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THE
TRIAL
1857
OF

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Michael Powars,

FOR THE
MURDER

OF

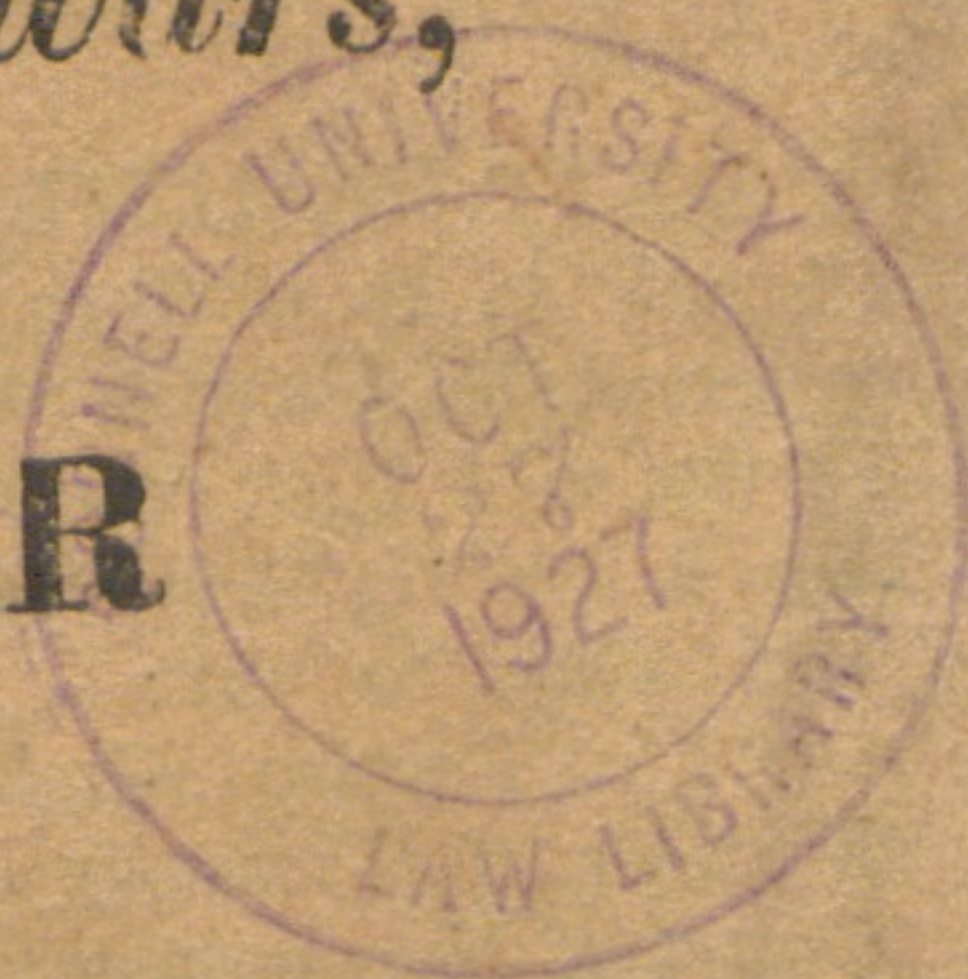
Timothy Kennedy,

BEFORE THE
SUPREME JUDICIAL COURT OF MASSACHUSETTS,

BOSTON, APRIL 11, 1820.



BOSTON :
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1820.



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DISTRICT OF MASSACHUSETTS, TO WIT:

District Clerk's-Office.

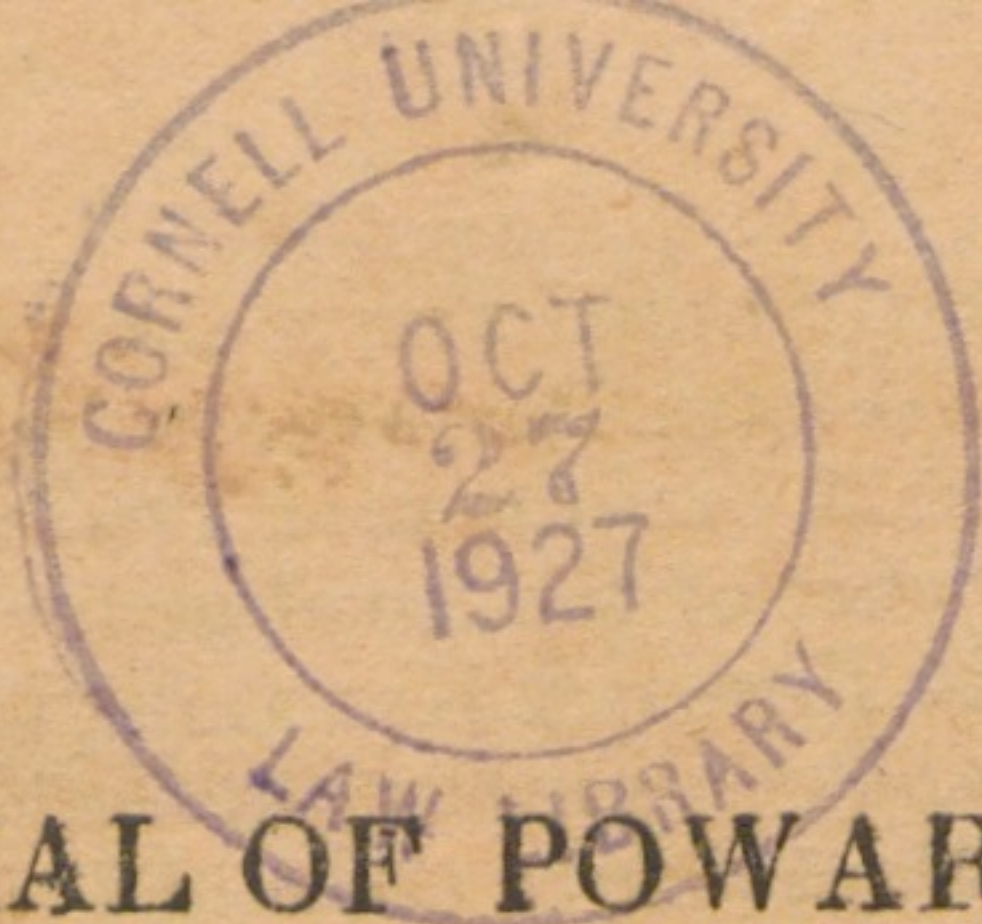
BE IT REMEMBERED, That on the eleventh day of April A. D. 1820 in the forty-fourth year of the Independence of the United States of America, WILLIAM S. SPEAR of the said District, has deposited in this office the title of a Book the right whereof he claims as Proprietor in the words following, to wit:

"The Trial of Michael Edwards, on an indictment for the Murder of Timothy Kennedy: before the Supreme Judicial Court of Massachusetts, at Boston, April 11, 1820."

In conformity to the Act of the Congress of the United States entitled, "An Act for the Encouragement of Learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies, during the times therein mentioned," and also to an Act entitled, "An Act supplementary to an Act, entitled, An Act for the encouragement of learning, by securing the Copies of Maps, Charts and Books, to the Authors and Proprietors of such Copies during the times therein mentioned; and extending the benefits thereof to the Arts of Designing, Engraving and Etching Historical and other Prints."

JNO. W. DAVIS, { Clerk of the District
of Massachusetts.

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TRIAL OF POWARS.

Friday, March 31, 1820.

SUPREME JUDICIAL COURT.

