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No. 9.

A FULL REPORT OF THE

ARGUMENTS OF

THOMAS F. CARPENTER, SAMUEL Y.
ATWELL, AND JOSEPH M. BLAKE,

ATTORNEY GENERAL,

IN THE CASE OF

THE STATE vs. JOHN AND WILLIAM GORDON.

FOR THE MURDER OF

AMASA SPRAGUE.

SUPREME JUDICIAL COURT, MARCH, 1844.

—
REPORTED BY
EDWIN C. LARNED,
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1844.

A FULL REPORT OF THE

COMMISSIONERS OF THE

THOMAS F. CARPENTER, SAMUEL V.

ATWELL, and JOSEPH M. BAKER,

ATTORNEYS AT LAW

STATE vs. JOHN AND WILLIAM GORDON, FOR THE MURDER OF
AMASA SPRAGUE.

SUPREME JUDICIAL COURT, }
Monday, April 15, 1844. }

Gen. Carpenter closed his opening for the prisoners as follows:

I congratulate you, gentlemen of the Jury, that this protracted, and to us who are engaged in it, tedious and exhausting trial, is at length drawing to a close. I might even venture to congratulate the prisoners at the bar, that they will be soon relieved from the agitation and uncertainty which they must have endured during its continuance. What its termination may be, whether for weal or woe to them, I know not.

That a horrid murder has been committed upon a useful, active and good citizen of this State, on his own soil, on God's holy sabbath, in the expressive language of the gentleman who opened this case for the government—there is no dispute—that is a fact about which there is no controversy between us. I stand not before you, gentlemen, to protect and screen the guilty, but solely to protect the innocent. If the prisoners at the bar, or either of them, have been proved beyond a reasonable doubt to have perpetrated this atrocious crime, neither my professional duty, any more than my duty as a citizen or a man, requires me to attempt to screen them.

The prisoners are strangers in this land; they came over from Ireland, a few months since, as hundreds of their countrymen annually do, to seek in our more favored land the employment which is denied them in their own. They arrived here in July last, and as soon as was practicable obtained employment, and up to the time of their arrest on this charge, have been deemed peaceable, quiet, inoffensive men—addicted occasionally to that vice formerly so common to their countrymen, but which, I am happy to say, is daily becoming less frequent among them—the vice of intemperance. William Gordon was a tailor by trade, and found employment in this city, with one of the witnesses. John had no trade, but worked as a common laborer. Gentlemen, that is their history, so far as it has come to our knowledge.

From the questions asked of some of the witnesses by the Attorney-General, we judge that the impression has gone abroad that the counsel in this case were to be largely paid, and that large sums had been raised by subscription among the countrymen of the prisoners, for that purpose. I can not speak for my colleagues, but for myself I will say, I have never received, nor had the promise of receiving, one single cent for my labor and services in this cause. If I do receive any thing, it will be from the gratitude of some persons of whom I am now ignorant. But, gentlemen, so long as I am able to stand in this house, it shall not be said that any man on trial for his life, on a

charge of murder, was convicted because there was no member of the Rhode-Island Bar to be found willing to volunteer his services in defence of the prisoner.

In the progress of our defence, we have encountered great obstacles. There have, in the first place, been the misunderstanding and mistake arising out of the differences of language between us and the witnesses. Then it has been almost impossible for us, when we have heard of a witness, to get him into Court. Instead of finding clanship and fraternal feeling to aid us in the defence of these prisoners, we have found that the preparation of this trial was considered to be nobody's business but ours. That was not our chief difficulty. A highly respectable man has been brutally deprived of life; public feeling has been excited, as it ought to have been. The inquiry has been, who was the murderer?—the instant a man is selected, public feeling is turned against him; "trifles light as air become confirmations strong as proof from Holy Writ." The newspapers take it up; it goes far and wide through the community; circumstances are multiplied—not only those which are true and well known, but others are conjured up and put in together the false with the true—and all sent forth to prejudice the public mind against the unfortunate individuals upon whom the public gaze first fastens. Even the poor old house dog, too feeble and harmless to hurt a living being—who can but just walk, and who has not a tooth left in his head—was made a swift witness against these prisoners in the columns of the public papers, to convict them of the crime of murder. One of their own countrymen (Mr. Cole) tells you he had little doubt of their guilt, from reading the statements in the newspapers. If he would be no more charitable than this in his judgment, what is to be expected from the feelings and suspicions of those who lived in the vicinity, and shared in all the prejudices and excitement of the event?

When such a man as the deceased is taken from life, all feel the loss, because he was the fountain head from which flowed the subsistence of a great many individuals. When taken from life by violence, every man's feelings are aroused to the highest pitch, and regret is mingled with overpowering indignation.

These two unfortunate men, with Nicholas S. Gordon, their brother, happened to be the men upon whom suspicion alighted; and when people of such standing and influence as the friends of the deceased fix their suspicions upon any man, and incline to believe him guilty, much is to be encountered in his defence.

The learned gentleman who opened this case

for the Government, has told you that the friends and relatives of the deceased appear here from a sense of duty to the deceased. All duties to him ended when his mangled corpse was committed to the bosom of the earth. The duties of fraternal love had been up to that period most fully and faithfully discharged by the distinguished gentleman who has appeared here during this trial. Gentlemen, that was not the reason; let me assign a nobler and better, a more rational, and, I trust, truer cause. He appears here out of a sense of duty to his family, to himself, to his friends, to me, to you, and to all his fellow citizens. If one man can be thus taken off from the community, another may be taken. The friends of the deceased appear here because it is their duty. It is their duty to do all that can be done to ascertain the perpetrator of this atrocious crime, and bring him to punishment. It is a matter almost of self-preservation to them. With any other motives than these, I do not believe them to be influenced; and before I go into the argument of the case, I would most distinctly say, that I do not believe the friends of the deceased, with all the power of almost unlimited wealth at their control, would purposely throw any obstacle in the way of a fair, full and impartial trial of these men. On the contrary, the friends of the deceased have been ready to insist that one of the witnesses summoned by us, and who was unwilling to come, should be compelled by process of law to appear and testify in behalf of the prisoners. If we have encountered difficulties on account of their doing what they and we esteem to be their imperative duty, we blame not them in the slightest degree.

Another difficulty against which we have had to contend, has been that an impression seems to have gone abroad among the ignorant and ill informed of the community, that this trial is in the nature of a civil action, where one man is on one side and the prisoners on the other. They have supposed that there were sides taken in the case, and have been affected by this supposition. Men have been so stupid as to believe, that for them to come here and testify in behalf of the accused, would be offensive to the friends of the deceased. We have had the greatest difficulty in getting men here to testify. The Government are amply provided with agents and with means; they have only to say to this one, "go, and he goeth, and to that one, come, and he cometh." But when we look around for assistants in our arduous work, our eye rests upon a young woman, the sister of the prisoners—sick in body, and without a cent in her pocket—or a feeble, grey-haired old woman, the broken hearted mother of these unfortunate men; and these are all who have any interest in their fate.

Again, owing to the ignorance of the nature of the defence, men who have been acquainted with important facts, have not come forward and made them known, as you have seen illustrated in the case of one of the last witnesses who appeared on the stand for the prisoners. William Gordon had spoken of this man, and described him to Mr. Knowles, when first arrested, and told him Mr. Knight could tell him who he was, for he boarded with him. Mr. Knight had very naturally forgotten all about it; and after instituting inquiries in every direction, without success, we at last gave up the search, and informed the prisoner of our failure. I will not tell you with what feelings he received the intelligence. But at length, when we had entirely given up the search, and gone on

to trial without this evidence, as it were by the interposition of Providence, this man is discovered and brought on to the stand, and completely confirms the story told by William.

The learned Counsel who opened the case for the Government, has said, that when such an event happens as the death of Amasa Sprague, every man must take it home to himself; but let me tell you, that when a case of this kind happens—that two men stand before the bar of a tribunal in a foreign land, friendless and strangers, on a trial for murder—every man should take home also their condition to himself. On you, gentlemen, depend the lives of these prisoners; the duration of their earthly career rests with you. The humanity of the law presumes every man to be innocent, until proved to be guilty. If you have any feeling at all, it should be in favor of the prisoners, not against them. That kind of prejudice which is created by the statements of newspapers, should not be suffered to tinge your minds. It is unnecessary for me to attempt to combat it; but it will exert its influence upon us almost insensibly, unless we search our hearts closely. The impressions of years since are now producing their effect upon our actions, and the prejudices we have imbibed, we know not how silently mould our opinions and guide our judgments.

It is too much the mode, in modern times, in all sorts of investigation and inquiry, to make a theory first, and afterwards find the facts to support it; like sectarians, who first construct their system of theology, and then search the Bible for proof; realising the description of the Bible in the old poet:

"Here all denominations for their tenets look,
And all denominations find them in this book."

Let us, gentlemen, in this case pursue a different course. Let us trace the facts in the first place, and come to a conclusion afterwards; not seeking to confirm a previously formed impression, but seeking to find what ought to make upon the mind a correct impression.

It should be remembered, gentlemen, in the consideration of this case, that the law, as well as humanity, makes no difference between the rich and the poor. In the sight of Heaven, as well as of the law, the life of the meanest beggar that crawls in the ditch, is of the same value, and entitled to the same careful protection as that of the man of wealth, who lives in a palace. You are to inquire as diligently, to weigh as carefully, and to decide as cautiously in the one case as in the other.

The gentleman who opened this case for the State, has told you that the State asks nothing but justice. It may be so, gentlemen, but the State is one thing, and the instruments and agents through which the State acts, another; and when one party is rich and the other poor, it is difficult for Justice to hold the scales even poised.

Our position then gentlemen, both yours and mine, is more than ordinarily solemn and important. You have been told that mercy lies with a higher tribunal. It goes so; but, gentlemen, in this case think not any mercy will be dealt out. Whoever is convicted of having perpetrated this murder, will expiate his offence upon the gallows, just as certainly as yonder sun will set; and if I believed at all in capital punishment, I should say he ought to do so. But with this question you have nothing to do; you are to do your duty, whatever may be the consequences.

The evidence upon which the prisoners must

be convicted, if they are convicted at all, is strictly circumstantial. There is, with one solitary exception, no positive evidence that has the slightest tendency to connect the prisoners at the bar with the murder of the deceased. I allude to the testimony of Barker and Spencer. They say they saw William Gordon on the Johnston road. I shall endeavor in the course of the trial, to show you the danger of relying on the testimony of any witness whose mind is prejudiced. He sees things that never existed, hears sounds that never pierced the air, and discovers resemblances that exist only in his own heated imagination.

The Government seek a conviction upon circumstantial evidence only. Now I do not say that circumstantial evidence may not carry to the mind the strongest conviction. If the circumstances are such as to be consistent with only one hypothesis, they are as forcible as any evidence. The train of circumstances may be so clear and convincing, that the mind has no more doubt than if a virtuous and upright man should swear that he saw the transaction with his own eyes. But there are many instances given in the books, where terrible mistakes have been made by juries relying too fully upon this kind of evidence.

I recollect the case of a servant girl, who was left at home with her mistress; some angry words were heard to pass between them. At night the house was carefully fastened; and in the morning the mistress was found murdered in her bed. The servant being the only person in the house, and there being no appearance of any entrance having been effected from without, was convicted and hung upon the force of these circumstances. After it was too late, it appeared by the confession of the actual murderer, that the house was entered through the garret window, by a plank thrown across from an adjoining house; and the poor girl was wholly innocent. They had entered, committed the murder, and made their escape, without its being known by a single being, save that Being without whose knowledge not a sparrow falleth to the ground.

The Court here adjourned until afternoon.

Wednesday, 3 P. M.

Gen. Carpenter resumed his argument.

At the time of the adjournment, I was commenting upon Circumstantial Evidence. I had said to you that circumstantial evidence was capable of producing as high a degree of certainty as any other. But circumstantial evidence is not without its rules, any more than positive evidence. There are certain rules which reason and experience have proved necessary to guide the mind in weighing and examining proof; and when these rules are departed from, especially in cases of circumstantial evidence, there is great danger of error in the conclusions which may be drawn. I have cited some cases in illustration of the danger of a too implicit reliance upon circumstantial evidence, and I was about to cite another, the case of an uncle who had a niece living with him; he had treated her unkindly; had been heard to threaten her; and on one occasion the neighbors heard her say, "good uncle, do not kill me;" and after that she was seen no more; she had suddenly disappeared. After three or four days, the neighbors' suspicions were excited, inquiries were made of the uncle; he is brought before a magistrate and questioned. He was arrested, and said the girl was alive, and he could produce her; he produced a substitute; the fraud was detected; he was tried, convict-

ed and executed, and unfortunate to relate, not long after the true niece returned. The angry expressions had been overheard; the uncle knew it; the girl had run away; he knew of no way of avoiding the accusation, except by palming off a substitute.

In this case, the corpus delicti was not made out, and it differs therefore from the case at bar; but all these cases shew the danger of relying upon such evidence. And where so important an event as the life of a man hangs on circumstantial evidence, and circumstantial evidence alone, it becomes us to inquire with the utmost care and caution, into all the circumstances and matters said to be proved.

The principal rules by which evidence, circumstantial in its character is to be governed, are these:

1st. All the facts and circumstances on which the Government rely, and from which a conclusion is to be drawn, must be fully and clearly established.

2d. The facts and circumstances from which the conclusion is to be drawn, must be consistent throughout with the hypothesis; that is, the supposition that the person accused committed the murder.

3d. The facts and circumstances from which the conclusion is to be drawn, must be of a conclusive character and tendency.

4th. They must be such as to exclude to a moral certainty every other hypothesis but that of the guilt of the accused.

5. Each particular circumstance must be distinctly proved, and the number of circumstances do not strengthen the evidence at all, provided that number be sworn to by a single witness only.

Circumstantial evidence is more dangerous, because you run more risks. If two honest and upright men swear to a fact, positively, it is proved, so far as they can be believed. But if the same men swear to certain circumstances only, you have two risks to run; first, the risk of their not telling the truth in regard to these circumstances, and second, of drawing a wrong inference from the circumstances which they prove.

I am aware that it will not do to say circumstantial evidence is not to be trusted, because it is liable to mistake; but my duty is to put you on your guard against mistaking probability for proof; for no number of probabilities whatsoever will warrant a conviction. You have no right to put a man's life into a lottery. Then what is wanted in circumstantial evidence, is moral certainty—that certainty which produces a conviction so clear and decided, as that after having given a verdict of guilty upon one of your fellow men, you can retire to your couches and sleep quietly, without a single reasonable doubt to disturb your consciences. If these principles be not true, then the great masters of the law have been mistaken. Is it not an established and well known maxim, that it is better that ninety-nine guilty persons should escape, than that one innocent man should suffer? Let us then examine and apply the evidence in this case, bearing these rules in our minds. If we are governed by them, we shall not be likely to err; but if we do, we shall err as we ought, on the side of mercy.

Men in this world, gentlemen, do not act without a motive. No principle in ethics is better settled than this; and before men will take any great risks upon themselves, they must be actuated by some very powerful moving cause; they do not for a mere trifle hazard

all, both here and hereafter. These truths are so grounded in our minds, so perfectly established by reason and experience, that we know them as well as we do the faces of our fathers.

A question arises in the outset. A murder has been committed; what motive could have actuated so horrid a crime? Some men become so sunken and degraded, so lost to all the better and nobler feelings of humanity, as to take life for mere gain. In the case before us, money was not the object. It was not the day of the week on which the deceased would have been likely to have had much money; on other days he would have been in the possession of large sums. What he did have was found untouched upon his person; not a dollar of money, not an article of property was taken from his possession. The object of the assassin was evidently revenge—the basest and blackest of passions—revenge not for some small injury, but for some injury considered to be great. I reason from the principles of human nature to these conclusions. Had John and William, the two boys who sit there, any such motive of deadly hate to prompt them to the murder of Amasa Sprague? It is a question for you to ask, and for you upon your consciences and your oaths, to answer.

What cause of personal enmity existed between these simple hearted young men and Amasa Sprague?—had they ever spoken together? No. Had they ever exchanged unpleasant messages? No. Did the prisoners ever know him personally? I speak what I sincerely believe—No. Have they ever threatened him? There is no such evidence in existence, and no evidence that his name was ever taken upon their lips. Has the deceased ever inflicted any personal injury upon them? There is not a shadow of proof of it. Have they sustained the character of revengeful, malicious, desperate men? On the contrary, their conduct has been quiet, peaceful and inoffensive; attentive and industrious in their business, like many other men, having only the fault occasionally on a holiday of quaffing the poisonous bowl.

The prisoners being such men, and under such circumstances, we are to prove a motive in them for the commission of this crime. If the crime was proved upon them by positive evidence, no motive need be given; but now we are to seek for a motive to confirm our suspicions, and establish their guilt. If no adequate motive can be found, you cannot find them guilty; for motive is an essential part of the testimony, in a case of circumstantial evidence. The Government felt this necessity; a motive is wanted, and one is speedily discovered. Nicholas S. Gordon, the brother of the prisoners, a man of much talk, a sportive, swearing little Irishman, beneath the size of ordinary men, has talked in his blustering, threatening style, about Amasa Sprague. Well, what has that to do with this case? Why, Nicholas Gordon is the brother of the prisoners, and Nicholas Gordon had some petty difficulty with the deceased, about a license; and because he is their brother, and because he got angry and talked threateningly against Mr. Sprague, therefore the prisoners murdered him. This is exactly the force of the argument on the part of the Government. Such an inference as this it will not quite answer for you to draw, in a capital trial, where the lives of your fellow men hang in the balance. There must be some shadow of a connection instituted be-

tween the prisoners and these threats, before they can affect the prisoners. To do this they bring Mr. Harding Hudson as a witness; for gentlemen I don't mean to say a word about Miss Susan Field, the inmate of the house of Miss Susan Parr, and who said she could answer questions faster than the counsel could ask them, and who pretended that she knew each of these men well, and yet could not tell them apart, when called upon to distinguish them.

What does Harding Hudson say? He was once with Nicholas and John. Nicholas was scolding and swearing about the loss of his license; saying he would have his revenge. What did John do—did he second these threats, did he give them his sanction or acquiescence? No, he went about his own business, said the witness, and took no part in the conversation.

It is no unusual thing for people to have disputes about licenses; it would be a very unusual thing to kill a man for opposing a license; and still stranger would it be for a man, on account of his brother's license being taken away, to perpetrate a murder so bold and atrocious. Gentlemen, is it not next to impossible that such a deed could have been done from such a cause. Do you suppose the prisoners are differently constituted from other men—that because they happen to be Irishmen, they are not made in God's image, and endued with human natures? Where, I ask you upon any principle of reason, common sense, or experience, is the motive which could have actuated these men to the commission of this crime? Crimes of this description, done in the broad face of day, and within hail of hundreds of human habitations, do not proceed from any such imaginary, fanciful motive, as this which the Government attempts to impute to the prisoners at the bar. Crimes of this nature, where the party is determined that the deceased shall know it is *his* hand which inflicts the fatal stroke, may be perpetrated in open day light. If John or William Gordon had wished to murder Amasa Sprague, because he had in connection with many others, (for you will remember that Mr. Lawton says the whole neighborhood were as much opposed to the license as Mr. Sprague) opposed the granting of a license to their brother Nicholas; they would have taken an opportunity when it could have been better concealed.

But the man who perpetrated this murder, was a different man—a man who believed himself to have received from the deceased some deadly wrong, some injury which nothing but blood could wipe away—a man who was so stung with a sense of injury that he would have followed his victim onto a parade ground or into a public assembly, and murdered him in the presence of thousands of his fellow men, rather than that he should have escaped his vengeance.

This question of motive is important for two reasons:

1st To shew the inadequacy of the motive which has been proved, and

2d. To enable us to test the hypothesis upon which the government rely, when we have made out another hypothesis consistent with the circumstances.

The weakness of this motive might easily be tested thus: Suppose, if you please, that Amasa Sprague had threatened Nicholas Gordon, in the presence of William Sprague. Nicholas Gordon is found murdered, and William Sprague is suspected of the crime. It would certainly have sounded strangely to have said that a suf-

ficient motive for the commission of such a crime was proved in the fact that once or twice William Sprague had been present when Amasa had used threatening expressions toward the deceased; and Amasa Sprague could prove an alibi, and therefore William must have done it! Is not that this case precisely? If so, is one rule to be made for one man, and another for another? When the Court permitted this evidence to pass to you, his Honor, the Chief Justice, remarked to you that it might go for what it was worth.

Durfee Chief Justice. No, Sir, No, Sir; we permitted it to pass to the Jury, for them to determine what influence it might have had upon the minds of the prisoners, in the relation they then were to him.

Mr. Carpenter. I so understand it.

Such, gentlemen, is the case as it respects the motive. Can you draw any inference from the evidence of motive, which would authorize you to infer, or even to suspect that these prisoners committed this murder? If these men were proved to be hardened, desperate villains, you might suppose that they could have been influenced by such a motive as this; but such is not the case; they stand before you, so far as the evidence in this case is concerned, as peaceable, quiet, orderly, industrious men. It is therefore wholly incredible and unaccountable, that they should have committed this murder from a cause so trivial.

I have said, gentlemen, all that I shall say in this stage of the trial, upon the question of motive; but before I enter upon the devious pathway of the evidence which is relied upon to connect John Gordon with this transaction, I will dispose of one portion of the case, which I can do in a very short space of time. I said to you, in the opening, that there was but one piece of testimony in the case, which connected either of the prisoners with the murder, by such sort of evidence as required any rebutting evidence on our part; that person was William Gordon, and he is the only person that has, by testimony worthy of reliance in a case of life and death, been connected with the transaction.

William Gordon is jointly indicted with John Gordon, for the perpetration of this murder. By the testimony of Barker and Spencer—two highly respectable witnesses, on whom I would rely with as much confidence as any witnesses in this case, for they are men of intelligence, and swear with great caution—William Gordon was seen issuing from the lot adjacent to the place of the murder, just at sundown, in his shirt sleeves, on a cold day in December.

