

W. J. C.

TRIAL OF
THOMAS RECTOR,
FOR THE MURDER OF
ROBERT SHEPHERD.

At nine o'clock, on Tuesday morning, April 24, Thomas Rector was put to the bar for the wilful murder of Robert Shepherd. The honorable John P. Cushman presided, and with him were associated Judges Lansing, Holliday, Hilton and Holmes. For the prosecution, appeared the District Attorney, Rufus W. Peckham, Esq. assisted by Edward Livingston and Samuel Stevens, Esq's. For the prisoner, were retained Ambrose L. Jordan, of Hudson, James McKown, Recorder of the city, and Henry G. Wheaton, Esq's. The prisoner's appearance had undergone considerable alteration since the period of his commitment. Throughout the trial, his demeanor was evidently that of a man fully sensible of the awful position in which he was placed. When put to the bar, and the usual inquiry whether "Guilty or Not Guilty," asked him, he replied in a firm tone, "Not Guilty." The clerk of the court then proceeded with the jury panel. Out of thirty-six jurors returned indiscriminately from the city, from Bethlehem, New-Scotland, Guilderland, and the adjacent towns, eight of them only were found unprejudiced and competent to take their seats in the jury box. The sheriff was then ordered to return 24 additional jurors, and at 11½ the court adjourned to afford him time to summon them. At 3 the court reopened, and the clerk proceeded to call the list of talesman, and with considerable difficulty a jury was obtained. Their names were John Hilton, Joseph Mead, James Ramsay, John Arkles, Isaac Norton, John Kerr, John Soup, Aaron Van Schaack, David Lockwood, jr. James Winne, Frederick Markle, Joseph Robinson. Out of 56 whose names were called, 6 only were peremptorily challenged by the prisoner's counsel. The jury having been sworn, Edward Livingston, Esq. opened the case on the part of the people, as follows :

GENTLEMEN OF THE JURY:—On behalf of the people, I am called to address you in a case of deep and solemn importance to public justice and to public morals, and likewise of vital interest to the prisoner at the bar. Of some extent of the popular excitement felt in this case, you

may judge from the different reports in circulation, as well as from the fact before your eyes, when juror after juror has appeared on that stand and called to testify under the solemn obligation of an oath, that he stands indifferent between the people, on the part of the prosecution, and the prisoner, whose life awaits your decision, have been found incompetent to discharge that duty, owing to the prejudice they have already imbibed. But I trust that matter will in no way influence *your* verdict—for, if I understand correctly, you have each of you made that solemn adjuration that binds you to the throne of eternal justice; that you do stand indifferent, and are prepared to render such a verdict as shall accord with justice, and shall be consistent with the evidence upon which this prosecution will rest. To you is confided that important part in the administration of justice, which is permitted to be administered on earth. The excitement manifested in this court; the community in general testify an interest not arising from mere curiosity, but from that pervading interest we all feel in favor of the well being of our species, and which I trust you will think with me, to be a right and commendable interest. The case upon which you are sworn to adjudicate, will be to you in after years one on which memory will revert with a feeling of satisfaction at having fulfilled the highest obligation that can be imposed upon you, viz: that of administering justice in a cause wherein depends the life, the existence of a fellow-citizen. It would ill become me on the part of the people to say any thing that would tend to the prejudice of the rights of the prisoner; but as it will be long before you will be again addressed by my associates, it becomes my duty to warn you of what may be the consequence of giving too much weight to the arguments of the learned gentlemen opposed to me. We know the important advantage which a prisoner's counsel has in opening a case of this description—and we know, too, that the evidence herein is to be followed by the eloquent and impassioned addresses of two learned gentlemen highly eminent in their profession, the same of one of whom has extended not only throughout an adjoining county, but throughout the state; and that you will have to decide on that evidence, distorted as no doubt it will be attempted to be made by the ingenuity and great professional ability of my friend Mr. Wheaton, than whom a more able and experienced lawyer and eloquent man does not practice at this or any other bar. I complain not that our institutions accord to the prisoner the right of availing himself of the talents and ability of such counsel as he may think fit to employ—I complain not that we have arrayed against us men of the greatest eminence and ability in the profession—but it does fall within the scope of the duty assigned me to implore you not to allow prejudice to usurp the place of sober reflection within your minds, and to endeavor to bring you back to a sense of the duty you are called on to discharge, which is to render that verdict that shall be consistent with the evidence you shall hear. As regards the law, there will, I presume, be but little question. The prisoner stands indicted for the awful crime he is charged with, having, on the morning of the 11th March last, assaulted one Robert Shepherd, thereby inflicting such injuries as to cause his death within a short period afterwards. The language of the Revised Statutes declares that murder consists,

“1st. When perpetrated from a premeditated design to effect the death of the person killed, or of any human being:”

“2d. When perpetrated by any act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual:”

"3d. When perpetrated without design to effect death, by a person engaged in the commission of any felony."

What the Legislature meant in this enactment, by design in cases of murder, is exemplified in the case of Enoch, for which I quote the 13th vol. Wendell's Reports, which leaves the law as it regards murder, as far as the individual in question is concerned, precisely as it stood at common law. Now with regard to malice, it is either expressed or implied—expressed as from the previous declaration of the party accused, or implied, such as shooting in a crowd, or it may be inferred from the character of the weapon used. As regards each of these cases, I will state to you the law that applies to it. If, in the course of the evidence it shall be shown to you that the prisoner struck the deceased without provocation, or upon a slight provocation, with unnecessary violence, so as to cause his death by means of the club I hold in my hand, you will not hesitate to find him guilty, and to award to him that degree of punishment which the awful nature of the crime charged to him deserves. For this position, I shall refer you to Blackstone's Commentaries, page 200. Thus the law implies malice wherever the life of man is taken by another, without any or without considerable malice, which has been the uniform law, not only in this country, but also in that from which we more immediately derive our laws and descent. I next cite 1st Russell on Crimes, 438, for the purpose of showing you that where the violence used is of that excessive character as to cause death upon a slight provocation, the law infers malice as well from the degree of chastisement, from the weapon used, from the relative size of the parties; the one being a large and powerful man as was the prisoner; and on the other hand, the deceased being of a delicate and slender form. On the part of the people, we shall produce to you the hat worn by the unfortunate deceased at the time of the assault, with the marks of blood on the lining; we shall show to you the instrument occasioning the fatal injuries and the manner in which the blow was struck; and we shall clearly and uninterruptedly trace the death of the deceased to the wounds inflicted. This is a case in which, if any doubt shall be raised in your minds, the prisoner is most certainly entitled to the benefit of it; but it will be clearly proved beyond contradiction, that the prisoner struck on the head of Shepherd, a most violent blow—and that the club was raised a second time will be beyond dispute: we shall show that on the night of the 11th March last, the unfortunate deceased was at the Mansion House; afterwards at Stanwix Hall, and that he then returned to the hotel I have named, and at the solicitation of his companions, accompanied them to the house of Thomas Rector, in Pine-street, (and it will be for the opposing counsel afterwards to shew if they can, his character ever to have been attacked before); that upon his arrival there, and one of them demanding admittance, they were refused by the prisoner's wife under pretence of the ladies being all engaged; one of the individuals used rather an hasty expression, saying, "By God I will come in," but instantly turned and left the stoop and proceeded for a considerable distance from the house; we shall show to you, that in a moment or two after this, the prisoner at the bar opened the door, approached Shepherd, who was standing off the stoop and struck him a blow with such violence as to fell him to the earth; and that immediately after he made another blow at him, we shall offer proof so conclusive that it will make a stronger appeal to your understandings than language itself; we show you by this cast of the face of the deceased, the exact situation of the flesh wound in the fore part of the

