any appellation rather than a *conviction* or *sentence* of the law.

And while you suffer yourselves to hearken to the evidence and that only—in proportion as the charge is of an aggravated and heinous character, so will be the certainty of proof which you will require to convict.—When a much more bloody penal code existed, than is now tolerated in civilized society, even then it was declared from high authority, that it was better an hundred guilty should escape than one innocent person suffer. The object of punishment is not vengeance. The penalties of the law are inflicted not to retrieve the injury, which has been sustained: but as a terror—a restraint upon others. Punishment has this effect only when it is inflicted upon clear and undoubted evidence of guilt. In any other case, when the excitement of the moment shall have passed, him whom you execute upon equivocal proof will be looked upon not as a convict, but as a martyr.

While our statute book is filled with provisions upon almost every question of property, you may perhaps have felt surprize to find there no definition of the crime of murder—yet when you consider the thousand circumstances which may detract from or aggravate the character of guilt, connected with any particular transaction, you will undoubtedly deem it wise in the Legislature to have left to the common law—or in other words, gentlemen, to have left to *you* to determine the character of an offence from its own circumstances—I say to *you*—for you are judges as well of the law as the fact. You will undoubtedly consider yourselves most safe in adopting what is termed the common law, so far as in criminal cases it may have been adopted in this country, as your guide—but you ought not to forget, that the rules of the common law as they may be read to you from the books, have reference to the common law of that country where a much more sanguinary system of jurisprudence prevails than in our government—the common law of that country where stealing twelve pence is punished with death—where two hundred and forty victims have been led to the scaffold in the train of their courts, at a single circuit through the counties—I say it fearless of contradiction—and it is with



pride I say it—to the extent of its principles, *that* common law has never in practice been adopted in this State, and I pray heaven the time may never come when our altars of justice shall thus be deluged in blood.—

When capital punishment shall become frequent—its pangs and its ignominy will have no terrors. But I need not, I cannot fear the result of your investigation in the present case, even upon the most rigid principles. And in pursuing that enquiry, the prisoner would most readily have admitted many facts which the government have been at the trouble to prove—In truth every fact which is proved—but, gentlemen, by no means the prosecutor's inferences from those facts.

We admit that Wadleigh is dead—we admit that he died of the wounds upon his head—we admit that the prisoner left the village at this place, and walked with Wadleigh on the road home—We admit that after Wadleigh was wounded the prisoner helped to conduct him to his house.—But we deny

I. That the prisoner killed Wadleigh.—

The government ask you to come to the conclusion, that the prisoner killed Wadleigh from the circumstances which have been disclosed in the testimony.—But gentlemen in considering those circumstances, I beseech you not to set down *any* as evidence of guilt which are perfectly consistent with innocence—for instance take the fact that Blaisdell and Wadleigh were together on the road home that evening—Is that fact of itself any evidence of guilt? or if one of you gentlemen should leave this place on your way home with your neighbour—would you consent it should be set down as a proof of your design to murder him?—Go farther and suppose another neighbor should find you upon the way supporting him wounded and disabled, and requesting assistance for him—and you should then inform by what misfortune the accident of the wound happened.—Even more—you actually convey him to his family—and would you believe yourself convicted of murder?—For this part of the case then it is proved the prisoner in a dark and stormy night, when the roads were slippery left this village in company with Wadleigh—was seen upon the road



—was passed by Brown, who was requested by the prisoner to take Wadleigh into his sleigh, stating that he was hurt.—Gentlemen—to entertain for a moment a thought, that the prisoner could that night have killed Wadleigh, you must find some sufficient *motive*—some strong and irresistible inducement.—The most hardened villain commits not murder in sport—Though he were trained to assassination, he would not without fee and unprovoked steep his hands in blood—Some great hope of gain—or some fell spirit of revenge must have rankled in his bosom, to have nerved his arm to such a deed—And the government attempt to give you a *motive* of the latter description. They do not pretend, that it was for his purse or his property of any description that the prisoner should have taken the life of Wadleigh, but from personal enmity and malice.—For the proof of this, you will be directed to the testimony of Jude Hall, the black, whose manner upon the stand you have just witnessed—The desire with which he appears to be affected to give the colour of murder to the most indifferent circumstances, is apparent in his every word and gesture—Even the breathing of the dying man he has attempted to represent to you—the exclamations of the senseless and insane, his own imagination had brought him to the point of testifying to you, as the dying declarations of the deceased in relation to the prisoner.—His acuteness of smell was such, he could swear to the fact that Wadleigh had drank no rum—while at the same moment he admits his clothes to have been drenched with the remnant from the broken bottle in his pocket.—Such a witness I say must be resorted to for proof of Blaisdell's design to murder the deceased—And what is this mighty proof, which is to satisfy you of that malignity of heart, which had selected this man, and this time and place to consummate its diabolical purpose?—It is this—that Hall some months before says he heard Blaisdell say, “he would flog Wadleigh for not letting him join him in hauling some wood.”

Pike was called probably to lay a foundation upon which Hall could rest for some support. But so far from proving any dispute between Wadleigh and Blais-



dell, he proves directly the reverse, and that this five dollar contract, was declined by Blaisdell himself. Now if Blaisdell had been entitled to one half the profits, at most it could have been but a few shillings. It would not have been sufficient even for the idle threat to which Hall testifies. But who believes in such depravity of human nature as to endure for a moment the thought, that it could be a motive for the crime of murder. Take the threat to the full extent of Hall's testimony, and if that prove a design to murder, may Heaven protect us in our need; for in the cause of justice we all are guilty. I feel no surprise that such evidence has been found; but I must confess my astonishment, that while all such men as Hall and Wedgewood had determined to fix the crime of murder upon Blaisdell; while they had settled the fact that he was guilty, and all times and memory was searched to find some pretence to make the murder plausible,—It is matter of astonishment, that as the parties were neighbors and their interest and feelings must have sometimes been in collision, that no more serious difficulties are proved to have existed.—I fear few persons of their condition of life thus situated will be found to have lived so amicably together—Even that single instance of sham pretence of anger is most distinctly disproved by the testimony of all the witnesses, as well those called by the prisoner to shew their intimacy, as by those who testify to their manner and appearance on the very evening of the death.

There is then no *motive* for the crime proved, still you are to be pressed to believe the prisoner committed it, from the circumstance of the *place where* it is said to have been done—and the witnesses were enquired as to woods by the way—the distance of houses &c.—Do not however forget, that this is testified to have been on the most public road in all this section of the country—one, where it could hardly be hoped or expected that five minutes should elapse but some traveller would pass—Now suppose for a moment the prisoner designed to murder Wadleigh—It is proved they lived near each other—would he omit the thousand better opportunities such a situation would afford him—and select this most publick and ex-



posed situation, where detection would be almost certain? To believe it you must find him to have been as crazy as he is alleged to have been wicked.

Again gentlemen the *wound*, and its appearance is supposed to have furnished some evidence against the prisoner, from the enquiries put to the witness you will be required to believe it was just such a wound as Blaisdell would inflict and not such an one as any other person would inflict; for unless it comes to this, it comes to nothing.

Dr. Perry has described to you a wound upon the forehead, and upon the side of the head and his *opinion* as to the instrument and manner of their being given. Now so far as Dr. Perry testifies to facts, there is no man entitled to more credit. But gentlemen, however skillful he may be in his profession, he is just as unsafe to be trusted in *conjectures*, as any other person. The reason he assigns why the wound upon the forehead must have been made by a blow and not a fall, may perhaps satisfy him, but I think will come far short of satisfying any one else; and from the appearance of the wound here described, to attempt to tell the particular form and shape of the stick with which it was inflicted, partakes a little too much of necromancy to suffer such skill to be engrossed entirely, even by the medical faculty. No, gentlemen; when the appearance is described to us, we can guess what did it, just as well as the most learned doctor; for he can do no more. There is nothing that renders it any more probable that the wound was inflicted with the axe than by a sleigh. If you must conjecture one of two things, either that Blaisdell split Wadleigh's head with the axe, or that he fell upon the ice, and was struck by a sleigh, which is the most natural and fair conclusion? Is it more probable that a man should be guilty of such a crime, than that such an accident should happen. But if it be proved to have been done with an axe, or some such weapon, why shall Blaisdell more than any other man be presumed to have done it? His statement that it was done in a quarrel with a sleigh, may be understood either with the sleigh or persons riding in it. The nature of the weather, the storm, ice and darkness, with the public travel, render such an account by no means improbable—Nor does any improb-



ability result from the circumstance, that he does not now produce the person who did it. His account has been consistent, and the same from the first moment of the transaction. In the darkness of the night he could not know the person—had he been abroad he might have met him and not recognized him—but he has had no means of discovering even by accident, the author of the mischief. In the cells of yonder prison he could insist on his innocence—he could do no more than trust to Heaven for proof of it.