These two men, Barker and Spencer, left Barton's house, near the Hoyle tavern, at five minutes after twelve o'clock. They went out on a visit to the father-in-law of one of them, and went by the Johnston road. After getting about three miles out of town, somewhere near the Carpenter house, and a short distance beyond the place of the murder, they met two men on the road, coming toward Providence; one a tall man and one a short man, with a gun, going toward town. They (the witnesses) pursued their way to their place of destination. On their return home to the city, they arrived at Gallow's Bridge just as the sun was setting, and a few minutes after saw two men, whom they conjectured to be the same they had met before—the one a tall and the other a short man, coming out of the corner of the lot where the murder was committed. They continued on and passed these two men; they were the

same they saw before; the short man was now in his shirt sleeves, and had no gun; the tall man had a gun. They said, those men are suspicious looking chaps. These men were no doubt the murderers of Amasa Sprague. It was not five minutes afterwards, before they heard a man had been found dead. Now these men both swear that the men they saw the second time, were the same men they saw the first time. The short man, they swear was William Gordon. Now, gentlemen, they did think so, without doubt; they swear to you as they thought. Was it so? This is the only link which connects either of these prisoners with any certainty with the murder of Amasa Sprague. This is the strongest circumstance in the case. If either of these men were seen coming direct, as it were, from that scene of blood, without a coat, on a bitter winter's day, and without the gun which he had before been seen with, it is the strongest evidence of guilt which could be presented to the mind.

But, gentlemen, Barker and Spencer are mistaken; they did not see Wm. Gordon on the Johnston road; they could not have seen him; they made that mistake which men are apt to make when suspicion is aroused against a man. Men then begin to see things which they never dreamed of seeing before. Every thing is construed into guilt. As the proverb has it, "If you want to whip a dog, you will find a stick in every bush."

That man was not William Gordon, and yet, if we could not prove where he was that day, this evidence would have perilled his life; and yet this evidence was honestly given. Now, gentlemen, William Gordon is on trial for his life, and it is necessary for me to follow out through that day, even William Gordon, who has proved as perfect an alibi as ever was proved in a Court of Justice.

The Government, on the supposition that the man seen in his shirt sleeves, on the Johnston road, was William Gordon, have to make out that after he was seen on that road, which was about sunset, he crossed over the river, returned to Nicholas S. Gordon's, procured a coat, and was proceeding down by Benoni Sprague's house, on the Cranston road, at ten minutes after sunset. That was their theory, and wild and impracticable as it was, they would have asked you to believe it. But where was William Gordon? He is proved to have been in church at mass in the morning. He was seen there by several persons. If human testimony can be relied upon, there is no question of the fact that William was seen at church, and after church in this city. Church was not out until after 12 o'clock, at the earliest. It would take him at least five minutes to walk from the church to Barton's house; he has then to go out of town, passing by Barker and Spencer, on the Johnston road, unobserved, change his dress, get a gun, come back and meet them on the same Johnston road, proceeding to the place of the murder, on his return. But let us trace him. It is proved that he was seen at Bagot's, in Providence, between one and two o'clock. He left his employer's, dressed in his Sunday suit, in the morning, to go to church, stating that he hoped to see his mother there. He did not find her there, and thought it his duty to go out and see her. He was about doing so, when he went with Michael O'Brien into Holohan's, and the Irish hospitality of that family was a most fortunate thing for poor William. If an Irishman has but a crust of bread he will share it with you; and as William got up to leave for

home, they said, no, you shan't go without your dinner. After dinner, Mr. Holohan sat awhile, not to be guilty of the rudeness of leaving his guests immediately. Holohan says at length, "I must go, I have an engagement at a funeral," and got up to go. William then says he will be going, and he and Holohan go out together. They come up to what is called High street, and Holohan observes the Universalist clock, and sees that it is just half past two o'clock. He fixes the time exactly, because he was going to a funeral at that time, and was afraid he should be late. It was half past two o'clock. Up to this time, William has been in the city of Providence. Of the truth of this there can be no doubt. That, then, would render it impossible for him to have been on the Johnston road, at the time when the two men were first met by Barker and Spencer; for they swear it could not have been later than 2 o'clock, when they saw these men, and at half past two William was still in this city. But let us follow him. He is going out, as a dutiful son ought to do, to see his sick mother, and inquire after her health, and to visit his only child. Surely, if any reason could excuse a man for travelling about on the Sabbath, these would be sufficient. He is hurrying along, when he happens to see one of his countrymen, Martin Quick, in the street, and Irish fashion, he must stop and talk with Martin awhile. Martin Quick has appeared here; you have seen him on the stand. He is a man of honesty and respectability. Let them sift his character to the bottom; they have had time to do it; and depend upon it, if a flaw could have been discovered, you would have had it pointed out. The witnesses who appear here for the prisoners, are tried as by fire. The Government has its emissaries everywhere. William begins to feel as if he wanted something to drink. It is a cold day, and he has a long walk before him. He crosses over, accosts Martin, and asks him if he won't have something to drink. There is a row of taverns along there beyond the Hoyle tavern; they went into three without success; finally, in the fourth they got something to drink. They come out; William says, my way is across here, and goes on his way homeward. Martin comes down street, and just as he reaches the Catholic church which is about a five minute's walk distant, church is out, and he concludes it must have been about three when he left William on the road. Now can it be doubted that Martin Quick tells the truth? If not, I lay it down as a thing certain, that William Gordon was in Providence at three o'clock, on Sunday afternoon. I therefore leave the testimony of Barker and Spencer entirely out of the case, for it is plain, if human testimony can be believed, that they were mistaken.

We find this man on High street, as late as 3 o'clock; he is then going toward Cranston, and in the incipency of this trial, this is as far as we could trace him. He would have been safe enough then; but he had said that he met a man on the road, and had described him. We were unable to find that man. He told us Mr. Knight could tell us about him, if he would, for he went in there. Mr. Knight could tell nothing about it. But by the providence of God, just at the close of the trial, that man is found. He discovers the importance of his testimony, and comes here and tells you his story. He tells you he overtook William Gordon on the Cranston road, by the Arsenal; that he thought it was Nicholas; that he accosted him, walked out with him as far as Mr. Knight's, where he (the wit-

ness) boarded, and left him going towards home. That it was nearly sundown when he parted with him. Now, gentlemen, the fact that Gen. Knight does not recollect having any conversation with this man, does not prove any thing. It is not extraordinary, that at that time of excitement and agitation, a trivial circumstance should have escaped Mr. Knight's memory. I do believe Mr. Knight is mistaken about this matter, and that this man is right. So that there is no contradiction here. I think therefore I might, without dwelling on this matter longer, safely leave William Gordon in your hands. But let us trace him further; he goes to his mother's, stops a few minutes, finds the sun has left, and hurries back to the christening. He sets off at a run, fearing he should be late; you will recollect that he came very near losing his supper, as it was. He is seen coming up the hill by Benoni Sprague's, at a trot. After a while he gets tired, and relaxes into a walk. About three quarters of a mile further on, he is overtaken by Mr. Arnold. Now mark how every portion of this testimony corresponds. William Gordon goes out with Cole. Cole says he left him on the road, to his mother's house, about sunset; he goes to his mother's, stays but a few minutes, turns about for town, runs up the hill, is seen by Benoni Sprague, passed by Almon Arnold, goes on and meets Miss Kingston, stops a minute and talks with her, and gets to the christening at six o'clock. There is a perfect alibi, every part is fitted into the other. It is a complete dovetail. Well, gentlemen, I think by this time William Gordon may put his hand to his neck, and not feel the halter round it. When he was arraigned, he shook his handkerchief, and said he was as innocent as that. Let me follow him a moment longer, to shew the course of things. He arrives at the christening. "Whom did he sit beside?" asks the Government. "By the side of Nicholas." Nicholas was at the corner of the table, and of course made room for his brother. He stays until Nicholas says it is time to go home; he goes out with them, goes into Dennis O'Brien's a few minutes, and returns to the latter end of the feast. Is there any thing in these circumstances which can be hinted into evidence of guilt? Did any thing remarkable transpire at the christening? Nicholas was pleasant and talkative, and William sung two very pretty songs. I do not think it would be proper for me to dwell upon the consideration of William's case longer. His innocence is too clearly established to require any additional argument. But I must use William farther in this case, for the hypothesis of the Government is, that all three of these brothers were concerned in this transaction—Nicholas as abettor, and the other two as actors in this bloody deed. Now by positive testimony—not by any circumstantial testimony, we have been able to prove a negative, to prove that William Gordon was not and could not have been there. We have proved this to a moral certainty. Has the Government made such a mistake in regard to William Gordon, when too they thought they had connected him with this crime by such positive testimony, so that they have nothing left now to call upon, but to suppose that he had some knowledge of the affair? then beware how you rely too implicitly on their testimony in relation to John Gordon. When you see a case of circumstantial evidence got up in this way, and one half of it breaks away entirely, beware lest the other half, if you trust too much to it, shall also crumble under your feet. With these remarks,

I leave the case of William Gordon in your hands.

The case is attempted to be made out against John Gordon, upon grounds differing in many respects from those taken by the Government, as regards William. To connect William with the murder, they attempted positive evidence, to a certain extent; that he was seen coming from the scene of the murder in a disordered manner, without a coat, walking rapidly, soon after the deed was perpetrated; but John Gordon was neither seen near the scene of the murder, or known to have had any connexion with it. And although he lived nearly a mile from the place of the murder, yet you are called upon to presume that John Gordon left the house in which he then happened to reside—a house which is like a city set on a hill, which cannot be hid, exposed to view in all directions—that he left that house with the weapon of death in his hands; went to the scene of the murder, perpetrated the crime, and returned to that house, all in broad daylight, on a Sunday afternoon. You are called upon to *presume* this. Now, gentlemen, let us carefully examine the evidence on which the Government call on you to *presume* this fact.

I have already considered the first important circumstance—the motive—that applied to both William and John. I come now to that part of the case which the Government have chosen to fasten exclusively upon John.

The first circumstance, or train of circumstances, upon which the Government rely, is the circumstance of the tracks across the meadow through the swamp, and, as they say, to Nicholas Gordon's back door. Now so much do the Government rely upon this circumstance, that the opening counsel for the State said it seemed as if the tracks were letters of light, indicating the guilt of the accused, or in other words, that his guilt was written by them in letters of light. I will shew you, gentlemen, that these letters of light are an ignis fatuus, that shines but to bewilder, and glitters to deceive.

You are called upon to take the life of a fellow being, upon the evidence of these tracks. If they produce in your minds that degree of certainty which admits of no reasonable doubt, then you have no other course but to say so, and these tracks, faint as they were on the snow, become the links to connect John Gordon with this murder. But how do you know beyond a reasonable doubt that John Gordon made those tracks? Because Nicholas S. Gordon had a quarrel with Amasa Sprague—does that prove it? Because Nicholas S. Gordon owned a gun, which is thought to have been the weapon with which the death was inflicted—is that the way you know it? Gentlemen, after so many have been over these tracks, and so carefully—after they have been thought to write in letters of light the guilt of John Gordon, let us, with feelings different from these, follow them ourselves, and see whither they will lead us.

We are going not now on an errand of suspicion, we are going on an errand of life or death.

I agree, gentlemen, that the person who committed that murder, in all probability made those tracks across the meadow and through the swamp to Hawkins' Hole. The questions I would now consider are, whether the tracks which begin at the place of the murder, which were discovered on Monday, and the tracks on the south side of Hawkins' Hole, which were discovered on Tuesday, are the same tracks, and

made at the same time. Whether John Gordon made the tracks from the spot of the murder to the back door of Nicholas S. Gordon's house. Whether this is so proved that if it stood alone in the case, you could convict the prisoner on the strength of it. Now, gentlemen, there are several reasons which, as a mere matter of suspicion, would lead me to doubt exceedingly whether the same person made the tracks on the left side of Hawkins' Hole, which made those on the right side, and through the meadow. I ask you, how do you know the same person made these two lines of tracks—entirely separate and distinct from each other, divided by a common highway? If these two series of tracks formed one continuous line the whole distance, I should tell you that any other hypothesis, than that they were made by the same person, was repugnant to all reason and experience, and therefore you were compelled to believe that they were made by the same person—as strongly as if some person had sworn to you that he stood by and saw them made. Because you can frame no other hypothesis consistent with the facts. We know of no way in which a man can rise in the air and fly from a track, and another man spring up from the ground and take his place. From the place of the murder, to Hawkins' Hole, this reasoning holds good. So far, there is one continuous track. But when we get to the drift way, this continuous track ceases; it ends upon a regular beaten road, where no tracks can be traced. It does not begin again on the other side of the driftway exactly opposite to where it left off, but farther up, as if the man had been coming from another direction. You have then on the other side of the swamp another track, going off from the driftway into the swamp, some three rods distant from the point where the meadow tracks come to the beaten path of the driftway. Now if you were to ask me if I believed, or could say to a moral certainty, that the same person made the tracks below Hawkins' Hole, who made the tracks above it, I should tell you it did not amount to a probability. I would not hang a dog upon such evidence as that; much less a fellow being. Do you not see the difference at a glance? Suppose a man coming along that driftway, which is travelled by everybody who goes a gunning in that vicinity, had observed game in that swamp, he would have turned off from the driftway and gone in there—a man coming from Henry Fenner's, as some of the witnesses themselves, and especially DeMerrit, the chief witness admitted, might have gone in that way—or a man coming along the beaten road from Sprague's factory, might have turned in there. Doubtless if John Gordon committed the murder, he would have taken that route to his house, rather than the main road; but in that supposition you must not take the very fact sought to be established by these tracks for granted. Is the correspondence, size and appearance of two different lines of tracks so remarkable? Why, Mr. Ormsby tells you that they put these very boots into *his* tracks, and they fitted exactly; and he is not contradicted. Rollin Mathewson does not contradict him. Walter Beattie does not contradict him; they merely do not recollect a fact which he does recollect. There is nothing remarkable in this similarity of tracks. There is nothing impracticable in the theory that the tracks below Hawkins' Hole were made by one person—the tracks across the meadow to Hawkins' Hole, by another person. There is no certainty that the tracks on the south side were

even in the same direction with those on the north side. Was there any range taken, by a tree, or house, or any thing, so as to fix the direction? No, not at all. And it appears by the evidence that you have to go nearly three rods out of the straight course in the beaten public pathway, and at a right angle, before you would get from the tracks on the one side to the commencement of the tracks on the other side of Hawkins' Hole. Is it probable, if a man was coming from the swamp on the North side to that on the South of the Hole, that he would have gone three rods out of his way, instead of continuing on in a straight line? What becomes then of these letters of light?—the word has been misinterpreted. What! on a mere probability or possibility, is a man to be convicted of such a crime? But it is said the boots fitted the track. DeMerrit measured the tracks at the request of John O'Brien; he measured the soles; they corresponded in length, but differed an eighth of an inch in width. It is said an inch in a man's nose makes considerable difference. I should think the eighth of an inch difference in a track, where the life or death of a man depended upon the exactness of the correspondence, was no unimportant difference. DeMerrit, the principal witness, and the most exact, tells you that there was a difference of an eighth of an inch. This is the result of actual, exact measurement. When this is made, there is no scope for imagination.

Now, by no principles of reason or common sense, can it be shewn that the tracks of that boot would be of the same exact length, but of an eighth of an inch additional width; that they would remain stationary in length, but increase in width. Would you then, I ask, supposing these tracks to be continuous above and below Hawkins' Hole, would you consent to hang John Gordon on such evidence—when John Gordon's boot does not fit the track within an eighth of an inch, by careful measurement? Gentlemen, you would not. Then here are two satisfactory answers to the assertion they make, that these are John Gordon's tracks. Why, gentlemen, if John Gordon's boots were the only pair of sale boots made of that size, and upon the same last, and exactly fitted to the track, a stronger presumption would arise; but thousands of the same size, shape and appearance, were sent into the market at the same time with these. I think, gentlemen, these tracks begin to be beaten out, and fade away already before a searching examination. But I wish you to examine the boots themselves, in order that the last vestige of the impression upon your minds that these tracks were made by those boots, may be removed, and the last traces of those "letters of light" wiped away. The argument is, that the tracks above Hawkins' Hole were made by the same person as the tracks below it, and that John Gordon made them both, because his boots fit them. On Monday morning the tracks in the meadow were first found. They seemed to terminate at the pond; no further traces being found until they got on to the other side of the pond. Now, gentlemen, look at those boots—(Gen. Carpenter here passed the boots to the Jury) look at the heels of them, circled by a row of iron nails, protruding almost an eighth of an inch out of the heel, and tell me if a man crossing that ice with those boots, would not have left the traces of those nails behind him; would they not have made impressions or scratches on the ice which would have been easily distinguishable? Yet the witnesses searched with great care, and could find no

traces until they got over on to the other side of the pond. These boots must have made tracks all along that ice, with these iron nails. What then becomes of these letters of light? Do you not begin to have a reasonable doubt if John Gordon made those tracks? if so, you have nothing to connect him with this transaction. That is not all. John O'Brien says he and DeMerrit both agreed that the boots that made those tracks had been tapped. Have these boots been tapped? You know there will be, where the upper leather laps on, a mark or opening between the ends of the leather. There would be a crack or opening, which would leave an impression, especially after the boots were wet. It is positively sworn to that DeMerrit came to the conclusion when he was examining these tracks, that they were made by a tapped boot; could these boots have made any such impression?

You see, then, you have several difficulties to encounter, in coming to the conclusion that these were John Gordon's tracks.

1. There is no evidence that the tracks on the South side of Hawkins' Hole were made by the same person as those on the North side; they may have been made by an entirely different person.

2. Another difficulty is the coincidence of other people's tracks with these boots.

3. There was no impression on the ice, and no appearance of a tap on these boots.

These tracks are a main circumstance in this case. It is *the* circumstance in the case. It is the only one which can connect John Gordon in the slightest degree with this murder. Now let us examine, by the rules of evidence which I have before laid down, the tracks, as you find them and as they are proved.

Is it clearly and distinctly proved to you, beyond all reasonable doubt, that the tracks above and below Hawkins' Hole, were made by the same person? I contend not. I have already shewn you a variety of suppositions, consistent with the fact of their being different tracks. I have shewn you that a man might have come across there gunning, started game in that swamp, and passed out by N. Gordon's house, into the main road; that this might have been done Sunday morning,—Sunday afternoon, before the murder, when it is proved that men were out gunning—Monday morning, or Monday afternoon, by one of the crowd of people who were out there looking round. The whole case hangs upon this circumstance. It must be weighed by itself; you can not strengthen it by adding other circumstances to it. Each yarn in your rope must hold, or it must be thrown aside.

Another rule is, that the facts and circumstances from which the conclusion is to be drawn, must be such as to a moral certainty to exclude every other hypothesis. What is the hypothesis here? It is that John Gordon, with these boots here produced, did make these tracks; or in other words, the hypothesis is, that the same boots which made the tracks North of Hawkins' Hole, must have made those South of it. Is this proved so as to exclude any other reasonable hypothesis? The mere statement of it is a sufficient answer. Have I not, while I have been standing here, made an hypothesis which agrees exactly with all the facts, and which one of the witnesses, DeMerrit himself, admitted might have been true. Then the facts sworn to do not exclude every other hypothesis. Another hypothesis fits them exactly; there is nothing that contra-

dicts it, there is no inconsistency in it. Well, if I have shewn you any other reasonable hypothesis connected with the fact, then the argument is gone. They are not proved to a certainty to be John Gordon's tracks. I do not require that certainty which is sometimes extravagantly demanded—a certainty amounting to a perfect demonstration. I ask only for a certainty such as shall exclude every other reasonable and consistent hypothesis, and that certainty you are bound to exact.

The hypothesis which I have suggested to you, is supported by other facts in the case. An impartial, unprejudiced man, having no object for swearing falsely, tells you that he was on the ground Tuesday, and that men were there measuring tracks with a pair of boots, which are proved to have been this pair, and that these boots exactly fitted his track. In addition to this, you have the fact that there were no impressions upon the ice, and that these boots must have made an impression. I have therefore not only shewn you that these boots did not make that track, but have established a probability that another pair of boots did make them, since another man's tracks coincided exactly with these boots.

When all these hypotheses are taken into consideration, how do these "letters of light" begin to appear? When you take into consideration also the manner in which William Gordon has been brought into this case, and the singular manner in which that part of the case has fallen to the ground, I trust you will come to the same conclusion as I have, that the circumstance of this gun and coat having directed public suspicion toward these unfortunate men, the true murderer has been suffered to escape; and every trifling fact has been magnified and distorted into evidence of their guilt. I have thus gone into the whole of William's case, and have commented upon the most important point upon which the Government depend for the conviction of John.

(Court here adjourned.)

Tuesday morning.

I had hoped yesterday afternoon, to have closed my remarks upon this case; but having fallen into the devious pathway of the tracks across the snow in the meadow, I may have followed them too long; if so, my apology is found in the importance attached to those tracks by the Government.

I come now to the next important circumstance in the case—the gun.

The argument based upon the gun is this—that the gun found by the side of the cedar tree, in the swamp, and here produced, is the gun with which the murder was committed; that the gun so found is the property of Nicholas S. Gordon; that it is to be presumed to have been in his house at the time of the murder; that John Gordon, his brother, temporarily resided in the house of Nicholas Gordon, and might have got possession of the gun; therefore John Gordon committed the murder. I have stated the argument fairly and broadly. It is neither more nor less than I have stated it to be, and the very statement shews the inconclusiveness of the reasoning. The inference is, that because it is the instrument with which the murder was committed, and because Nicholas Gordon owned it, therefore John Gordon committed the murder. If such is not the argument, I should like to be corrected by the Government, for it is right that we should know the grounds on which they intend to seek a conviction of this man. Passing by the non sequitur in this rea-

soning, let us examine the circumstances which have been proved respecting this gun, and see to what weight they are entitled, according to the rules of evidence already established.

1. Let us see if the facts and circumstances are established beyond a reasonable doubt, nay, even to a high degree of probability. Let me again impress upon you to take nothing for granted. Do not first suppose John Gordon to have committed this murder, and then seek to confirm that opinion by searching after the facilities which he had for committing it. That is not the mode in which Juries are to form their opinions; begin first with the facts, and see where they will carry you.

That the instrument produced here was the instrument used in the perpetration of this horrid crime, I have not a shadow of doubt. It is unnecessary for me, after this admission, to go into an examination of the evidence to prove that fact. Whose gun was it? that is the next question which arises in the cause. To whom did it belong at the time of the murder? The Government say it is proved to have belonged to Nicholas S. Gordon. When was it ever delivered to Nicholas S. Gordon? Has any man sworn to its delivery to him? Will you inform me who that man is? No such man can be found; there is none such in the case. Is it sworn that Nicholas S. Gordon ever had that gun in his possession? There is no such witness in the cause. Then how do you know to a moral certainty—how do you know beyond a reasonable doubt, that this gun was ever the gun of Nicholas S. Gordon? He is proved to have had a gun which, in the opinion of some of the witnesses, resembled this gun, and that is the whole force and extent of the testimony; no witness has shewn to you, by any thing definite, that he knows Nicholas S. Gordon had this gun. Don't confound Francis' testimony with that of the other witnesses. He identifies this gun as one which he formerly had, but he does not swear that he ever saw it in the possession of Nicholas S. Gordon. Are you then, because certain witnesses think that Nicholas Gordon had a gun which looked like this gun, to presume, for the purpose of affecting John Gordon, that this is the identical gun which Nicholas owned? There exist no circumstances in this case, in regard to this gun, upon which, as honest, sensible men, you can convict John Gordon of ever having had this gun in his possession. Let us look at the evidence a little more in detail.