head; and we shall also show by the production of this skull, the exact spot where the wound was inflicted, of which he shortly afterwards expired; and from this, the real skull of Robert Shepherd, you will infer better than all the imaginary inferences of the character of that blow; and when you look at this mass of evidence and view this skull as that of a man who received his death wound in consequence of a civil inquiry made by one of his companions to be received into this house of public prostitution, at an hour of the night not unusual for young men to be admitted, you will view this case as very different from one in which the house of a quiet and orderly citizen may have been assailed at the dead hour of night, and the peace of himself and family invaded; and would that authorize the prisoner, a tall and powerful man, as you observe him to be, after a couple of moderate raps at the door, and an expression by one of them that he would come in, to take this formidable weapon, and to strike Shepherd so violent a blow as to cause his death. Judge from the weapon yourselves, gentlemen, and decide what would be the probable effects of the blow produced by it, and viewing that blow in connection with the visible consequences of it, upon this skull, you can have no doubt that a more gross and vindictive murder has seldom, if ever, been committed. The facts of the case presented to you on the part of the prosecution, will be that immediately after the blow was struck by Rector, Shepherd fell; that shortly after Whitney observing him while falling, went to him and assisted him to rise; that his other companion arriving, went for the purpose of procuring assistance to the American Hotel; that during Wilson's absence, Shepherd partially recovered; that with Whitney's assistance he arose and walked for a short distance, but being faint and unable to proceed far, Whitney sat him on the side walk, where he was rejoined by Wilson, who had not been successful in his application at the American for aid; that being a little better, with the support of Wilson and Whitney, he was enabled to proceed in the direction of the office of Drs. Wing and Boyd; that having proceeded as far as the house of Mr. Corning, in State-street, he was unable to proceed further, and rested himself upon that stoop; that he here exhibited all the symptoms that a man would exhibit who had received such a wound; a feeling of sickness at the stomach and violent retching then ensued; from there he was able to proceed to the office of Drs. Wing and Boyd, where the injuries he had received were examined by a medical student; here the wound on the top of the head was dressed by Dr. Groesbeck, that being the only one at that time discovered; from thence he was taken to the Mansion House, where he was put to bed by his companions, and in that house and within thirteen hours after he received the blow, the unfortunate individual died. In a case of this description, you are to take into consideration what is the law of the land, of which, as well as of the facts, you are the constituted judges. It may be attempted to be proved that the skull of Shepherd was a remarkably thin one, and that such a blow might not have killed a man whose skull was of ordinary thickness; that is, that it might not have had that effect upon the skull of one of the African race. But the law of the land affords no such justification. A powerful man, with such a weapon and on slight provocation, has no right to speculate upon the thickness of the skulls of his fellow-beings. If he perpetrated an act dangerous to human life, the law implies malice, and it is no extenuation of his guilt, for his opposing counsel to contend that the assault was committed to preserve the peace of a house of public prostitution, of which he was the avowed keeper; and held the lure enticing men to be there at all

hours of the night, and himself seducing them from the paths of virtue, either by the reputation of the house, or by the delicacy of his wines, or by the beauty of his women.

It does not, indeed, lay within the strength of the accused party, that upon the night in question, the unfortunate Shepherd and his companions were upon a guilty errand; but if they were, it was the character of the prisoner's house that enticed them to be there, and it ill become him to contend that he has the right to exercise that cruel power of striking him to the earth and putting him out of existence; cutting off a young man full of hope and promise, dear to his friends and connections, in the bloom and dawning of his existence. I trust, gentlemen of the jury, that the issue of this melancholy occurrence will be to sound forth to this outraged community with a trumpet tongue, that they who keep such sinks of pollution, as well as they who become frequenters of them, will assuredly be brought to that condign punishment which the prisoner at the bar will certainly suffer, if we satisfy you that he is guilty of the crime with which this indictment charges him. Independently of the testimony of Whitney, who will depose to the first blow having been struck; an inmate of the house for that night, of the name of Charles Radliff, will be produced, who saw the club raised a second time, and saw Rector standing over in the attitude of striking. He will tell you when the first blow took effect, so violent was it that it sounded like the report of a blow struck upon a drum-head that was unstrung. Then, gentlemen, if we make out these facts; if we show you that these young men came to a house of the kind I have named, about 1 o'clock at night; that one of them commenced talking civilly with the woman of the house, and inquired for a Miss Johnson; you will be satisfied that on the slight provocation of a gentle rapping at the door of a house of ill fame, affords no justification for Shepherd's being stricken out of existence in the flower of youth by the keeper of that establishment. The case presented to you, gentlemen, is one on which the great mass of the community have an immediate interest; I am now supposing that the opinions of this great mass have been formed upon mere rumors; but if the whole proof be taken down, what then would be the judgment of all men of common sense? From the killing of a man without provocation, the law implies murder; but whether there be malice, must be inferred from the nature of the instrument used, and the manner of inflicting the chastisement; but it will be for you to decide, whether the rapping at a house of prostitution at that hour of the night, is a sufficient provocation. He could not regard men who were coming to his house to spend their money as coming for an improper purpose; he could not think that men who were at his house at his own invitation were there for an illegal object, and therefore the injury was one most wanton, most outrageous and entirely unprovoked, for there is no pretence that the prisoner can set up this day, that will not be entirely disproved by express testimony. Does not the common law with respect to murder speak the language of common sense? If there was any attempt at breakieg into the house of a respectable citizen, in such a case, the party whose residence was assailed would have the right to make use of such force only as was necessary to repel the attempt made by the other party. But so far as regards this application of the principle, so far as we can judge, we believe the facts to be that there was no violence made use of, there being no actual assault made upon this house; there was nothing more than an ordinary and usual rapping at the door, and that it was while young Shepherd was actually standing away from the stoop, the injury was inflicted by Rector, who struck him while