If the Doctor must at all events be correct that this wound was made by the axe—there is great difficulty then of fixing the offence upon the prisoner—all the witnesses state that Wadleigh himself had the axe—they state too that he was much the stronger man of the two. Believe then who can, that in a struggle of life or death Blaisdell could take from his stronger antagonist the axe and inflict such wounds and himself receive not the slightest injury.

Another circumstance relied upon by the government, is the finding the axe in the field near where the misfortune is supposed to have happened. But how does this corroborate the pretence that government set up, any more than it does the account of the prisoner? Had the blow been inflicted by him with the axe—it is more probable it would not have been found near to the scene of blood—nor would it ever have been found by information from the prisoner. In this case the prisoner did state before it was found, where the axe was, and the reason of his placing it there—that after Wadleigh was hurt, he required his assistance—that he could not support him and carry the axe at the same time—and that he threw it over the fence that it might not be carried off. Would he have attempted to hide it, and have done it so ineffectually? Having attempted it, would he himself have first disclosed the fact? Does not his conduct in relation to this circumstance confirm his own declarations and most conclusively rebut any presumption of guilt!

There is also testimony to you concerning the mittens. And I call your attention to it, gentlemen, not because any thing might result from it unfavorable to my client,



but because it does disclose something of the feeling and disposition of the witnesses to create evidence, which may be thought to bear against the prisoner. It furnishes an additional reason for caution how you give too much weight to the testimony of such witnesses. Suppose then that those mittens were left there and by Blaisdell, what results from it? Does it add any proof to a single fact that we deny?

It shews no more than this, that Blaisdell must have been with Wadleigh and in a situation in which he could have taken the mittens—we do so agree, and it is perfectly consistent with the account we ourselves give. He was with Wadleigh, he helped him home, and he might have taken or left the mittens, it is immaterial. But gentlemen, if any thing at all rested upon that circumstance, I think you will support me in the opinion when I say, I do not believe one word of Blaisdell's having put them there. Had he supposed those mittens were any evidence against him, would he have carried them home to deposit them in his own building, to be hunted up for the purpose of fixing suspicion upon himself? In that stormy night, and in all that distance could he find no other place to rid himself of them? But mark the manner of this testimony—Mrs. Wadleigh recollects with perfect *certainty* that her husband wore those mittens from home that day—and more strange, if you believe her statement, while her husband lay bleeding before her—while in the agonies of death, this, his *affectionate*, his *afflicted* wife was enquiring of Jude Hall for these old mittens, not worth a groat. Hall as if with a *second sight*, that they were connected with some wonderful secret, she says, made no reply, but most significantly “shook his head.” All this may have happened, but wonders seem to cluster, when the next morning, we find that distinguished *friend of justice*, that *unsuspected*, *immaculate* David Wedgewood fixing upon the prisoner as the murderer, going directly to his barn to search for proofs, directing a particular pile of flax to be examined—and that these mittens should there *instantly* be found by an *apprentice* of this same hopeful *rogue-hunting* master. Strange as may seem the fact—and disgraceful as it is to human nature, there



are persons desirous even to *figure* as witnesses in a capital trial—and for that purpose pretend to knowledge, or give importance to trifling circumstances to gratify such unhallowed ambition. Whether any of the witnesses in this case would go so far as to *hide* that they might *find*, it is not necessary to determine. But that Wedgewood did feel new importance and exhibit airs of consequence in the character of witness, was perfectly apparent. It might however all have resulted from a feeling of triumph at the reversed course of justice, by which Blaisdell was placed in the criminals bar, and he permitted *out side of it*, to testify upon the stand.

From the particular enquiries relative to the prisoner's flight the morning after Wadleigh's decease, it may readily be anticipated with what eloquence that circumstance will be urged upon you by the states counsel as *evidence* of his guilt. We deny not the fact, that he fled—we deny not that such a fact may sometimes justify such an inference. But we do beseech you, before you come to such a conclusion in this case, to consider well the situation of the accused at that time.

Put it to your own consciences, ask yourselves if the *innocent never fear*. It is proved to you that on the morning before Blaisdell left his home, the cry of murder was abroad in all the land—not the general cry of murder merely—but that “Blaisdell was the murderer”—every voice was exclaiming, execute him, execute him—every hand was eager to be the first to drag him to the gallows. He knew his protestation of his innocence could avail nothing against such clamour—he knew upon that alone he must rely, and should his innocence eventually be established, he surely, while such excitement lasted, could look for nothing less than a half year's confinement in the loathsome dungeons of our county jail. Would it not have required a man of nerves sufficient, deliberately to commit the crime of murder to brave such a scene. Would not a man of more firmness than Blaisdell have deemed it prudent to retire and let the angry billows spend their force, before he would breast him to the shock.

The state of public feeling is readily understood from the account of the witnesses—already had imagination



clothed this inoffensive young man with such terrors, that he was deemed to be at war with all mankind—and none were to approach him, but such as dared death in any form. Even the gallant Wedgewood makes a merit of having volunteered to attempt his arrest—and exposed his *valuable* life rather than a *culprit* should escape from justice—and from a most formidable band, headed by such a leader, the prisoner did retreat—and this same captain spurred by his zeal to prevent crime from going unpunished, has told you with what perseverance and toil he pursued him forty miles, but found him only six from home. It may be said that “the guilty flee when no man pursueth”—and may it not also be said, that “the *innocent* too when thus hunted, would fly?” Shew me the man, who can coolly take his chance of being executed, amid such popular excitement—who can unconcernedly suffer himself fettered and chained to be dragged to prison—and I will shew you a man, fit for murder. The very course and manner of the prisoner’s leaving home, shew that he had no fixed purpose of flight—it was the result of that sudden agitation and alarm, which would more effectually unman the really innocent when accused, than the most hardened culprit. That the innocent may fear, and may be in danger too has more than once been exhibited—and was most impressively so in the case as stated in the appendix to Phillips’ treatise upon evidence, (case VI. page 86) which was this—

Two men were seen fighting together in a field. One of them was found, soon after, lying dead in that field. Near him lay a pitchfork which had apparently been the instrument of his death. This pitchfork was known to have belonged to the person who had been seen fighting with the deceased and he was known to have taken it out with him that morning. Being apprehended and brought to trial, and these circumstances appearing in evidence, and also that there had been, for some time, an enmity between the parties, there was little doubt of the prisoner’s being convicted, although he strongly persisted in his innocence; but, to the great surprize of the court, the jury, instead of bringing in an immediate verdict of guilty, withdrew; and, after staying out a considerable time, returned and informed the court, that eleven, out of the twelve, had been, from the first, for finding the prisoner guilty; but that one man would not concur in the verdict. Upon this, the judge observed to the dissentient person, the great strength of the circumstances, and asked him, “how it was possible *all circumstances considered*, for him to have any doubts of the guilt of the accused?” But no arguments that could be urged, either by the



court or the rest of the jury, could persuade him to find the prisoner guilty; so that the rest of the jury were at last obliged to agree to the verdict of acquittal.

This affair remained, for some time, mysterious; but it at length came out, either by the private acknowledgment of the obstinate jurymen to the judge who tried the cause, (who is said to have had the curiosity to inquire into the motives of his extraordinary pertinacity,) or by his confession at the point of death, for the case is related both ways,) that he himself had been the murderer! The accused had, indeed, had a scuffle with the deceased, as sworn on the trial, in which he had dropped his pitchfork, which had been, soon after, found by the jurymen, between whom and the deceased an accidental quarrel had arisen in the same field; the deceased having continued there at work after the departure of the person with whom he had been seen to have the affray; in the heat of which quarrel, the jurymen had unfortunately stabbed him with that very pitchfork, and had then got away totally unsuspected: but finding, soon after, that the other person had been apprehended, on suspicion of being the murderer, and fearing, as the circumstances appeared so strong against him, that he should be convicted, although not guilty, he had contrived to get upon the jury, as the only way of saving the innocent, without endangering himself.