In the first place Francis is called. He swears positively that he once owned this gun. You heard him testify; he could not tell where he got the gun; had it but a short time; but now knows it to be the same gun. You will weigh his testimony. It is not important in our view of the case. The important fact is, to prove this gun in the hands of Nicholas S. Gordon. Recollect, gentlemen, that every circumstance has been raked up in this case, which could by any possibility affect the prisoners. The village has been ransacked, and everybody has been produced—from Elder Risley, the minister, to Ben Kit, the fool; aye, and lower than that, to Susan Field, the inmate of the house of Susan Parr—and yet no one has been found who has been able to connect Nicholas S. Gordon directly with this gun. It is not every thing which excites the suspicion of jealous minds, by which a man's life is to be jeoparded.

Let us look at Hardin Briggs, a candid and honest witness. He saw Nicholas with a gun. It was sometime before the murder. Nicholas

told him it was one he traded for, not one he bought of Tillinghast Almy, not one he purchased with money, but one he traded for, that is, exchanged other goods for. Briggs tells you there was no particular mark upon the gun, by which he could know it; then certainly this witness does not identify the gun. The next witness is Abner Sprague, Jr. who swears that he saw John Gordon with a gun somewhat like this; he does not know that this is the same; he is not willing to swear to it.

So far, nothing has been established but a fancied resemblance. They then attempt to strengthen the force of this testimony, by some evidence in regard to the ramrod. Morgan tells you that a certain piece of stick was brought him in December, by Ben Kit, and that he made a ramrod out of it; but he is not certain that this is the ramrod. He says the wood split, and he had to cut in deep; do you find any appearance of that upon this ramrod? Well, we ask who brought you this piece of wood? Why, Ben Kit. Why is he not here? Oh, he is a fool; a sort of wandering fellow. But in a half an hour afterwards, wandering as he is, he is brought in here, and he tells you he should know the ramrod in the darkest night that ever was! It was carried from Henry Morgan to Andrew Briggs, to have a ferule put on. Briggs is called, and tells you he can't identify the ramrod; and Stone, who adjusted the wormer, tells you the same thing; and the only evidence to connect Nicholas S. Gordon with that ramrod, and through that with the gun, is the testimony of Ben Kit, the fool, and he swears he should know it in the darkest night that ever was seen. So much for the evidence in regard to the ramrod.

If Hardin Briggs will not swear to this gun; if Abner Sprague will not swear to it, but only to one which resembles it, where is your moral certainty that this is the gun of Nicholas S. Gordon? Where is the evidence on which you would convict Nicholas S. Gordon himself, to say nothing of the inference which you are afterwards called upon to draw in the case, that John Gordon committed the murder with Nicholas' gun.

But it is said there is an entry upon the books of T. Almy, by which this gun is traced into the possession of N. S. Gordon. No entry on a man's books is worth any thing, even for a quart of molasses, unless the delivery can be proved. You must have not only proof of sale, but proof of delivery. Here is a total absence of all proof of delivery. Again, the charge on the books of T. Almy is not made to N. S. Gordon, but to N. Gorton. This is attempted to be explained by shewing that other charges against N. S. Gordon are made in the same way. But you will find that at and about the time this charge was made, and for a considerable time before; the name is uniformly spelt Gordon, on Almy's books. What right have the Government then to infer that N. Gorton, who procured a gun of Almy in Oct., 1843, was Nicholas S. Gordon. The variation in the entry proves that it was another man, if it proves any thing. I say fearlessly, that upon this evidence Tillinghast Almy could not have recovered \$1,50 in a Justice's Court, if he had sued Nicholas S. Gordon for the price of the gun. Suppose he sues. The case is called, Mr. Almy produces his book, containing this charge against "N. Gorton," made by his clerk. The clerk, Mr. Sabin, is called to corroborate the charge, and fix it upon Nicholas S. Gordon. Mr. Sabin swears he made the charge, but does not know the person

to whom the sale was made, has no recollection of the gun, and does not know that he ever delivered it to any one. Mr. Almy calls his other clerk, Wm. H. Green, who swears that although he has lived in Mr. Almy's employment several years, and during that time has been constantly at the store, and has known N. S. Gordon well, yet he knows nothing of this transaction. Mr. Almy himself appears on the stand, and swears that he has no recollection of the transaction. Thus far nothing is proved. Francis is then called, and knows not who had the gun after he left it at Almy's for sale. Mr. Briggs, and Susan Field (it is not pretended that poor Ben Kit knows any thing about the gun) are also called; but neither of them will say more than that they have seen N. S. Gordon have a gun resembling this. No one can be found to swear that the gun in question was ever delivered to, or in the possession of N. S. Gordon. Is it not manifest that Mr. Almy has not established even a single point necessary for recovering the sum of one dollar and fifty cents? Yet upon such evidence, you are called upon, gentlemen, to conclude that N. S. Gordon did purchase and possess this gun, not for the purpose of enabling the vender to recover its paltry price, but for the purpose of sending two of your fellow men prematurely into eternity by an infamous death.

The very appearance of the ramrod of this gun, shews that it is an old ramrod; but the one described by the witnesses was made only a week before this murder was committed. You are called upon to convict John Gordon of murder, upon evidence which would not support an action for a dollar and a half in a Justice's Court! So powerful is imagination, gentlemen, that it binds objects together by links of fancy only; unless you scrutinize them closely, you would almost believe that there was some real connexion between them.

Is it then proved that this was Nicholas Gordon's gun? If so, I come to another question. Did John Gordon ever have possession of that gun? It is the duty of the Government, relying as they do upon this circumstance; relying upon it to convince you of the guilt, not of Nicholas, but of John Gordon; it is, I say, the duty of the Government to prove to you, in the first place beyond all doubt, that this gun was owned by N. S. Gordon; and having proved that, it goes for nothing, unless they can prove that gun in the possession of John Gordon. The Government will say to you in the close—We have proved this is Nicholas Gordon's gun; now account for it. Produce Nicholas S. Gordon's gun, or let him tell where it is. Gentlemen, John and William Gordon are here on trial. If Nicholas S. Gordon had a gun which is missing, let him be brought on to the stand, and testify concerning it. The Government can bring him; he is a competent witness for the State. We cannot bring him here; he is not within our reach; he is under the lock and key of the Government. Why is he not brought here? Let him be produced and tell how he parted with his gun. William and John Gordon have no control over Nicholas Gordon, and no knowledge of his disposition of his property. They can not account for his acts; they are not to be called upon to do so. Neither can we be allowed to prove Nicholas Gordon's statement about this gun. If then we can neither produce Nicholas Gordon, for he is out of our power, nor be allowed to prove his statements about this gun, how can we account for it? What have we omitted to prove, that it was within

our power to prove in regard to this gun? Nicholas Gordon kept his own store. He would not let his own mother and sister go in there. He was so careful of his property as to lock up the doors, even after he was hand-cuffed. What have these men—these poor men confined in a dungeon—to do with accounting for Nicholas Gordon's gun? How can they prove where it was? Will you convict them of murder because they cannot account for another man's gun?

Now is there any other hypothesis which will account for this gun? Let us see.

In the first place, it is not probable, if Nicholas S. Gordon had a quarrel with Amasa Sprague, that he would have employed his own brothers to murder him in open daylight. But suppose this was his gun? Suppose that on Saturday night, a company was in his shop, and among the rest one who knew that Nicholas S. Gordon had had a difficulty with Amasa Sprague and had threatened him? and suppose in this crowd and bustle on Saturday night, during the Christmas Holidays, one man who had a deadly animosity towards Amasa Sprague, should have contrived to get possession of that gun and carry it off? Suppose the man who took it was the murderer, and after having committed the murder, secreted himself in the vicinity, and afterwards carried the pieces where they were found, ran across the meadow by night to the driftway, then to Nicholas Gordon's door, and passed off on the road. Could not this have been done by another, as well as by John Gordon? If so, what proof is there that John Gordon did it? The answer is, that it is more probable that John Gordon took the gun, than another man. We are not upon probabilities to convict men of the crime of murder. Then the hypothesis which I have mentioned, fits the facts in the case. Again, suppose Nicholas Gordon lent his gun to some one? we do not know what he did with it. Let him account for it himself; and the person to whom he lent it, used it in the murder of Mr. Sprague, and when he found the deed was done, determined to fasten it upon the Gordons; would he not have pursued the very same course which the Government contend that John Gordon pursued? You see, therefore, the necessity of putting Nicholas Gordon on the stand, to clear up this matter; but the Government have not chosen to do this. And now, because John and William cannot account for Nicholas S. Gordon's gun, they ask you to infer that they are guilty of murder! If Nicholas had designed to kill Amasa Sprague, would he not have been far more likely to have employed a third person, rather than his own brother? Is not the presumption in favor of that supposition? If so, and this were Nicholas Gordon's gun, it would account for the murder, and yet these men would be perfectly innocent.

I have dwelt long on the circumstance of the gun and the tracks, because they are the most important facts in the case.

I come now to the coat. A coat was found in the swamp, not deposited where the gun was, but in a different place, and attempted to be more effectually concealed. The gun was standing up by the side of a cedar, where it could not fail to have been discovered on the slightest search; the coat was more carefully hidden under the bushes. The coat had blood upon the breast, which probably came from the gun when it was carried along. The reason why it was not deposited in the same place as the gun, I will give you when I come to present

to you our hypothesis of the manner in which this murder was committed. The coat, when first found, one man declared to be one man's coat, and another another man's; but suspicion having fastened upon the Gordons, every man of course thinks he sees it to be Nicholas Gordon's coat. If another man had been suspected, it would have been seen to have been his coat. So powerful is suspicion, that men could not touch any thing in any way connected with the murder, but they immediately fancied it to be Nicholas Gordon's.

Now whose was the coat in question? That the murderer wore this coat, there can be little doubt. Was it the coat of Nicholas S. Gordon, or John or William Gordon? It is not pretended that it belonged to either of the latter, and hence the coat stands on the same footing with the gun. You are called on first to say that it belongs to Nicholas; and second to infer, hence, that it was worn by John, and therefore that he is the murderer.

To make the argument amount to any thing, it must first be proved to a moral certainty that the coat was the coat of Nicholas S. Gordon. The first witness called is John Cassidy. He would not swear that he knew this coat: he was very far from doing so; he merely thought he had seen such a one thrown out of Nicholas Gordon's lumber wagon. What kind of evidence is this to depend upon in a capital trial? The man was honest in his belief that this was that coat; he thought so. Every man, at that time of excitement, was ready to exclaim, "Is this a dagger that I see before me?" Horatio N. Waterman saw John have a dark coat on, something like this, one day as he was passing along the road. Next George Beverly was called, and although I knew this coat did not belong to Nicholas, I felt some anxiety about his testimony, from his known honesty, intelligence and observing character, lest if he should make a mistake in this matter, it would have a very unfavorable influence upon our cause. He swore, as well he might, that he had seen Nicholas have a coat similar to this; for Nicholas had worn a coat similar to it. When he had given his testimony, I thought we had no other course but to get every body that had ever seen Nicholas often, or observed his clothes, to come here and swear that they had never seen that coat. We called Tillinghast Almy, who traded with Nicholas Gordon at all seasons; he never saw this coat. John Fleming, who had seen him summer and winter, wet and dry—at whose house he used to stop three or four times a week—he never saw this coat. Tillinghast Almy's boy never saw it; Patrick Hawkins never saw it. Seneca Stone, who lived next door, and saw him three times a day sometimes, in all weather, never saw it. Margaret Gordon, his sister, never saw it. Ellen Gordon, his mother, never saw it. Michael O'Brien, Abby N. King, with whom he boarded; Jeremiah Bagot, at whose house he often stopped, never saw it. When we got here, we hoped we had rebutted the presumption that this was Nicholas Gordon's coat. But a relief came to us providentially. Mr. Beverly had been uneasy in his mind, not because he had done wrong, but because he had thought more about the coat. He requests to be called again. We thought, as the Government undoubtedly did, that he was going to strengthen his previous testimony; but when he comes upon the stand, he retracts the whole of his previous testimony; and why, gentlemen? because Nicholas Gordon's coat is now shewn to him, and he at once perceives that

this is the coat he had seen on Nicholas, and not the one found in the swamp. Thus shewing you how easy it is for the most honest and observing men to make mistakes in matters of mere resemblance. This testimony is a key to all which has been put in in regard to the coat by the Government. This is the old coat which he used sometimes to wear round, throw upon the wagon seat to sit upon, and draw on on rainy days; and there is just resemblance enough between the two, for the one to be mistaken for the other.

The Government still, however, cling to the coat with singular tenacity; and Harding Hudson was called. He had been examined once before. Don't you believe, before he came into this room, he had been questioned as to his knowledge of that coat? Had not the coat been a prominent object of inquiry among the Government witnesses? But when the Government find the evidence of the coat demolished, it becomes necessary to have additional testimony to back it up; and it comes in the person of Mr. Harding Hudson. He swears he saw Nicholas wear this coat round at auctions. Do you believe that Nicholas Gordon, if he be the man he is described to be, wore such a coat as that at auctions? If so, would he not have been seen in it by a number? Mr. Hudson did not mean to state what is false, but he is mistaken; he has mistaken one coat for another. The only other witness in regard to the coat, is Susan Field, who swears just what the Government want her to, and whose testimony I throw entirely out of the case. I have now done with the coat. I deem it out of the case. We have shewn by undoubted testimony, that it did not belong to Nicholas S. Gordon.

I come now to another circumstance upon which the Government rely, though it is trivial in its character. I mean the bruise on John's face. The nature and extent of this bruise has not been described by any person. No one perhaps thought enough of the matter to notice the bruises on an Irishman's face, during the Christmas holidays. As to the nature of the bruise, therefore, we can tell nothing; for if it had seemed no larger than a quarter of a dollar before the murder, it would have covered the whole face after it. Now the argument of the Government is this, that John Gordon had a bruise on his face Monday, when he was arrested; that he had no bruise on there Sunday, and therefore he must have got it in the murder of Amasa Sprague; and this is the sort of reasoning you are asked to adopt in a capital trial!

Now, Gentlemen, there is a difference between positive and negative testimony. I am in a room and hear the clock strike and count the hours, and swear to it; you were in the room, with several others, and all of you swear you did not hear it. This does not invalidate the force of my testimony. A man meeting another of whom he has little knowledge, and cares less, will take but little notice of his appearance; but if the man be my servant, or my brother, or a member of my family, I shall be very likely to notice his appearance. Two witnesses have sworn that they did not see any bruise on John's face on the Sunday morning, or on the Friday morning before the murder. Benoni Waterman passed him on the road, and may have seen but one side of his face; and if he had not, it would not be strange if he should not, in merely passing a man on the road, notice such a fact. Abner Sprague did not observe the bruise, or if he did, he has forgotten it. But a number of other witnesses at different times,

from Christmas to Tuesday morning, after the murder, did see and observe this bruise. Michael O'Brien, in reply to the Government examination—and as to this point he is their witness, for we did not question him concerning it—saw the bruise on Sunday morning. He was an acquaintance and countryman, and would be likely to have observed such an appearance. You find John drunk on the highway, on Christmas day, with his heels in the air; would he not have been very likely to have got a bruise in falling? Such has been his statement from the beginning. Margaret Gordon saw this bruise on Christmas day, so did Mrs. Gordon; and here, then, are several witnesses, who swear positively that John had a bruise on his face; and because two or three persons tell you they did not see it, you are to be called upon to presume, in the face of this positive testimony, that John Gordon did not have that bruise on Sunday, and therefore that he got it in the murder of Amasa Sprague.

The next thing which is lugged into the case, is the wet clothes. The officers found wet clothes in the house. Is there any proof that John Gordon did not fall into the river, as he declared he did, and wet his clothes? He came home reeking wet, as Mr. Morrison describes it. The argument of the Government is, that he wet his clothes in coming through the swamp on Sunday; and you are called upon to presume, because there are wet clothes found in his chamber, that he must have wet them on that day, and hence that he committed the murder; and this is the sort of reasoning, the nature of which I have several times before remarked to you—upon which you are asked to convict a fellow being of the awful crime of murder. The fact of an Irishman's clothes being wet, who lived in that neighborhood, and was in the habit of going about gunning, &c. would be a matter of no importance, even if it were without explanation. But we have proved that he did fall into the river and wet his clothes; we have proved it by three or four witnesses. The circumstance of these wet clothes is not entitled to a feather's weight in the scale; but, gentlemen, when suspicion alighted on the Gordons, every thing was construed into evidence of guilt. Any thing that looked like a spot, at once assumed an important aspect, and became transformed into blood. Hence, when the vests were found with the red stains upon them, they are at once deemed to be red with the blood of Amasa Sprague; a shirt with a beer stain upon the sleeves, becomes a damning evidence of guilt. So it goes into the newspapers—the prisoners were found reeking in gore, their clothing all bloody—their shirts, their vests, their coats, covered with the blood of their victim.

But on a little cool examination, the stains turn out to be madder stains. It appears that the vest is one which John was in the habit of wearing when he assisted in preparing the madder dyes; and it is well known that madder is a fast color, and cannot be got out. Thus, gentlemen, vanish away one by one, these bugbear circumstances by which it has been attempted to fasten this crime upon John Gordon. There was no blood found upon his clothing, no marks of violence upon his person. Powder was found in one of the vest pockets in the house belonging to Nicholas. Well, there is nothing extraordinary in this. He was in the habit of gunning; he kept powder in his store, and when he went, probably rolled some in a paper, and put it in his vest pocket. Why, if you un-

dertake to convict a man of murder, because he has powder in his vest pocket, you will have to convict half the neighborhood. The correspondence of the powder is of no importance. Nicholas Gordon might have supplied half the village with powder. For aught that appears, he was the only person that kept it; and if not, other persons had powder precisely like it. The powder used in gunning, would be very likely to be similar.

But they say the shirt had blood upon it. If they believed that stain to be blood, why has it not been subjected to a chemical analysis, that there might be some better evidence of it than mere conjecture? Depend upon it, it would have been done, if they had had any confidence in the fact; for no possible pains or diligence has been wanting in the preparation of this case. If this had been a stain of blood, is it not probable that the shirt would have been concealed—would it have been thus left in plain sight? But here is a shirt with blood on the elbow, and here is the coat with a hole in the elbow; and Mr. David Lawton, not a swift witness, is produced to tell you that there was blood upon the sleeve. He told you he saw clotted blood on the lining of the coat. He examined on the stand before you, the same appearance on the coat which he had before thought to be clotted blood, and found it had suddenly become transformed into shoemaker's wax. Gentlemen, it was not strange that shoemaker's wax should have been mistaken for clotted gore, two days after the murder, and on the spot where it was perpetrated. But in order to have made this stain upon the sleeve of the shirt, the lining of the coat must have been all one gore of blood. What then is proved about this stain? why, that it corresponds to a hole in a coat. Gentlemen, trifles light as air—coincidences the most common and trivial, are brought into this case, to convict the prisoners of this atrocious crime.

Another circumstance about which much has been said, is this, that John did not go in to Amasa Sprague's with the Kingstons, to see the body. John Gordon was spending the evening at the Kingstons, in a quiet, pleasant manner, smoking and talking, when Miss Kingston arrived with the news of the murder. Miss Kingston, you will recollect, lived in the house and service of Amasa Sprague, and her brothers were also in his employ. She came down there at once, knowing that they would feel the deepest interest in the matter. She states the awful intelligence. She tells you they were all equally amazed; that she saw no difference in their appearance. They all start to go up to the house. John continues with them as far as the gate, and then passes on toward his own house. Now, says the gentlemen, "strong as were his nerves, they were not strong enough to bear the sight of that murdered man; he feared some motion of the lip, some expression of the countenance, would betray him." This, gentlemen, is the only circumstance resembling guilt in John Gordon's conduct, after that murder, which the Government have been able to detect. Let us examine it.

Why did Miss Kingston go to her brother's house, and inform them of the murder? She was in the employment of Mr. Sprague; she was his family servant. Her brothers were also in his employ. She knew their services would be wanted; she knew they would wish to offer them at once; and she judged rightly. They do so immediately. But John Gordon had no acquaintance with Mr. Sprague or his

family. He had never been in the house in his life. Mr. Sprague had a prejudice against him. He knew he could render no assistance; he knew not that his presence there at that time would not be disagreeable to the family; but he had an old feeble and sick mother at home, alone in her house, and he might well have feared that the intelligence would agitate her, and he hurried home to make the first announcement of it to her himself. It was more natural and proper for him to go home, than it was to go into the house of Amasa Sprague, at that time. The theory of the Government is, that because he did not go in there from mere idle curiosity, but returned to the house of his old mother, that he must have committed the murder.

That is another, and the last remaining circumstance in the case. Gentlemen, we have examined them all, one by one; do they satisfy you beyond a reasonable doubt of the guilt of John Gordon? If it were not a matter of life and death, I should be willing to leave the case with you on the Government testimony alone.

But, gentlemen, there is positive testimony in this case, that John Gordon could not have committed the murder.

Where was John Gordon during this time? All the proof which it has been in his power to produce, to give an account of his history on that day, he has produced here before you. If you will not believe it, it is his misfortune, not his fault. He has done all in his power; he has withheld nothing; he has kept nothing back. Every human being who saw him on that afternoon, he has brought here before you. Where was he? If we could not answer this question, you could not convict him on this evidence; for it is wholly insufficient. But he undertakes to shew you where he was; and what is the result? John Gordon came into town on Sunday morning, to attend upon the worship of God, at that church which, from boyhood, he had been taught to reverence. After church, he goes into Mr. Bagot's, for a newspaper, remains there until a quarter past twelve, and then starts for home. In coming into town in the morning, he wore a pair of pantaloons with a rent in them, which became so bad before he reached town, as to expose his underclothes. Michael O'Brien lends him his coat to cover up the rent; for an Irishman, if he sees you in want of any thing which he has, will always strip himself to supply you. It is his nature. He arrives at home somewhere between 2 and 3 o'clock; there is some little difference in the witnesses about the time; and in such case the benefit of the doubt must always be given to the prisoner. He finds that dinner is not ready. He goes up stairs and changes his pantaloons, comes down and waits for dinner. His mother had not put on the beef to boil when he came home, being uncertain of the time when he would arrive. The beef is boiled, and John eats his dinner and goes out with the same surtout on which he had when he came from church. If the old lady had to boil that beef after half past two, it must have been late before he went out. He had no time to get over to the scene of the murder, and commit it before sunset.