in an elevated situation, so as to give more violence to it. Considering the relative size of the parties concerned in this conflict, the circumstances of the whole transaction, and the absence of all provocation; divest the offence of the prisoner of the garnishing and false colouring which ingenuity has cloaked it with, and a fairer and a clearer and less difficult case has never been presented to a court and jury. The danger of the weapon used must necessarily depend upon the circumstances of the case; and you, gentlemen, being judges of the law as well as of the facts, will have to take the whole conduct of the prisoner into consideration, and then to say whether this was or not a dangerous weapon; regarding it in the manner in which it was wielded by the prisoner. Or if you are satisfied that it was used in a cruel manner, or with unnecessary severity; if you are satisfied from the form and extent of the wound; if the character of the parties giving testimony be entitled to credit, then, in the judgment of the law of the land, in the judgment of common sense, in the judgment of humanity, in the judgment of that law which presides over us and which will not continue to reign over us so as to give us a peaceful and quiet government, when the land in which we live is stained by the blood of her citizens, and that blood not appeased by a verdict of a jury of the country: the prisoner is guilty. I know well in this case you will be assailed as is perhaps right, by every argument which ingenuity can devise; that you will have to listen to an impetuous torrent of eloquence, calculated to sweep from your mind its firm hold of reason; that you are to be appealed to by an advocate the most learned and able that can be procured in this or the next adjoining county; by my learned friends, the ablest counsellors in the state; men well skilled in making the worse appear the better cause, and I feel the deep responsibility which devolves upon me as one of those acting on behalf of the people, and call on you to keep your mind clear and free from bias; to consider your mind a blank sheet of paper, and to let the only impression they receive be from the mouths of the witnesses, and not from the statements of counsel. Draw then such inferences only from their mouths as will justify to yourselves that verdict you will feel bound to give.

William W. Whitney, of Schenectady, examined by *R. W. Peckham*, Esq. Q. Did you know Robert Shepherd, the deceased. A. I did. Q. Were you in company with him on the morning of the 11th March last; and if so, in what places. A. At the Mansion House, Stanwix Hall, the Mansion House, and afterwards to Pine street. Q. Who was with you, when you went from the Mansion House to Pine street. A. John O. Wilson. Q. Relate to the jury what time you got to Pine street, and what occurred there. A. I should think it was nearly one o'clock in the morning. I got to Rector's a little ahead of Shepherd and Wilson, and went to the door, and gave an ordinary tap. After knocking at the door, Mrs. Rector came to the window, and I asked her to let me in; she said she could not open her doors so late in the morning, and that all the ladies of the house were engaged. I asked her if Miss Johnson was engaged; she answered, she was. We had some further conversation, which I do not recollect, and I turned round as she shut the window and left it. Q. Was it moonlight that night. A. It was—Wilson and Shepherd, then came up; I told them we could not get in, and related the conversation I had with Mrs. Rector at the

window. Wilson then went to the door, and knocked. Thomas Rector came to the same window, & we asked to come in. Rector said that we could not, and made about the same answer that Mrs. Rector had given me. Rector then closed the window, and Wilson as he did so—said that he would come in, using an oath the exact words of which, I do not recollect. It was by God, or Jesus Christ, I will go in. Rector replied from the inside, you had better try it; the window was then closed. Wilson immediately turned and went down the street, about the distance of 15 or 20 feet. When he went down, Shepherd and I were standing on the sidewalk in front of Rector's door. By the court.—How far were you from the door. A. Right in front of it. Q. Do you recollect about how many steps there were from the sidewalk to the stoop. A. I do not. There were more to the east end than the west end, perhaps two more. Shepherd and I had been standing there about a minute and a half, or two minutes, when the door opened, and Rector came out with his club raised, and struck Shepherd over the head, and Shepherd fell. I then saw the club raised a second time, and supposed it was intended for me, as Shepherd had fallen. I turned my face and jumped off the sidewalk, and as I sprung out of the way, exclaimed, "don't strike me," thinking Rector was behind me with the club raised. By Mr. Jordan. You need not tell sir, what you thought. Mr. Peckham resumed. Q. When the prisoner struck the first blow, where did he stand. A. He stood on the stoop. Mr. Jordan, Why does the gentleman talk about the *first* blow—has the witness sworn that he saw any other struck Mr. P. How far did you stand from Shepherd when he was struck. A. About two or three feet, I stood facing the door, a little to the west of him. Q. In what position was Shepherd at the time you turned to run. A. He was falling with his left side towards the walk, in an angle of about 45 degrees. He was about half way down between his erect position and the earth, when I turned my face to run. Q. Which way was his head directed. A. Towards east a little north of east. His head was towards the edge of the sidewalk. Q. How was Shepherd then. A. He was between me and Rector when the club was up so as to strike the second blow. He was then falling between me and Rector. Q. When you returned how did you find Shepherd? A. He was lying on his left side. Q. Where was Rector then? A. When I turned to come back he was just going into the door. I then went to Shepherd and attempted to raise him up. As I took hold of him I put my left hand on the back part of his head, and I thought my fingers pressed into the skull a little. As I was raising him up Wilson came and asked what was the matter. Shepherd replied,

Mr. Jordan—Do not tell Shepherd's statements, sir.