A voice from the world of spirits could hardly give you a more solemn warning to beware how you give heed to circumstantial proof. Something is attempted to be added to the story of the flight from the declarations of Blaisdell on his return. It is said he then denied that he went home with Wadleigh. Imagine to yourselves for a moment the situation of this unfortunate and at that time *friendless* young man—for if he had friends, to dare be known as such would have then jeopardized their liberty. The indefatigable Wedgewood and his troop in triumph, had just escorted him pinioned through the town—he was then in the custody of the officers—the house was surrounded—the enraged relatives of the deceased were threatening him on the one hand—such witnesses for government as Hall and Wedgewood were volunteering their testimony, while the officious advisers, always present on such occasions, were lamenting his most deplorable fate. If to their accusations he was silent, it was set down as an admission—if he agreed to any fact, it was a confession of their inference also—and in this dilemma, a witness is found who heard him say, he was not with Wadleigh that night. Now while the whole tenor of the testimony is, that he made no such pretence at any other time—and while this statement is entirely inconsistent with his uni-



form account of the transaction, you may believe that the witness misunderstood—or you may believe the prisoner made the answer to avoid importunities—but sure I am you will not believe it any ground to presume him guilty of this charge.

But, gentlemen, should the testimony bring you to a conclusion, so different from my anticipations, that you should be satisfied that Blaisdell killed the deceased—and that you are justified in saying it is proved to you—still we shall contend

II.—That the killing was not attended with such circumstances as to constitute the crime of murder.

That which distinguishes *murder* from other homicides, is the purpose of heart—the intent or what the law technically and emphatically terms MALICE AFORETHOUGHT. “It is,” said an eloquent advocate, “the purpose of heart which creates all the various degrees of homicide from that, which is excusable to the *malignant* guilt of murder. The fact is the same in all—the death is the imputed crime, but the INTENTION makes all the difference, and he who killed is pronounced a *murderer*, a simple *felon*, or only an unfortunate man as the circumstances by which his mind is decyphered to the jury, shew it to have been cankered by deliberate wickedness or stirred up by sudden passions.” A man may by accident be innocently the cause of another’s death—he may in self defence be justified in taking life, or he may unlawfully kill, and yet without that malice which distinguishes murder—and such killing the law terms *Manslaughter*. Manslaughter is defined to be “the unlawful killing of another without malice either express or implied, which may be either voluntary upon a sudden heat, or involuntary, but in the commission of some unlawful act.”

It is in compassion to the frailties of human nature that the law visits not its severest penalties upon those acts which are done in the heat of passion, upon sudden quarrel. It is that *furor brevis*, that temporary insanity, in which he is deprived of reason and the presumption of premeditated malice, does not attach to his acts in that state of mind. To show that this death, if it was occasioned at all by Blaisdell, must have happened on some



sudden affray, I need not again advert to the testimony which rebuts all pretence of ancient grudge or premeditated malice even to the very hour of the accident—but is disproved too by the kindness and attentions of Blaisdell in conducting him home. If in his heart he harboured, that night, the intent to murder, why did he not finish his purpose? Or why did he not leave to the storm and that inclement night to have finished what his hand had failed to accomplish? Is that the employment of the malignant murderer to restore his intended victim to life to visit his wicked purpose upon his own head? No never.

It is stated by Hall that Blaisdell had conducted Wadleigh by his own house—and observed he would not have gone home with him for ten dollars—and the government may attempt to assign as a reason—because he had been trying to murder him—But I think you will find another cause quite as satisfactory—Wadleigh was in habits of intoxication—He and Blaisdell had been drinking at the shops together—It is evident Blaisdell thought Wadleigh's difficulty resulted much more from liquor than from his wound—from the anxiety expressed by Mrs. Wadleigh about the old mittens while the neighbours were closing her husband's eyes—you will not believe she is a person who would have given them in that situation a very cordial welcome—especially as the broken bottle deprived them even of that quietus of discontent.

It may perhaps be contended that the malice necessary to constitute murder may be implied from the nature of the weapon with which a wound is inflicted—and there are some *dicta* in the books, that a *deadly* weapon implies malice—But you will examine well this doctrine of malice by implication before you assent to it. The ground upon which a death occasioned in a sudden quarrel is not considered murder is—that the passion has deprived him temporarily of the power of reason and deliberation—and yet this doctrine of malice by implication from the nature of the weapon supposes the person to reason as to the consequences and to be guilty because he did deliberate—Such is the paradox to be encountered in listening to such a doctrine.

Gentlemen, in the remarks submitted to you I have endeavoured to impress upon you the necessity of great



care and caution in examining the sources and grounds of your opinions—the importance of requiring strong proof to justify a conviction upon a charge of so aggravated a character—and followed with consequences so afflicting to community—so tremendous to the prisoner—I have attempted to suggest to you such considerations relative to the testimony as in my mind not only shew that government fail *to prove* that Blaisdell killed Wadleigh—but even raise an almost irresistible presumption that he did not—or at all events, if the death was caused by him, it has none of the characteristics of murder—And I have now to request that you will not suffer the imperfect manner in which this duty has been attempted to prejudice the cause of him for whom I appear—that you will not impute any omissions of his counsel to any want of a good and perfect defence in truth. And I hope these suggestions will not receive less attention because the prisoner addresses them to you through his counsel—As a witness he cannot inform you of the facts—the state has silenced him—could he relate to you the circumstances of this misfortune—I would have been silent—And I know you would listen could you hear his weeping children ask you what has my father done that the dictates of humanity did not warrant—he was with his neighbour when misfortune happened to him—he supplicated the assistance of the traveller—he abode “the pelting of the pitiless storm” to aid and support him—he left him not, till he found him shelter and protection—could you hear his afflicted wife say to you punish him not for the kind offices of humanity—for if he knew he performed them at the hazard of his life still he would not have refused—could you witness the silent resignation of an aged mother who while she reflects upon the principles of virtue and humanity she has inculcated silently resolves “though they bring me with sorrow to the grave still will I adhere to them and “if I perish, I perish.”

If we err on such an occasion, it is much the safest to err on the side of mercy.

“For earthly power doth then shew likest God’s,  
When mercy seasons justice”

The law too guides you thus, while the accused is presumed innocent, till evidence shall have turned the bal-



ance—and there every doubt is put in favour of the prisoner.—In returning a verdict for the prisoner you say no more, than that you are not satisfied that he is proved to be guilty—and should a guilty person *here* go unpunished, his triumph it is but momentary—a few years—a few days—perhaps a few hours—the prisoner at the bar—and you—and I—and all of us must appear before that tribunal, where crime cannot be concealed—where the guilty shall never escape.

In contemplation of that solemn event, let me exhort you to beware that you pronounce such a verdict as shall not make wretched the remainder of your lives---such a verdict as shall not inflict pangs in the hour of death.

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[The Defence here closed and the Attorney General followed on the side of the prosecution in a very eloquent and powerful argument in which the evidence was minutely analyzed and the points of the defence answered in detail. Having been promised from the Attorney General a full sketch of this argument (a promise which his important avocations have prevented him from fulfilling) the reporter delayed any preparation from his own minutes till it was too late to furnish to the press anything more than a partial outline prepared from that portion of Mr. S's minutes to which we have had access.

Those who have had the pleasure of listening to this gentleman's accustomed eloquence on these occasions, will not think the above apology unnecessary, however unacceptable it may be to the public.]

*May it please your Honours and you Gentlemen of the Jury.—*

If, Gentlemen, there ever can be an occasion, on which it is peculiarly the duty of a jury to disregard the suggestions of their passions, and to place themselves entirely under the guidance of their reason; it must be when sitting on the trial of a person accused of a capital crime. Passion is unfriendly to the investigation of truth;—it is blind, and leads its followers, almost invariably, into error. While on the one hand indignation against the accused, whether it arise from the aggravated nature of the crime with which he is charged, or from any other cause, may lead a Jury to convict the innocent; pity, on the other, may induce them to disregard the evidence and to acquit the guilty. It becomes you then, Gentlemen, as you respect the interest of the Public—as you regard the life of the prisoner at the bar, to divest yourselves of every prejudice and passion and to listen only to the voice of reason.