PRESENT,

Hon. ISAAC PARKER, L.L.D. Chief Justice.

Hon. GEORGE THATCHER, }
Hon. CHARLES JACKSON, } Justices.

Counsel for the prosecution, PEREZ MORTON, Esq.
Attorney General.—Counsel for the prisoner
assigned by the Court, DANIEL WEBSTER and
WILLIAM SIMMONS, Esquires.

The Prisoner was brought into court, and being called, the Indictment was then read by the Clerk, as follows :—

COMMONWEALTH OF MASSACHUSETTS.

Suffolk and Nantucket, ss.

AT the Supreme Judicial Court, begun and holden at Boston, within the said County of Suffolk, and for the said Counties of Suffolk and Nantucket, on the first Tuesday of March, in the year of our Lord One Thousand eight hundred and twenty.

The Jurors for the said Commonwealth, upon their oath present, that MICHAEL POWARS, of Boston aforesaid, labourer not having the fear of God before his eyes, but being, moved and seduced by the instigation of the Devil, on the 2d day of March, in the year of our Lord one thousand eight hundred and twenty, with force and arms, at Boston aforesaid, in the County of Suffolk aforesaid, in and upon one TIMOTHY KENNEDY, in the peace of said Commonwealth then and there being, feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said MICHAEL

POWARS, with a certain broad axe of the value of one dollar, which he the said MICHAEL POWARS, in both his hands then and there had and held, him the said TIMOTHY KENNEDY, in and upon the back part of the head under the left coronal suture of him the said TIMOTHY KENNEDY, then and there feloniously, willfully, and of his malice aforethought, did strike, penetrate and wound, giving to the said TIMOTHY KENNEDY, then and there with a broad axe aforesaid, in and upon the back part of the head, under the left coronal suture of him the said TIMOTHY KENNEDY, one mortal wound, of the breadth and width of two inches, and of the depth of two and an half, of which said TIMOTHY KENNEDY then and there instantly died. And so the Jurors aforesaid upon their oath aforesaid, do say, that the said MICHAEL POWARS, him the said TIMOTHY KENNEDY, in manner and form aforesaid, feloniously, wilfully and of his malice aforethought, did kill and murder, against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A true bill.

ARNOLD WELLES, Foreman.

PEREZ MORTON, Attorney General.

Clerk. Michael Powars, What say you to this Indictment, are you guilty, or not guilty?

Prisoner. Not guilty.

Clerk. How will you be tried?

Prisoner. By God and my country.

Clerk. God send you a good deliverance!

The Court appointed Tuesday the eleventh of April, for the trial of the Prisoner.

Tuesday, April 11, 1820.

THE Court met at nine o'clock; MICHAEL POWARS, the prisoner was set to the bar.

Clerk. MICHAEL POWARS, you are now set to the bar to be tried, and these good men, whom I shall call, are to pass between you and the Commonwealth upon your trial. If you would object to any of them, you must do it, as they are called, and before they are sworn.

The jurors were then called, and the prisoner challenged eighteen peremptorily.

And the following gentlemen, were sworn.

JURORS.

ROBERT FENELLY, SAMUEL BARBER, AARON BANCROFT, ANDREW DRAKE, PHINEAS UPHAM, MICHAEL KINNAIRD,	{ { { { { { {	WILLIAM MILLS, JOHN RAYNER, ROBERT ROGERSON, EPHRAIM SNOW, DAVID SHUTE, CALVIN SPEAR.
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The INDICTMENT was then read.

Clerk. GENTLEMEN OF THE JURY. To this INDICTMENT the Prisoner at the bar, hath pleaded not guilty; and for trial hath put himself upon God and his country, which country you are. You are now sworn to try the issue. If he is guilty, you will say so. If he is not guilty, you will say so and no more. Good men and true, stand together, and hearken to your evidence.

The ATTORNEY GENERAL in opening, alluded to the alarming increase of crimes amongst us; stated that the testimony on the part of the government to be adduced, was of that kind called *presumptive*, and briefly defined the distinctions between positive and *presumptive* evidence. He then stated particularly the case as he expected it would appear from the witnesses, and proceeded to call them.

THOMAS BADGER, *Sworn.*

I am a Coroner. On the 5th of March last, I was called to take an inquest on a body in South Russel street. I summoned a jury. There appeared on the head marks of a violent blow. The blow appeared to have been given with sufficient violence to knock down a bullock; certainly with force enough to kill a man. The hands, face and clothes much burned.

Question by Court. Was the skull broken by the wound?

Answer. Yes, very much indeed.

DR. SHURTLEFF, *Sworn.*

I was called to examine the body of Kennedy. I found the bosom, face, under side of the hands and wrist.

considerably burned. There was a fracture of the head. The back part of the skull fractured two inches each way. I passed my finger in and felt the brain. The wound appeared to have been made by a blunt instrument; such as the head or eye of an axe. The fracture was made on the upper part of the parietal bone, near the coronal suture.

Ques. by Court. Was the wound a heavy one?

Ans. Yes.

Q. by Court. Was the wound sufficient to produce death?

Ans. Yes. When the body was turned on the back, some blood flowed from the wound.

Q. by Court. Could you ascertain with any certainty how long since the blow had been given? *Ans.* No.

Ques. by Pris. Coun. Might not the blow have been given by a hammer?

Ans. It might by any blunt instrument of sufficient size and weight.

Q. by P. C. Could you say it was an axe?

Ans. No, it might have been done with an iron dog; but more probably with the head of an axe.

At. Gen. Have you known Kennedy?

Ans. I never have.

SAMUEL APPLETON, Esq. *testified,*

That Kennedy had lived with him since July last, and continued with him until Thursday, March 2d. He did not lodge at his house, but was a daily laborer. On Friday, March 3d, he found that he had been absent the afternoon before, and that day. On inquiring at his lodgings on Saturday, found that he had not been seen there after taking his dinner on Thursday. Mr. A. afterwards got a warrant, and went with Reed the constable to search the house of Powars; found there Susan Campbell, much intoxicated, and who could give them no information. He went a second time to the house of Powars and could obtain no information. On Sunday morning, he went again to Powars' house. Reed came soon after, and entered the cellar through

a small scuttle over which a barrel was placed. On the side of the scuttle there appeared a spot of blood. Reed soon called him, telling him he had found the body. He went down and saw the body, and it was afterwards brought up and examined. He knew the body perfectly well, and described the wound, as before by Dr. Shurtleff. He had paid Kennedy at different times and always in the money of the Keene Bank. On the 16th Feb. he paid him a ten and two five dollar bills of Keene Bank. Owed him at the rate of one dollar a day from Aug, 7th, except forty dollars paid him since ; having paid him twenty four dollars on the 7th Aug. Kennedy was a remarkably faithful, peaceable, and industrious man. He could write, and had offered to keep an account of the work done for Mr. Appleton by other laborers at a time when he proposed making a journey.

Pris. Coun. Had Kennedy any income or property except the money which he received from you ?

Ans. Not that I know of. I told him that he received so little money that he would not have enough to pay his board. He said he had some other money.