Mr. Peckham—Tell what you next did. A. Wilson then proposed going to the American for assistance, and went. While he was gone I raised Shepherd up and walked him towards the American. He recovered his strength so as to be able to get

up. Q. What occurred on the road between Pine-street and the American. A. We walked together as far as the corner of Chapel-street and Maiden Lane. He then complained of being tired and weak, and requested to sit down, and I sat him on the side-walk. Q. About how long did he lay before you took him up. A. Not more than two or three minutes. Q. What occurred when you sat him on the side-walk. A. There were two young men on the opposite corner, and I called to them for assistance. Wilson got back about the same time. Shepherd recovered a little, and we raised him up again and walked him towards the door of the American Hotel. Q. In what manner did you walk with him—I mean as to supporting him. A. His arm was round my neck and mine was round his waist. I think Wilson was on the opposite side of him. Q. About what sized man was Shepherd. A. little taller than myself, (the witness was about 5 feet 4 inches) he was about two or three inches taller than myself. He was very slim, and that made him appear taller. When we arrived at the American we asked the porter to let us in and give us a room—he could not, they were all engaged. Q. While Shepherd sat on the side-walk at the corner of Maiden Lane, what symptoms did he exhibit. A. Sickness at the stomach, and faintness. Q. Where did you go from the American. A. He wished to sit down. I then took him up to Mr. Corning's steps and sat him down. Q. What symptoms did he exhibit there. A. He still wished to vomit. We then took him to Dr. Wing & Boyd's office. The young man, the student, got up, and we sat Shepherd down on a chair, and Wilson started for Dr. Boyd, and returned without him. I then proposed to go, and Wilson and myself started off for, Dr. March, leaving Shepherd and the student in the office. We went to Dr. March's office and rapped four or five times, and no one answered. I then said "there must be something done for poor Bob," and proposed going again for Dr. Boyd, and Wilson went with me and knocked at the door, and a lady came to the window up stairs. I asked if Dr. Boyd was in, and she said he was not, and advised me to go for Dr. Groesbeck. We went there and Dr. Groesbeck went with us to Wing & Boyd's office, and he dressed Shepherd's head. Wilson and myself then took him down to the Mansion House and put him to bed, the porter at the Mansion House assisting us. Q. When did you see him after putting him to bed. A. I have never seen him since. I left for Schenectady by the nine o'clock cars on the Sunday morning. Q. You mentioned when the blow was struck you and Shepherd were on the side-walk. At what time did you leave the steps. A. At the same time Wilson left—we all went off together. Q. What did Shepherd do at the house in Pine-street. A. He merely stood on the stoop, he never said any thing that I recollect. What symptoms did he exhibit at the Mansion House. A. Sickness, and complained of a pain in his head. Q. Was the club, when Rector gave the first blow, in both his hands. A. It was. Q. What were you engaged in at

the Mansion House when there. A. Six or eight young men sat together in a side room drinking some wine. Q. How much wine was drank there. A. One bottle of champagne. Q. What kind of blow was the first blow as to force. A. I should think it a pretty hard one. Rector came out softly, and the club seemed to come down very swift from off both his shoulders.

Cross examined by Mr. Wheaton.—Q. What time in the day, on Saturday, did you come from Schenectady. A. About half past two o'clock. Q. After you came to the city where did you go. A. I believe I stopped in Frothingham's drug store, and made one or two other calls, which I do not recollect. Q. Well sir, after you got through with your rounds, where did you then go. A. I went to the Franklin House and took tea. Q. After you left the Franklin House where did you go. A. To the railroad office: While at the Franklin House made an arrangement to go to Stanwix Hall that evening. Q. Did you drink any thing before you went to the Hall. A. Not that I recollect; I may have drank once in the forenoon. Q. Who was in your company before you went to the hall that evening. A. Shepherd was. Q. Did you drink at the Mansion House. A. I do not recollect whether I did or not. Question. How long did you remain at Stanwix Hall. A. Till the party broke up. Q. Do you recollect how many times you drank while there. A. Not more than two or three times. Q. What did you drink. A. Brandy and Water. Q. Was Shepherd in the dancing room at all. A. No, I think not. Q. Where did you see Shepherd and Wilson. A. In the dressing room. Q. Is there a bar there. A. Yes, sir. Q. Do you not recollect drinking at that bar as much as five or six times that evening. A. I do not. Q. When you left Stanwix Hall where did you go next. A. To the Mansion House. Q. Who accompanied you to the Mansion House. A. Wilson, Shepherd, and six or eight young men. Q. Did you drink at the bar after you went to the Mansion House. A. I think I did, once. Q. How long had you been there before the champagne was called for. A. Probably about half an hour. Q. Were you not in the bar-room at all during that time. A. For a short time, only, when we first went in. Q. Can you tell how many of you drank of the bottle of champagne. A. I could not, six or eight, certainly. Q. Was there any thing brought into the room besides the champagne. A. A bottle was brought in with whatever liquor the other young men drank. Q. How much was there in the bottle of that other liquor. A. About two-thirds full, I think. Q. Was it a quart bottle. A. It was a common decanter. Q. Did you drink out of that bottle after it was brought in. A. I did not. Q. did Wilson. A. I believe not. I did not see him. Q. Before you drank the champagne did you discover that Wilson was intoxicated at all. A. I thought he was under the influence of liquor a little. Q. How did he show he was under the influence of liquor. A. By being noisy and boisterous. Q. How many glasses of that champagne did you drink. A. I drank a part of a tumbler full. Q. Did Shep-

herd also partake of champagne. A. I think he did. Q. Did you drink as much as the rest. A. It was divided about equally, but I do not know whether I drank the whole of mine or not. Q. After you had got through with the champagne, about what time do you think it was. A. About half past twelve, I think but had no means of judging the time accurately. Q. I suppose a tumbler full of champagne does not usually produce any effect on you. Q. When you left the Mansion House was Wilson so intoxicated that he needed assistance. A. No, sir, he was then able to go home, but we were afraid if we left him he would grow worse. Q. Then champagne sometimes makes him worse. A. Sometimes. Q. Did you see Wilson drink anything except champagne after he came to the Mansion House. A. I saw him drink at the bar. Q. How far did you get up Market-street before you knew where you were going. A. We were between the Mansion House and Maiden Lane. Q. Do you recollect who proposed going to Rector's, and whether it was not yourself. A. I do not know. Q. Did Wilson get worse, as you anticipated. A. No, he grew better upon going into the open air. Q. In Walking to Pine-street, did you not make considerable noise. A. I think not. I went ahead of Wilson and Shepherd after we got past Maiden Lane. Q. When you got to Rector's had they turned the corner of Pine-street. A. I think they were just on the corner when I got there. Q. When you got to the house how many times did you rap. A. Once or twice. I rapped the second time very soon after the first. I did not wait more than a few seconds after the first rap. Q. Did you not rap the second time pretty hard. A. No, sir, I did not, it was nothing but an ordinary rap. Q. How long did you wait after rapping the second time, before some one opened the window. A. A few moments. Q. Had Wilson and Shepherd got to the stoop at the time Mrs. Rector came to the window. A. I think not. Q. Was Mrs. Rector in her night clothes or in her common dress. A. I do not recollect. Q. What was the subject of your conversation with Mrs. Rector after she had told you she could not let you in. A. I asked her if Miss Johnson was engaged, and who was with her. Q. Did Shepherd & Wilson join you before Mrs. Rector closed the window. A. I think a moment or two before. Q. What did Wilson do after you told him Mrs. Rector said she could not let you in. A. He said he would try them, and went up and knocked at the door. Q. Did not Mrs. Rector again open the window after Wilson knocked. A. I think she opened it after she had partly closed it. Q. Now, sir, can you swear that Wilson did not kick at the door. A. I can. He did not kick at the door. Q. Was it before or after Wilson knocked that Mrs. Rector opened the window the second time. A. I think it was before. Q. How long was she at the window. A. About a moment, and closed it again. Q. Who opened the window after Wilson knocked. A. I cannot say, but Rector put his head out. Q. How many feet were you standing from Rector at the time. A. Five or six feet. I stood