It affords me much pleasure to reflect, that the prisoner has been defended with unusual ability. When a man is charged with the commission of a crime, that affects his life, it is always my wish that every thing should be urged in his behalf, that professional ingenuity can suggest. If, after an able defence, the Jury are obliged by the evidence to pronounce him guilty, the world will be satisfied that his condemnation is just—

Crimes are not produced by reason, but by passion. Providence appointed the reason of man to be supreme and his passions subordinate: but the passions too often rebel, dethrone reason, and usurp her place. It is in the moral as in the natural world; when the arrangement established by providence is reversed, disorders and confusion necessarily take place. It is the misrule of the passions, that is the fruitful source of public and private calamities. It is this, that has rendered the history of mankind little else than a history of wars, of bloodshed, and of crimes. It is this, that has so often armed the hand of the murderer and directed the dagger of the midnight assassin.—In order to effect that, which reason is too feeble to effect; in order to restrain, by adequate punishments, the fierce and turbulent passions of the human heart, Governments have been established. The laws of every civilized society have prohibited the commission of crimes, and denounced punishments against offenders; but such laws are useless, if they are not carried into execution. To have no laws against the commission of crimes; and to have laws, that are unexecuted, produces the same disastrous consequences to a community. The Government, under which you live, has ordained, that murder shall be punished by the death of the offender, and it belongs to you, Gentlemen, to see, that the law is carried into effect, if the prisoner be guilty. You are bound by the duty, that you owe to your Country; by the solemnity of the oath that you have taken; by the law of God, to whom you must render an account of this day's doings, to take care, that the prisoner, if guilty of the crime of murder, does not escape without punishment.—

In determining whether the prisoner be guilty, you



will examine the evidence, produced on the trial, with the most deliberate and anxious attention; lest on the one hand, an innocent man should suffer; or, on the other, lest a man, should be permitted to live, who is dangerous to society, and who has forfeited his life by the laws of God and his country.—

That the deceased died in consequence of the wounds he received you can have no doubt. The evidence as to this point is so conclusive, that it is not denied by the counsel of the prisoner.—

Let us consider, Gentlemen, whether the evidence is sufficient to prove that the prisoner gave the wounds that destroyed the life of the deceased.—

No positive evidence has been produced to prove the guilt of the accused; no witness has told you that he saw him commit the murder. But you have evidence as satisfactory as positive evidence could be.—It is said that it would be dangerous to convict the prisoner on circumstantial evidence alone. If no man could be convicted of murder on this sort of evidence, it would rarely happen that a murderer could be punished. In order to determine what evidence ought to satisfy you of the existence of a particular fact you should consider the nature of the evidence you have a right to expect. No intelligent Jury will require the same strong evidence of facts, that usually take place in secret, as of those that take place openly and in the face of day. Men who are about to commit crimes, will endeavour to commit them with secrecy; and in proportion as the punishment of crimes is severe, secrecy will be studied. Where crimes are punished with death, it is not to be expected, in most cases, that any thing more than circumstantial evidence can be obtained. In every instance, in which a crime is committed, except that of murder, the party injured may be a witness to prove the guilt of the accused: but in the case of murder, the party injured is removed from society and cannot be a witness. There is more reason then, in the case of murder, that circumstantial evidence should be regarded as sufficient to prove a man's guilt, than in other cases. If this species of evidence is not



sufficient to convict, unnumbered murders would take place without a possibility of punishing the offenders. It is said that instances have happened, in which the innocent have been convicted on circumstantial evidence. This is undoubtedly true, and many instances have also happened, in which the innocent have been convicted on the testimony of false and perjured witnesses. If, then, you are to reject circumstantial evidence, because the innocent have sometimes been convicted on it; you must reject positive evidence also, because upon this species of evidence the innocent have likewise been convicted.—

Consider the various circumstances, that have been proved, and then determine whether there can be any reasonable doubt of the guilt of the prisoner.

You will remember, Gentlemen, it was on the evening of the eighteenth of February last that the crime was committed.

*Nathaniel Weeks* testifies that the prisoner and the deceased left his store on the 18th of Feb. about half after five o'clock; it was nearly dark. It was very stormy. The deceased took his axe and one of them a large, heavy piece of wood intended for an axe-handle; but which of them took the axe-handle he cannot tell. They were both perfectly sober.

*Larkin Taylor* was at *Weeks'* store, when the deceased and the prisoner left it; he saw the deceased take the axe and the prisoner the axe-handle.

*Josiah Gilman Smith* saw them pass by his house, which is 20 or 30 rods from *Weeks'* store about half after five o'clock, going toward Kensington. The deceased had an axe under his arm and the prisoner an axe-handle under his. They were both sober.

*Nancy Folsom* saw the deceased and another person, on the evening of the 18th of February, pass her father's house, which is a little more than half a mile from the spot, where the murder was committed. She knew the deceased, as he had often worked with her father; the person with him she had often seen pass by the house, but did not know his name. She was called as a witness before the magistrate, who examined the prisoner and immediately knew him to be the person she saw in com-



pany with the deceased.—Her father was from home, and as she and the family were expecting him to return, she took particular notice of the deceased and the prisoner, as she at first supposed her father was one of them. She observed that the deceased had an axe and the prisoner a large piece of wood.

*Jude Hall* testifies that on the evening of the 18th of February, between 8 and 9 o'clock the prisoner knocked at the door of his house; he told one of his children to go to the door. As soon as the door was opened, the prisoner asked, if the Captain (meaning the witness) was at home. Some one told him he was. The prisoner then informed Hall that the deceased had been fighting with a sleigh and had received a wound and requested him to assist in carrying the deceased home. Hall assisted in getting the deceased to his house and tarried with him till he died. The prisoner tarried with the deceased from five to ten minutes; said he must go and take care of his cattle, and then went away.

From the testimony of these witnesses, Gentlemen, this fact is placed beyond a doubt, that the prisoner received the wound, of which he died, between the time, when he and the prisoner left Weeks' store, and the time when the prisoner called at the house of Jude Hall between 8 and 9 o'clock. If the prisoner was with the deceased during all this time, and I shall satisfy you that he was; if there is no proof that any other person was present, who gave the wound, the guilt of the prisoner cannot be doubted.

That the prisoner was with the deceased from the time, when they left Weeks' store, till he called at the house of Jude Hall is rendered certain by the evidence.

*Nathaniel Weeks* says they left his store together about dark.

*Josiah Gilman Smith* saw them together as they passed his house.

*William Dolloff* saw them five or six rods beyond Mr. Smith's on their way toward Kensington.

*Nancy Folsom* saw them in company, going toward the place, where the murder was committed, and a little more than half a mile from it.—The crime must have been



perpetrated soon after she saw them pass.

It has been suggested that soon after Nancy Folsom saw them, the prisoner returned back to the compact part of the town of Exeter and let the prisoner go alone and that during his absence the wound was given. Where is the proof of this? There is not even a shadow of evidence to support it. The circumstances of the case are so strong as to render it utterly incredible.

It is impossible to believe that the prisoner would have returned in such a stormy night, without some urgent—some pressing business. Why did he not attend to his business before he set away for home? If he forgot it, then it was not urgent and did not require his return.

If he had business of importance, which made his return necessary, what was the nature of that business? With whom did he have it? Why has not the prisoner stated to you what his business was? Why has he not called on the persons with whom he had business, to appear before you and prove the fact? Most undoubtedly, because he had none.

If he returned without any particular business, (a thing not to be credited) he would not have remained in the street in such a stormy night. It was the severest storm that happened during the winter. If he was at the house of any person; or, if he was at the store or shop of any person, he could prove it. But he has neither proved nor attempted to prove it. The inference, then, is unavoidable, that the prisoner was with the deceased, when the mortal wound was given. You have not a particle of evidence to shew that any other person was present. From whose hand, then, but that of the prisoner, could he have received it?