GEORGE REED, *Sworn.*

On Saturday March 4th, Mr. Appleton sent for me at Col. Austin's office. Mr. Appleton, stated to me that Kennedy was missing, and Col. Austin thought it was proper to get a warrant against Powars. I went to Justice Gorham's and got a warrant, and then went to Powars' house, but found he was not at home. I went again on Sunday to search for the body. I observed some blood on the scuttle. I got a light and stripped off my clothes and went down cellar. They handed me down a pick-axe and shovel, and Mr. Cleesby came down to help me. I found blood on the ground and on a chip. The cellar was about six feet clear of two tiers of wood piled in it. I removed one tier and found the earth shuffled up and it seemed loose. I then removed the other tier. I found loose earth newly dug about the size of a grave. I removed the earth till I

found a body. The arm was discovered first. The body was pulled up and it appeared to be Timothy Kennedy. The face appeared to be burnt. We got a rope and lifted the body out of the cellar.

Ques. by Court. Did you know Kennedy?

Ans. Yes; I put him in gaol at Powars' suit.

Court. Are you sure it was he?

Ans. Yes.

Mr. Reed shewed a broad axe to the jury, and pointed out specks of blood upon it.

Reed. The axe appeared to have been newly washed. There appeared to be some hair upon the head of the axe. There is some now.

Court. Was the closet open?

Ans. It was not locked.

Juryman. What was the colour of Kennedy's hair?

Ans. Sandy.

C. for P. Where has that axe been kept?

Ans. In the Supreme Court room, under lock and key.

C. for P. Did you see the axe before you went down cellar?

Ans. Yes. Mr. Lancaster saw it first. The blood on the scuttle induced us to go down.

JOHN DOBSON, Sworn.

Court. Are you a Roman Catholic?

Ans. Yes.

Court. Do you feel bound by the oath as now administered?

Ans. Yes. I stand here to speak the truth. I am used to this form of the oath.

At. Gen. What is your occupation?

Ans. I am a Tailor. Kennedy came into my house on Tuesday, to get his coat fixed. It was a black one. While I was fixing the coat he looked at my books. He said I had some which he had never seen, and asked me to lend him some, which I did. He took two, and said he wanted to see me again on Thursday particularly, when he would return the books, and he wished me to

be at home. I live in South Russell street, on the same side of the way with Powars, and near his house. I had a book in my hand at about a quarter past two o'clock, and was waiting for Kennedy, when I saw Powars pass shaking his head violently, and just after Kennedy passed and nodded to me and laughed. They went towards Powars' house, and turned into his gate, and I saw nothing more of them. I had some work to do for a man in Newbury street, and on Friday I carried home his clothes. His daughter told me, there was a bad report, and asked me if I knew Kennedy that worked for Mr. Appleton. I said, yes. She told me that he was dead. I was informed that Powars' house had been searched. On Sunday morning about eight or nine o'clock, two gentlemen went by my window. They went into Powars' house. I went myself to Powars' house. I saw the body after it was taken up, and knew it to be Kennedy's. About a twelve month ago, Powars told me of a concealed place in his cellar. In our own country we sometimes have such places to conceal tobacco and such things to avoid paying duties.

Attorn. Gen. Had Kennedy a memorandum book?

Ans. Yes. He took it from the pocket of his pantaloons on the Tuesday when he took the two books. I have sometimes seen it in his coat-breast-pocket.

Attorn. Gen. Is the book produced the same one, and did he always carry it about with him?

Ans. It is the same book. He had it in his pocket on Tuesday, and took it out to pay me, and took a one dollar bill out of it.

Coun. for Pris. How do you know this is the same book?

Ans. How do I know? Do not you think I take particular notice of such things? I told Kennedy that it was not the right kind of pocket book; he said he knew it, but it served him.

Coun. for Pris. Were your windows open when Powars and Kennedy passed by? *Ans.* No.

Coun. for Pris. How then did you know that they went into the gate ?

Ans. By the waving of their hands, and the flaps of their coats as they turned.

Coun. for Pris. How far apart were Powars and Kennedy when they passed ?

Ans. About five or six yards. They were both in sight at the same time. My wife said that Kennedy and Powars were countrymen, and that Powars had taken Kennedy into his house to give him something to drink, but that Kennedy would come in presently.

Att. Gen. Do you know the clothes now produced ?

Ans. I know the clothes very well as I made them for Kennedy, and he brought me this waistcoat pattern to make up, and I advised him not to, and he told me he had put it into his chest ; I know it by this spot.

The witness identified a coat, pantaloons and waistcoat, by some marks which he pointed out, and said there were other marks which he could explain to a person in the same business, but which a jury would not understand. He said he knew his own work, every man works in a particular way of his own.

At. Gen. To Mr. Appleton. Did you make the description of the clothes in the advertisement from Mr Dobson's account of them ?

Mr. Appleton. I did.

The Attorney Gen. reads the advertisement in which the description corresponded with the clothes produced.

BARBARA DOBSON, (wife of the preceding witness)—
Sworn.

On the 2d March, I saw Mr. Powars about 5 o'clock, come out of his gate with a portmanteau trunk in his left hand ; and go up the street swinging his arm. He went up into Myrtle-street. I have seen him have a memorandum-book, (the book found with Powars is shown to her.) This is the book, Kennedy used to have a tape tied round it. The last time I saw the memorandum book was on Tuesday. Kennedy opened it, and

took out a bill, which I took to change. I wanted to see Kennedy on Thursday about some books.

P. C. What books ?

Ans. "Old Farmers Friend, and "A Rich Cabinet of Heavenly Jewels." Tim was very peaceable and religious.

CATHARINE FERRIS—*Sworn.*

On Thursday March 2d, I saw Powars about half past 5 o'clock in the afternoon. I heard a voice, and looked out and saw a man buttoning a brown surtout which he had on. It was the prisoner. I live at No. 7, Wharf-street, in part of the same house in which Mrs. Hewes lives. I heard a loud talking before I looked out of the window. And the prisoner appeared to have come out of Mrs. Hewes' house and to be agitated. A trunk was upon the step of the door with him. I saw him take up the trunk, and walk away. I did not see who he was speaking to.

SALLY HEWES—*Sworn.*

On Thursday 2d March last, Michael Powars came to my house about half past five o'clock in the afternoon, and said he was coming to board with me.—I asked him if he had had any falling out with his old woman. He said no, but thought he might as well go to board. He said that he wanted to go into a room and shirt him. I directed him to a lower room. He said that would not do, that he wanted to go up stairs. I then shewed him into the chamber, in which Kennedy slept. Powars soon went away, and I did not see him afterwards. I kept supper waiting, until 9 o'clock for Kennedy to come home. He did not come, and I supposed that he stopped at Mr. Appleton's. On Sunday, a young man came and enquired for him. I examined Kennedy's chest, and found it unlocked, and nothing remaining in it but a few old things. Kennedy had a change of clothes. (Some remnants of clothes were produced in Court.) She said she found those in Kennedy's chest.

Mr. DOBSON, was called again.

A. Gen. Did you return any remnant with the clothes of Kennedy?

Ans. Yes, and those are the pieces. In my country it is customary to return all remnants.

Pris. Coun. Mrs. Hewes do you know whether Kennedy's chest was locked on Thursday? *Ans.* No.

A. Gen. Did Powars know Kennedy's chest.

Ans. In all likelihood as the chest came out in the vessel in which Powars was a passenger.

Pris. Coun. Were Powars and Kennedy related to each other?

Ans. Kennedy's mother was Powars' cousin.

ELIZABETH KELLY, *Sworn.*

Kennedy boarded with me more than a year, he was of a peaceable and quiet disposition. He had a suit of clothes made by Dobson. I should know them again because there were pieces fastened on the folds. (*Clothes were produced*;) and she identified them.

At. Did Kennedy keep a memorandum book?