on the stoop between the door and the window, near the edge of the platform of the stoop. Q. What was the conversation that took place between Rector and Wilson at the window. A. about the same thing that I had had conversation with Mrs. Rector.— Q. Was it an angry conversatton or was it a pleasant one. A. A pleasant conversation. Q. After that pleasant conversation was through he closed the window, did he. A. Yes sir. Q. When Wilson swore he would come in, what did he do. A. He turned round, walked off the stoop and went down the street. Q. Where did you go. A. I walked with Shepherd on to the walk, right in front of the door. Q. When he shut the window he appeared to be pleasant and good natured; when he opened the door a minute or two afterwards, was he in a dreadful rage. A. I could not say he was. Q. When Rector opened the door was Shepherd standing on the side walk or on the lower step of the stoop. A. There is one step on a level with the walk, whether he stood on that or the walk, I do not know. Q. Were you standing as near the stoop as he was, or were you back of him. A. I was back and west of him two or three feet. Q. What were you doing in that position. A. I was neither doing nor saying any thing; waiting for Wilson. Q. After Rector opened the door, how many steps did he have to advance before he could reach Shepherd. A. Not more than 2 or 3 feet; one good long step would have brought him near the edge of the stoop. Q. Did you hear him while he was opening the door. A. I heard the door open. Q. Did you hear the bar drop. A. No sir. Q. Did he strike Shepherd the moment he came out. A. As quick as he could get the club down. Q. Did you hear the blow. A. I cannot say I did; there were many thoughts in my mind at that moment. Q. Do you know sir, whether he raised the club while Shepherd was falling. A. I saw it. Q. Shepherd you say fell east of the position where you stood, and you were to the west of Shepherd, and Rector stood right in front of Shepherd; was there any interval that Shepherd stood still after he was struck. A. I think not. Q. When he fell did he fall with his head towards the curbstone. A. Yes sir; he tottered after he was struck and did not fall very fast. Q. When he fell how much nearer was his head to the curbstone than his feet. A. About 18 inches or 2 feet. Q. What was the distance of his head from the curbstone when you found him. A. I should think four or five feet. Q. Where was Rector standing when he raised the bar the second time. A. On the edge of the platform of the stoop. Q. What made you think the second blow intended for you. A. I saw my friend fallen and I did not think he would strike a man down. Q. When you sprung into the street did you go further than just jumping off the sidewalk. A. I went right into the middle of the street. Q. You say when you turned round you saw Rector just going into the door; did you immediately return to Shepherd. A. I did. Q. When you got to him did you speak to him. A. I asked him if he was hurt; he made me no an-

swer. Q. When you attempted to raise him up, where did you first take hold of him. A. My right hand was on his coat collar, and my left was under his head. Q. Was it then, sir, that you discovered this fracture on the head. A. I thought something gave way beneath the pressure of my fingers, but whether it was the hair or the skull or what it was, I cannot say with any certainty. Q. That queer feeling you speak of excited your attention at the time, did it not. A. No sir; very little. Q. When this young man's head was dressed, did you mention to the physician that you thought you had made a discovery of an injury on the back part of the head. A. I told the medical student so. Q. Did you mention at the police office when you were examined, that you had discovered this fracture. A. I did not. Q. Nor before the coroner's inquest, nor before the grand jury when you were examined twice there. A. No sir. Q. How far had you raised Shepherd up when Wilson got to you. A. I had raised his head about a foot. Q. Did Wilson leave you to go to the American before you raised him up. A. No sir; he was raised up. Q. How long did he sit on the pavement after Wilson left you. A. A very short time, until he recovered his senses more fully. Q. Did he fall or sit down after he had walked with your assistance to the corner of Chapel-street and Maiden-lane. A. He sat down; that is, I eased him down. Q. Had Wilson returned before you sat Shepherd down, or did he come afterwards. A. After I sat him down. Q. How long did Shepherd sit on the sidewalk. A. Three or four minutes, I should think. Q. Now let us come to the doctor's office: did Shepherd tell Dr. Groesbeeck where he was hurt. A. I do not recollect whether he did or not. Q. When the wound in the front part of the head was dressed, was discovery made of any other wound except this pretended discovery of yours. A. No sir. Q. On going from Dr. Boyd's office to the Mansion House, did he require any other assistance than walking with his arm interlocked in yours. A. No sir. Q. Did you sit him down at all in going that distance. A. No sir. When you arrived at the Mansion House, did you stop in the bar-room at all. A. I told the porter what was the matter, and we made no stop there. Q. Did he walk up stairs without your assistance. A. He had hold of my arm. Q. In what part of the Mansion House did he go to bed. A. In the extreme back part, in the first room at the head of the stairs. Q. Did he undress himself. A. With the exception of his pantaloons and boots, he did.

Re-examined by Mr. Peckham. Q. Can you say whether Rector was on the edge of the stoop, on the platform, or on the first or second step of the stoop. A. He was on the platform when he struck the blow. Q. Where was Shepherd's hat immediately after the blow. A. The first I saw of it Wilson was fetching it towards the gutter.

Mr. James Cromwell, was called and sworn. The purport of his evidence was, that on the suggestion of Whitney, he examined Shepherd's head, and attempted to call the attention of Dr.

Groesbeck to it. In the course of the examination of this witness, a long argument ensued as to the admissibility of the statements of the deceased as evidence, which were rejected by the court.

The next witness was *William R. Coulson*, a constable of the Court, who identified the bar with which the prisoner struck the deceased.