You have been entreated by the counsel of the prisoner to decide this case according to the evidence produced on the trial. You will then, Gentlemen, lay out of your consideration all the declarations of the prisoner in his own favour, which are not supported by proof, because these declarations are not evidence. Strip the case of every thing but the evidence and how will it then appear? This is the evidence. The prisoner left Weeks' store in company with the deceased; he was seen in



company with him by several witnesses going towards Kensington ; he was seen in company with him within a half mile of the place, where the murder was committed ; the circumstances are so strong as to satisfy every intelligent person that he did not leave the deceased—that he must have been present when the wound was inflicted. There is not the slightest evidence that any other human creature was present at the time. What, then, can you say, but that the prisoner is guilty ?

Consider the story of the prisoner, as related by his counsel, and see if it is in any degree probable. I need not remind you that the story of the prisoner in his own favour is no evidence ; yet it is proper to examine it, for if the story he tells is false, it furnishes strong proof of his guilt.

He says that some persons in a sleigh had a quarrel with the deceased and gave the wound. This is manifestly a fictitious story formed to conceal his guilt. It is in the highest degree improbable, that a quarrel should have taken place between persons passing along in a sleigh and a foot passenger. Sometimes when two sleighs meet in a place, where it is difficult to turn out, a quarrel will happen between two ill tempered men. But here no such difficulty could exist.—It is the more improbable that a quarrel should have happened, as the deceased was remarkable for the mildness of his disposition.

If a quarrel did take place, what was the cause of it ? Who began it, the deceased or the persons in the sleigh ? What number was engaged in this barbarous transaction ? With what weapon was the wound inflicted ? None of these things has the prisoner mentioned. He has only said in general terms that a quarrel took place between the deceased and some people in a sleigh and that by them the wound was inflicted. Yet if a quarrel had happened, the prisoner would have related all the circumstances with perfect accuracy.

Recollect that this transaction took place about a hundred rods from David Wedgewood's house. If the prisoner had been innocent and the deed had been done by persons in a sleigh, he would have gone instantly to the house and informed the family of what had happened :



the whole neighborhood would have been alarmed. This is, without doubt, the course which an innocent man would have pursued.

It may be said that the prisoner was afraid to leave the deceased, lest he should perish in the storm.

It would have required but little time to go to Wedgewood's and return. The prisoner must have known that he could carry him to Wedgewood's house in far less time than would have been necessary to take him to his own house.

The conduct of the prisoner after he was met by James Robinson serves strongly to disprove his story.—The place where the wound was given was on that side of the cove bridge that is next to Wedgewood's house. This is proved by the large quantity of blood that was discovered there. Robinson met them on the opposite side of the bridge next to Kensington and several rods from it. The blow was given, then, before Robinson met them. The person with the deceased spoke to Robinson and said "it is very stormy." The witness asked him how far it was to Wedgewood's house. He was told, it was about half a mile.—If the deceased had been injured by people in a sleigh, would not the prisoner have mentioned it? Would he not have said to Robinson, John Wadleigh, who is with me, has been severely wounded by some people in a sleigh, he will perish with the cold, if not with the wound he has received, I entreat you to take him into your sleigh and carry him home; if it is inconvenient for you to do that, carry him to Wedgewood's house, as you are going directly by it. I appeal to the heart of each one of you to say, if such would not have been the conduct and such the language of an innocent man.

When Joseph Brown afterwards overtook the prisoner and the deceased, the prisoner asked Brown to take the deceased into his sleigh, but did not urge him to do it. He told the witness, that the deceased was drunk. Several witnesses prove this to be false! Those, who saw him when he left Week's store, and those, who saw him on the road, say he was sober. Why should the prisoner have told this falsehood? He seems to have been un-



willing to let the witness know how badly the deceased had been injured ; a circumstance that he could have had on motive to conceal, had he been innocent.

The story, on which the prisoner relies for safety, is entirely disproved.—The night, on which this fatal transaction took place, was so very stormy, that few people would travel ; none, who were not obliged to do it. Here is no evidence that more than two sleighs passed by the place, where the murder was committed during the night. The people, who were in those sleighs have been called before you, and have testified that they offered no violence to the deceased ; that they had no quarrel with him.

There are various circumstances, that mark the guilt of the prisoner and require your particular attention.

When the deceased was in a situation the most distressed and helpless ; after he had been exposed to the violence of the storm for nearly three hours ; why did the prisoner carry him by his own house, a distance of 30 or 40 rods, and get Jude Hall to assist in taking him home ? If one of you, gentlemen, should be present, when a person was so desperately wounded by another, would you think of carrying him by his own house ? Would you not take him as soon as possible to his home ? The prisoner told Hall, he would not have carried him home alone for ten dollars, as the family would have suspected that he did the mischief. An innocent man could not have imagined that he should be suspected of such a horrid crime. It was his guilt, that made him imagine this. His conscience condemned him as the author of the crime and he supposed the family would suspect him.

After he went into the house of the deceased he tarried but a few minutes ; not more than ten. When he spoke of going away, Mrs. Wadleigh, the wife of the deceased, pressed him to stay ; he said he must go and take care of his cattle. His leaving the house at such a time and for such a purpose was a mere excuse. When he saw the wife of the deceased overwhelmed with sorrow at the situation of her husband ; when he saw the children weeping around their dying father, and reflected that he was the cause of their distress, hard as his heart was,



he could not endure the sight. The most savage and relentless murderer would have been affected by such a scene.

It has been proved that the axe and the axe-handle were thrown at a distance ; the axe into the pasture ; the axe-handle under the fence in the road. The prisoner confessed to Capt. Rowe that he threw away the axe. You can have no doubt, I believe, that he threw them both away. Why was this done, if the prisoner is innocent ? If any other person had wounded the deceased what motive, what inducement could he have had to throw them away ? They were the instruments of death. It was dark and the prisoner doubtless supposed them to be bloody ; that, if they should be found, they would furnish evidence against him. He supposed, as the storm was then raging, they would soon be buried in the snow ; that they would be washed by the melting of the snow and by the rains in the spring, so that no appearance of blood would remain.

It is said he was afraid they would have been lost, if they had been left on the ground where the injury took place.

If that had been his fear, he would have placed them within the fence and so near to it, that they might have been easily found.

An innocent man—one who had made no improper use of these instruments and who was anxious only for the safety of the deceased—would not have spent a single thought about them.

It has been said that the deceased fell and wounded himself. Several witnesses tell you that he was perfectly sober. Doctor Perry says that a fall could not have produced such a wound. The exclamation of the deceased proves that the wound was not accidental. Two or three times the deceased exclaimed “ what a fellow ! what a fellow ! ” Plainly shewing that the wound was inflicted by some one. The prisoner himself did not pretend that the wound was occasioned by a fall, but said the deceased had been fighting with a sleigh.

It has also been said that the injury was occasioned by the runner of a sleigh. This could not have been done,



unless the deceased had previously fallen, which the prisoner himself did not assert to have been the case. 'The exclamation of the deceased, which I have just mentioned, renders it impossible to believe that the injury arose in this manner. Dr. Perry testifies that the runner of a sleigh could not have made such a wound as that which appeared on the head of the deceased. In addition to this, you will consider that the blow was given, as appears from the blood, when the deceased was several feet from the main path, so that a sleigh in passing along could not have struck him, if he had fallen. But the only people, who passed the road that night in sleighs have been examined, and have told you that they did no injury whatever to the deceased.

I will not avail myself of the circumstance, that the mittens of the deceased were found in the barn of the prisoner as strong proof of his guilt. If it had been doubtful whether he was with the deceased on the night, when the injury was done; and if it had been proved that he concealed them in the barn; it would have afforded satisfactory evidence that he was with him. But this fact is so fully established by other evidence that there can be no doubt of it. The concealment may have some weight, but not much.

It has been urged in behalf of the prisoner, that if he had been guilty, he would not have gone home with the deceased—that he would have left him. He doubtless imagined that to remain with him would be the safest course. He knew that it could be proved that he and the deceased left Week's store together; that they were seen together on their way to the place where the deed was done; he supposed that if Wadleigh should be found dead, after he had left him, the world would be satisfied of his guilt. He thought it safer to continue with him and to form the story, utterly improbable as it is, that he had been injured by people in a sleigh.