The next we see of him, is at the house of the Kingstons, ten or fifteen minutes after sunset, his clothes unchanged, save as stated by his mother. Is he agitated, is he in a hurry, does he come with the aspect of a murderer upon his countenance? Is he out of breath from running? On the contrary, he is pleasant, quiet,

composed as ever. The two Kingstons tell you this. They are Government witnesses; they loved Mr. Sprague; they regret his death; they are anxious for the detection of the murderers. They are not of the same religion, though of the same country with these prisoners; they would have remarked any extraordinary appearance in his manner; they knew him well, and must have observed it. But he comes in when they are flipping up a copper to see who shall pay for the drinks. John joins them, goes up to King's Tavern with them, returns with them, and they are sitting amusing themselves, when the news of the murder is brought. At that time, they all tell you they saw nothing peculiar or unusual in John's manner; he appeared as much amazed as the rest. If, therefore, the circumstance of his not going into Sprague's, which has been so strongly dwelt upon, is to be taken against him, I pray you, gentlemen, let him have the benefit of these circumstances in his favor. They speak powerfully in his favor. The man who left the mangled corpse of Amasa Sprague, never could have heard the announcement of that murder without peculiar emotion; the laws of human nature would not permit it. He could no more prevent the blood from retreating from his face, than he could have controlled the ebbing and flowing of the tides; and I put it to you as one of the strongest proofs of the innocence of John Gordon, that he could exhibit so calm, composed and unaltered a demeanor at such a time.

I did intend, gentlemen, to have shewn to you an hypothesis connected with all the facts in the case, and yet consistent with the innocence of the accused, but I have already occupied so much time, that I must leave that portion of the case to my colleague.

But there is one thing further which I must notice—the confessions of the prisoners. These were proved equally against William as well as John. Now by all the authorities, the greatest caution is to be used in considering such statements. When they are made perfectly voluntary, and without hope or fear, they constitute the best evidence which can exist; and yet even in such cases, they have sometimes turned out to be false, as in the case of the Boorns, who confessed the commission of a murder; and not long afterwards, the man supposed to be murdered came back again. In the agitated state in which a man is when first arrested, he may omit facts of great importance, or he may be understood differently from what he means. Let us take the statement in regard to Wm. Gordon. Some persons understood him to say that he was not in Cranston that day. Knowing nothing about town lines, he meant, without doubt, that he was not at the place where the murder was committed; he did not say he was not in Sprague's village. He is brought into the magistrate's office, agitated and excited. He tells Mr. Wright, whom he took for the magistrate, that he was not *there*; meaning, as Mr. Wright understood him, not at the place of the murder. Might he not have used the term Cranston, in his agitation, with reference to the place of the murder.

Dr. Cleaveland you will recollect, in his first statement of the conversation with William, omitted one important portion, which he afterwards on being called a second time supplied. Now Dr. Cleaveland had also a conversation with John. I am sorry that he did. I am sorry that the keeper of the prison, should ever enter into any conversation with the prisoners relative to their case, although in this case it

works in our favor, because the accused is not then in a state of freedom, and all such examinations are deceptive and dangerous. The prisoner may be mistaken or mis-remembered, and important portions of his story omitted.

John stated that he came into town to church, got home between two and three o'clock, dinner not being ready, he went to the Kingstons. He and two of the boys then went to King's Tavern and got something to drink, left King's Tavern before sun-down and returned to Kingston's and remained until he heard of the murder.

This is just such a statement as you would expect, giving all the main facts and leaving out the details. It is substantially a correct statement. It is true that he got home between two and three o'clock—that he found dinner not ready and that he went to the Kingston's—but he omits to state the fact that he remained until it was ready and eat it before he went to the Kingston's, or he may have stated that fact and Dr. Cleaveland has forgotten it. The Doctor swears he omitted one fact, and one material fact, in his first statement of the conversation with William, which he has since recollected, might he not also have omitted one in his statement of John's? If so, then the statement is exactly correct, and corresponds with the truth and is the same statement which he made in the first place and has never varied from.

An attempt was made to attack the testimony of the old and feeble mother of the prisoners. She was siezed on the charge of being concerned in this horrid crime, committed to prison, put in a place where felons are confined, brought out of her dungeon to appear before the magistrate, all the time under the impression that she was to be tried for this murder, and with three of her sons before her charged with the same horrid crime. Do you wonder she was agitated excited? Could she have had a woman's heart, a mother's feelings, and not have been agitated. All of a sudden she is informed that she is released—that she is no longer a prisoner, but is now a witness, and is called upon to give her testimony. How much of this she understood is doubtful. But she was examined and every word she uttered was taken down by a gentleman who was present, Mr. Larned, a witness of the utmost candor and fairness, who will tell you just what he remembers and nothing more. But the minutes which a witness takes at the time are not evidence. His memory alone is to be depended upon legally, and not his notes. Mr. Larned swears cautiously, he does not pretend to remember, and has testified only to the accuracy of his notes, persons so employed seldom do remember, they do not charge their minds with the facts.

Durfee, Chief Justice. The Court understood the minutes read by the witness, who took them down, to be admitted as evidence by both parties, no objection being made to them at the time. If the counsel for the prisoners did not intend these should pass as evidence, they should have made their objection at the time. They are now in the case.

Mr. Carpenter:—Well, gentlemen, this old lady comes into court and takes the oath of God upon her to tell the truth, the whole truth and nothing but the truth. Do you believe she has perjured herself. She swears with perfect candor and openness. She tells you that the shirt belongs to Nicholas, although she sees the so called bloody spot upon it. She makes mistakes about the pantaloons—she comes with no prepared and invented tale. We say she is to

be believed notwithstanding the attempt to discredit her, and if you believe her story, you cannot convict John Gordon of this crime.

And now gentlemen, after having thus gone into the material facts in this case, and taken more time than I had intended, I will leave the case to be closed by the able counsel who will follow me—I leave the prisoners to God and the country which country gentlemen, you are.

MR. ATWELL'S ARGUMENT.

Tuesday Afternoon.

Mr. S. Y. Atwell closed for the defence as follows:—

IF THE COURT PLEASE—

I come to the consideration of this cause, gentlemen, with the feeling that I cannot do it justice—with the feeling that my clients have placed reliance for their safety upon one who from physical inability, can do but little toward making that safety sure. But at the same time, gentlemen, I am in a great measure relieved by the consciousness that the able, elaborate and thorough examination of the evidence, which has been entered into by my learned brother who is associated with me, has rendered any further argument from me the less necessary, and has enabled me to feel that if I cannot help their case, I shall not at least harm it. Had I felt that the responsibility was to rest on my shoulders alone, I should not have appeared before you.* Gentlemen of the jury, there is imposed on you a duty of the most solemn character. To your hands is committed the life or death of two of your fellow beings. It is an important trust and one which not only affects them, but you and the whole community. It is a duty which you are called upon faithfully to discharge. I trust you will not shrink from its execution, that you will do your duty as citizens, as jurors, as conservators of the peace and happiness and lives of your fellow-men.

A most horrid murder has been committed. One of our fellow citizens standing high in the community, in the prime of life, in the midst of his usefulness has been murdered. murdered in open day, upon that day when all human passions should have been at rest and no other feelings have influenced the human heart than devotion to its God.

This is the crime—and probably a more atrocious one has never been committed in this community or in New England. I know not how you feel, but I can tell you how I feel in view of it. I feel that the man or men who have perpetrated this crime deserve the most exemplary punishment.

I cannot but feel as I grow older, gentlemen, that all my comfort and happiness and prosperity depends in a great measure upon the protection which the law throws around me. As we become advanced in life, and grow less strong of body and stout of heart, as the ties of family and kindred multiply around us, and we become fathers of families, we can but feel that in the law is our only safety, and if the law fails to punish those who destroy our property, defame our characters or make attacks upon our lives, we should be worse off than the wild beasts of the forest.

I feel therefore, as you feel, that the perpetrators of this deed, should have the punishment

*Mr. Atwell was laboring under severe indisposition, and with the greatest difficulty and labor only, he was enabled thus briefly to address the jury.

dealt out to them to the full measure of their guilt—that no mawkish sensibility, no idea that a man has a right to revenge his own injuries, should come in between the criminal and his punishment. God forbid that such an idea should come into your minds or into the minds of jurors in any other State in the Union.

For my clients I ask no such sensibility. I make no appeals to your feelings. If they have committed this crime, in the name of Justice and of the God of Justice let them pay the penalty.

In this case, gentlemen, your duty is peculiarly arduous, because the evidence submitted to you is not positive in its nature but wholly circumstantial. It is evidence which requires of you to reason yourselves into the guilt of the prisoners. In a case of positive evidence you have to judge of the *evidence* only, you have only to balance the testimony on either side, and as the one or the other scale preponderates so you decide. Circumstantial evidence puts you upon broader ground. Well made out it is more potent and convincing in its character than positive testimony, because as was well said by an eminent English Judge, "circumstances do not lie," positive testimony may be false. I swear that I saw a man commit a murder. I may perjure myself, and the jury may be deceived by my perjury. The life of the accused is thus, (I say it without irreverence,) in the palm of my hand. But circumstances when proved to the satisfaction of the jury, do not lie, because it requires too many perjuries to make up a lie of such a character. Circumstantial evidence being of this character and having this potency to determine the guilt or innocence of the prisoners, your duty becomes if possible more difficult and more important. You have more to do in a case of circumstantial than of positive evidence.

Again this case has another importance, and one of no little weight. The crime is one of the greatest atrocity. It is one which excites a feeling of indignation in every member of the community. The idea that a man standing as Amasa Sprague did among us, in the midst of his usefulness, enjoying a large property, ranking high in the estimation of his fellow citizens, should be taken from his family and friends, from those who loved him best, and sent to his last account without a moments warning, by the brutal blows of the assassin, is calculated to excite the highest degree of indignation toward the men who have committed this offence. You feel it as well as I do. Now take care gentlemen, and it is this duty which I would impress upon you as men, as christians, as citizens, as jurors sitting there under the oath of God, take care that you do not transfer your feelings of indignation against the crime, to the men who are accused of its commission.

This is one of the most difficult points for juror to overcome. Men are brought before them charged with a crime for which they properly entertain feelings of abhorrence and indignation. The very fact that men are charged with a crime leads the mind to their condemnation. It is the very nature of the human mind. Let any thing take place in the community which arouses public feeling and excites public indignation, and let public opinion point its finger at an individual and the mind naturally becomes prejudiced against that individual, and almost condemns him at once. Create a jealousy, excite a suspicion and the man is condemned unheard. Take care that you do not admit this feeling into your hearts, take care that you do not commence your consideration of the evidence with the theory, (stated by my learned

brother in the opening,) that these men are guilty because they are accused, and then seek to fit your facts to that theory. It is this danger that I would warn you against. Look at these men as you would look at me or any other unsuspected individual, and then form your opinion of their guilt or innocence.

Gentlemen you have this to guard against, for although one man has been thus foully assassinated, take you care that you do not commit another murder. Be you careful that although one murder has been committed on the highway you do not commit another in the jury box.—Look ye to it. Impress it upon your consciences, because if you err, you will have no power of retrieving your error. Mercy lies not with you nor with the Court. This furnishes the strongest motive to your hearts and consciences to be careful how you form your presumptions and draw your inferences. Your duty is to decide simply whether these men are guilty or not guilty of the crime with which they stand charged, and take you care that in forming that judgment that you so do it, that you yourselves hereafter may not feel that you have committed a judicial murder. Gentlemen, I ask of you no mawkish sensibility. I call upon you simply to do that which I should feel myself called upon to do, were I seated in that box. I should wish to sleep easy upon my pillow. I should like to feel that I had not taken the life of a fellow being by any improper guessing. You have a right to act so as to feel thus—nay, it is your duty so to act—so to act, gentlemen, as when your last hour arrives, and you are about to appear before the great Judge of all men, no accusings of conscience may haunt your pillow and no self reproaches embitter your dying moments. Having thus shown to you the principles which I think should govern you—I will proceed to lay down certain rules which you are to pursue in the consideration of this evidence.

This is a case of purely circumstantial evidence. There is no positive proof against either of the defendants. No man ever saw John Gordon even near the place where the crime was committed, at the time when it was committed. No man ever saw William Gordon there. They were no nearer to the place of the murder, than two hundred other persons were at the same moment. There is not a tittle of evidence that they were either of them any nearer to the spot than the whole population of Sprague's village on the Cranston side and of Fenner's village on the Johnston side of the river.

They are therefore to be connected with this murder by circumstances. If John Gordon had been seen coming from the place of the murder with the bloody gun in his hand and the dead body of Amasa Sprague, lying on the ground behind him, there could have been no reasonable doubt of his guilt. But proof of contiguity is entirely wanting. The evidence by which he is to be connected with it, consists of circumstances. Certain facts being proved you are to infer from these facts that he is guilty.

Now the first rule of evidence which we contend for is, that the facts from which these deductions are to be drawn must be clearly proved—that is, proved to the satisfaction of the jury. You must be satisfied of the existence of the facts, you must have no possible doubt of them before you proceed to draw any inference therefrom. You cannot pile inference upon inference—you cannot suppose a theory to be true and afterwards seek for facts to confirm it.

2. You cannot aid the proof offered in sup-

port of one fact from which an inference is to be drawn—by proving another fact from which a like inference is to be drawn, because in so doing you assume the truth of the first fact. For instance, suppose the jury believe the gun to be Nicholas Gordon's, they could not from that fact infer another, without proof, as that John Gordon used that gun, because there is no connecting link established between these two facts. Again, suppose the jury are partially convinced that the tracks across the bog meadow were made by John Gordon—that they still deem this a doubtful fact—well now, they cannot strengthen their conviction of this doubtful fact, by uniting with it another doubtful fact, as whether the boots of John Gordon fitted or made those tracks and from both these doubtful facts infer a *certain* conclusion, viz: that John Gordon made those tracks and therefore is the murderer. You must have the first fact established before you make out the second. Common sense will show you these principle to be true. If you are to arrive at the guilt of these men by reasoning, you must be careful that the basis of your reasoning is sound, that the facts upon which it rests are certain and sure.

Every man is by the law of the land entitled to demand not only a trial by his peers—but that he shall be convicted upon legal testimony and upon nothing but legal testimony. It is not enough that you have your surmises or your suspicions or your opinions that a man is guilty, he has a right to demand of you under your oaths to acquit him unless he is *proved* to be guilty. What I mean by the difference between proof and opinion, I will illustrate. There is no subject presented to the human mind upon which it does not form some sort of an opinion. Edmund Burke, one of the profoundest thinkers and acutest analyzers of the human mind, said in the House of Commons that no man ought to be held liable for his opinions, for his opinions were not under his own control. If we read a book or a newspaper statement of a fact we form some opinion, we get a bias, a leaning in one direction or another, that is what I mean by opinion in opposition to proof. It is of such sort of opinions that you are to be careful. You are to form your judgments without reference to anything which has taken place out of this room—to clear your minds of everything which stands outside of the case and the evidence. These men have a right to demand this of you. If it were not so, in the name of Heaven where should we be? Where would be your safety, and where would be mine? Life would not be worth living for, so insecure would be everything which makes life desirable. These men have a right to require of you not your opinions, not your suspicions, but whether under your oaths they have been proved, according to the law and the evidence, to be guilty of this crime. I have thus far stated to you the principles upon which are bound to proceed, and I will now proceed very briefly to review some of the main points in the evidence.

This murder was committed on 31st December, 1843. John Gordon was at home on that day at half past two o'clock. William was in the city of Providence, as late as three o'clock, certainly. The only evidence which connects William at all with the transaction is that of Barker and Spencer, and that must be thrown entirely out of the case. Because they tell you that the men they met the second time about sunset, were the same men they met the first time, and that it could not have been later than two o'clock, when they met them the first time,

and William Gordon is proved beyond the shadow of a doubt, to have been in Providence at and after that time. It is very clear he could not have been in Providence at three and been met on the Johnston road, 3 miles from Providence, at 2 o'clock. Without any reference to Cole's testimony therefore—the impossibility of William's having been the man met on the Johnston road, is perfectly evident, if the witnesses are to be believed. It is very extraordinary if these men are not to be believed. Why are they not? Because they are Irishmen? I should dread to go into a foreign land, if the evidence of my countrymen was to be mistrusted because they were my countrymen. With whom I ask would you expect men to associate? Why, with their own countrymen, would you not? They are the natural and the usual witnesses of every man. And especially on a Sunday afternoon when the Irish are in the habit of being together, attending the same church, and participating in the same festivals, is it not natural that these prisoners would be surrounded by their now countrymen. And are the witnesses to be disbelieved, because they happen to belong to the same church, and come from the same land? Where do the English attend church in Paris? Why, at their own Protestant chapel, and I should go there if I was there, and so would you. You would associate with your countrymen, more especially in the worship of Almighty God; you would kneel at the same altar where your fathers knelt and enjoy the rites hallowed by the earliest and most sacred recollections. If Americans, and Protestants should come here to swear to the whereabouts of Wm Gordon, I should distrust them sooner than any other witnesses, because it would not be natural that he should be surrounded by such persons; it would not seem so reasonable that they should know where he went on a Sunday.

I say then, we have traced William Gordon in such a manner, as demonstrates, beyond the possibility of a doubt, that he could not have been the man of whom Barker and Spencer swear. Then putting their testimony out of the way, there is not a tittle of evidence in this case, which brings William or John Gordon near the place of the murder, but which would apply equally well to every witness who has been examined upon the stand.

The argument of contiguity then amounts to nothing, for every fact which will apply with equal force to any hypothesis, is entitled to no weight. You have then to look at the other facts in the case, and see whether they prove the guilt of either of the prisoners. As to Wm. Gordon, I do not really believe that the government will ask his conviction. I cannot think that the Attorney General, will ask a jury to convict him upon this evidence. The only evidence is that he went to Cranston on the afternoon of the murder, staid a few minutes and returned. He went out for a most praiseworthy object, to visit an aged and feeble mother, and an only child. He was there at an hour when he could not have possibly committed this murder. I should not therefore suppose that a heart that had one particle of human kindness, could insist upon the conviction of William Gordon for the crime of murder.

The sole question before you is the conviction of John Gordon. John Gordon was at his mother's house. If she swears falsely, he might have had opportunity to commit the murder, if her testimony is true he could not have committed it. She swears that John came home about 2

o'clock, staid until near 4 o'clock, and went out stating that he was going to the Kingston's. A few minutes after sunset he was at the Kingston's, three quarters of a mile from his own house, a mile and a half from the place of the murder. If Mrs Gordon therefore is to be believed, John Gordon could not have committed the murder. You must say that that old woman with one foot already in the grave, and whose hairs are whitening for the winter of death, must have deliberately perjured herself, or John Gordon is innocent of this crime. Suppose that by sharp running he could get over to the place of the murder, and back to the Kingston's, what is the probability of his having done so? This was not a sudden murder, committed at a moment when the heart leaps up and the tiger passions of our nature seize upon their victim, in a moment of excitement. It was a contemplated, planned and deliberate murder. How should John Gordon know that Amasa Sprague would be there just as soon as he got there?

He was not directed to the murder by any sight of Amasa Sprague, the only spot where he could have seen him, would have been when he got up on the plain, and then he would have been behind him. If then John Gordon was in his mother's house until 4 o'clock, (and I am considering the case now with reference to his mother's testimony which is the only positive evidence in the case) how could he have known that Amasa Sprague would be there? The only way as I have already shown that he could have seen him, would have been by coming behind him along the driftway, and if he came behind him, how did he get round to the Johnston side in front of him. Now, gentlemen, you will recollect that the testimony of Mrs. Gordon is wholly uncontradicted by any other testimony in the case, and by that testimony it is utterly impossible that he could have been the perpetrator of this crime. How could it have happened that Mr. Sprague should have travelled down by the drift-way, and that John Gordon could have got round by Dyer's bridge in the same space of time, a circuit of nearly twice the distance, which he must have traveled to have met Amasa Sprague in the face? He could not have gone across the bog meadow, because that would knock the theory of the tracks all to pieces. If therefore the old lady has told the truth, you cannot believe John Gordon to have been there; that is you cannot believe it under your oaths. You are to judge of this case not from suspicion, but to judge as you would be judged, to decide upon it, so that when after reflection shall come to your aid, and that great and final hour shall arrive, which will arrive soon to all, you can put your hands upon your hearts, and say that you have acted conscientiously. If you say that Mrs Gordon is unworthy of belief, and throw her testimony out of the case, then you say it upon your own responsibility alone, for her testimony stands unimpeached and uncontradicted, and you take the risk of the conviction upon your own heads.

I have shewn you if that evidence is to be believed, by no possible mode, can John Gordon be connected with this murder. We have done all we can, we have brought all the evidence which it was in our power to bring; we have brought it for good or ill, for hap or harm. We did not desire to bring Mrs. Gordon here; we had it under consultation whether we should produce her; but if we had not, the argument of the Attorney General would have been, "why do they not produce Mrs. Gordon; if John was at home

on that day, she must know all about it, she could tell the story." We therefore felt that she must come here. You have seen her upon the stand and must judge of her credibility. Tell me about her contradictions!—the contradictions of a woman dragged from a dungeon, accused of a horrid crime her whole family involved in the charge, a stranger in your land, ignorant of your laws, why a person under such circumstances could not give testimony with accuracy and correctness; could not tell her story with the same calmness and composure, as she could here in a court of justice, after her agitation and excitement have subsided, and memory has had opportunity to refresh its recollections.

These so-called contradictions, are all that the Government have been able to find against her testimony. And if that testimony is to be believed, there is an end of this cause; if disbelieved, it is necessary I should go on to the other circumstances of the case.