Walter B. Thayer, a constable, was likewise sworn to the same point.

Dr. March, was then examined by Mr. Peckham. Q. Did you know the deceased Robert Shepherd. A. Not before I was called to him, on the Sunday morning before he died. Q. What were his symptoms when you saw him. A. Difficulty of breathing, laborious respiration, and at times stertorous. There was a clamminess on the surface of his skin, and cold perspirations, generally pretty profuse. When I first saw him slight convulsions of the muscles of the upper extremities; more particularly a moderate distortion of the muscles of the face occasionally. I observed that the pupil of his right eye, was much dilated, and that of the left, moderately contracted. Neither of his eyes seemed to be influenced very much by the light; his pulse was weak and frequent, from 120 to 130 in a minute; he did not appear to be conscious of anything around him; he lay in a sort of stupor, occasionally there seemed to be considerable agitation by the slight convulsive motions of the muscles. Q. Were any questions then asked him. A. Not in my hearing. Q. Did you examine his head, to see if you could discover any injuries. A. I examined the external wound, the one in the fore and upper part of the head. Q. Did you make the post mortem examination of the young man. A. I think it was about three o'clock on the Sunday that he died. Mr. Jordan, What time do you say he died. A. I was not present when he died, but I suppose about 2 o'clock. Mr. P. Describe to the Court and Jury, the situation of the wounds on the skull, you discovered on the examination after death. A. This cast was made by Dr. Armsby, and myself, after the death. It is a facsimile of the profile of the face of the deceased, and the red mark on it is designed to represent the wound on the scalp. We examined the wound after death, before we made any incision with the knife, for the purpose of ascertaining whether the wound extended to the bone.—Our first examination was directed to this wound; we found it was not cut through to the bone, it laid bare the tendinous portion of a muscle, called the occipitos pontalis. The muscle to which this name is given, extends over the whole head. There is a muscle at the back part of the head, called the occiput, and there is also a similar muscle in the front. Q. Explain what you mean by tendinous portion. A. Tendons vary, but they are the same that you understand as sinews. Q. What part of a muscle is it, you call tendinous. A. It is that which extends all over the top part of the head. Tendinous muscle is the lean fleshy part, and tendon is white gristle; the tendon on the top

of the head is of the same texture as this, which I hold in my hand, only spread out in a different form. Q. Do I understand you, that the front wound laid bare the tendinous portion of the muscle called occipitos pontalis. A. It laid it bare—we saw, and next divided the tendinous portion of this muscle. We examined the situation of the wound down to the skull, and found bloody serum between the tendons under the surface of the pericranium, which pericranium is the membrane that covers the skull. A membrane is that soft cellular texture that covers the bones. Q. What is the thickness of that membrane that covers the skull. A. It is not thicker than common bank-note paper. It is so thin that in taking it off, you can hardly keep it together. I then proceeded to divide the scalp from ear to ear, across the top of the head just behind the wound. I then peeled off the scalp, throwing it on the face, and backward on the back part of the head, and on removing it, discovered some effusion at the point where it was divided. The point where we divided it, was just across the part of the head cracked. The anterior part was first taken off, and on removing it, we discovered the fore part of the fracture. The fracture was sufficiently wide, to allow of the introduction of my scalpel. On throwing back the back part of the scalp, we found that the scalp in the situation of the depressed portion of the bone was very much contused, and great effusion of blood into the cellular portions. We next examined the depressed portion of the bone, and comminuted fracture; we then measured the extent of the fracture, from the fore part to the back—taking the line of the fracture, we made it 10 inches in length. The next operation was to measure the depressed portion: at one point, it was little less than the $\frac{1}{2}$ of an inch, so much depressed, that the handle of the knife would pass over the depressed portion, right above it. The extent of the depressed portion towards its upper part, is about an inch and a quarter across its upper and anterior point, near the back of the anterior prominence; the fracture of the depressed portion, is somewhat more extensive on the inner table, and more depressed towards the anterior part; the edge of the fracture towards the back part of the head, is a little more depressed, than towards the front part. We next sawed the skull to remove it, from its bases; the first that struck the eye, was a large clot of blood, three inches in one direction, and about 4 inches in another, and indicated on the skull by the dry blood you here perceive; the thickness in the clotted blood in the centre, was three quarters of an inch, at least. The clot was between the membrane, and the skull; the brain of Shepherd instead of being convex, was concave, depressing the dura mater, and pressing on the brain. The dura mater is the lining of the skull, immediately covering the brain. Pia mater, is a more delicate texture, coming in immediate contact with the brain itself. In the dura mater of Shepherd's head, were two rents, caused by the sharp edge of the depressed portion of the bone. One of the arteries in the dura mater, was torn across, which caused the

escape of the blood, the clot of which, covered the lacerations. The impressions of the arteries cause these marks which you see in the interior of the skull; there was very little blood under the dura mater, which was also but little clotted. We then examined the substance of the brain itself, by making horizontal sections, commencing at the top, slicing off pieces. We proceeded thus 'till we had dissected the whole brain, to ascertain whether there was any laceration, or effusion of the substance of the brain itself, but we found none. This completed the examination, with the exception, that on removing the brain, we discovered that the fracture extended deeper than we had before imagined; that it extended into the bases of the skull, almost through to the large opening, that transmits the spinal marrow. Q.—How was it with regard to the brain itself, being depressed. A. The brain was a flattened, or concave surface, instead of being convex; there was so much compression, as to make a hollow. It was the compression, occasioned by the blood pressing on the brain, that produced death. Q. What was the instrument probably, that inflicted the wound on the back part of the head. I speak of it, as directing your attention to this club. A. A club of that description, wielded edgeways, would certainly make a similar fracture. Q. Is there anything inconsistent in the symptoms, as proved by the witnesses, with the supposition of his having received both these wounds in Pine-street. A. No sir. Q. Was there anything inconsistent with his walking as he did, with that wound at the back part of his head. A. None sir, at that time—because the depressed portion of the bone, was not sufficient to interrupt the functions of the brain, the coagulum not being at that time formed. The symptom of concussion, and the symptoms of compression are distinct; the symptom of compression would exhibit themselves gradually, in the exact proportion that the coagulum itself increased, and made its pressure upon the brain. Q. How are the blood vessels about the brain, affected by a blow of this kind. A. The whole system of circulation, would be inverted by the concussion—occasioning the increased action of the arteries about the heart. Q. You have said that either of these would produce the same symptoms; to what extent do you mean. A. I mean the probability is, that either of them, would be sufficient to produce the symptoms of concussion, some of which, are like those of compression, but there is less torpor in concussion, than in compression. In the latter, the pulse fails considerably, and if the patient is attempted to be aroused, it will accelerate the pulse very much.—Q. After compression, does a patient ever recover his senses. A. After compression, a patient may get his senses, but he will not recover them, except the cause producing the compression is removed. Q. To what extent did Shepherd manifest symptoms. A. I think his being sick at the stomach, and being weak, and feeble, were the second stage of the concussion. The first stage is the insensibility; slight drowsiness, is also an attendant symptom of concussion. Q. Could the wound in front, have