Ans. Yes. [The memorandum book shown to her.] She knew it to be Kennedy's. Powars came to her house about five weeks before the murder and wished her to board him. He referred to Kennedy for his character and said that he was his relation. At dinner she observed that Powars and Kennedy did not speak with each other. In the evening, witness inquired of Kennedy the cause of this reserve. He said Powars was the old villain that he had a law-suit with, and had not told the truth. Witness offered Powars a chamber by himself, and urged him to take it, but he preferred to lodge in the same chamber with Kennedy, and other boarders. He lodged there but one night. Powars came again to Mrs. Kelly's about a week before the murder, and asked her if she would board him again, she told him that she would. In the course of conversation she told him that Kennedy had left her, at which he appeared surprised, and asked where he had gone. He asked her if Kennedy had paid her, and on her answering in the affirmative, he

said he was glad of it, for he was a singular character. He asked her if Kennedy had any money. Witness answered that she did not know. Powars then sat and seemed thoughtful, looking in the fire for a few minutes and then went hastily out of the room. He did not return then to board. Mrs. Kelley also swore to several articles of cloathing as belonging to Kennedy, which were produced by Reed, having been taken by him, from Powars' chest.

SUSAN CAMPBELL, *Sworn.*

I lived in the house with Powars. I went to Mr. French's on Thursday in the forenoon, and returned in the afternoon, and found Powars at home.

At. Gen. What was Powars doing?

Ans. He was putting a few things into a pack—the pack was already made up. He said he was going to Mobile, where he had some months before said he was going. He went out early in the morning on Friday, and said he should return to breakfast. I waited for him until nine o'clock, but he did not come home.

At. Gen. Did you ever hear Powars make use of any threats?

Ans. He had said he would be revenged; I do not know that he mentioned any particular person.

[Witness was asked who owned a trunk which was produced in court. She said it was hers. Mrs. Dobson was called again, and said it was the same trunk she saw Powars carrying under his arm on Thursday.

At. Gen. When you returned on Thursday did you observe any remarkable appearance about the house?

Ans. No. The ashes were scattered a little about the fire-place, and I did not find some scouring cloths which I left in the house.

C. for P. Were there any curtains?

Ans. Yes.

C. for P. Did you not take them down a few days before to wash?

Ans. No. They were up on Thursday.

C. for P. Did they cover the whole window?

Ans. Only the lower half.

P. C. Is the room lower than the ground ?

Ans. Yes ; it is very much exposed.

P. C. Did you not buy new curtains ?

Ans. Yes ; on Thursday.

At. Gen. Was the door locked when you returned on Thursday ?

Ans. It was, and Powars let me in. There were no steps to the cellar through the scuttle, and I never saw any body but Powars go down. He used to bring up my wood.

P. C. Did you not take down the white curtains on Thursday ?

Ans. I think I did ; but cannot remember.

At. Gen. Did you see a pick-axe ?

Ans. I did on Thursday. Powars said he borrowed it of Mr. Taylor to break up the ice in the yard.

At. Gen. Did he break up the ice ?

Ans. No.

P. C. Was Powars discomposed on Thursday ?

Ans. No. He slept as usual.

P. C. Did he always sleep at home.

Ans. Yes.

P. C. Was the broad-axe ever used to cut meat.

Ans. Yes. Both by myself and by Powars.

THOMAS FRENCH, *Sworn.*

Thursday 2d March, Susan Campbell was at my house ; she came about 11 o'clock in the morning and staid an hour and a half ; took \$1 and went out shopping ; she returned before dinner and staid until 5 o'clock. In answer to several questions from the prisoners counsel, Mr. French described particularly the situation of the house and cellar and stated that the partition which separated the cellar of Powars, from the one adjoining, was as good as common, and could not in his opinion be easily removed.

WILLIAM TAYLOR, *Sworn.*

I own the house in which Powers lived ; there is a small scuttle in the house about two feet square,

which was not there when Powars took possession of the house—heard Powars in April last, speaking of a law-suit with a relation of his from Ireland; he seemed very much dissatisfied with the result of the law-suit, and said that he would have satisfaction, and would be revenged. He asked witness in May to go with him to Mr. Parker his lawyer. Mr. Parker offered him some money, \$13, he took it and gave a receipt, still saying that he would have satisfaction. Witness went to Mr. Fuller's with him, and Mr. Fuller said all was right. Powars borrowed of witness a pick-axe, February 23d to break the ice in his yard, as he said; which he did not return.

Pris. Coun. What is his general character?

Ans. He is temperate and industrious. He lived in my house four years, except a temporary absence. I never knew any thing amiss in him.

Wm. Lancaster. Powars worked for me in 1817; he made a voyage to Ireland, and returned in 1818. He said that he brought two men with him, one of which was Kennedy, and that he had lent them money. I had understood that he had a law-suit with Kennedy—I asked him if he had settled with Kennedy; he said he had, and that he would have satisfaction, and could take a horse and get off, from any trouble in consequence of it. I do not remember the exact expressions which he made use of; I advised him to use caution. When I heard of Kennedy's murder, the threatening language of Powars occurred to me. I saw the axe in his house, and first discovered marks of blood on it and on the scuttle; there was a barrel over the scuttle full of chips. Mr. Reed went down the scuttle with another man, and picked up a chip in the cellar.

Pris. Coun. How long since these threats?

Ans. I believe that I heard them the first of the year 1819.

Pris. Coun. What is the general character of Powars? *Ans.* That of an industrious, sober man. I have known him ten or twelve years.

DAVID KELLY, *Sworn.*

was induced three young men, of whom Kennedy was one, to come out from Ireland with him, and they became indebted to him for their passage money, and for some money lent. I made unsuccessful attempts to produce a settlement between them. Some months ago, after a decision by a referee, Powars told me he would sue Kennedy and put him in gaol if I would not bail him, for Kennedy had no other friends, and Powars offered me ten dollars if I would not be his bail. I told him it was unreasonable, and I put him in mind of a private oath he had taken to abide by the award of the referee.

JOSEPH KINGSLEY, *Sworn.*

I heard Powars say he meant to have satisfaction of Kennedy. I supposed he meant to whip him or something of that kind. He said he had been wronged in his law suit.

SAMUEL D. PARKER, *Sworn.*

October 5th, 1813, Powars applied for three writs, one of them against Kennedy for twenty dollars lent him, to pay his passage from Ireland. The other writs were against two persons by the name of Mc'Daniel for similar cause of action. Kennedy was committed to gaol. The action against him was entered, and Col. Austin appeared in his defence. There was no evidence on either side, and the parties agreed to refer it. An award was made that Powars should pay Kennedy five dollars and twelve cents, which award was accepted by Mr. Minot. Powars refused to pay the sum awarded, upon which Col. Austin brought an action on the award, before Mr. Minot and the action was carried into the Court of Common Pleas by appeal. The referees were then examined, and Col. Austin was convinced the action would not be sustained. Colonel Austin and myself agreed to dismiss the action, and have nothing to do with it personally. On the 7th of May, Powars expressed dissatisfaction at the result.

Coun. for Pris. Was Powars' claim unfounded

Ans. I do not think it was.

Thomas Philpot, *Sworn*. Had heard Powars say some time in Oct. last, that he had been down in town about a law suit—that Kennedy owed him forty dollars. He said he was afraid that he should lose it, and he would be revenged on Kennedy. If he did not pay him he would murder him. I told him that would be cutting off his nose to spite his face. He said he did not care, he would murder him. At the time he said this, he was very much intoxicated, which I had never known him to be before.