I have shewn you that contiguity is nothing in this case; if it were any thing, it would go against the probability of John Gordon's having committed this murder; for the murderer came from the Johnston side, and of the whole distance to the place of the murder, one fifth lays on the Johnston side, four fifths on the Cranston. The tracks came from the Johnston side, towards the scene of the murder. So far as tracks create any presumption, what, in this view of the case, is it? It is that the murderer came from the Johnston side, and not from the Cranston. Now it is possible that a person came from the Cranston side and went over to the Johnston side; and then it might be proved to be one of the accused. But so far as the tracks themselves create presumption, it is that the murderer came from the Johnston side, met his victim on the hill, and shot him. Sprague retreated over the bridge, was knocked off by blows inflicted from behind, and crawled up to the place where the body was afterwards found, and where the last blows were inflicted. Now what evidence is there of any person having passed over from the Cranston to the Johnston side, on the day of the murder? Is there a tittle of such testimony in the case? Is there any body who saw John Gordon taking that course? He must have been going over, gun in hand, at a time when the population of the village was on its way to church, and yet no person can be found who saw him. There was a track of a much larger foot than John Gordon's, which winds around Dyer's Pond, toward the place of the murder. Was that the track of the assassin? If so, then it could not have been John Gordon. Where is the individual who ever saw John Gordon going from his house over to the Johnston side of that stream? or ever saw a track leading from his house in that direction? The evidence from tracks, then, being that they come from the Johnston side of the river, there is only one thing left which connects John Gordon with this murder. It is not that any tracks of his went toward the place of the murder, but that they led from that place to the house where John Gordon lived; that is the whole testimony, and the guilt is attempted to be fastened upon John Gordon, from a supposed correspondence between them and a certain pair of boots which he admits to be his. John Gordon went out on Friday, and was seen along the driftway by Abner Sprague, with a gun; he said he was going after partridges. Now if there was any game, it would be most likely to be in this swamp, among the brush. He had been unsuccessful in his hunt round on the

Johnston side, and when he returned he would naturally strike for that covert, and follow it through to his house. Then these tracks may have been made—and I wish you continually to bear in mind, that if the facts proved are consistent with any other hypothesis than the guilt of the prisoner, you cannot convict him of the murder—and therefore these tracks prove nothing in the case, because they might have easily been made—and there is good reason for presuming them to have been made by John Gordon, if made at all by him—on the Friday before the murder. That is the very direction in which he would have been most likely to have gone. The only other fact left, is that these tracks corresponded with the size of the boots. It seems to have been taken for granted in this case, that this is true; that the boots and tracks did correspond. But for what reason, I know not. The tracks through the bog meadow were of a man on a run, or jump; they were very long strides. Now if a man is running or jumping on the snow, will not the tracks which he makes be longer than his boots? Of course they will; and if he is running with great speed and violence, they will often be several inches longer than his foot. Every one of you must know this. It is too plain to require argument. Therefore either these tracks were made deliberately by a man in an ordinary and usual walk, or else they were not made by John Gordon; and if made by a man on an ordinary walk, they were not made by him, because the steps were too far apart for so short a man as he is. If the tracks, therefore, are of the size of the foot, if they are not longer than the boot which made them, they must have been made by a man on a walk, and then John Gordon could not have made them; and if they are longer than the boot which made them, then John Gordon did not make them, for they are of precisely the same length as his.

The tracks are traced from the Johnston side down to the place of the murder. Now we find a man—an armed man, on the Johnston side—coming toward the place of the murder, just before the time it must have been committed. John Gordon was not found there at the time of the murder. William Gordon was not found there; but we find another man on the Johnston side of the river, whose tracks correspond exactly with those on the Cranston side. This fact exactly fills up the hypothesis of the Government.

There is not a single fact in this case which connects either of the prisoners so strongly with this transaction, as those which connect the man seen standing about Dyer's Bridge, with it. That man is seen on Dyer's hill, at the brow of the hill; he is seen jumping from tree to tree, keeping himself concealed; he has a gun in his hands; he has a dark colored frock coat on. He is next seen by the end of the wall leading toward the ledge of rocks. A quarter of an hour after, the report of a gun is heard, and this corresponds with the time of Amasa Sprague's murder. If the man seen by Stratton, thus dodging from tree to tree, and traced in this manner almost to the very spot of the murder, was now on trial, could not the Government, make out a stronger case against him than against either of these defendants? And, gentlemen, these important facts were kept back by the Government, and we learned nothing about them, until I forced them into a discovery and explanation of them.

W. H. Potter. We deny this, Mr. Atwell. It

is not so; and we are astonished, after the course which has been pursued by the Government in this case, that you should make such an accusation. I spoke of these tracks in my first opening. I explained what they were to the Jury, in your presence. It was not necessary that we should introduce any evidence in regard to them, as we did not then, and do not now, deem them of any importance, but we gave notice of this very evidence, to the prisoner's counsel.

Mr. Atwell. I say, Sir—and the remarks of the gentlemen do not correct me of any error in this matter; I reiterate—the Government gave no notice of these important facts to us, until last Saturday, when we instantly summoned these witnesses. They knew of the existence of this testimony; they gave no information to us in relation to it, until it was forced out of them.

Mr. Potter. The gentleman still persists in asserting that which he must or at least ought to know to be incorrect. The plat with these tracks marked upon it, was by me explained to at least one of the counsel for the prisoners, and I believe to two of them. That was a sufficient notice. It was again explained in full, and these very tracks spoken of in my first opening.

Mr. Atwell. Here then are tracks on the Johnston side, leading directly toward the place of the murder. Were they John Gordon's? If the Government had thought so, would they not have summoned the witnesses to confirm it? Would not Stratton and M'Cclocklin have been here? They were not summoned. What is the inference? Why, that the Government did not believe the man seen walking, by Dyer's Bridge, with a gun, was John Gordon; and yet it is distinctly proved that the tracks leading from the hedge to the ledge of rocks are precisely the same; they are perfectly identical with the tracks leading from the place of the murder to the Gordon house. Gentlemen, where are we? Are you to convict the prisoner at the bar, John Gordon, upon suppositions of your own raising, and which the Government themselves do not believe? Here are the tracks of a man by Dyer's Bridge, going toward the place of the murder, creeping under the trees and rocks with a gun, and these tracks are identical with those found on the other side, leading to the Gordon's, and yet the Government dare not say that these tracks by Dyer's Bridge are those of John Gordon. Here then is another hypothesis, which accounts for this deed wholly different from the hypothesis of the Government, and wholly unconnected with either of the prisoners.

So much for the tracks, gentlemen. The coat, another circumstance dwelt upon by the Government, I consider out of the case. The evidence has already been minutely considered, and I shall not detain you by any further comment upon it.

There is another circumstance—the gun. I am not going into another examination of the testimony on this point. I will make but one remark; that with the exception of the loose testimony about the ramrod, there is not a particle of evidence in the case which connects the gun here produced with Nicholas S. Gordon. But suppose it had been fully identified as the property of Nicholas S. Gordon, how does that prove that John Gordon committed this murder, independent of other facts? Why, gentlemen, I was once in my life in some little peril, and during that time there were in my

house two muskets, both loaded, belonging to my servant. If a man should have been found dead, and one of those muskets by his side, I should have thought myself dealt hardly with, if a Jury of my country should have found me guilty of murder, because a weapon was found near the body belonging to my servant, and which had been in my house, and the servant could prove an alibi. If such inferences are to be drawn by juries—if such is to be deemed the law of the land, better were a state of entire self-protection—better were it to throw off the Ægis of the law, and depend on the right arm and the good sword. No man would be safe. There would be more murders committed in the Court House, than on the Highway.

(The Court here adjourned.)

Wednesday morning.

Mr. Atwell resumed his closing argument for the prisoners, as follows:

I will endeavor, gentlemen, to complete as soon as possible the observations which I deem it my duty to make to you in the close of this case. I was remarking to you that there was no evidence in the case which I had been able to discover, which connected John Gordon with the gun here produced, because there is no evidence that Nicholas S. Gordon had that gun; and I gave some reasons why it was a matter of doubt; because, as was remarked by the opening counsel, guns resemble each other in size, color, shape and appearance.

Now there has been no witness who has told you that he could prove that this gun, from any positive mark upon it, is the same gun which Francis left with Almy to be sold. In the alarm posts of the Marine Artillery and Infantry, are stands of arms. No man could tell his gun from another, unless there was some mark or number put upon it. Francis don't pretend he recognizes the gun by any such mark, but only by general appearance. Harding Hudson only saw a gun resembling this. Abner Sprague thinks it was like this. So that the first fact, that this gun was the property of Nicholas S. Gordon, is not proved beyond a reasonable doubt. Now to apply the rule of law which I laid down yesterday, in all cases of circumstantial evidence, the circumstances or facts from which the inference is to be drawn, must be clearly proved. You can't infer that John Gordon killed Amasa Sprague with Nicholas Gordon's gun, without in the first place you are convinced beyond the shadow of a doubt, that this gun was in truth the property of Nicholas Gordon, and in such a situation that John Gordon could have obtained possession of it.

This has not been so proved. John Gordon was not seen with this gun that day; the gun is not proved to be the same sold by Francis. It is all the conjecture of witnesses; a conjecture founded upon a mere fancied resemblance, from simply looking at the gun, when there are hundreds of guns exactly similar in the possession of other persons. If there had been any particular mark upon this gun, the case would have stood differently; but it is all a matter of mere guess and fancy. If this fact is not in your judgment proved beyond a reasonable doubt, then as men under the oath of God, you cannot infer the guilt of John Gordon. There is an end of the Government case. Because we all agree that the murder was committed with that gun. Now if you can not prove John Gordon to be connected with this gun, then, although there be ten thousand other circumstances, the case falls to the ground.

Whoever committed that murder, used that gun. If John Gordon did not use it, he is not the murderer.

But it does not follow, if Nicholas S. Gordon did own the gun, that John Gordon is the murderer.

Suppose you are all satisfied that this gun is the one sold by Almy to Nicholas Gordon, and that John Gordon lived in Nicholas' house, and was in Cranston, and might have had access to the gun? The next question is, what is the legitimate, legal inference, which can be drawn from these facts? The presumption—the facts are supposed to be all established. Now comes the inference, and here applies the other rule which I adverted to, that the inference which is drawn must be a legal and legitimate inference from the facts, *and must exclude every other inference* which could be reasonably drawn from those facts. Now it is clearly proved that the gun which Nicholas Gordon owned, was kept openly. It stood in the shop; the shop was open on Saturday evening; many other persons were in there, and might have had access to the gun; they might have borrowed it. Is it therefore a necessary inference, that because John Gordon might have had possession of this gun, therefore he did have possession of it, and that when many others might also have had it? You must come to this conclusion before you can convict. Suspicion is nothing; opinion is nothing; you must be governed by legal and undoubted evidence.

When a man like Mr. Amasa Sprague—a man of influence and wealth and standing, of high ability and extensive acquaintance, falls by the blow of the assassin, the first impression through the community is, that somebody must be hung to answer for that blood; and wo to the man upon whom the eye of public suspicion first fastens; he has that force of feeling, that keenness of indignation aroused against him, which, if Jurors are not careful, will make suspicion look like proof, and probability like certainty. If you can not legally draw this inference, there is not a fact in the whole case, which tends to fix suspicion upon John Gordon, any more than any other individual in the community. I have shewn you that the tracks do not do so, and there is not another fact in the whole case, upon which such a presumption can be based.

There has been one circumstance thrown into this case to strengthen, if possible, the inference which is sought to be drawn from the gun.

A motive has been attempted to be set up, in order to infer that it would be more probable John Gordon took the gun than any body else; and what is it? Why, that Nicholas S. Gordon was at feud with Amasa Sprague, the deceased, and uttered threats against him. They were uttered by one brother who had been in this country some years, in the presence of another who had just come over from Ireland, who was a stranger, ignorant of our laws and customs, and it is attempted to charge John Gordon with the murder, by asking you to presume that John Gordon imbibed the feelings of revenge felt by his brother Nicholas, took up his brother's quarrel, and committed this great crime. Now permit me to say to you, gentlemen, that this evidence ought not even to make a lodgement in your minds. Because, if I am to be convicted of a murder, because my brother or my wife or my friend had a feud with the deceased—then the more friends a man has, the more family and kindred to cheer him in

his pathway of life, the worse is he off; the more dangerous is his situation. If a Jury can be called upon, in a case where a man has no motive of his own, to presume that he is affected by the evil desires and fell passions of a brother, because he has been an affectionate brother to him, and performed all the kind offices of paternal love, so that he shall be convicted of the horrid crime of murder, upon the strength of such a motive—it would be dangerous to have friends or relatives; it would be dangerous to mingle with them, and exchange the kind offices of affection. I would not ask a man to love me. I would not seek for friends. I would cut myself loose from family and kindred; for, if any one of that circle should utter a threat or menace in my presence, I might be convicted of murder in consequence. This is one of the "trifles light as air," which have been thrown into this case to influence your minds against the accused."

I have nearly finished the consideration of this case. William is proved to be innocent, unless you are to presume our witnesses all perjured. If you are to take this fact for granted, without proof, then you may convict him. I have shewn you that it was to be expected that these witnesses should be Irishmen and Catholics. And although it is the fashion in these days to decry the countrymen of Grattan and Burke and Curran and Wellington, and all the great men who have adorned modern English History—yet, though we have produced Irishmen, we have not produced either a fool or a —— (I had liked to have used a naughty word)—a *young lady*, the inmate of Miss Susan Parr's!

Now, Gentlemen, a man was seen on the brow of the hill, by Dyer's Bridge, dodging from tree to tree, with a gun in his hands—aye, with that gun in his hands—because that man, whoever he was, committed the murder. He was seen for nearly an hour; he was seen coming toward the place of the murder from the path to the ledge of rocks, on toward the spot where the murder was committed. Now recollect that the tracks in the swamp are not continuous—that they were traced the first day no further than Hawkins' Hole. Suppose a man coming in the direction from Dyer's Bridge, as we have shewn, to have committed that murder, and to be desirous to get over on to the Cranston road, instead of returning in the same direction in which he came, would he not have taken just that course pursued by these tracks? If he went through the swamps, and past the house of Nicholas Gordon into the highway, he ran the risk only of being seen by the Gordons; if he went by the driftway, he might have met a dozen persons. Would not the evidence, in this case, bear more strongly against the man who was seen by Dyer's Bridge, if he were here on trial, than against John Gordon? This man was seen lying in wait; he was dodging from tree to tree; he was going in the direction of the murder; a quarter of an hour after, the report of a gun is heard in that direction; then the same tracks are traced out by the house of Nicholas Gordon to the highway. Is not that a stronger case than this? I would convict neither of the men upon such testimony; but if either, I would say, were it my last word, that I believed it to be the man who made the tracks by Dyer's Bridge, rather than John Gordon. The Government do not pretend that that man was John Gordon; they have put in no proof to that effect. We have proved by several witnesses, that it could not have been John

Gordon; that it was a taller and stouter man. Now if there is any doubt about it; if it might have been another man, and that hypothesis fits as well the circumstances proved, you can not, and so I ask the Court to charge the Jury—you can not convict John Gordon.

There are many things now which I would say, if my strength permitted. These men are strangers in this country; they are poor and unfriended. I have endeavored to do my duty by them—that duty which I never shrink from in a capital trial, if God gives me health and strength. It is yours, gentlemen, to do the rest. In your hands are the lives of these prisoners. I commit them to your protection, and may “God Almighty send them a safe deliverance.”

**ARGUMENT OF JOSEPH M. BLAKE,
ATTORNEY GENERAL.**

MAY IT PLEASE THE COURT, AND YOU, GENTLEMEN OF THE JURY—

The counsel who have addressed you in behalf of the prisoners, have very properly spoken of the importance of this trial. It is important to the prisoners, for upon it may depend their lives. It is important to the community, for it is a trial for murder; and the safety of the community requires, that every such case should be thoroughly investigated, that the innocent may be protected, and the guilty detected and punished. The prisoners at the bar have had a fair and impartial trial; their counsel have occupied two days in presenting the case to you; and exhausted as you already are, I rely upon your sense of the high and important duty which has devolved upon you, for an attentive hearing of the case, as I may deem it my duty to present it, in behalf of the Government.

The Government do not ask you to depart from any of the rules of law or evidence in the trial of the prisoners at the bar. They ask you only to hear the evidence as sensible men, as I know you to be, and to form your judgment upon it in the same manner as you would do upon any of the great and important affairs of life. The Government have not, I think, from the beginning to the end of this trial, manifested a desire unwarrantably to press the case against the prisoners. There is not one single circumstance which has come to my knowledge, that has any bearing in favor of the prisoners, which has not been communicated to their counsel. Evidence which some thought might have a bearing on the case, but which I did not deem material, and which was not therefore put in, has been communicated to the counsel for the prisoners, that they might use it, if in their discretion they should deem it best. The Summons of the State has been granted to them, to compel the attendance of their witnesses, at the expense of the State, although it is not usual for the State to grant its summons in cases where the parties, as in this case, employ their own counsel. The Court felt some reluctance to depart from a salutary rule, and I joined with the prisoners' counsel in requesting them to do so. And when it was understood that a witness for the prisoners neglected to obey the summons of the Court, it was upon my suggestion that he was brought in by writ of attachment. It was said by the counsel who closed for the prisoners, that the witness, Stratton, was endeavored to be withheld by the Government. This statement is wholly unfounded. I had never heard of the name of that witness, until I com-

municated it to one of the prisoners' counsel. If his testimony is important for them, they are indebted to the Government for it. Gentlemen, nothing has been kept back. No person who has assisted in this prosecution has any desire for the conviction of these prisoners, unless clearly proved to be guilty. And if there are any circumstances which go to shew their innocence, we rejoice at it. It has been said that the case has been unfavorably affected by the excitement and prejudice created in the public mind by newspaper statements. I have seen but few statements about it, and it is remarkable how little has been generally known of the facts. This is strikingly illustrated by the small number of jurors, but three or four I think on the whole panel, who had formed an opinion upon it. The Government has from the first, studiously endeavored to keep the public mind in ignorance of the facts, for the very purpose of securing a fair and impartial trial. It is true that there has been excitement. It is true that the public mind has been shocked. Well may it have been! A man well known throughout the State, of extraordinary activity and enterprise, of an enlarged capacity for usefulness, and conducting more extensive business operations than were conducted by any other man in the State—in the broad light of day, almost within hearing of his own wife and children, and of hundreds of those with whom he was in daily business intercourse, and who at any hazard to themselves, would have rushed with the speed of the wind to his rescue, has been assaulted by a band of assassins and most foully murdered! Such an event would have created excitement in the worst of countries, in the worst of times. But here in New England, there never was a murder so bold and atrocious. God grant the time may never come when information of the perpetration of such a crime shall be received by the public with apathy and indifference! But the excitement has not operated against these prisoners; much that has been said has had a tendency to draw off suspicion from them; stories have been circulated for that purpose, or for some worse motive, but which have had that effect, and which all who have attended to the evidence, have seen to be entirely without foundation, and the sheerest fabrications. It is true that the friends of the deceased are interested in this trial; but they have no thirst for the blood of the prisoners. Their duty to the deceased did not, as the counsel who opened for the prisoners seemed to think, cease when his body was interred in the ground. They owe something to his memory, something to themselves—to you—to the community. Who should manifest an interest in the trial, if not those most interested in the deceased? Each member of his family must feel that he has an interest in the detection of the murderers. This murder must startle the mind with a sense of personal insecurity unknown before. The feeling must be strongest with those who think most of the crime; and they who think most of it, must be those who were most intimately associated with the deceased. Does not the distinguished brother of the deceased, between whom and the deceased there was exhibited a remarkable and beautiful instance of fraternal affection, and generous and enduring confidence—into whose soul the iron of affliction has been driven deep by this terrible event, but who sustains himself under it with such exemplary firmness, must he not feel less secure—must not every man in this community, who knows that

he has a malignant and unprincipled enemy, or that there is any such person who would be profited by his death—feel his life less secure, if the perpetrators of this bloody deed can escape with impunity?

The counsel for the prisoners have told you, that in the eye of the law, and of God—aye, and they might have said of every right thinking person—the life of the rich man is worth no more than the life of the meanest beggar that crawls. But the murder of a public man, of great wealth and extensively engaged in business, will create more intense and general interest, than the murder of a poor and friendless man; because there are more who know him. It will create more excitement too, because the crime is more audacious. There are more to observe the movements of such a man, he can be more easily traced, and the chances for detecting those who may assault his life, are greater. If the assassin can strike down such a man, and escape unpunished, the poor and friendless must feel, that for *their* lives, the security is but frail.

Most of the testimony against the accused is circumstantial, and on that account requires the closest attention. You should be tender of human life; but to be tender of human life, you are not required to brace up the mind against impressions which the facts would naturally make. You should not condemn the prisoners, unless you have such testimony, as taken all together, convinces you, beyond a reasonable doubt, that they are guilty of the crime laid to their charge. If you have such testimony, you are bound to convict. They may propound to you technical rules, and tell you *this* piece of evidence is not sufficient, and *that* is not sufficient, when weighed in the balance of these rules. But I know no other rule than this—You are to require such evidence, as would clearly satisfy your minds, out of the Jury-box, in the important affairs of life. No other rule of evidence can be given you; there is no other which it would be safe for you to follow. I have known cases, where jurors and magistrates, after they had acquitted, have said, they believed the accused to be guilty, yet the difficulty was to *prove it*; and still they formed the opinion of his guilt, upon the very facts and circumstances, which were legally before them when they acquitted. Jurors are not to be influenced by any thing not legally before them; but it would be perfectly absurd for you to say, upon the evidence which the Court has permitted to pass, that you believe the prisoners to be guilty, but that they are not *proved* to be guilty. Evidence is that which convinces the mind, and if from the evidence which the Court have admitted, you believe the prisoners guilty, it will be your duty to say so by your verdict. The counsel for the prisoners have said that it is better that an hundred guilty persons should escape, than one innocent man should suffer. The meaning of this is, not that it is better that one hundred guilty persons, against whom there is sufficient evidence should escape, than that one innocent man should suffer; but that no one should be convicted upon insufficient proof. Many guilty persons escape the punishment due to their crimes, from an idea of juries, that though the evidence of guilt is enough to convince the mind, yet on account of some supposed technical rules of law, it is not enough to found a verdict of guilty upon. The lives of more innocent men have been lost in consequence of improper acquittal, than of improper convictions. Men bent on mischief consider

the chances of escaping punishment. They hope to cover up their tracks entirely, so as to escape all suspicion. If suspected and tried, they calculate the chances of acquittal through the meshes of the law, by the ingenuity of counsel, or in consequence of the false sympathy of juries. You should take care, gentlemen, that you do not hold out *inducement to crime*, by requiring more evidence than can be furnished in one case in a hundred.