I will now, Gentlemen, call your attention to a circumstance that places the prisoner's guilt beyond doubt. It shews that he entertained a spirit of hatred and revenge against the deceased. A few weeks before this murder was committed, the prisoner told Jude Hall that he would



beat Wadleigh, if he found him alone. When a vindictive man is brooding over some real or supposed injury and is devising means, by which to gratify his revenge, he is apt, on hearing the object of his vengeance named to threaten to do him mischief. The prisoner was bent on obtaining revenge. It is of little importance that it has been proved to you, that he had been in a situation, in which he might have taken the life of the deceased, but did not do it. He might suppose that the time or place was not suited to his purpose. No opportunity more favourable to his wicked design could be expected than that which was presented when this inhuman deed was done. The place was solitary; the night unusually tempestuous. Wedgewood's house, which was nearest to this scene of wickedness on one side, was more than a hundred rods from it; on the other side toward Kensington, there was no house within three quarters of a mile; a thick wood, increasing the surrounding darkness, stood near. Such a place and such a warring of the elements suited the dark and deadly purpose of his soul. No one could be expected to interrupt him in his murderous work. He sought and obtained revenge by destroying the life of an industrious and useful citizen.

Another circumstance, I shall mention, to prove the guilt of the prisoner is his flight. Would an innocent man have fled? Would he not have wanted a trial that the world might be satisfied of his innocence? Fear is the companion of guilt. The man, who commits an atrocious crime feels that punishment is his due. He reads in the countenances of others the condemnation of his crime. He is filled with terror and flies from the scene of his wickedness. Such are the emotions and such the conduct of the guilty.

It is said that if the prisoner took the life of the deceased it is not murder but man-slaughter because it was done suddenly and without premeditation.

If Jude Hall is to be credited, the crime was premeditated. But if it was not, still it is murder. However, to reduce the killing of a person from murder to man-slaughter, the person killed must have given some provocation.



If a man kill another suddenly without any provocation, the law implies malice and such killing is murder; for no person, unless of an abandoned heart, would be guilty of such an act, upon a slight or no apparent cause. 4 Black. 199.—There is no proof of any provocation given by the deceased to the prisoner. Indeed the prisoner does not even now say that any provocation was given to him. To presume that there was some provocation, without the least evidence to support it, would be dangerous. You may as well presume that the deceased attacked the prisoner with his axe and that the prisoner with the axe-handle killed the deceased to save himself from instant death and thus acquit him of all crime. If, when a man finds his enemy alone and kills him, a Jury are to presume there was such a provocation as to reduce the killing to manslaughter, no man can ever be convicted of murder.

If you should be of opinion that the prisoner did not mean to kill the deceased; that he struck him with more violence than he intended, it is nevertheless murder. If a man, upon a sudden provocation, beat another in a cruel and unusual manner, so that he dies, though he did not intend his death, it is murder. 4 Black. 198.—The blow given to the deceased was most violent and cruel. The nature of the weapon and the force with which it was used indicate a wicked, malicious, and depraved heart and demonstrate the crime to be murder.

The counsel for the prisoner has endeavored to excite your compassion in his favor. When a man is accused of a capital crime, it is natural that the feelings of a Jury should be interested in his behalf. However necessary it may be for the safety of society to punish crimes with death, we regard it, even in the case of murder, as a severe exercise of power. When we see a man, on trial for his life; standing friendless and alone; agitated and alarmed at his situation; our resentment dies away and pity pleads powerfully in his behalf. We pity the accused while we feel no compassion for the community.—

In order that you may discharge your duty faithfully, you should consider what would be the consequences to society and to individuals, if crimes should be unpunish-



ed. The great object for which Governments are established is to protect the peaceful and the weak against the violence of the turbulent and the strong. No government can long exist where offences are not punished. Men feeling, in such a case, no confidence in Government would give it no support. If Courts of Justice will not punish offenders, the injured and the friends and relations of the injured will seek for vengeance with their own hands. Government would be dissolved; men would revert to a state of nature, where scenes of bloodshed and of murder would be perpetually exhibited; where little would be seen but the sanguinary and destructive agency of the sword.

The above unfinished sketch of Mr. Sullivan's speech presents only some of its prominent topics. Those who heard it will regret the omission of its eloquent peroration as well as many of its replies to the arguments on the other side—The causes of this omission have been already stated.

*After the Attorney General had closed his argument—the testimony was summed up to the Jury by JUDGE WOODBURY in the following*

### CHARGE.

*Gentlemen of the Jury*—It is peculiarly important in capital trials that Jurors should understand the nature of the enquiry before them, and the rules of evidence by which they are to be guided.

It behooves us to aid you in these respects, and, Gentlemen, though our remarks are not binding, being yourselves in this case the judges of the law as well as of the facts, yet it deserves consideration whether it will be at all safe for you to depart from those legal principles which have long been adhered to in our Courts of Justice, and which were derived from that country where all our legal institutions originated.

The charge in the indictment before you is of a high and aggravated nature—that the prisoner feloniously destroyed the life of a fellow being—it involves not merely the fact of killing, but the existence of express malice. Should both of these be established by the evidence, though your hearts might bleed over the unhappy fate of the accused, you must convict him, for the offence charged is one which has the same atrocious character attached to it by the laws of God and of man: and no unmanly sympathy should ever disarm you when an offender appears clearly to have violated divine as well as human sanctions.

Yet in cases of a capital nature, you cannot forget that the consequences to the prisoner of a conviction are not the loss of property only, but of life—not merely the loss of life, but of character; and that it fixes a stigma too not only upon his own memory, but in a considerable degree on all his kindred.

In such cases, therefore, you will pause—but you will pause only to receive that certainty of guilt, without which you should never be instrumental in hastening a fellow being to the dread tribunal of eternity.

The certainty, Gentlemen, which the law requires is that no rea-



sonable doubts should remain on your minds as to the guilt of the accused. And in this case it is not enough that you should be without doubt as to the fact of the killing by the prisoner, but also that you should be without doubt as to his motive: Nor is it enough that after this examination you should believe the whole charge probable; but the evidence of his guilt must be such as not to be reconcileable with innocence on any fair analysis of all the circumstances. These circumstances are to be viewed with a reference to the well known passions of man, and to the acknowledged principles of human action. Should the facts of the case thus viewed appear reconcileable with the supposition either that there was no homicide, or that there was no felonious intent, you must acquit the prisoner of the charge of murder, although he may be punished for manslaughter if the first point is found against him. But it is not to be forgotten that although you are in the outset to presume his innocence, and in the end to require the certainty of guilt before named; yet, if the circumstances of the case thus viewed appear necessarily to imply that the prisoner destroyed the deceased under the dominion of feelings fatally bent on mischief, you are bound by your duty and your oaths to arrest his career of guilt, and by removing him from life not only avenge innocent blood, but protect society from his future outrages. Not that in this case it is for your interest or ours that an improper conviction should take place: nor for the sake of the example of a punishment do the interests of the community require that the penalties of the law should be inflicted on improper grounds: but if after a faithful examination of the case, all reasonable doubts are removed from your minds, whatever may be the consequences to the prisoner, however ignominious in time, and however tremendous in Eternity, your duty and the laws of God and man require a verdict of guilty.

Before you commence the examination of the evidence, it ought also to be remarked, that the force of confessions in such a case as this depends much on the circumstances under which they are made, and the motives which probably prompted them: that an innocent man may be induced by various reasons to make false statements, and resort to occasions to escape threatened disgrace or prosecution. He may want physical nerve, he may want intelligence, he may want high moral principles, and hence not always preserve that adherence to truth and that trust in Providence, which are the safest shield to innocence. If, therefore, any confessions proved to you are reconcileable with the fact of the prisoner's being induced to make them from these causes merely, you are not to consider them as necessarily implying his guilt of murder; but if not reconcileable on this hypothesis, they must then have their full operation against him, in support of the whole charge in the indictment.

With these suggestions, Gentlemen, impressed on your minds, you will proceed to enquire whether the prisoner be or be not guilty of the crime whereof he stands charged. In this inquiry the first point to be settled is, *Did the prisoner kill the deceased?* Because, as there is no doubt from the evidence that the deceased died of the wounds which have been described, it must first be ascertained from whom or for what cause these wounds originated. It is contended on the part of the State that they were inflicted by the prisoner, and to prove



this, the counsel for the State has produced to you the persons who trace him with the deceased from the village to a place near the scene of the alleged murder, and others who follow him from the bridge near the scene to his own home. It is proved to you that he was not only seen with the deceased both before and after the wounds, but that he was also seen with weapons by which it was most likely, in the opinion of the surgeon, that the wounds were caused. The government attempts also to prove to you some previous difference between the prisoner and the deceased, and also some threats made by the prisoner shortly before the act of violence suffered by the deceased.