James Vinal *sworn*. I saw Powars in Bowdoin-square, about a month or six weeks since ; we walked together. He asked me if I knew Kennedy. I told him that I did. He said Kennedy was a rascal—that he had loaned him money, which had not been repaid, and he would kill him if he could get a chance.

Mrs. Mary Fowle *sworn*. Lives in a part of the house which the prisoner occupied. Was at home all Thursday. Heard no noise in Powars' apartment, and did not see him go in or out. Witness has 5 children. A week or ten days before 2d March, Susan Campbell came home and could not open her door. I looked and found the key was inside. She called Powars by name several times, and asked him to open the door. At length he came (from the cellar as my daughter said,) and opened the door.

Court. Is there an entry between your house and Powars'. Ans. Yes.

Coun. for Prisoner. What is the partition in the cellar made of?

Ans. Pieces of boards not fastened at the top.

Mary Ann Fowle. Is 14 years old. Was at home on the 2d March. Did not see Powars. Some days ago Susan Campbell came home and could not unfasten her door. My mother looked and found the key was on the inside. After a short time I looked through the key hole, and saw Powars come up from the cellar, through the scuttle, and set the light on the floor. He then opened the door.

JONATHAN FOWLE, jr. Esq. *Sworn.*

In the afternoon of the 15th of March, my brother, George M. Fowle told me he had found Powars, and asked me what he should do. I directed him to obtain a warrant from Alderman Badger, and a constable, and arrest him immediately. He hesitated at first about doing any thing. I asked him if he was sure it was Powars? He said he was pretty sure. I told him to be certain of that before he arrested him, and I would wait at Alderman Badger's office until he came up. Michael Powars was arrested at Philadelphia on the 15th March last. Sometime after Powars was brought in to Ald. Badger's by M'Masters and Melliman, followed by George. I undertook to examine him, and in answer to a number of questions put to him by me, and some by the Magistrate, he said that his name was Michael Powars, that he had lived in several places in Boston, and last in South-Russell street. That he knew Susan Campbell, that he had reason to know her, for he had lived with her 12 or 14 years, though she was not his wife. That he left Boston the latter end of February, travelled on foot to Providence, where he remained about 24 hours, and then took passage in a vessel for Philadelphia, where he arrived the day before he was arrested. I asked him if he knew Timothy Kennedy. He answered "yes" "did you bring him over to this country from Ireland, and pay for his passage?" "Yes." "Did you sue him afterwards for the money?" "Yes." "Did you recover any thing on the suit?" "I dont know, Squire Parker had the care of it. I never got any thing." Have you had a quarrel with Kennedy?" "No, I have had a law suit with him, but no quarrel." I then asked him when he saw him last? He said he did not know. I repeated the question—He was somewhat confused—said the last time he saw him was about a fortnight before he left Boston. Did you see him the day before you left Boston? "No—Alderman Badger who had been reading a paper my brother brought in, said 'Michr.

ael, Timothy Kennedy was at your house the very day before you left Boston, he was seen to go in." To this Powars made no reply. I then said, Michael, Kennedy has been murdered, and you are charged with having murdered him. He seemed alarmed, but not surprised at the accusation, answered instantly, though in a low tone of voice, that he was not guilty; that no man living could prove it.

I told him the proofs were very strong against him. He said again "I am not guilty" I then told him S. Campbell was in jail; upon which he said, with great quickness, she has no right to be there. "Why?" "Because she has no right to be there"—"Why?" "She never did any thing wrong." "Who has a right to be in jail?" He hesitated, but said he did not know. I said that probably before that time Susan Campbell has told the whole story about the murder. He said quickly, she can't, no person living can prove it." Alderman Badger said, "Michael, I believe you have killed Kennedy." Powars answered, "I am sorry you have so bad an opinion of me, sir." Alderman. "I must send you back to Boston." Powars. "What for?" Alderman. "To take your trial for this murder." At this information, Powars became frightened, and agitated, and the tears came into his eyes. He turned suddenly round, stepped quickly across the room, and took a seat on the settee. I directed the officers to search him. They did so, and found an old razor in his pocket, an old silver watch in his fob, some money in bank notes, and silver, and a number of guineas sewed up in the back part of his suspenders. He said there were 104 in the whole, and that he took them out of the Savings Bank the day before he left Boston. He appeared to be very unwilling to part with his money, although I told him it should be taken care of. One of the constables was obliged to cut his suspenders, in order to get them off. Powars paid his landlord 75 cents for his lodging, &c. and was then committed to prison. The officers said they would go after his chest. The next

day they showed me a large red one in Alderman B's office, as belonging to Powars, which I opened, found the memorandum book, and other things, and which is the same chest that I opened in the presence of Powars at the prison on the twenty fourth, and which Powars claimed at that time with its contents. I asked him if he had laid in some wood just before he left Boston? He said no, at first. Afterwards he said he had some pine wood. I asked him when he got it? He said some time last summer. "How much did you lay in at that time?" "I don't know." "Was there one cord or 16?" "I don't know; it was more than one cord." "Did you buy any more during the winter?" "No." "Did that last you all winter?" After some hesitation, he said, "No." "Did you live part of the winter without a fire in your house?" "No."

March 23, Reed arrived at Philadelphia. I went with him to the prison; asked Powars if he wanted any thing and how he fared? He said he fared very well, but he wanted a clean shirt. I told him I would endeavor to get it for him. He asked Reed if he was come after him, &c. On the 24th March, I sent Powars' chest to the prison. Powars came in, and I told him that I had brought his chest that he might change himself and asked him what he wanted? He said a clean shirt and cravat. I proceeded to open the chest, Powars appeared to be in a great hurry and offered to assist me. I asked him if he brought the chest from Boston. He said no, he bought it in Providence. When the chest was opened I permitted him to take out such things as he pleased. Without looking for a shirt, he took the hat, blue coat, pantaloons, and waistcoat, (which the witness identified; the same sworn to by Dobson) and put them in a great hurry into the fire-place. He put his own hat into the chest, and covered it with the blanket. I took out a shirt and gave him. He began to strip in order to put on the blue clothes and waist-

coat. I asked him what he was going to do ? and he said he was going to put them on. All this time his hands shook, he appeared to be in a great hurry and considerably agitated, I told him that he wanted only a shirt and cravat, but he said he wanted all the things he had taken out. He had taken off his surtout in a great hurry, in order to put on the blue coat. I then told him he must not have them, and desired him to put them into his chest again. The coat I think he had put on, I made him take it off again. The keeper Deacon who was also present during the whole time, told him his clothes were good enough for the prison, and better ones would be spoiled. He was reluctant to return them, when I told him positively that he should take nothing but a shirt, and cravat. He then put the hat, coat, &c. in haste into the chest, and covered them as well as he could with the blankets, as if he was desirous of concealing them from our view. He retained a shirt and black cravat. I repeatedly asked him if all his things were there, and if any thing was missing ? He said they were all in the chest, and he did not miss any thing. Before he put the clothes back, I told him to try on the blue coat. I wanted to see how he looked in it." He did so, & it was both too long & too large for him. The sleeves in particular were much too long for him. After he had put them into the chest, I took up the coat, and asked him where he got it ? He said he bought it at auction. In answer to similar questions about the hat, pantaloons and waistcoat, he said he bought them. I asked him if those clothes ever belonged to Timothy Kennedy. He said no—He afterwards said, Kennedy had given him a pair of pantaloons, but when I asked where they were ? he said he did not know, I asked him if he did not go down to Kennedy's boarding house just before he left Boston ? He said he went there two or three days before. I asked him what his business was there. He said he went there to shirt himself. I asked him if he could not shirt himself at home ? No. Why ? Because I had no shirt