This, it is said, is a case of circumstantial evidence, and do any of you know of a case of deliberate, premeditated murder, proved by any other than circumstantial evidence?

Men who intend to commit a great crime, do not take witnesses with them. They hope to do it in secret, when no eye but the Omniscient one is upon them. Cases of murder proved by positive testimony, have usually been those which were committed in the heat of passion—in the fury of excited feelings—and when in the defence, it has been attempted to reduce the crime to manslaughter; but I have not known a case of deliberate, premeditated murder, which was not proved by circumstantial evidence. So, gentlemen, if you wait for positive evidence, you will rarely if ever convict a man of murder. The value of circumstantial testimony is in proportion to the number of circumstances proved, tending to the same point. In the cases adduced by the gentleman, a *single circumstance* was alone depended upon—the blade of a knife had been broken off in the window sill, and the piece which was found in the window sill exactly corresponded with the broken blade of a knife found in the possession of the prisoner. This was but a single circumstance, and of course had not as much force as a variety of circumstances, all tending to the same conclusion, would have had.

In this case, did we desire to prove the instrument of death, if some credible person should swear, that he saw a stranger inflicting the blows with a gun, which he threw down and then fled, the fact would be sufficiently proved, though possibly the witness was mistaken, or had a motive to deceive. If Costello, when he found the body, had found a bloody gun by the side of it, we might infer the gun to be the instrument of death. Yet this circumstantial testimony would not be so satisfactory as the positive testimony in the case put, because there would be the same possibility of deception or mistake in the positive testimony of Costello, as to the fact of finding the gun; and also the possibility, that if so found by him, it might not have been the instrument with which the blows were inflicted. The fact of its being there might be explained some other way. But here too, you will observe, there is, as in the case of the broken knife, but a single circumstance from which a conclusion can be drawn.

But the force of circumstantial evidence, when the evidence consists of a *variety* of circumstances, is illustrated by the actual proof in this case of the instrument of death. On Monday morning, Stephen Sprague noticed a few drops of blood and foot tracks near the fence, and a few steps from the string bridge; he followed the tracks a few rods, and as he was getting over the fence, he noticed a small piece or splinter, which appeared to have come from a gun or pistol; there were two or three black hairs and blood on it. It was found accidentally and it had evidently been dropped by accident. It did not occur to Mr. Sprague to trace the tracks farther. The same day Mr. Beattie and others who had been following the bank of the

pecting no one, but with an earnest desire and fixed determination to use all vigilance and spare no pains to bring to light and to punish the perpetrators of the dreadful deed.

The murder was committed, as nearly as can be ascertained from a comparison of the evidence, a little earlier than four o'clock. Michael Costello was passing along the travelled pathway, fifteen or twenty minutes, he thinks, before sundown—or a little after four—and found the body with the head down, resting on the hands and knees. He did not know it. He saw a man laying in a *bad way*, he says that he was frightened and went up the hill and communicated the fact. He saw a number, who immediately came down. It was found to be Amasa Sprague. Now, gentlemen, without forming any theory, let us carefully examine the body, look around the ground, and see if we can find any circumstances that shall furnish a clue to the detection of the murderers. And the first circumstance that will strike us, is that it was committed by some persons who knew the deceased, who were familiar with his habits, and his accustomed walks. It was committed in a hollow place, mainly concealed from observation, and although one or two windows may command a distant view of it, yet it is the only place on that route, where a crime could be so easily committed. And it does not appear that there was any other unfrequented path, which the deceased was in the habit of traversing alone. He was an active business man, surrounded by many people on week days, but on Sundays he was in the habit of going over to the Carpenter place by this route, to see his cattle and view his estate there. Mr. Waterman and Mr. Abner Sprague say his usual time for going there was on Sunday afternoon, and generally at about the same hour. But a few rods up the hill there is a good view of his route, and from which place his approach could be seen. The hollow tree by the bridge would entirely secrete one person, and others might have been secreted under the bridge. The fatal blows were not struck in any sudden excitement of passion. They who inflicted them were prepared to inflict them. They laid in wait for his coming. This is admitted by the counsel for the prisoners.

Now let us go to the body. His pockets have not been rifled. All the money and other things which he had about his person when he left the house, are still there. Nothing has been taken. He was murdered then for revenge, or some other fell passion; and we have attained to another fact, to guide us in our investigations.

There are circumstances which may be observed on the ground, indicating that several were concerned in the death. There is a pistol near the foot of the bridge, which had been snapped but not discharged. He was shot as he was going up the hill, for there are spots of blood there, which were traced down to the bridge. At the place where the blood was first observed on the hill, there was the print of a hand, as though he fell partly down when he was shot. Whether he was shot by a man in front or behind him is uncertain. But little can be inferred from the places where the ball entered and passed out, because it would glance. A ball sometimes goes through the body in nearly a circular direction, passing out near where it entered. The wound was made with a musket ball. When wounded, he started to return, and had got on the bridge, when he was probably knocked off by some one concealed

there. His hat was at the side of the bridge, and there were marks of a struggle there, and from there, to where the body was found. It can not be doubted that he was attacked by more than one. He was a large, strong man, of very great muscular power, self-possessed in danger, quick to conceive, and prompt, bold and determined to execute; and had he not been disabled of one arm, and his whole system paralyzed and weakened by the wound, he would have cleared himself of the whole band of assassins, and trampled them under his feet.

By careful observation, we may perhaps be enabled to ascertain something more about the characters and dispositions of the murderers, than merely that they were willing to take human life. Murders are sometimes committed by men of intelligence, of some good traits of character, the general tenor of whose lives is moral and exemplary—men unaccustomed to crime, and who, under ordinary circumstances would revolt at it. They are men of strong and uncontrollable feelings, who cannot brook an injury; with whom, when they fancy they have been wronged, revenge becomes the ruling passion, and who will have it at any hazard to themselves. This murder was not committed by such a man—by some associate of the deceased, who thought the deceased had done him some great wrong. Such a man would have sought the life of his enemy at once, publicly, whoever might be present; or if not reckless of his own life, he would have sought to meet him, perhaps, at this spot, and blown out his brains with a pistol, or on failure of such an attempt, plunged a dagger to his heart. But he would have had no confederates. Whatever may be the character of him who planned it, this murder was committed by men of gross brutality—ignorant, insensible barbarians. The doctors inform us that there were many wounds on the head, nose, cheek, temples, chin. The skull was broken all round, so that it was loose and movable. Three or four of the wounds would have been instantly fatal. It would seem that those who did the deed, hardly knew the difference between a man and a brute—thought they must *beat off the head* of a man as they would of a reptile, before life could be extinct. This is all perhaps, we can ascertain about the perpetrators of the crime by looking at the body, and observations on the spot.

But before forming any theory, while the mind is yet in suspense, let us look further, take up the evidence piece by piece, and see whither it will lead us. Who could have had a *motive*?—the motive of deadly hate and fierce revenge? and who would be benefitted by the death—who knew of the walks and habits of the deceased, and who was possessed of that brutality and ignorance? Who could have had a motive? Not an *adequate motive*—for there can be no such thing as an adequate motive for the commission of murder. No motive is adequate. Whether the motive was *powerful enough*, depends entirely upon the character of the man. Because one motive operates on one man and another on another man. No virtuous man could find any motive strong enough to prompt to the commission of any crime. But it is perfectly idle to say that a certain motive was not a sufficient one to induce a commission of the offence, until we know what is the exact character of the person upon whom that motive is to operate. But if the gentleman means to say, that no murder is ever perpetrated without some powerful moving cause, some cause

that might well excite deep and abiding resentment, the annals of the world, from the commencement of our race, shew the incorrectness of the assertion. I believe no skeptic has ever yet denied the Scripture account of the first murder and fratricide on earth, on the ground that no sufficient motive has been revealed.

It is a lamentable truth, that the direst crimes which have deformed the page of history, have been committed from the most frivolous and unworthy of motives.

But who had a motive? We find that one Nicholas S. Gordon was an enemy of the deceased. The deceased had prevented him from obtaining a license. His principal business had been the selling of rum, and he had profited by it. The officers say there was scarcely any thing in his store when they went into it. Mr. Sprague thought proper to oppose the renewal of his license. In June last he got up a remonstrance and sent it by his Agent to the Town Council. He headed the remonstrance himself. The application was continued, and at the next meeting of the Council, Mr. Sprague's agent was present, but the remonstrants had leave to withdraw. At the next Town Council, Mr. Sprague appeared personally, with another remonstrance. Nicholas S. Gordon too was present. Mr. Sprague opposed the license, and probably with earnestness and zeal. His opposition was successful. Nicholas Gordon, whose principal business had been the selling of rum, had his license taken from him. Mr. Sprague had taken from him what he considered his means of living. Mr. Sprague carried his opposition farther. He considered the shop a pest, and he forbid his help from going to it at all; at any rate, he told them he should employ no one who contributed to sustain it, by going there, or buying any thing from it. No doubt Nicholas Gordon thought himself deeply injured, and his angry feelings were doubtless excited as well by the manner of the opposition, as by the effects of it. The manner of Mr. Sprague was calculated to excite the animosity of those to whom he was opposed, as well as to attach to him his friends. I knew him perfectly well. It so happened, that I was in his company a good deal, when we differed on the subjects which were the most usual topics of conversation, as well as when we agreed. He was ardent in opposition—accustomed to great directness and plainness of speech, speaking right out, in strong, unguarded language, what he thought of one, to him in his presence, just as he would of him in his absence. Yet he was a warm, whole, true hearted man, without malice and without guile; and had those who supposed him to be their enemy, been in distress from sickness or poverty, or any other misfortune, they could nowhere have found more generous assistance, than of him whom they made the victim of their infernal hate.

We find then, Gentlemen, in Nicholas S. Gordon, a motive for the commission of the crime. He had two brothers who had come over from Ireland last summer, at his invitation and at his expense. They probably came with the idea which is common to many of their countrymen, that the laws here, in this free country, are less severe, and may be more easily evaded, than the laws of their own country—that they would be less restrained in their indulgences, and less liable to punishment here, than under the strict police of their own country. Nicholas was the head of the family—he

had prospered in the world; and there is a kind of pride which the members of a family feel for one of them who is more talented and successful than the rest—a pleasure in fulfilling his wishes and advancing his plans. And if there be any people in which such a feeling is peculiarly strong, it is among Irishmen. The Gentleman has spoken enthusiastically of Ireland and her great men. He has extolled in eloquent language the virtues of the Irish character. I yield my cordial assent to his tribute to Ireland. The Irish have strong propensities, strong attachments and resentments; qualities which, under a favorable development, tend to enoble, but under an unfavorable one, to debase the mind. One of the strongest and most marked features of the Irish character, and to their honor be it said, is the strength of their national and fraternal feeling. The tie of kindred is to an Irishman almost an indissoluble band. These brothers had recently come over. That they must have known of this difficulty between their favorite brother and the deceased, might almost have been presumed without proof. Amasa Sprague was the principal man of the village. They must have known him; they could hardly have lived in the village a month, and not have known him. And in the absence of all evidence, we should naturally be led to infer that this difficulty between him and Nicholas, which had so keenly aroused the angry passions of the latter, would have been talked over in the family. But we are not left to inference. There is positive proof in the case of these facts. Now one of the counsel, (Gen. Carpenter,) said that he should not touch Miss Susan Field. But yet he has deemed it necessary, in the course of his remarks, to comment quite often upon her testimony.

You are not compelled by any rule of law, to believe Miss Field. You can doubt her if you think proper. But she is a *competent* witness, or the Court would not have suffered her testimony to pass to you. She is wholly unimpeached, and uncontradicted. She is not a woman of notorious falsehood, whose word cannot be trusted; or rely upon it, gentlemen, there would have been twenty witnesses in that box to have proved it.

The character and habits of a witness are most important where he testifies to but a single fact, for then there is but little opportunity of testing the truth of his statement by internal evidence.

It often happens that witnesses of good general character, testify very unfairly, though unintentionally, from sympathy or prejudice. To test the truth of testimony, it is important to inquire what the relations of the witness are to the accused, whether friendly or hostile—the manner in which he has testified—the reasonableness of the statements, their consistency with each other—and with the other facts proved by other witnesses. Apply all these tests to the testimony of Susan Field, and tell me how you can doubt its entire correctness. You can judge for yourselves of her manner on the stand. She was subjected to a severe and searching cross-examination, without involving her in a single contradiction. She testified to a great number of circumstances, and it is remarkable, how as the different witnesses for the Government and the defence, have been examined on points connected with testimony sworn to by her, facts have come out, one by one, confirming her testimony. And in no single instance, in any one particular, has her testimony been found incorrect. The only thing which

the different counsel, with all their labor and skill, have been able to discover to hang a doubt upon, is the fact, that just as she was leaving the stand, she confounded the names of the two prisoners—a thing which you or I may do twenty times a day. The Sheriff tells you that William is so much altered in appearance, that he should hardly have known him. And you will recollect, that the mistake was a mere mistake of names, for when I asked her which one tended the store, she designated the right one. This very mistake shews you that she has not come up here with an artfully prepared and fabricated story, for the purpose of affecting the lives of these prisoners. She described a great variety of clothing, with singular minuteness and accuracy, and described it before any of it was produced, just as she described it here; and those clothes which she did not know, she as promptly said she did not know, as she identified those which she did know.

Mr. Shaw testifies that on the Monday after the murder, he met Susan P. Gardner in the street, who told him there was a girl at her house who could put him on the track of the murderers. This was before it was known in Providence that the Gordons had been arrested, or any mention had been made of them in public, in connection with the murder. He went up there, and she made to him identically the same statements which she made here on the stand.

Now mark, gentlemen, the facts. You have seen that the persons who committed the murder must have known the personal habits of Mr. Sprague—of his walks—must have been men of great ignorance and brutality. Now before any circumstances are known, before any thing has come to light—while the horrid transaction is yet involved in mystery and darkness—before the gun was found, or the coat was found, before it was known that an arrest had been made, or an individual suspected—this girl, who can not be omniscient, and who was then in this city, five miles from the place of the murder, this girl said she believed that she knew the murderers, and pointed out the family of Gordons as the perpetrators. She had heard Nicholas threaten vengeance upon the deceased, she had heard him say that he would have his life—that he would be revenged upon him—that the deceased had injured him, and that he should suffer the consequences, and that these threats and angry expressions were vented in the presence of the prisoners.

How did this girl know that it was of importance that the threats were uttered in the presence of the brothers? And yet on Monday before they are known to have been arrested, she avowed her belief that these men were guilty of the murder, and related the fact of the threats made in their presence to a police officer. Here then is a motive found for the commission of this murder; and we find it in men who knew of the deceased's habits—who lived in the vicinity. Abner Sprague, Jr. saw John Gordon with a gun, within a few rods of the bridge, but two or three days before the murder.

This girl has had no difficulty with Nicholas S. Gordon, or the accused. If she had, it would have been proved. She says she liked to trade at his store, and that he always treated her fairly. She is not a swift witness in the case. She appeared here with great reluctance. But her testimony does not stand alone. Not only is it unimpeached and uncontradicted, but

it is confirmed by Harding Hudson, and by several other witnesses, upon the various points as to which she has been examined.

The gentleman make light of these threats—they say they were uttered in a moment of passion, and meant no more than the idle wind.—But, gentlemen: they were uttered concerning an injury which had been inflicted some time before, and shew that the sting of that injury was still rangling in the heart. Harding Hudson tells you that Nicholas said he would have his revenge. Gentlemen he has had it; and has made his brothers the willing instruments of his fiendish purposes. But we must not believe these facts, because several witnesses have testified that the persons were men of a quiet, peaceable character. Proof of character is only important in a doubtful case. It weighs but little when the testimony is clear. But what do the witnesses know of the character of these men? They had been in the country but a few months—Who has told you what character they had in the country from which they came? What can be known of the characters of these men in the space of three months—during which they were probably seen by the witnesses scarcely a dozen times? It takes a long time, and an intimate acquaintance to understand a man's character. All this testimony may be thrown out of the case. It is not entitled to a feather's weight.

Having discovered who had a motive and facilities for the commission of the crime, let us go back to the scene of the murder, and see if we can find anything more to lead to the detection of its perpetrators. The first particular examination of the ground was made by Walter Beattie early on Monday morning. A few rods from the bridge he first saw the tracks leading to the swamp. They are traced to the pond. There was but one solitary track there at that time. There was no confusion, no mistake, no difficulty.

Now gentleman, the place where the murder was committed, is a better place to commit a murder, than to escape from after the deed is done. The swamp is the nearest place of concealment in the vicinity. These tracks lead towards the swamp, the steps were those of a man going in long strides, as though in great haste, not on a jump as the gentleman (Mr. Atwell) supposes, but with long strides. When they were traced into the swamp the appearance was as if the man had jumped from hillock to hillock, and this is all that is said by the witness about the appearance being of a man jumping. So that the whole of that portion of the gentleman's argument about the tracks being longer than the foot in such cases, falls to the ground. These tracks are traced to the pond, there they are lost. It is asked why if these tracks were made by John Gordon's boots, those boots did not leave a print on the ice, since they have large nails in the heels, which must have scratched the ice. It is true that if a man had just passed on the ice there would probably be found scratches in his track if he had on boots with nails in the heel; but there would be no clear or distinct impression as of a track similar to those which the witnesses had been following in the snow. If the men had got down on their hands and knees and examined the ice, they might perhaps have discovered such scratches, unless in the course of the night the wind had blown the snow over them, and filled them up. Beattie traced the tracks over as far as the opening towards Hawkins Hole, there he saw two, and concluding they could not be the

same, made no further examination at that time and came away.

Mr. Stephen Sprague the same day found drops of blood which excited his attention, and following along the fence he found a piece of a gun; and that piece of gun, is the cause of the discovery of the perpetrators of this murder. Had it not been for that piece of gun, it is doubtful if the gun itself would have been found, had not that little piece and a part of the lock have been discovered all by accident, we could not when the gun had been discovered, have identified it, as the instrument of death. The person who committed the murder thought he had avoided all means of detection when he had cast the gun into the bushes of that swamp where it might not be found for years. But "murder though it hath no tongue will sometimes speak with most miraculous organ."—This little piece of gun led to the discovery of the gun and the coat, and has led to the discovery of the perpetrators of the crime.

Mr. Beattie who saw the track first, knew not that any part of a gun had been found, and when he saw two tracks he measured no farther. But when he knew that a piece of gun was found, the track was more narrowly examined, and it was found to proceed from the very spot where the piece of gun was first found; then the steps and the size of the tracks were particularly noticed. Mr. DeMerritt and Mr. Waterman measured them accurately; they measured them from the body to the pond; from the pond to the spot where the gun was found; thence to where the coat was found. There were other tracks at the time, but these were clearly distinguishable from any other. The measure corresponded to none other than the one first traced. The witnesses all say so; they say the other tracks were fresher and newer in appearance. They may not be able to say why; as it is sometimes difficult for us to tell why we think two persons look alike, and yet the fact of resemblance may be very positively fixed in the mind.

Here it is asked, how do we know that the tracks leading to Hawkins' Hole are the same as those to the pond? Well we don't *know* it, at least in this stage of the investigation. But it is at any rate a most singular coincidence, that tracks should be identical in size and shape, and direction and length of step, and yet not to be the same track. They go on to trace the track through to Hawkins' Hole. A gun has been found along the route of the track, and the track turns up towards the tree where it was found, and the gun is ascertained to be that with which the murder was committed. A coat has been found worn by the murderer, the identity of which we will not now stop to consider. *Let us follow the track.* There are other tracks in the swamp, made more recently by the man who found the gun and coat. They do not sink so deep as this one. The steps are not so long, and were made more apparently by men walking slowly. None of them correspond with the measure. Let us follow this track; it goes down to Hawkins' Hole; It reaches the travelled cart-path, and is for a moment lost sight of. Perhaps the murderer went up the cartpath; and if so, after going a few rods, he would come to a foot-path leading across the lot, direct to Gordon's house. But the track is discovered in the swamp South of Hawkins' Hole, and nearly opposite the place where it came into the cart-path, from the swamp north of the Hole. But the gentlemen ask, how do you know that but this track was made by a person who was com-

ing along the road from Fenner's and turned in there? The witnesses answer, it certainly might have been made by a man coming from Fenner's if he had been of about the same weight; wore boots of the same size, and made steps of the same length, who doubts it? And who can believe that it was so made? It corresponded exactly with the track on the other side of the Hole, and the witness had no doubt, and you can have no doubt that it was the same. Here then is the track passing from the scene of the murder, to the bloody gun and the coat, and now passing over the cart-path, and entering this dark and unfrequented ravine; here skulked the prowling assassin, back from his deed of death; here is his track; here is but one track now, let us follow it, and see whither it will lead us. It carries us into the most dense and difficult part of the ravine. It does not go in the direction of Gordon's house, it goes South of it; we know not whither it is leading us; but it suddenly turns! It goes out of the swamp and follows on in the direction of the house of Nicholas S. Gordon; It goes on in a direct line, and is measured up to the very door of the house! Into this door the murderer entered. Now there can be no longer doubts. We lay the charge of this murder upon the house of the Gordons, and there it must rest forever. Let them account for the tracks. We have traced them to their door, and we bring home the murderer to their door.

But, Gentlemen, we will keep in view the admonition of the counsel, to follow up the circumstances, one by one, before we adopt a theory.

The next thing found was the coat. It is contended that this was not the coat of Nicholas S. Gordon. I do not think it of much importance whether it was somebody's else coat—worn by one of the confederates and brought away by John and left in the swamp, or whether John wore the coat himself. It was not left there for the purpose of exciting suspicion; if it had been left any where for that purpose, it would not have been hid. I have never thought it of much importance that there were hairs and an appearance of blood on it. Susan Field said the dog used to lie on this coat, and you may see that it is now covered with short hairs. In observing it closely, I saw it was full of them. This coat is found by the side of the track made by the same person who had the gun. There was powder found in one of the pockets and a box of percussion caps—the powder is of the same kind with that in the pistol, by the side of the body, and some of the balls are precisely like that in the pistol.

Gentlemen, we know one thing more which will help us to fix the ownership of the coat. It belonged to an *Irishman*. The paper found in the pocket, is a piece of an Irish newspaper, and has an Irish direction in writing upon it. These facts we ascertain from the coat itself.

I would have the gentleman point out, among all these facts, one which leads the mind away from the house of Nicholas S. Gordon.