It is contended also, Gentlemen, on the part of the prosecutor that a violent presumption arises that the prisoner killed the deceased from the conduct of the prisoner immediately subsequent to the death of Wadleigh, from his flight, from his contradictory statements and from the circumstance of the finding Wadleigh's mittens in his barn. It is on the proof of these facts that the prosecutor relies to convince you that the alleged killing was by the prisoner.

It is attempted on the part of the defendant to rebut these presumptions by directing your attention to the fact of the prisoner's stating to Brown and to Hall, who were the first persons that met or conversed with him after the injury, that the deceased received his wounds from a fight with a sleigh. This statement having been proved by the State is competent evidence for the prisoner and admits, you will perceive, of two constructions; either that a sleigh or some persons in a sleigh, caused the wounds. Of these constructions you in charity are to take that which is most favourable to the prisoner.

Now, Gentlemen, when you advert to the ice in the highway, to the state of the weather as proved to you, to the darkness of the night and to the circumstance that there was much travelling on this road by people journeying to a distance, and that it appears that two sleighs had passed the spot within a very short time after the injury, it at least would not be remarkable if something had happened to the deceased which authorized the prisoner's statement. No very strong inference against this statement arises from the fact that no sleighs were afterwards traced with which the defendant could have quarrelled. On a public road so much travelled it was far from impossible that the deceased should have had some difficulty, perhaps a momentary broil, with travellers who were not followed afterward from various reasons. It appears from the conduct of Cheney, Brown, Hall and Blaisdell, that the injury received was at first regarded as comparatively slight. Hence the travellers might forget it. Blaisdell too would not be likely to make close pursuit at the time, and since the time has had neither means nor opportunity to do it. For you are to recollect also that a hue and cry was the next morning raised against the prisoner, that he was soon arrested and imprisoned, and of course had afterward no opportunity to make any effectual inquiry or pursuit of any sleigh to which he might have alluded, and which may have belonged to some traveller at a great distance.

I do not advert to all this, Gentlemen, as by any means conclusive. It is only to direct your attention to these particular circumstances which constitute a part of the transaction and which are entitled to due consideration.



There exist other circumstances, however, to which you are bound to advert, as either fortifying or weakening the account given by the prisoner of the cause of the wounds. You are to consider whether the appearance and character of the wounds, as described by the physician, afford any presumptions on this point. Dr. Perry states that the skull is very tender in the place of the principal wound, and that there was a smaller wound on the forehead. From the slippery and frozen state of the roads, notwithstanding the snow then falling, it is not difficult to suppose that a mere fall previous or subsequent to the fatal wound might have produced the injury on the forehead: but the larger and the fatal wound, judging from the description of the physician, it would be difficult to account for in that manner.

But whether it could not have been occasioned by a sleigh-runner as well as by an axe or other similar instrument, you are not much less capable to decide than a surgeon, who had enjoyed no practical acquaintance with wounds inflicted by tools and machines of a like form.

Had that portion of the skull which was depressed been raised and appeared unbroken, an inference might have been made as to the shape of the weapon with which the blow was inflicted. The skull, although depressed, might still be in fragments or splintered in the centre or the under side of the whole length of the piece depressed, and hence the blow have been inflicted by a cane or whip-handle or some other round instrument. It is only from such considerations as these that you are left to infer the character of the weapon, or of the fall that produced the wounds. If you conclude that one wound was caused by a fall, and the other was as likely to be produced by a sleigh-runner in rapid motion against his head, or by persons in a sleigh, as by the axe, then the prisoner's account is not discredited by the testimony of Doct. Perry. Another circumstance to show that Blaisdell was not the author of these wounds is, that it has been proved to you that the hat of the deceased could not have been on at the time the mortal wound was inflicted: a circumstance which the prisoner's counsel might well have argued as proving that there was no sudden attack by the prisoner on the deceased; for then the hat would have been broken. You, however, will observe that this is not conclusive on the supposition of a previous struggle, as the hat then might first have fallen off. But to decide on the probability of a struggle between the parties ending in this way, you are to consider the evidence that is before you as to the personal strength of the deceased; and in connexion with this, observing the feeble appearance of the prisoner, you are to infer the comparative probability of a struggle commencing on his part without giving a sudden and heavy blow by surprise. But this blow was not given till the hat in some way had first fallen or been knocked off.

In addition to this circumstantial evidence, the prisoner's counsel urges to you the want of motive as another argument against the probability that Blaisdell committed this deed. This is a consideration surely that is to be well weighed, because you are acquainted with the human mind, and know that men do not generally act without motive in the smallest transactions and much less in cases of the greatest human magnitude. It is contended that here was no conceivable inducement which could influence the prisoner to such an



act. In your examination of this argument, you are to advert to the account given you by the prosecutor of a previous difference between the prisoner and Wadleigh, which is, in short, that Pike, the witness, applied to Wadleigh, about two months before his death, in Blaisdell's presence, to cut some trees; that a bargain was made for the work on this application; that Wadleigh asked the prisoner if he would assist him; that prisoner declined; that Wadleigh and his brother afterwards executed the contract; that about a month after this affair, the prisoner, talking on the subject with the witness Hall, said to Hall that he, the prisoner, intended to give Wadleigh a "licking for taking away the job from him after promising to go halves." From this account, which I state to you in the language of the witness, you are left to gather some motive or inducement that may explain the act of the killing alleged. Now, Gentlemen, suppose that facts like these were stated to you in relation to any other two men like the prisoner and deceased, would you consider such a transaction as likely to terminate in murder? Could you imagine feelings to thus arise sufficiently violent to account for such disastrous consequences, especially when as in this case the parties were proved to have been afterwards, seen together at various times without any appearance of ill blood in either? or if from such a cause you could suppose a flogging likely to ensue, could you suppose any thing else? If you could charitably make any further inference that Blaisdell would thus be induced to kill Wadleigh on account of the loss of the profits of a five dollar contract, profits probably not exceeding fifty cents, let it weigh as it ought. If not, you are still left unaided in your enquiry for a sufficient and probable motive to the deed in question. From the circumstances I have now recapitulated as adduced by the defendant against the presumption that the killing was by him, you will decide for yourselves—the first enquiry I proposed. If after you have made the enquiry faithfully, you have any reasonable doubts that Blaisdell killed Wadleigh, you will give a general verdict of acquittal; but if you have no reasonable doubts on this point, you will proceed to the examination of the testimony on the question of malice. To illustrate the difference in the character of homicide committed with or without malice, you can imagine yourself, Mr. Foreman, as attacked on your return home in a dangerous manner by a person of equal strength and whose life you destroy to preserve your own. Such a killing, not being from malice, but for self defence, the law considers as justifiable homicide. But suppose yourself to meet a person between whom and yourself a quarrel ensues, in which, under the influence of violent passions, you kill the person, even this killing would be no evidence of express malice on your part, as it would in such a case grow out of the excitement of the affray, and wanting that felonious intent which is the essence of murder, it would be manslaughter merely. But the law has become settled, that if in an affray of this last sort; a deadly weapon is used, the killing is then murder, because the selection of a weapon likely to produce death is deemed evidence of express malice.

On the presumption then that Blaisdell killed Wadleigh, you will examine the evidence adduced to show the malice alleged. On this point the prosecutor contends that malice is inferable from the nature of the wound, and the testimony of the Physician that it was probably inflicted with some deadly weapon. You are therefore to give this part of the testimony a new examination, proceeding on the hypothesis that the killing was by the prisoner, and on this hypothesis you are to advert again to all the circumstances which can satisfy you as to the character of the weapon used.—



The prosecutor contends also that the malice charged is inferable from the threat uttered and testified to by Hall, and particularly from the flight of the prisoner after the act, you are urged to consider the flight as proving not merely the killing, but the malice, by its indicating the consciousness, not of an accident or an affray, exposing the prisoner to wrongful suspicions, but of deliberate wickedness. As circumstantial evidence of previous malice, you are directed also by the prosecutor to the affair of the mittens, and to the fact of the prisoner's carrying the deceased by the house of the deceased, and expressing to Hall great reluctance to go into that house. You are asked to enquire whether this conduct is reconcileable with the supposition of an affray when there was no malice—As evidence too of the killing being malicious, your attention is directed by the prosecutor to the subsequent conduct of the prisoner, to his denial in relation to the axe-handle and to his denial of having seen the deceased after leaving Weeks' store till he found him wounded.