there. I asked him if he found a shirt at Kennedy's house? He said no. Where did he get it? He took it with him in a small trunk. He also said something about his Taylor, but I do not recollect. I then shewed him the memorandum book, which I took out of his chest unobserved by him, and asked him if that ever belonged to Timothy Kennedy? He became confused, and his voice faltered as he answered in the affirmative. "How came it in your possession?" "Kennedy gave it to me: "When?" "This last fall, we boarded together at the time." "Did you not take this out of Kennedy's trunk just before you left Boston?" "No." I shewed him the \$10 note, and asked him how he came by that? He said, Kennedy gave it to him for a debt; which he owed him. He then turned round and stepped quickly to the other end of the room, as if to avoid further conversation on the subject. Recovering himself a little, he turned round and asked me if Reed had come on after him, whether he should be hand-cuffed, &c. I then asked him if he had made a trap door in the floor of his house. He said, "yes," "what for?" to throw his wood down, which he could not do before, without going through another person's house: I asked him if he had been digging in his cellar just before he left Boston. He answered no. If he had an axe in his house? He said he had two. I then told him the body of Kennedy was found buried in his cellar. He said it must have been done after he came away, and says he, "*If he got an unlucky blow it was not for his money, for he had not any, I knew he was poor.*" This he repeated several times. I never had told him of the manner of Kennedy's death. He said also, "I never killed him, what should I kill him for, I knew he had'nt any money." I told him he had had a quarrel with him. He said he had had a law-suit with him, but it was all made up before he left Boston, and he and Kennedy had boarded together. He said several times he was not guilty of the murder, and that *no man living could prove it, he defied any man to prove it against him.* In

answer to some other questions, he said he had seen Kennedy some time before he had left Boston, he would not tell how long before, that he did not see him the day before, nor was Kennedy at his house on that day. That he left Boston because he had nothing to do and business was dull, that he was going to Ireland to lay brick, and had engaged a passage on board the ship Howard, for Dublin. He appeared to be apprehensive that he should lose some of his property, but I assured him, that every thing belonging to him would be taken good care of and sent to Boston. Some other conversation took place, which I do not recollect. He was not tied or chained in the prison, but was suffered to mix with the other prisoners

At 2 o'clock, the Court adjourned. At a quarter past 3, the trial proceeded. The Attorney General called the attention of the Court and Jury to the circumstance that the charges in the memorandum book, were in uniform hand writing, and continued to the 19th Feb.

Mr. Simmons on the part of the Prisoner called witnesses.

Wyatt Richards sworn. I have known the prisoner for a year past. I heard him say some time last fall, that he intended to go to Ireland in the spring. He was a sober, and industrious man, peaceably disposed. I am an apprentice to Calvin Page.

Calvin Page sworn. I have known the prisoner 10 or 12 years. I have employed him almost every season. His business is attending upon masons. I have always confided in him as an honest man. He is industrious and sober. I have heard him talk about leaving this country. He speaks very quick, but is not of a passionate temper that is as far as I have observed him.

MR. SIMMONS opened the defence in an argument that occupied an hour and an half:—He commenced by advert-
ing to the difficulty and arduousness of the duty assigned by
the Court to the Counsel on the part of the prisoner. The
impressions on the public mind relative to his guilt, and the
fatal effect it might have on the issue—and the importance
of giving him a dispassionate trial. He admitted it was in-
contestibly proved, that Kennedy came to his death between
Thursday morning the second of March—and the Sabbath
following—and that the death was the result of violence
from some one. The question before the Jury was, did
the prisoner at the bar inflict the wounds which caused his
death. If he did, he was guilty of the most savage, and un-
provoked murder, recorded in the annals of criminal juris-
prudence, without apology or palliation. That it was a crime,
to commit which he could have no motive. The deceased
had acquired no property to be plundered or inherited, and
his removal would not aid him in the accomplishment of any
object. He then adverted to the general character of the
prisoner, as furnishing strong presumption in his favour.—
His days had been honestly laborious, and his nights dedi-
cated to repose. The fruit of twenty years labour in this
country, had placed him beyond the temptation of poverty,
and temperance had stood sentinel over his passions; that
villainy was progressive, and it was contrary to experience
and the human character, that the prisoner should plunge in-
to the depth of profligacy precipitately, and at once. Here
was no gradation; if he was guilty, he had overlept all the
intermediate steps, and passed from one extreme to the other
in a moment—an anomaly in the human character. If the
prisoner was capable of such a crime, Kennedy would not
be the probable object of it. They were relatives; the pris-
oner had brought Kennedy to this country, and must feel
that he stood in the place of a guardian and protector. From
these relations, natural and acquired, no one could anticipate
that Kennedy would fall by the hand of Powars.

No one saw the fatal blow given. The Jury were called
on to infer the time, place and person, from the other facts
proved; that it became necessary, therefore, to advise them
of the rules of evidence. He then proceeded to state to the
Jury the principles of evidence applicable to the case, and to
read passages from the Books on circumstantial evidence.—
He then proceeded to consider the circumstances in the case
relied on by the government, as sufficient to establish the
fact of the prisoner's guilt. He first considered the subject
of previous threats, and contended, that the threats proved

were but the common language of litigants in a moment of irritation ; that had Kennedy lived, no such import would ever have been given them ; that the term "satisfaction," was the one testified by most of the witnesses to have been used by the prisoner, and that never imported an intent of bodily harm, except in the mouths of men, falsely called men of honour ; that to imply a deadly purpose, words must be cool, deliberate and explicit, such as indicate a heart fatally bent on mischief. Two witnesses only testified to words of such import ; one when the prisoner was intoxicated, an event as unusual, as the utterance of the expression. He next remarked on the prisoner's flight ; that to be evidence of guilt, it must appear to have resulted from it, by being referrible to no other probable cause ; that his intention to leave the town had been long fixed, and declared to various persons at various times, from last fall, to the time of his departure, and that he had assigned adequate motives for it.—His departure, therefore, and Kennedy's disappearance, ought to be viewed as an accidental coincidence.

He then drew the attention of the Jury to the discoveries made at the Prisoner's house, and remarked, that the place, the time, and the fatal instrument, were supposed to be clearly proved by the discoveries there. They were made by persons strongly impressed with a belief of Powars' guilt, and ready to yield to the slightest presumptions. Blood was supposed to be found on the axe and scuttle ; they were of course inferred to be the blood of Kennedy. He asked, who by the eye, without any surer test, would presume to discriminate between the stain of blood and that of other substances in domestic use ? and who so rash as to attempt to distinguish the difference between the blood of man and beast ? The axe was proved to be in frequent use for chopping meat.