But they say the coat is not proved to have been Nicholas S. Gordon's. Let us see. If you believe Susan Field, you must believe this was his coat. She described it before it was produced with more minuteness than I could describe it now. She says it was used by him as an old coat and thrown in his lumber wagon for a seat. You will recollect that John had no outside coat of his own. She says she has seen

John with that coat on. Now they bring here certain persons, who never saw Nicholas with this coat, and did not know that he had such a one. John Fleming never saw the coat; but he says Nicholas had a kersey coat, which he describes, but which no one of the other witnesses ever saw. So it seems Nicholas had at least one coat which he used to wear, and which none of the witnesses but Mr. Fleming knew any thing about. And if the testimony of a number of persons who never saw him have a particular garment, can, in opposition to positive testimony, prove that he never in fact had it, then it has been proved in this case that he had no kersey coat. You see by this, Gentlemen, how little stress can be put on the testimony of the acquaintances of Nicholas Gordon, that they never saw him with the coat found in the swamp.

On the first examination of Mr. Beverly, the velvet collared coat was not shewn him, because it was not in our possession. After it was produced, it was of course proper for the Government to recall him and let him examine it, and tell what he knew about it. If his testimony should be favorable to the prisoners, so much the better for them. He was recalled, and his statement so far as it goes, is in their favor, and let them have the benefit of it. Miss Field says Nicholas did not wear the old coat much—that he threw it into his wagon to sit on, when going out of town. Beverly had before said that the coat which he referred to, Nicholas wore in town, sometimes in the day time, and often in the evening. He now thinks this is not the coat, and he has come forward like an honest man and said so. But he says Nicholas used to have, besides the coat he wore, an old coat on his wagon seat—and that is just the place where Miss Field says he used to keep this when he came into the city in his wagon. Cassady says he saw Nicholas have this coat, and throw it out of a lumber wagon, and noticed it particularly from its being so rough a coat. Job Wilbor saw John Gordon with a thick, darkish, rough looking frock coat, on the Friday before the murder, which he thinks compares very well with the one found in the swamp. Mr. Waterman saw John one day in the turnip field with a coat on, which resembled this. They say it must have been the velvet collared coat, but Harding Hudson says it was not. He distinguishes between the two—he says he has seen the velvet collared one on Nicholas hundreds of times—but the other, the dark blue one, he used to see round in his lumber wagon on the seat, and one day he saw him with it on his back. He said nothing about it when he was first called on the stand, because he was called upon another point, and the question was not asked him. He thus swears positively to both coats, and by his testimony all the evidence in the case is made perfectly consistent. Nicholas owned both these coats—the velvet collared one is the one which he used to wear round as an old coat and which Beverly used to see him in; the other is the one he used for a wagon seat, the same that he had on top of his lumber, and that he and John sometimes wore on a rainy day. Where is that old coat on which the dog used to lay, and which was used as a wagon seat? Why is it not produced here? There has been no difficulty in producing the velvet collared one, which he used to wear. Where is the other old coat, which Harding Hudson and Wilbor and Miss Field and Waterman positively swear to? Why is it not produced? No such coat was

found in Nicholas Gordon's house. What has become of it? This is one of the cases alluded to by the gentlemen, where we can infer as much from what is not proved as from what is proved.

The next thing to which I will call your attention, is the gun—the instrument of death—the weapon which beat out the brains of that unfortunate man. Whose gun was it? Gentlemen, take the evidence all together, not piece by piece. You have undoubted evidence that this murder was committed with a gun. Whose was it? The counsel for the prisoners have examined this testimony portion by portion, and told you this was not sufficient and that was not sufficient; as though you would be foolish enough to consider the case in any such mode as that. The counsel who closed the case says he keeps fire arms in his house, and that his servant has access to them, and asks you if in case a man be found murdered, with his gun by his side, could the servant be convicted of the murder? Most certainly not. But the owner of the gun, or the servant, would be expected to make some reasonable explanation. Whose then was this gun? It was found secreted in a swamp; it was not put there on purpose to fasten suspicion upon the innocent; if so, it would not have been concealed. It was found by the side of the track leading up to the house of John Gordon—the same track which led from the spot where the piece was found—which went by the coat which contained the box of powder and ball, and which exactly corresponded to the bore of the gun; a bore which is very small and peculiar—larger than a pistol and smaller than a musket bore. But says the gentleman, though this track is traced to the house of Nicholas S. Gordon, it is not proved that he owned this gun, or ever had it in his possession. This is a most important point, and counsel have well directed to it their ingenuity and skill. Let us see if that gun was not owned by the person who lived in the house to which these tracks have been traced.

Susan Field testified that there was a gun in the store, when she was in the habit of going there, and that she had not been there since August; and this gun was not sold until October. This was the first apparent inconsistency which the gentleman had been able to perceive in her testimony, but that Nicholas had another gun with a bayonet; and the officers when they searched the house did find a bayonet and Sheath, thus confirming in a singular manner the testimony of Miss Field in relation to the gun. The counsel say it would be difficult for a member of a military company to tell his own gun, unless it had some peculiar mark upon it. I have no doubt it would be, for these guns are all new, made at the same time, and intended to be precisely alike. But when you have an old fowling piece to identify, the case is very different. I suppose it would be difficult to identify a particular plough, among a great many of the same pattern, and all entirely new. But no farmer would find it difficult to identify one of his old ploughs, which had been altered and mended as much as this gun was.

Harding Briggs says the gun which he saw Nicholas have last of all, was an old gun, full stocked, with a percussion lock altered from a flint one, and of a smaller bore than he ever knew such a kind of a gun to have; in a word, that it was just such a gun as this. If the testimony went no farther it would be at least a remarkable circumstance that the gun, the bloody gun, found by the side of the tracks

leading up to the door of Nicholas Gordon's house, should resemble so clearly the gun owned by Nicholas S. Gordon, that no difference could be discovered between them.

Then you have the testimony of James Francis. He says he owned *this* gun and left it last fall with Tillinghast Almy for sale. He knows it by a screw being gone, and you see that in the place where he says one was missing, a new one has been put, which does not fit, and he knows it by the small bore, the percussion lock, the full stock and the general appearance.

But it is objected that it does not follow it was the gun of Nicholas S. Gordon, because it was entered on Mr. Almy's books as sold to N. Gorton. Almy says Francis did leave a gun with him last fall. Francis identifies this as *the* gun which he left there. Almy did sell it, but he wrote the name of the purchaser, N. Gorton. Does that mean N. S. Gordon? If not it would be a most extraordinary circumstance, connected with the other facts in this case, all tending to fix the charge so near an individual and yet not touching him. But Mr. Almy swears that he wrote the name sometimes Gorton and sometimes Gordon, and finds charges on his book, both ways and that N. Gorton and N. S. Gordon are the same person. What further testimony do we want? But if more be needed, there is an abundance of it. James Francis you recollect, though he could identify the gun, was not able to say anything about the ram-rod. Young Morgan testifies to the making of a ram-rod from a piece of wood brought to him by a simple fellow calling himself Benjamin Waterman, who said it was for Nicholas Gordon. He describes it beforehand, and the imperfection in it resulting from a knot in the wood. He identifies this as the ram-rod.

Then Andrew Briggs tells you that this ram-rod was brought to him by Ben Kit, who told him it was Gordon's, and that he put on the ferule, and that he put it on with a single cross piece instead of two, as is the usual way. This ferule is put in with a single cross piece. Stone says the ramrod was brought to him by the same Ben Kit, and that he put on a wormer; that it was too large for the ramrod, and he told him to carry it home to Nicholas and tell him to wind some thread round it. This ramrod here has thread wound around it. Then comes Benjamin Waterman—Ben Kit, the fool as they call him. If he is a fool then he can't manufacture or invent anything. He tells you the whole story of the ramrod exactly as it is told you by the other witnesses. He tells you that Nicholas S. Gordon got him to get a ramrod made and paid him for it, and that this is the ramrod. It is true he says he should know it the darkest night that ever was. But such a man is not to be taken literally; he merely intends to express his entire conviction that this is the same ramrod. But the evidence does not stop here; Abner Sprague saw this gun in the hands of John Gordon a few days before the murder. He stopped and talked with him sometime about his gun, and he says that it looked so much like this that he has no doubt it is the same. He saw it when found in the swamp and had then no doubt of it. Here is a mass of testimony which defies all the power of argument, and which no sophistry can evade. It is proved to be the gun of Nicholas S. Gordon by testimony which no man can escape. No man can say that he does not believe that gun to be the gun of Nicholas S. Gordon always excepting what a man may say as counsel. John Gordon had a gun on Friday; he was seen with it by Abner

Sprague. Where is the gun that John Gordon then had? What has become of it? Why has it not been accounted for? One of the counsel surmises this about it, and another surmises that. What have the prisoners themselves said about it? What account did *they* give of it when they were first accused? They knew this gun had been found when they were first arrested. It was damning evidence against them. It stared them in the face. What did they say about it? What explanation did they give of the presence of that gun at the scene of death? I do not ask for them to *prove* where it was; I ask only for any explanation, of any statement which they have given concerning it from that day to this. What has occasioned this profound silence? It has been because they knew where that gun was on that dreadful day, and explanation would be impossible. I do say, gentlemen, that no man in his senses can doubt that this was the gun of Nicholas S. Gordon.

It has also been proved that a pistol was found near the body of the murdered man. It is proved that it could not have been the pistol of the deceased. It was loaded evidently by an unskillful hand. There was powder and ball in that pistol, it is not proved who owned it. It is only a circumstance which is to be put with the other circumstances in the case. Nicholas Gordon owned a pistol, but no pistol was found in his store. Susan Field says he owned one, and she is confirmed in this as she is in every other part of her testimony. Now the powder found in the pistol exactly corresponded with the powder found in the coat.

We have now noticed all that was found near the scene of the murder; we have found the gun admitted to be the instrument of death, which has been proved to be Nicholas S. Gordon's, used by some one who has been traced to Gordon's house. We have found the gun, the coat, the tracks, the pistol, the powder and balls. Let us now follow the tracks to the house and see what we can find within. Here it is that the persons lived who are proved to have had the motive to commit this crime; here it is that the weapon of death was owned. We have already discovered something of the character of some of its inmates; we have already learned who of them would be most likely to be the perpetrator, and who the plotter of the murder. Let us go in there and see if we can still more clearly distinguish the innocent from the guilty, and determine the different parts which each performed in the transaction.

The Officers entered the house on Monday night and made particular search for a gun.—No gun was to be found; Mr. Potter went up stairs and found a pair of boots which John said were his; they were wet; he came away and left them there thinking them of no importance. The house was locked. Shaw went there the next day; the old lady refused at first to let him in, but he finally went in, he found no gun, but he found powder in the store in a cannister, which exactly corresponds with the powder found in that box, in the coat, and in the pistol. He found a pair of boots under the bed, and clothes thrown under the bed;—a curious place for clothes; the boots were wet, Shaw took the boots which John had admitted to be his, and applied them to the tracks which led up to the Gordon's house; they corresponded exactly with the track, the heel fitted exactly, the foot-prints were not so distinct, but wherever they were visible they corresponded.—The heel fitted not only in size, but in shape and height.—Mr. Shaw, a cautious man, tells you that he had

no sort of doubt in his own mind that the tracks was made by the boots, then DeMerritt and Waterman measured the tracks very carefully in all parts of the route, they measured them in the meadow, where the gun was found, where the coat was found, along to Hawkins' Hole and through the swamp south of it, to Nicholas Gordon's door, and they applied that measure to the boots; it corresponded in length precisely, in width it differed only an eighth of an inch, the bottom of the track was an eighth of an inch wider than the sole of the boot. This is easily accounted for; They were thin boots and the upper leather would press over a little, just what you would expect. But these tracks were not only measured by a stick, and the measure applied to the boot, but the boots themselves were put into them and fitted them exactly.

But is said by the Counsel in the close that the tracks made by Dyer's bridge, were not made by John Gordon, and therefore, since these tracks were of the same dimensions, all of them are the tracks of some other person.—Why could they not have been made by John Gordon? What was to prevent him from making them? It is not probable that John Gordon went on behind Mr Sprague along the drift-way, he undoubtedly went round and headed him. The gentleman says he could not have known when Mr Sprague went out. Why not? It is all in plain sight. He knew of his habit and the direction of his walks. Who can tell how many times before they have lain in wait for him with their confederates ready to fall upon him! How many times his life has been preserved by some slight accident! how many times Nicholas has been round the city taking out his watch and calling attention to the time so as to prove his absence from the scene!

Gentlemen we cannot expect a revelation from Heaven to satisfy our curiosity as to the particular part which was performed by each of the actors in this horrible transaction. The probability is, that John Gordon took the route of Dyer's Bridge, went by the ledge to the cavern and thence to the path-way where he met his victim.

(Mr Blake then suspended his argument until the afternoon.)

General Carpenter rose and said that he had refrained from interrupting the Attorney General during his remarks, but that his duty required of him to correct important mis-statements of the testimony. He wished to call the attention of the Jury to the fact that DeMerritt and Waterman said they measured the sole of the track, and it was one eighth of an inch wider than the sole of the boot.

Attorney General.—I believe I have not misstated the testimony, if I have the Jury will correct me. I will examine it again during the intermission. It is certainly my intention to state it exactly as it is, and if I do not, I beg to be corrected.

Wednesday Afternoon.

Mr. Blake continued his remarks as follows:

Gentlemen of the Jury:

I have said that in following out the tracks, we do not allege the murder to have been committed by John Gordon,—that is to be proved by all the circumstances in the case. But we say that the continuance of the tracks from the place of the murder to the spot where were found the gun and the coat and to the door of the house where John Gordon then lived, and the correspondence of the boots of John Gordon found there, with the tracks, are most remarkable cir-

cumstances,—they form some of those extraordinary coincidences, with which on the supposition of the innocence of the prisoners, this case is so full.

The tracks on the other side of the stream by Dyer's bridge and the ledge of rocks, were undoubtedly made by the same person who made those through the meadow. The counsel for the prisoners have dwelt upon the circumstance of this tract with all their ingenuity, and have endeavored to make out that we have kept this fact out of the case and withheld an explanation of it. In point of fact the counsel who opened the case for the Government referred to those tracks, and mentioned the fact of their being of the same dimensions with the tracks leading through the swamp. And though we did not deem it material to put in the testimony of Stratton with regard to a man being seen walking in that direction, because we could not identify that man as John Gordon. Yet we informed the counsel for the prisoners of the existence of such testimony, that they might put it in if they deemed it expedient. But say the gentlemen, this man who made those tracks by the bridge could not have been John Gordon, because the man whom John O'Brien saw hiding behind the trees was not John Gordon. We do not think it was. It was probably one of his confederates. But they add, it could not be John Gordon who made any of these tracks for the steps were too long for so short a man. But a short man on the run, or fast walk, would have made steps of about the length of them, according to all the testimony.

As to the tracks being about an eighth of an inch wider than the boots, you will notice that these are thin boots, the soles are very thin. The upper leather of such boots when wet would press over a little, and make the track a little wider at the bottom than the sole of the boot, and yet without leaving any distinct or different impression; and if you notice the boots you will see they were a tight fit, and that the upper leather is pressed over the soles, so that in measuring the tracks of such boots, we should naturally expect the measure would overrun a little.

This fact too, is strong proof of the fairness and accuracy with which the tracks were measured. The measure was not made to fit the boots—it was made without regard to them and applied to the boots afterwards. But if there be any doubt about this matter, give John Gordon the benefit of it. If these tracks were certainly made by his boots, then beyond all possibility of doubt John was guilty of the murder. That would settle the matter. It would be conclusive in itself, and it would be unnecessary that other circumstances should be proved. But we put this in only as a circumstance in connection with other circumstances in the case.

But John O'Brien—John O'Brien—I shall not forget him. He is brought here to do away, if possible, the force of the testimony relative to the tracks. He comes into court bringing a piece of shingle with him. The counsel for the prisoners say to him: "Mr O'Brien did you measure the track?" "Yes." "Have you got the measure?" "Yes, here it is"—and produces that piece of shingle. Mr. DeMerritt and Mr. Waterman are called and testify that John O'Brien measured no track, cut no stick, and had no measure in his possession, to their knowledge, or while in their presence. Mr. O'Brien is recalled and asked, "Did you make that measure?" "Yes." "When?" "Yesterday." He comes into court with a piece of

stick which he had measured the day before with his thumb, and endeavors to palm it off upon you as the real measure of those tracks made at the time! And would they influence your minds in a capital trial by such evidence as this? He says he measured the tracks with DeMerritt and Waterman, and that he cut the stick which was applied to the track—that the measure was made by applying his thumbs to the track, and cutting a stick to fit; the length of which he ascertained in the same way, by running his thumb over it; and that he was able to make the measure yesterday, which he brought into Court, by recollecting how many thumbs long the track was. All this is very absurd; and Waterman and DeMerritt say that DeMerritt cut the stick, applied it to the track and cut it by the track, and that O'Brien did not measure at all in their presence. I care not what may be his motive, whether good or bad, whether national feeling or any other feeling—he is not, and I regret to say it of any witness, he is not entitled to credit. He cannot be believed under oath, and his testimony must be entirely thrown out of the case.

The boots found in the house of Nicholas S. Gordon, and owned by John, were wet. Mr. Beattie tells you that in passing through the swamp following the track, the next step he made after he lost sight of the track, he went in over his knee.

Now they endeavor to explain how the boots became wet. They tell you that John got drunk Christmas day—went over to Benjamin Fenner's for a turkey, and coming home fell into the river by the bridge at Hawkins' Hole, and wet himself. This bridge is a large cart bridge, not a string piece. But he fell over it and got wet. That is their explanation.

Mr. Fenner and Mr. Sprague tell you that they saw no appearance of intoxication in him when he came for the turkey, and that his clothes were not wet then. It is a little singular that when he got this bad fall over the cart bridge, into the river, he should have clung on to his live turkey with such tenacity. He is not so drunk that he cannot keep that safe. But let us accept this statement as true.

Now go back to the house. There were found in that house, the day after the murder, two pair of wet pantaloons. Did John wear both of them on Christmas day? How came both of those pants wet? Mrs. Gordon says John's pantaloons were wet on Christmas day, but that they were dried again immediately. She says that the pantaloons that were wet were the grey ones. But the pantaloons found in that house were not the grey ones, but the dark ones. She was not here when the others were examined. I do not mean to censure that old woman. What will a mother not do to save the lives of her children? And although it is not justifiable under any circumstances to swear falsely, yet who would not rather commiserate, than censure a woman for deviating from the truth, that she may, if possible, do something for her sons, who are on trial for their lives. No. I cannot comment harshly on her testimony.

But this poor woman tells you that the clothes were all dried that afternoon, and that at the time of the arrest, there were no wet clothes in the house.

But let us look farther into the house. It is a new house. Nicholas had been prosperous. It sits up there on the hill, commanding a view of Mr. Sprague's usual route to the Carpenter place. Let us thoroughly examine the house—

this house, all fair without, which if it not like the whited sepulchre, full of dead mens' bones within, is yet full of the blackness of death. Here was the murder first suggested, here was the horrid plan matured, here were kept the instruments of death. In this house the murderers lived; from it they went forth to meet the destined victim, and back to it they have been traced when the work was done. Let us examine farther. There was blood found upon the sheets near the pillows. How came that there? Madder did not make that. Nicholas Gordon owned a pistol. The powder found in the pistol by the side of the body, and the powder found in the coat, and the powder found in the vest under the bed in that house, exactly correspond. Is this accident? Is it another extraordinary coincidence, from which no inference can be drawn? There are balls also in the vest pocket, and one of these exactly fits the small and peculiar bore of the gun with which the murder was committed. In the coat which the murderer wore, was found a paper box of powder—a singular thing to keep powder in—and in the store of Nicholas S. Gordon, the constable who searched the house, found several similar paper boxes filled with powder.

Put these circumstances all together and tell me how they have been explained. One of the gentlemen will tell you that this hypothesis will account for one circumstance, and the other counsel, that another hypothesis will account for another circumstance. But how have the prisoners themselves, explained them? The fact is, gentlemen, that this case is surrounded with so many suspicious circumstances, that even the ingenuity of counsel is at fault; it is unable to explain them all. The skill and astuteness of the learned gentlemen, have failed to produce anything consistent with all the facts. They say Nicholas Gordon might have lent the gun, whom did he lend it to? That at least might be told:—that some man might have taken the gun out of the house on Saturday night—committed the murder with it, and come round by that house for the purpose of turning suspicion in that direction. Is this natural or probable? If so, why did he not leave the gun by the side of the body—why did he hide it in the swamp? But if he got Nicholas Gordon's gun in that way and for that purpose, in what way did he contrive to insinuate the powder and the ball into the pocket of the vest under John Gordon's bed?

A shirt is also found in the house with a redish stain upon the sleeve, corresponding to the hole in the coat. The gentlemen say that it is hop-beer. Perhaps it is. They ask why we have not had a chemical analysis of it, if we thought it was blood. I ask in return, why if the gentlemen felt certain it was not blood, they have not had a chemical analysis themselves, and proved it? I did not believe that a mere stain upon a piece of cloth was susceptible of a chemical analysis.

Mr. Currey said it might easily be done.

Attorney General—Well if you know how to do it, why did you not have it done? Did you not dare to have the experiment tried? I care not whether it is blood or not. I say there is a stained and dirty spot on the sleeve, which exactly corresponds to the hole in the sleeve of the coat, and therefore that the man who wore the coat, wore also the shirt;—or else it is another singular coincidence, meaning nothing, nothing, nothing and proving nothing.

The prisoners at the bar have not from first to last offered any explanation of how that cloth-

ing came in that situation, and containing the powder and the balls and the caps. Yet they are bound to explain it. When the evidences of crime are gathering thick and dark around a man, he cannot fold his arms and say nothing. They have not done so with regard to many circumstances of the case—they have searched for and hunted up every fact which could be obtained in their favor, and the reason why they have left those most important circumstances without any attempt at explanation, is because the difficulty is inherent in the facts themselves—because they know that these circumstances could not be explained, and any attempt to do so would only involve them in a tissue of falsehood, which would be more fatal than silence to their cause.