On this point the government have also proved to you the peaceable disposition and good temper of Wadleigh, and might have urged your attention to the fact of no wound or injury being received by the prisoner as indicating that the attack by him must have been sudden, unprovoked and violent. You are urged also to consider the evidence on the head of malice which results from the time and place of the deed, the remoteness of the spot from houses, the darkness of the night, the inclemency of the weather and the various facilities for the act afforded by these circumstances.

The mere fact of the killing is often a circumstance from which malice is implied; and if the killing was here proved by positive evidence as an independent fact, you might be warranted in presuming from the killing alone until explained by the prisoner, a murderous intent.—But the very evidence on the part of the State which tends to prove the killing, discloses circumstances which tend to rebut malice, and hence you will judge whether the argument of malice in this case from the mere fact of killing is entitled to much weight.

It is safer to ground your conclusions upon the various circumstances which preceded, accompanied and followed the killing, and having weighed all those indicating malice, you will advert to those which seem to repel any such presumption.

To obviate the presumptions of express malice to be drawn from all the facts on the part of the State, your attention is solicited in the first place to the fact of the prisoner's communicating the accident to Brown and Cheney when they overtook him, and going immediately with Wadleigh to Hall's house and then to Wadleigh's as if influenced only by kindness, and good will to the deceased.

There is another argument on this head which, although not suggested to you during the trial, is, I think, entitled to much consideration. It is the difficulty of conjecturing why the murder was not finished at the time of the attack if a murder was intended. There was every facility, offered by the hour, the place and the weapon. Were it shewn that an alarm was raised and the design thereby interrupted, this would have been some answer to the argument. There appears to have been ample opportunities for the effectual accomplishment of a murderous design if one existed, and yet it is proved that the prisoner endeavored, on the contrary, to assist the deceased, to give him aid and support, and convey him to a place where proper attention could be paid to his wounds.—You, Gentlemen, are to judge of human motives from human actions. Can you readily conceive of a man guilty of the murderous intentions charged and acting like Blaisdell? knowing the wounds he had inflicted to be ineffectual and having abundant opportunity to inflict more, and yet refraining, yet tarrying with the prisoner, supporting him and exposing himself to the worst suspicions? The hour of the night and the place afforded him facilities also not only to finish the murder, but to conceal the body and to escape to a great distance before suspicion and pursuit would be likely to commence.

All these circumstances are entitled to your consideration, and it is your duty to weigh them cautiously. You are also to attend on this head to the account given of the axe. Is this account consistent or inconsistent with the hypothesis of malice? It is shewn to you where the axe was found, and you have the prisoner's statement of his motives in throwing it there. Now whether such conduct in the prisoner, on the supposition of malice, was or was not natural, you will judge.

As to the prisoner's statement also of his reluctance to alarm Wadleigh's family finding him to grow weaker, you are to judge of the probability of the statement and its bearing on the question of malice. It is contended also by the defendant against the presumption of malicious intent, that the prisoner had other and better opportunities of executing such an intent than were afforded by a public highway, and after he had been seen with Wadleigh at the village and accompanying him home, that he would not, on the supposition of such an intent, have called, as is testified, on Brown that he would have suffered the witness to pass on and would have been rather anxious to secrete the deceased and keep him from observation. The conduct of Brown and Cheney, as well of the prisoner, seems strongly to indicate that neither of them then believed the deceased to have been mortally wounded; you will judge then whether the prisoner ever intended to inflict such a wound. The defendant also contends, on this head of the inquiry, that a construction should be put on the fact of his flight the next morning entirely different from that given to it by the prosecutor. You are urged to attribute the flight to the alarm and rumour that was raised the next morning. You are to judge whether such a man as Blaisdell under such circumstances would not be likely to abscond for a time, although innocent of deliberate crime. He was first probably apprised of the hue and cry against him, and was conscious that he had no proofs of innocence to oppose to it, having been seen with Wadleigh both before and after



the injury. He might lack only firmness to meet a prosecution under such disadvantages, and not be goaded into flight by the stings of guilt. In the language of poetry one may be "convict by flight," but such is not always the doctrine of human actions among that class of people whose characters are not the most elevated, and whose views are often contracted and erroneous, and who are so unfortunate as to become exposed to *violent suspicions*.

Hence, if under the circumstances of the case, you can give to the flight any other construction as reasonable as the consciousness of guilt, you will not set down this fact against the prisoner as conclusive evidence of an intent to murder. The defendant also contends that the secreting of the mittens, even if this was the act of the prisoner, has no bearing against him on the question of malice, and you will consider whether this affair of the mittens is at all material against him, because the fact of his having been seen with Wadleigh, both before and after the injury, was well known to Blaisdell, and would destroy all motive to conceal the mittens as evidence against him. The mittens were neither bloody nor torn as if in a struggle, and hence you will judge what possible motive the prisoner could have for their concealment. Such, Gentlemen, are the circumstances adduced by the prisoner's counsel to rebut the presumption of malice, and after a full consideration and comparison of their weight with the arguments and evidence produced by the prosecutor to support this presumption, you will adopt that conclusion on the subject which seems to you most reasonable. You are not, Gentlemen, to consider yourselves as answerable for the death of the prisoner, if this should be the effect of your conclusion on this evidence. His death would then not be your act or ours:—it would be the act of the law. We are sitting here merely to administer, not to make or revise, that law. If the law is too severe, let it be repealed; but it is not our province or yours to repeal it, any more than it was our act to make the law. If, however, after a patient and faithful investigation of the evidence, you have reasonable doubts either as to the fact of the killing or the existence of malice, it is not less your duty to acquit the prisoner, and you will do this not from the influence of sympathy or compassion, but because the crime is not proved—not because the prisoner may not possibly have been guilty, but because your reasonable doubts on this point are not removed by the prosecutor.

Derogatory indeed would it be to you as jurors to yield to the impulse of a mistaken humanity and tenderness in this case. The Appeal of the prisoner for mercy is premature; it should not be to his Jurors, but if convicted, to the executive. Your compassion to the prisoner, in exculpating him when guilty, would be a profanation of your oaths, and treachery to the public; for if you acquit the guilty, you throw them back upon society again to exercise their destructive passions without restraint. In administering therefore a duty so solemn as yours, unmanly sympathies and improper influence are disgraceful to those who harbor them, ruinous to the administration of Justice, and directly jeopardizing the property and lives of us all.

It may further be remarked, Gentlemen, before you retire, that if you believe the prisoner innocent of any felonious intent or express malice, and still believe the killing to have been his act, but committed in an affray without a deadly weapon, you have the power under this indictment to convict him of manslaughter merely. The legal distinctions between the crimes of murder and manslaughter have been read to you by the counsel, and need not now be any farther illustrated. In this case, however, you are the judges of the law as well as of the fact, and can therefore return whichever verdict seems most just, and we have no doubt, Gentlemen, from the high general character of our juries that your verdict will be satisfactory to the public and to your own consciences, however it may be to the prisoner or the immediate friends of the deceased.

The Court here closing their remarks, the Jury retired and after a consultation of about an hour returned into Court. The pannel was then called and the jury were addressed by the Clerk.

*Clerk*—Gentlemen of the Jury, have you agreed on a verdict?

*Jury*—We have agreed.

*Clerk*—Who shall speak for you?

*Jury*—Our Foreman.

*Clerk*—Mr. Foreman look on the Prisoner—Prisoner look on the Foreman—What say you, Mr. Foreman, is John Blaisdell, the prisoner at the bar, guilty of the crime whereof he here stands charged, or not guilty?

*Foreman*—GUILTY OF MANSLAUGHTER.

The Prisoner was then remanded to the County gaol and at a subsequent day of the term being brought to the bar was sentenced to CONFINEMENT IN THE STATE PRISON TO HARD LABOUR FOR THREE YEARS, AND FIFTEEN DAYS SOLITARY IMPRISONMENT.