If he was killed by the prisoner, it was in the prisoner's room, and at the fire ; there must have been a great effusion of blood, leaving the floor strongly marked from the fire to the scuttle. It was improbable the prisoner ever washed it up, or he would not have left the marks on the axe and scuttle. He next contended this room was the most improbable place, to select for the perpetration of the crime, that detection in the very act was to be expected. The supposition was inconsistent with the supposed deliberate malignity of the prisoner. There were two windows on the street, and one in the yard, and shutters not closed ; every object and transaction exposed to the gaze of all that passed. In the next room was a woman and five children, all the afternoon. On the opposite side of the street, were two

three story houses, overlooking the transactions in the prisoner's room. If the prisoner committed the murder, it was between half past two and five o'clock of this afternoon, surrounded by such imminent danger of detection. No noise was heard by those in the adjoining room. He contended, if it were possible, to shew another might have deposited the body in the cellar, it ought to outweigh this rash presumption, and stated how it might be done. The cellar doors on the backside of the house could be opened from without, the partition between the two cellars, of the slightest kind, be partly removed, and the body deposited where it was found; or two pieces of plank, slightly nailed, as an underpinning to prisoner's cellar, removed, and a passage of four feet by two was made direct into his cellar. He argued that motives were not wanting for this act—that the supposed existence of a quarrel between Powars and Kennedy would suggest the measure to divert suspicion from them and fix it on Powars. The Counsel then proceeded to notice the circumstance of the finding of the clothes of the deceased in the prisoner's possession, and contended there was no positive testimony, that they were taken from the trunk of Kennedy, for there was none, they were in it, at the time of his disappearance; that there was no proof of their identity, it rose no higher than proof of similarity; and argued that the conduct of Powars, in relation to the clothes, at Philadelphia, showed a consciousness of their being his own; that the same reasoning applied to the memorandum book and the bank bill, that there was no proof of the hand writing of the deceased in the book. If the prisoner's declarations were offered, as evidence the whole must be taken. But if the Jury were satisfied they were stolen, and that they were the clothes of Kennedy, the murder was not a necessary inference. It was one circumstance. As to the prisoner's supposed confessions, and false declarations at Philadelphia, he remarked that they ought to weigh little against him; that innocence, when suspected loses its confidence, and sometimes exhibits the marks of guilt, and quoted the remark of Lord Mansfield, that "it is no uncommon thing for a man to defend a good cause by foul means, or false pretences."

He commented upon a variety of other circumstances which appeared in evidence, and cited and alluded to a number of cases in this country and England, where persons had been convicted on circumstantial evidence, and the fatal error discovered too late. He concluded with some general remarks, upon the nature of the evidence; and the solemn duties the Jury owed to the prisoner and the community.

The narrow limits, in which it has been found necessary to confine the account of this trial, prevents our giving any thing more than a very brief abstract of the arguments of Counsel, and the charge of the Chief Justice. In making it, we have availed ourselves in part of a comprehensive report, published by the Editor of the Daily Advertiser.

MR. WEBSTER followed in the defence. He said he had little to add to what had been said by his colleague. He said that the facts stated on the part of the government were not doubted; the only question was on the inference from these facts. If there was any defect in the series of circumstances against the prisoner the jury must acquit. The prisoner has a right to a charitable construction of the circumstances proved. The jury should not yield to the impression produced by the atrocity of the crime charged. It is natural that when such a crime has been committed there should be a strong bias against the person suspected. After further general remarks, he proceeded to comment on some of the prominent facts of the case proved. The circumstance of the body being found in the prisoner's cellar was not conclusive, because there were other possible modes of access to the cellar, besides that through his room. The coincidence of the day when Powars left town, with that on which the murder was committed, is not conclusive. It was proved that he intended to go on *some* day, it was as likely to be on that day as any other. The threats which were relied on as proof, were not consistent with the coolness shown when the crime was committed, if committed by him. He remarked upon the finding of the clothes upon Powars, which he contended were not fully identified, unless by the testimony of a single witness. He requested the jury to consider how much of the testimony depended upon the accuracy of Dobson in his statements in respect to the passing of Powars and Kennedy together, the identity of the clothes, &c. He commented upon the finding of the memorandum book, and bank bill, upon Powars. He remarked upon the character and habits of the prisoner—upon the want of mo-

tive to commit the crime—upon the threatening language for being irritated in a law suit—upon the exposure of Powars's room to observation, &c. He reminded the jury of the inconclusiveness of the circumstances, and the claims of the prisoner to a charitable and conscientious consideration. These are but brief hints of the course of argument of the learned advocate.

During the argument of Mr. Webster, much noise was heard from the crowd about the door. In pursuance of directions from the Court, a young man, who appeared to be one of the foremost in producing the disturbance, was bro't in, and ordered to recognize with a surety in the sum of 100 dollars, for his appearance tomorrow, to answer for a contempt of Court, and in default of a surety, to be committed.

The Attorney General, in closing the cause, called the attention of the jury to the circumstances that appeared in evidence: That he was seen with Kennedy the last time the latter was ever seen; that they entered together the house of Powars; that the latter came out alone, a few hours after; that the body of Kennedy was found in his cellar, in a secret grave; that he proceeded to commit an additional felony in plundering Kennedy's trunk; and that the suspicion arising from these circumstances was confirmed by his flight, and by the result of his examination in Philadelphia. The Attorney General stated the dilemma in which the prisoner stood; that he was either in the house at the time, and if so, committed the murder or was accessory to it, or he was not there, and then he was bound to prove that he was not. The Attorney General argued that the revengeful spirit and avaricious temper which Powars discovered were sufficient motives to be supposed to have influenced him. He quoted the maxim of the law, *futetur facinus qui iudicium fugit*; and stated the impossibility of imagining any other person, who could have committed the crime, united with the other circumstances to fix guilt on the prisoner. The Attorney General specified as damning circumstances, the discovery of Kennedy's clothes in the chest of Powars and the memorandum book of Kennedy in his possession. The Attorney General expressed his opinion, that the circumstances detailed

amounted to a chain of proof stronger than the testimony of half a dozen witnesses ; and concluded by warning the jury not to betray the interests of society in a mistaken zeal to protect those of the prisoner.

The attorney General having closed his remarks, the Prisoner was informed by the Court that he was at liberty to make any statement that he wished in his own favor. Upon this the Prisoner stated in a confused manner, and in a strong foreign accent, that Kennedy gave him the pocket book the Monday before he left Boston ; that he (Powars) had bought and paid for the clothes, down by the market ; that Kennedy had given him seventeen dollars, at the same time that he gave him the pocket book.

Chief Justice PARKER, then charged the jury. He entered into a minute recapitulation of the evidence, accompanying it with remarks calculated to place it in a proper light. He observed that there was an unusual simplicity in the cause, and no questions of law to perplex the minds of the jury, the issue being confined to the single question of fact.

He observed to the jury, that the absence of motives to commit this crime on the part of Powars, had been urged to them as a reason for acquitting him. It is not always possible, however to arrive at the motives of human actions, nor when a crime is committed was it necessary that they should be satisfied what were the motives that led to it. Different men act with more or less disguise, and some are influenced by considerations which would have no effect upon others. But in this case, evidence had been offered to them of a law suit with Kennedy in which Powers was unsuccessful, and the feelings which it had excited, were expressed in threats, and declarations of a determination to be revenged. Menaces of this kind are generally indeed words of passion, and may not be followed by the commission of any crime ; but when the deed threatened actually takes place, they assume another character.

The Chief Justice, explained to the jury, the nature of circumstantial evidence, and cautioned them against being misled by the result of one or two cases in as many

centuries, in which the innocent had been convicted on circumstantial evidence. He alluded to the cases of the Uncle and Ward, and that of the Boorns in Vermont, which had been cited by the Prisoner's counsel; and observed that each of those cases differed essentially from the present, there being in those no sufficient evidence of the death of the person supposed to be murdered. He stated that the proper use of such cases was to impress the minds of the jury, with the necessity of caution, and not to induce them to acquit the guilty.