The rule of law is, gentlemen, that if suspicious circumstances fasten a crime upon a particular individual, he shall give an explanation of those circumstances. If the prisoners at the bar had given an explanation when first charged with the crime, and had persisted in it to this day, it would have been entitled to some consideration, if consistent with the known facts in the case, although wholly unsupported by proof. But these men have offered no explanation; they have preserved a total silence about them, even to their counsel; for one of their counsel gives one explanation, and the other gives a different one. One of them, (Mr. Carpenter) tells you that the tracks south of Hawks' Hole may have been made by a man passing that way from Benjamin Fenner's; the other (Mr. Atwell) says John Gordon might have returned that way when he was out hunting on Friday. Did John Gordon come through there that day, and make those tracks? If he did, he knows that he did, does he not? Why has he not said so? What occasions this hesitation? and whence came this discrepancy in the theories of his counsel?

The black cheek is another circumstance entitled to some consideration. Chaffee testifies that on the day after the murder when he arrested John he noticed a bad bruise on his cheek under his right eye; that it was quite large and looked as though he had had quite a heavy blow, that he asked him how he came by that bruise, and that after considerable hesitation he said he came into the city on Christmas day, and fell down in the road going home. Now an attempt has been made to explain this bruise by the fall on Christmas day. Not a fall on the road from town, as John stated at that time, but a fall on the road from Benjamin Fenner's, where he went after the turkey. You see, Gentlemen, that every circumstance in this case, of which it is possible for them to give any explanation, they are prompt to explain. King, who saw him in the road Christmas day, and saw him fall, says nothing about a bruise on his face. Indeed, according to King's testimony, the fall by which he bruised his eye, was upon his *back*. But Margaret Gordon saw it, and Mr. Waterman saw it, and Michael O'Brien saw it. Oh yes, of course Michael saw it. He saw it on Sunday, exactly in the spot where it was wanted—Michael O'Brien, the intimate friend of the Gordons—who strips off his own coat to cover John, and never asked for it again—Michael O'Brien, the man who, when he first heard of the murder of one in whose employ he had been for years, can only recollect saying, "give me something to drink!"—Michael O'Brien, who said nothing about the murder in walking out of town that night all the way to Cranston—who never spoke of it, not a word—who

went into Nicholas Gordon's house, and heard no word said about the atrocious deed, which was probably the sole topic of conversation in every other house in the village—Michael O'Brien, who after a few miles walk in a cold winter's night, was still so drunk that he has no recollection of any thing which he said or heard—Michael O'Brien, who although so drunk as to lose his memory entirely, had yet such a delicate sense of propriety, such a very proper respect for his own character, that he passed by the murdered corpse of his employer and would not go in, lest the crowd of persons who were gathered there, should remark his appearance—this Michael O'Brien saw the bruise in the right place on Sunday.

Gentlemen, it is for you to give to the testimony of this witness the weight to which you deem it entitled.

No witness has been produced who saw the bruise on Sunday, except O'Brien. He was at Church in the morning. Why have they not produced some one who saw the bruise there? Abner Sprague was with him and talked with him near half an hour Friday, and he says he saw no bruise. Job Wilbour, who saw him on Friday and Saturday, says the same. Benoni Waterman saw him at the house Sunday morning, and saw no bruise; and William Arnold, their own witness, who met him after Church, and conversed with him face to face, was asked by a juror if he had a black eye, or a bruise on his face, and the answer was, "No, none at all."

But Ellen Gordon, the mother, explained this whole matter—she tells you that John fell down on Christmas day and got a scratch or bruise *over his right temple*, and Margaret Gordon the sister, calls it a *little bruise*. But the bruise which the witnesses swear to on Monday, was a swollen face—it was under the eye, not over it—it was a large and bad bruise. How did he get that bruise and swollen cheek? He got it in the struggle which preceded that murder.

But it is objected that our testimony on this subject is negative, and is not therefore entitled to weight. The general rule is that negative testimony is of little weight when opposed by positive testimony—and it is exemplified in this case in regard to the coat. But testimony which comes in the negative form, is not always negative testimony. If I say I met a man yesterday whom I well knew, and that he had not at that time lost a leg, this is not negative testimony, it is positive, it is equivalent to saying he had both his limbs as before, and is entitled to as much weight as if I had sworn to an affirmation in any other form, for there could be no probability of mistake about such a matter. This testimony with regard to the bruised and swollen face, is of a similar character to this last. It is not hardly possible if John had had such a face—that the different persons who knew, saw and conversed with him before the murder, should not have noticed it.

The murder was committed a little after four o'clock, Sunday afternoon. John Gordon was arrested the next day, so soon after the event that he could have explained beyond the possibility of mistake, the whole history of the previous day. The circumstances fix upon him the very strongest suspicions, to say the least of it. Enough has been proved to put him upon explanation, and on failure of any explanation, to found a verdict of guilty upon. It will not do for him any longer to fold his arms and call for proof. You have a right to demand of him where he was at the time of the murder. John

Gordon, where were you that afternoon, after your return from Providence, and before you went to the Kingstons? There are fearful circumstances against you. The bloody gun has been found in the swamp. It was kept in your house, and you were accustomed to use it. The coat has been found which Nicholas owned and you wore. They have found the powder and the ball. They have gone into your house, into your chamber, to your bed, and they have found the blood upon your pillow. The charge is upon your house—upon your family, upon YOU! John Gordon, where were you on that fatal hour? Free yourself from the damning evidence of your guilt. Be careful, take time, deliberate well. You have but one short hour to account for. If you were alone, in the road, or in the fields, it is unfortunate. But tell the whole truth, and though you have no proof, if your account be reasonable, and uncontradicted by other proof, it will have weight. But if one grain of falsehood enter your statement, you are lost.

Gentleman, he did account for himself, he did tell where he was, he told it deliberately to Doct. Cleveland, he made to him, not a confession, but a denial; he made it to clear himself from the imputations against him, he made it freely and of his own accord, and Doct. Cleveland wrote it down in his presence. He made this statement only two days after the murder, when there was no possibility of misrecollection. He said that he got home between 2 and 3 o'clock, that dinner was not ready and he went down immediately to the Kingstons and remained in their company until after the murder. John knew the importance of his statement, he knew how and when this deed was consummated, he knew what time must be accounted for, he says he returned home, dinner was not ready and he went immediately to the Kingstons. He cannot now vary his statement, he must abide by it. It would do now for him to tell you that he was some where else, with his mother alone, he alleged that at the hour of the murder he was at the Kingstons. What is the truth? The Kingstons swear with great caution and reluctantly, they swear that John Gordon came there not between 2 and 3 o'clock, but *after sun down*.—They fix the time beyond all doubt. John they say came in between four and five o'clock, and a few minutes after Mr. Earl left the next house in a sleigh to go to Providence; and Mr. Earle says he left about ten minutes after sundown. John told Doct. Cleveland that he went with the Kingstons to King's tavern and returned from there before sundown. It was false. The Kingstons swear that they did not leave the house to go to King's tavern until sometime after sundown. He must abide by his statement, he cannot alter it now, the time has past, it is too late.

If the old lady's (Mrs. Gordons) statements are correct, I admit that John could not have committed the murder. But the counsel who opened for the prisoners (Gen. Carpenter) has himself told you that he doubted about putting Mrs. Gordon on the stand, and did so only because they feared the Government would ask why she was not produced. It seems then they had no confidence in her testimony, they feared to place her on the stand. If she knew of facts so important that the very life of the prisoners depended on their truths, why this hesitation about producing her?

Gen. Carpenter, "The Attorney General ought to represent that matter differently, it is very

unfair."

Attorney General, I represent it as I understand it.

Mr. Carpenter, I made no such statement.

Here one of the counsel remarked that it was Mr. Atwell who alluded to Mr. Gordon.

Attorney General, I was mistaken then as to the counsel who made the remark, but I was confident that it was made. In a case of this importance, if I state anything incorrectly I shall be glad to be set right.

You will recollect, gentlemen, that Mrs. Gordon stated at the examination at the jail that John went out, after he came from town and came in about four o'clock, went out again and did not return until evening. This statement she made soon after the murder, at her first examination before any consultation and before she knew what time it was important to account for.

Then you have the testimony of Gen. Knight who saw her the very day after the murder, before she had any opportunity to consult with any body, and she told him John gave her the first knowledge she had of Mr. Sprague's murder, that John came in before sunset and said Amasa Sprague "was done for," that he said no more, staid but a few minutes and went out again. Judge ye, gentlemen, if any reliance can be placed upon her testimony, standing in the relation she does to the prisoners, and contradicting herself in such important particulars. You can judge whether she would not be as likely to make a correct statement to Gen. Knight, the day after the murder, as at any other time.

But it is said John Gordon was not disconcerted, or confused when he heard of the murder, and therefore he could not have been the perpetrator of it. He goes up to the house of Amasa Sprague and does not go in with the others. The counsel who opened for the Government, spoke of this circumstance as evidence of guilt. It would have been more natural for him I think if innocent, to have gone in with the others. But I do not myself attach so much importance to it.—A person of sensibility so great as to prevent him from looking upon the body of his victim, might perhaps if closely observed, have exhibited some tokens of guilt in his manner, when the announcement was made. He was no such person, he exhibited no agitation when the news of the murder was communicated.—Why should he? How could a person who had committed such a brutal, revolting, atrocious murder, who was so savage, beastly and fiendish, have exhibited any sensibility? If he had had any feeling in his heart, he would have shown it in his countenance. But there was no more feeling in his heart, than in the stone on the ground. No gentlemen, the man who committed that deed could have gone and looked at the corpse of his victim with all its ghastly wounds, surrounded by the agonized family, and the weeping friends, *and given no sign* in a single feature of his countenance.—So much gentlemen in relation to John Gordon.

I will now call your attention to William Gordon and that only for a brief time. It is said an alibi has been proved. Now Spencer and Barker testify with great fairness in this matter.—They are not swift witnesses, they are respectable and cautious witnesses, they left Barton's house about five minutes after twelve, they walked three miles at a quick rate and met two men on the Johnston road coming this way. It is important to know at what hour. They will not fix the time, only that it was later than two o'clock.

clock. Now it could not have taken them more than three quarters of an hour to walk three miles, at a quick pace on a cold day in December. They met these two men, therefore, before one o'clock coming towards the city and just the other side of the path leading from the Johnston road to the String Bridge, the one was a tall, and the other a short man, and the short man had a gun. There was nothing at that time about them particularly calculated to excite their attention, when they got to the Gallows Bridge on their return to Providence, the sun was just setting. It was then, therefore, about ten minutes after four. They came on along the road and saw two men crossing from the field adjacent to the murder, and they thought they were the same two men they met before, but this time the tall man had the gun, and the short man was in his shirt sleeves, holding his head down, having no gun, and walking very fast, one of them observed his face particularly the other only noticed his general appearance. They both swear that the short man in the shirt sleeves they believe to have been William Gordon, the next that is seen of William Gordon is on the Cranston road, he is running up the hill by Benoni Sprague's, just beyond Nicholas Gordon's house, and on the road to Providence. It is then ten or fifteen minutes after sun-down, that is about half past four o'clock, giving him ample time to have crossed the river, come home, got a coat, and got where he was seen running.

It is said the two men first seen by Barker and Spencer must have been the two last men seen by them, that William Gordon was in Providence at one o'clock and therefore was not the man in his shirt-sleeves. But it is by no means certain that both the men last seen were the same that were seen at one o'clock, the tall one was probably the same, and Barker and Spencer think they both were, but there was nothing to attract their attention particularly the first time; but one of them being the same, and being near the same spot, it was quite natural that they should have the impression that they were the same. But the witnesses did not pay particular attention to either, the first time, but when they saw a man without a coat in a cold winter day, walking fast, with his head down, their curiosity was excited.

Recollect, that William Gordon was identified as the man in shirt sleeves, a few days after the murder when the appearance of the man they saw, was fresh in their minds. The gentlemen tell you they saw in William Gordon the man in his shirt sleeves the supposed murderer, because they looked at him through the medium of public suspicion, because he had been selected out. But it does not happen to be so. It was exactly the reverse. Barker did not know William Gordon had been arrested, he was standing in Justice Bowen's office when O'Brien was brought in; he says he did not know that William Gordon had been arrested, he did not know the man by sight, he had never seen him to know him; he went up to Mr Ellis, a person whom he did not then know, and said "instead of taking up that man (O'Brien) you had better take that one," pointing to William Gordon. This is very strange. It is a most singular fact that there should be such an extraordinary similarity between the man who came out of the field in his shirt sleeves, and William Gordon the brother of the man who had threatened the life of the deceased, and who owned the gun with which that threat was executed.

But it is said William could not have been the man, for he was in Providence. You will mark gentlemen, that the man first seen on the Johnston road was coming toward town; that he was seen not much after half past twelve o'clock, that he was walking quick, and that there is not a single witness in this case, except Michael O'Brien, who swears to seeing William between ten o'clock in the morning when mass commenced, and sometime between one and two o'clock, when he is seen at Bagot's. Michael Holohan saw him at mass, but does not tell when or how long. There is full testimony, undoubted testimony, that William was in town between one and two, and until near three; all this can be shown; but there is not a particle of testimony that William was in the city after ten o'clock in the morning, until one and two o'clock in the afternoon. If he was in church the whole time, could it not have been proved by twenty witnesses? Is that the way to prove an alibi? The gentlemen may talk about it in a high strain of confidence, but an alibi is of all things that what requires the most exact and complete proof, and here is the space of from ten to half past one wholly unaccounted for, except by such testimony as that of Michael O'Brien. An alibi has not been proved. The burden of proof in such cases is upon the prisoners, and it must be fully made out. I have been upon this matter long enough for the gentlemen to have examined their minutes of the testimony, and counsel me if it were not so; and I repeat it there is no testimony which fixes Wm. Gordon in Providence between ten and half past one o'clock.

You have to consider then whether the proof of an alibi is sufficient to show that William Gordon was not one of the men seen by Barker and Spencer a little before one o'clock; and if you shall be satisfied he was not one of them, you have farther to consider if the men the witnesses first saw were the same they saw on their return, and that William Gordon, could not have been the man without a coat. If William was not one of those two men, they were in all probabilities confederates in the conspiracy.

Throw if you will the testimony of Barker and Spencer out of the question. Where was William Gordon that afternoon? What did he go out there for? He had the same motive as John to commit the murder. Why did he go out there that day? They answer, to visit his mother and child; his mother was sick, he went out to see her. She was not much unwell for it appears she was cooking, and engaged in her accustomed avocations about house that day. He had an appointment in town that afternoon, and yet he goes to Cranston that cold day; goes out so late that he can only stay five or ten minutes and turns about and runs home again to Providence as fast as he can. This is a most singular story. He goes to inquire after his mother's health, yet she was in town the Sunday before and Nicholas and John were in town the day of the murder, and Michael O'Brien, their constant companion, they were all in town that day; William was with them some time. Could he not have inquired of them about how his mother did? Was it necessary for him to go out five miles on a bitter cold day in December merely to ask that question, turn round and return again?

Gentlemen, in a planned and long meditated murder, as this was, you are to expect to find facts that will appear to favor the perpetrators; they have been arranged for the very purpose of

turning away suspicion. Is this story of Wm. Gordon's probable or consistent?

I admit that William was in Providence that afternoon. Michael Hollohan puts him on the road home, going towards the Hoyle Tavern, a little before half past two. Martin Quick saw him after he left Mr. Hollohan. He left him in the road at about three. It is quite probable that he met some one on the road, after he parted with Martin Quick. He stated that he did, and inquiry is made among his friends. They are informed a man is wanting who walked out of town with William Gordon on the day of the murder. The man is suddenly found; he emerges into light after all the testimony has been gone through with, just as the counsel are to address the jury upon it, and when there is no time for contradicting him by proof. He has been in New Jersey most of the time since the murder, and did not return till sometime last March. His appearance on the stand was very unfavorable. I will not say that you cannot believe his testimony, that is for you to say. But his story is very extraordinary. He says he saw this man on the road, and mistook him for Nicholas, whom he knew; yet there is no resemblance between them in size, figure or face. When he was asked why he did not inform Nicholas or his friends of the fact of his meeting this man, he said he did not know Nicholas, although a moment before he had said he did know him, and was in debt to him. He first said he saw William coming up here to the trial in a carriage, and but a few sentences afterwards, when the nature of the questions shewed him that would not do—for if he had seen the man whom he had met on the road brought up to trial, it would not answer for him to say he had not communicated before, this important fact—he takes back his former statement, and tells you that he had never seen William before, from that day to this, and that it was Nicholas, and not William, that he saw in the carriage. He testified with the greatest deliberation, repeating every question I asked him, before answering, and yet he involved himself in contradictions. He was here when the indictment was read, saw these men, heard their names—and yet he did not open his mouth until last Saturday, when it was too late for us to contradict him. And what is yet more astonishing, he had had contentions with his brother about whether this tailor was, or was not on trial, and that brother has attended on the trial from day to day; and yet this man who was uncertain whether this tailor was or was not on trial—whose brother was positive he was—would not come forward or open his lips in a matter of life and death, so long as there was a particle of doubt on the subject in his honest heart. He would allow the man with whom he had walked, and whom he had said he could clear in a minute, to run the risk of losing his life on the gallows, rather than make a single inquiry; and that too with his brother at his side, positively asserting to him, that the man whom he walked with, was one of the men on trial. It is almost incredible. The reason he gives for thinking that William Gordon (the tailor) was discharged was, that Gen. Knight told him so, or gave him that impression. This is utterly false. Mr. Knight says that he could not have told him so, for he had no reason to know or believe on Friday, that the tailor was discharged.

So much for Mr. Joseph Cole.

Now, gentlemen, some persons beside John Gordon, were concerned in the commission of

that murder. Two pair of pantaloons were found under the bed in the house of Nicholas S. Gordon; two vests were found with powder in them. How do you account for it? No one else went to that house that afternoon, but William and John Gordon. Mrs. Gordon admits it, and it is not denied. No one else was there the whole of the next two days, except the Gordons and the officers who searched it. Mrs. Gordon admits this too, and her statement is not denied. But here are two vests with powder in them, two pair of pantaloons wet. William Gordon has been there; he is seen hastening toward Providence, deeply absorbed in thought. He goes to the christening and gets there a little after six o'clock. Nicholas and O'Brien leave about eight o'clock. William follows them out, remains awhile, and returns to the christening. And then occurs that extraordinary walk home, of Nicholas Gordon and Michael O'Brien, in which not a word is said about the murder which has been committed, and which they had heard of at the Hoyle Tavern, if not from William Gordon.

Gentlemen, how are these circumstances to be explained? No explanation is attempted.—They leave you in ignorance of the cause of this five miles walk and rapid return, of those two pair of wet pantaloons and two vests with powder in them, and yet they confidently ask for a verdict of acquittal. What was William's own account of himself on that day, given within forty eight hours after the murder? It wont do to say that he was drunk and excited, Mr. Potter tells you he was not drunk and he brought him into town. The excitement he manifested was as Mr. Wright has sworn, the same which he manifested here when he was arraigned; he told the same story to Potter and in Mr. Bowen's office to Mr. Rivers and Mr. Hazard. He said in their presence that he was not in Cranston at all on the day of the murder. He repeated this over and over again after he had been told of its importance.

Now look for a moment at the ingenious explanation which is given of this by the counsel. They say he was ignorant of geographical limits and the boundaries of towns, that he knew nothing about Cranston, he knew the place where Nicholas lived by the name of Sprague's village, and by Cranston he understood the place where the murder was committed. But it is very unfortunate for this theory, that he added that he was in *Providence all day*. He said he could prove he was not in Cranston, he was in Providence all day. There could be, no mistake about this, and this was a palpable falsehood known to him to be such at the time.

Gentleman, the Court will inform you that when a man charged with a crime makes false statements about where he was at the time, it furnishes strong presumption against him.—He has said he was not in Cranston but in Providence all that day, he cannot alter or retract his statement. He said this when he did not know what would be the nature of the proof against him, did not know that he had been seen on the road, he said this to three or four different persons, and now he tells you he did go to Cranston, but went to see his mother, staid but about five minutes and then came back again. If you can believe this statement I am glad of it.

Gentlemen you must take all these facts into serious and attentive consideration. This is a case of murder in which the whole community is interested. Take care of the lives of these men, take care also of the lives of such men

among us as he who has been made the victim, of the hellish brutality of this band of assassins.

There is no rule by which your minds should be governed in his case, different from that by which they would be governed in any of the great and important concerns of life.

You are to consider whether these men have made any explanation of the extraordinary series of circumstances which connect them with the murder. Nay more, whether any explanation, or hypothesis, has been found by their counsel; or whether any could be found which would meet all the circumstances of the case and be consistent with the innocence of the prisoners.

These men have had a fair trial. A subscription has been raised among their countrymen to defray its expenses. I mention this not in censure far from it; it was highly commendable in their acquaintances; but to show that money and friends have not been wanting to them. The friends of the deceased have wanted nothing kept back, their sole desire has been to clear up the mystery surrounding the transaction and bring the guilty to light. There have been enlisted on the prisoners an array of counsel, who have prepared the defence with industry and ability. The State has also had the benefit and I greatly acknowledge it, of the services of Mr. Potter, who prepared the case on the part of the Government, with his usual industry and good sense, and who presented it to you with much calmness and force.

I have also had the advantage of the advice of a distinguished Counsellor (General Greene,) of great experience in criminal law, whose views and suggestions are always as sound and judicious, as they are fit and honorable for a prosecuting officer to adopt.

But the prisoners have been defended by those of their counsel who have addressed you, with consummate ability, and commanding eloquence. In following such counsel, I can only hope to present the naked facts plainly before you, so that you may come to a conclusion from the impression they are calculated naturally to make, and not unwarily confound the creations of the genius of the advocate, with the testimony of the sworn witnesses upon the stand.

I now submit the case to you on the part of the State. If I have misstated, or put a wrong construction upon any fact, I have done so unintentionally, and the faithful attention you have given the case, will enable you to detect the error and prevent it from operating against the prisoners.

If you believe them, or either of them, innocent, you will be rejoiced to say so; but if you believe them to be guilty, you are bound by your oaths to say so by your verdict, and leave them to those tribunals of the State which have the ultimate disposition of their case, and to Him from whom no secrets are hid, and whose judgments cannot err.

NOTE BY THE REPORTER.

The above report has been delayed much beyond the time first designed for its publication. The great length of the speeches—which occupied upwards of nineteen hours in their delivery—and the desire of the reporter to secure the utmost accuracy to his report by submitting it to the revision of the speakers themselves, has been the occasion of it. This has been done so far as the business of those gentleman would

permit, and the report as now presented may be depended upon for entire accuracy and fidelity. The Reporter is permitted to refer to the distinguished counsel themselves in evidence of its correctness. It is printed uniformly with the report of the evidence and opening arguments, that the whole may be reprinted in one volume by those who are desirous of preserving a full report of the trial.