been inflicted by the flat side of this club, with the hat on. A. I should hardly think it possible. Q. Could it with the edge. A. The blow through the hat, might have been occasioned in that way. Q. What was the external appearance of the wound at the back part of the head. A. It was puffy, contused, but not discoverable untill the scalp was removed. Q. Was that such a fracture as might have been produced by this bar. A. I should think it might. Q. If produced by the bar, how probably was it inflicted. A. I should think it was by the edge of the instrument, near the end. It could have been produced so, because the abrupt termination of the depressed portion is anterior, and if Shepherd was laying on the ground, he would then be in a convenient position for Rector to strike the head at the precise point, where the wound was, the end of the bar pointing towards the crown of the head.

Q. As this person was falling, might that wound have been produced? A. It might when he was near the side walk, because his position then would not have varied 6 inches from what it was when laying on the side walk. Q. Could the symptoms you saw in Shepherd at the time you first saw him, have been produced by concussion? A. I think not; they were then the symptoms of compression.

Cross-examined by Mr. Wheaton. Q. When you first saw the deceased, did you consider him in a dangerous situation? A. I did, sir. Q. What examination of his wound did you make? A. I raised the adhesive plaster and merely observed its external appearance. Q. Could you by examination with your finger under the cut, have discovered that fracture in the skull. A. I do not think I could. Q. When you were first called, did you consider that the symptoms exhibited were occasioned by that cut in the fore part of the head? A. I suspected that from that blow there might have been a centre fracture and effusion in consequence; and that the concussion might have been so violent that blood was oozing out on to the brain, or that the concussion was so great that it might have lacerated the brain. Q. Did you at that time pass your fingers over any other portion of his head? A. I do not think I did. I was in a good deal of agitation and confusion at the time, and the man appeared to be in a dying state, and I did not think we could do any thing for the patient so as to afford him relief. Q. What remedies did you apply? A. I cupped him from the opposite temple. Q. Was there any thing that you discovered in the wound on the front part of the head that was calculated to occasion death? A. I did not see any thing that would. Q. Do you believe that any fracture in the skull was occasioned by the wound on the front part of the head? A. I do not. Q. Have you any doubt that it was the wound on the back part of the head that occasioned death. A. No, sir, not the least. Q. Have you any doubt there were two forces applied to occasion the two wounds? A. No, sir. Q. Do you consider the wound on the front part of the head to have had any serious effect at

all. A. I should not in itself. Q. I mean as regards the whole effect of it on the head? A. That might vary my answer. A blow that was sufficient to inflict that wound by that weapon might be sufficient to lacerate the brain, or to produce the fatal symptoms of concussion merely, but I think there was no fracture produced by this. Q. Might that blow have been sufficient with the injury to the integuments of the skull, to have produced a state of mental aberration in the morning? A. It might produce some of the secondary symptoms of concussion. Q. Suppose the person had been in a state of excitement over night and received such a wound, would the natural consequences be to occasion mental delirium the next morning? A. It would be more likely to produce delirium from that cause. Q. Suppose you knew nothing about this cause, and that a skull was presented to you in the condition this now is, and your opinion asked whether a man having received such an injury might have had his senses to the extent the witnesses say Shepherd had? A. I should think he might. Q. After a person had so far recovered from the shock of a blow as to be able to get up and walk, would not the circulation be so restored as to cause the blood to flow in its usual strength? A. I should hardly think it would; if the man was so feeble as to require assistance to get along, that excessive action of the arteries would not have taken place so soon. Q. After a rupture of an artery of the description you say was cut, how long would it be before you would expect the patient to exhibit symptoms of compression of the brain? A. That depends how soon a reaction would take place; if the circulation should be restored in a few hours, the compression would take place sooner than if there were a more protracted state of circulation. Q. Have you ever known an instance in which so great a depression of the skull has been made without occasioning unfavorable symptoms earlier than in this case? A. I do not know but that I have. Q. Have you, hearing the symptoms detailed by other witnesses, discovered any one that you consider inconsistent with the fact, that the injury was done to the head of Shepherd at the time he was at Rector's door? A. I do not know that I have. Q. Do you think it at all probable that a blow could be applied with this instrument, having sharp corners, depressing the skull, as it appears here, and not have cut the scalp at all? A. Yes; for I suppose that the fracture extends somewhat beyond the end of the instrument. If the density of the body applied and the violence had been sufficient, then we might have had a fracture corresponding precisely with the shape of the club. Q. Suppose this man fell on a round paving stone, would it have produced a fracture a little the shape of the stone? It would. Suppose that the edges of this bar were rounded off and thus be made a round instrument instead of a square one, could not that depression have been as well made by it? A. Not quite. Q. If the instrument that was used to occasion that depression had been a perfectly flat surface, what occasioned the fracture in the centre?

A. I should infer that the end of the instrument not being applied to the full extent of the depressed portion, it would be liable to produce a fracture where the end pressed, and if less force had been applied, that it would have been a long straight fracture without any comminution or breaking to pieces. Q. Suppose this man had been struck with a paving stone, rounded off at the end, and that the apex of the stone had struck him, would not that have been more likely to have produced precisely such a wound than this bar? A. Yes, if applied with sufficient force. Q. Do you not believe that the transverse fracture was occasioned by the greater force being applied to that point? A. About that point, not far from it.

[The skull was handed to the doctor to mark the precise spot where, in his opinion, the principal application of the force had been.]

Re-examined by Mr. Peckham. Q. In case this fracture had been produced by a round stone, would it not have been apt to produce a fracture as much below as above? A. I think it would. Q. Would not the depression in the centre be generally the greatest and on the sides less? A. Certainly. Q. Supposing this fracture had not existed, and one blow only given in front, would the patient have been apt to have been insane within three or four hours after he had recovered his senses? A. It depends upon the shock given to the person. Q. Would a person simply falling on the walk with his head downwards and falling on a stone, have produced such an injury as that? A. I should not think it would, unless thrown with considerable violence. Q. A man falling from an ordinary surface, what part of the head would be apt to hit? A. If he fell backwards on a plain surface, he would be likely to strike the exact back part of the head; if he fell laterally he would be likely to strike the side; if he fell forward, he would of course strike the fore part of the head.