The jury retired at half past 8—and returned in about twenty minutes with a verdict of GUILTY.

Wednesday, April 12.

At 10 o'clock the court was opened, and the prisoner, Michael Powers was set to the bar.

The Attorney General rose and addressed the Court as follows :

May it please your Honours—

Michael Powars, the prisoner at the bar, has been indicted by the Grand Inquest for the bodies of these counties of the crime of wilful murder, committed on the body of Timothy Kennedy. On this indictment he has been arraigned at the bar of this Court, and on his arraignment he pleaded *not guilty*; sufficient time was allowed him to prepare for his trial, and Counsel learned in the law, of his own choice, were assigned to aid him in his defence. A traverse jury of his own selection, from the venire returned, were sworn and impanelled to try the issue between the Commonwealth and him. This jury, after hearing the evidence produced on the part of government, and the arguments of his counsel in his defence, have returned their verdict, that he is guilty; and this verdict has been affirmed and recorded.

By a statute of this Commonwealth the punishment affixed to the commission of this offence is DEATH. I therefore move your Honours that the sentence of DEATH be now passed upon the prisoner, as a just retribution for the crime, of which he stands convicted of record.

The Chief Justice then addressed the prisoner, and told him that if he had any thing to say before the sentence of the court was passed upon him, he might now say it.

The prisoner, in a rapid, agitated, and angry manner, said, "I think the court very dishonorable. I am not guilty. It has not been proved that I am guilty. If there was one witness that proved that I am guilty, I should be satisfied. May it please your honours, I am dissatisfied."

SENTENCE.

BY THE

CHIEF JUSTICE.

MICHAEL POWARS !

YOU now stand convicted, after a full and fair trial, of the wilful murder of Timothy Kennedy. You have been permitted to avail yourself of all the privileges which the humane laws of the country allow to those who are put upon trial for their lives. You have had able and faithful Counsel assigned by the Court at your request to aid you in your defence, and they have presented to the Jury every consideration which could have a favourable tendency upon your case. From the whole body of jurors returned to serve at this Court you selected those to whom you were most willing to commit the solemn issue. Their verdict is the necessary and unavoidable result of the clear and convincing evidence submitted to their consideration. That all the proceedings have been regular and consistent with the rules of law the court are satisfied, and they entertain no doubt that you have been rightfully proved guilty of the crime, whereof you were accused by the Grand Inquest for these Counties.

There were circumstances attending the commission of this crime, which are calculated to appal the firmest mind, and to humble the proudest heart when considering of what atrocities our nature is capable, left to its bad passions unchecked by religion, unawed by a sense of God's power and justice. The malignity in which your crime was committed, and the desperate, unrelenting cruelty and boldness with which it was executed, teach us that however exalted above other animals man is when under the guidance of conscience and reason, he also transcends them all in ferocity when loosed from those moral guards and checks.

The beast of prey, impelled by instinct, devours to satisfy an appetite for which he can no otherwise provide. He but obeys the law of his nature; but man, in intellect a little lower than the angels, rebels against his better nature; and preys upon his fellow from hatred, malice, revenge, passions which if left alone in his heart, make him worse, more cruel, more ferocious than those animals whose natural food is blood and who are cruel only from necessity.

There is reason to believe that you had long brooded over a supposed injury from the victim of your revenge, and meditated his destruction; having suspended it only till you could strike with sure effect, and contrive the measures of escape from justice. That you decoyed Kennedy to your house under the pretence of friendship and hospitality, and there, when no human eye could witness the barbarous deed, with one deadly blow you extinguished his life, sending this defenceless, and to all appearance unoffending young man, one of your own nation and kindred, to his great account, before that tribunal where you also must soon appear to answer for this atrocious act of wickedness. His mangled body, scorched by the fire into which the blow had precipitated him, with ruthless hands you dragged down into that cave of horror, where for days and nights before you had probably been employed in preparing a grave to bury and conceal it.

Even in this dismal retreat, shut out from the blessed light of heaven, and busied with the frightful inhumation of your murdered victim, "there were no com-

punctious visitings of conscience," for from thence you sallied, your crime unpunished, and its proof as you thought in the bowels of the earth, to plunder the little stock of him you had murdered.

You fancied yourself safe, because your dreadful orgies were seen by no human eye, and you regarded not that eye which penetrates darkness itself, and sees all things at all times and in all places.

Yet you were hurried by the worm within you from the scene of your guilt; for the guilt of blood leaves no peace to the heart however hard, or the conscience however seared.

The fear of God cometh even to the wicked, when stained with blood, and from the time of the first murder to this its parallel, he who hath imbrued his hands in innocent blood, has never been able to hold his head erect, or wear the port of innocence.

You were safe from the hands of justice, in a distant city, ready to embark for your native country, exulting no doubt in the accomplishment of your revenge, and in your security from punishment. But an Almighty hand guided your steps, and you were brought into the presence of the only man in a great and populous town who was able to recognize your person and deliver you over to the law. Thus the very means adopted for your safety, were made the instrument of detection, and you were permitted to flee only to ensure the manifestation of your guilt.

Is there no Providence in this?

How is it that those who meditate murders do not see that a brother's blood will cry from the ground, and that every step they take will multiply the proofs of their crime.

Years may pass away in fancied security, and the crime be almost effaced from the memory of man, and yet soon or late murder will speak out, and overwhelm its perpetrator with confusion and dismay. And if not, is there no hereafter? Shall he who has said thou shalt not kill, suffer his law to be violated with impunity?

Is there no punishment in store for those who destroy God's image upon earth, and escape the vigilance of

human tribunals ? Vengeance is mine, saith the Lord, I will repay.

Is death here the expiation of a crime of so deep a die ? Reason and Revelation, answer no. The offence against human laws is expiated by death, but there is a dread account to come. The momentary pangs of death as inflicted by our laws are no more, not so much perhaps as were suffered by the innocent victim of revenge. There must be a suffering for the unrepenting sinner beyond comparison greater.

These things are set before you, and the enormity of your crime portrayed thus in mercy, that if possible they may work upon your conscience and prepare the way for repentance ; What then is your condition, and what the work you have to do ? You will probably be spared a few weeks of life, to make your peace with Heaven—Whatever sins you have committed in your evil course, ought to lay heavy upon your mind.

Your time is short, your work is great ; begin then to set your heart in order, bow yourself to the offended Majesty of heaven. Listen to the holy men who will offer to help you to repentance—subdue those malignant passions which have led you to this enormity. And when you come to die, may you have a broken and contrite spirit, that you may be a fit subject for that grace and mercy, which are in store for the vilest of sinners, if he sincerely repent and turn from the evil of his ways. Hear then the sentence which the law awards against you.

It is, that you be removed from this bar to the prison from whence you were taken, from thence to the place of execution, and that there you be hanged by the neck, until you are dead, and may God of his infinite goodness through the merits of the Redeemer, have mercy upon your soul.

N. B. The prisoner seemed all along to have labored under a false impression, but too prevalent, that unless there should be positive and direct testimony of his committing the murder, by some one who was eye witness to the scene, he could not be convicted according to the laws of this Commonwealth—This fatal mis-

take ought to be corrected, it is wholly without foundation—most of the convictions which occur are upon circumstantial evidence, and every one conversant with Courts knows this sort of evidence to be competent and legal, and that it oftentimes is as satisfactory as direct and positive proof and sometimes more so.