By Mr. Jordan. Suppose this young man had stood elevated on the first step of the stoop, and had fallen backwards, would that have had a tendency to break the skull higher up? A. Yes.

Mr. Peckham. You have said that you could not discover the fracture in the skull where you felt, because there was then a considerable effusion of blood; had you, therefore, as good an opportunity of discovering it as any one would have had who felt it, when the wound was first inflicted? A. No, sir; nor near as good. Q. Did this flesh wound extend as far as the skin that covers the bone in the head? A. No; down to the tendon occipatus pontalis. Q. If the back part of the head were pressed by the fingers after the back wound was received, what would naturally be the action of the patient? A. It would have produced great pain. Q. If a patient is pressed upon the head in a state of slight stupor, would not the natural result be, that he should try to get his head away? A. Yes; or try to shake the pressure off.

At 4 o'clock on Wednesday, the District Attorney said that he would here for the present rest the case of the people.

Mr. Wheaton opened the case on the part of the defence, as follows :

Gentlemen of the jury. Thus far, gentlemen, you have had an opportunity of listening to one side of the case only, and as you have heard nothing either said or proved in favor of the prisoner, I shall presume that you have kept your minds open to the conviction that you are not to allow the testimony you have heard, to produce any impression, which evidence explanatory or contradictory, may not have its due weight in influencing.

You were reminded by the counsel who opened this case, of its extreme importance, as well to the prisoner at the bar, as to the community at large. You need not have been so reminded, because I apprehend that the importance of the trial, and of the occasion that called you here, has already been most solemnly impressed upon your minds. You are aware that the position in which you are placed is one of the most responsible that ever falls to the lot of a member of our community. You are aware that in a case of this extreme importance, you are by the laws of your country constituted the judges who are to pass upon the life or the death of a fellow being, an occasion of sufficient moment to impress itself upon your minds, without any thing being urged on the behalf of the prisoner; and it is that extreme importance that has made us, while selecting you, to be so cautious that no man got into that box whose mind had been unfavorably impressed towards the prisoner, or had imbibed ideas on the side of the people. From the very exhibition that we then had—from the number of individuals who, called indiscriminately from the community, testified under oath that impressions had been produced upon their minds, such as to render it impossible for them to give to this prisoner a fair and impartial trial. And there are other circumstances which render it still questionable with us, whether impressions may not have been given to some member of the jury that is now to pass upon this case. I am well satisfied that no man would enter that jury box who felt there was such an impression on his mind; but I know too well of how subtle and deceptive a nature is prejudice, as it is not only unknown to the party who is influenced by it, but the very fact that it is prejudice, presupposes that the party himself is unconscious of it. I know that the story of this transaction has gone abroad, that it has been disseminated far and near, but I know that it has been presented to the public view in any light but its true light—distorted and disingenuous accounts have been propelled to the four winds of heaven—exertions have been made to give a false coloring to the melancholy occurrence—the public press, for some reason or another, (whether corrupted or not, I know not,) has also given credence to slanders that have no foundation in fact; but gentlemen, notwithstanding all that has been done to prejudice this prisoner from having a fair and impartial trial, his counsel repose themselves with perfect confidence upon the laws of the country; they are satisfied that those laws have provided a way in which a prisoner, not-

withstanding all unfair influences, may still be tried by a jury of twelve honest and unbiassed men. Such a jury I am bound to believe I have now the honor of addressing—by such a jury is this prisoner now to be tried; and if we could once make up our minds that the judgment upon this case is to be pronounced upon the facts and upon the testimony produced upon that stand, without reference to any thing else, I should be as confident of a safe delivery of this prisoner as I am that to-morrow's sun will assuredly rise to shed her bright and benificent rays over this benighted world, and I have this confidence not because the prisoner has done precisely what is right—not because he is immaculate in virtue, but because the people cannot prove he has done wrong—because they cannot prove he is guilty of any crime with which he is charged in this indictment. You are, however, the judges in a charge of this nature, and you I apprehend, wish to be informed precisely what constitutes the crime or crimes for which the prisoner is to be tried. You will, therefore indulge me in the endeavor to explain to you in as clear and lucid a manner as I am able, precisely the issue upon which you are to pass, and you will as the testimony is produced and sworn to, arrive at that judgment which justice and humanity alike require you to render.

The charge in the first place is one of homicide—it is the killing of a human being by the prisoner at the bar. Now before he can be convicted of any degree of homicide, either murder or manslaughter, two facts must be fully established to your satisfaction. You must be satisfied that the life of a human being *has* been taken, and when that is proven the next fact to be maintained is, that that life has been taken by the culpable act of the prisoner. You must be able to trace the death of the deceased directly, and not indirectly to the act of the prisoner; and as these two facts are the foundation of the whole proceeding, the public prosecutor has not taken one step towards conviction, till he has fully and conclusively made them out; and I might with the utmost confidence ask at this stage of the proceedings, what proof is there to connect the death of the deceased with any culpable act of the prisoner? He has struck one blow it has been proved; it has also been proved, that blow did not take the life of the deceased; therefore, it strikes me at the very outset that the proof on the part of the prisoner halts; that there is a defect in the very foundation of their superstructure, and that they have not taken a single step in establishing the guilt of the prisoner; and, gentlemen, you must be satisfied that a wound given to this man by Thomas Rector was the occasion of his death, and until that is proven to your entire satisfaction, there is no evidence on which to convict him of any degree of homicide. The first of these two facts, however, is conceded, that Robert Shepherd died there is no doubt; and the only remaining fact upon which to lie the foundation for this prosecution is, whether that death has been produced by Thomas Rector. The next question that arises is,

whether this prisoner has been guilty of murder or of manslaughter in one (if any) of its degrees, or whether the act by which he has taken the life of the deceased, is either justifiable or excusable, for if by an act of his he has produced the death of a human being, we admit the law presumes that it has been illegally done, and that the burden of proof has been thrown upon him to account for the manner and the occasion of his so doing.

[Here the learned counsel proceeded with great ability, and at considerable length, to cite from the authorities the law as they relate to the crimes of murder and of manslaughter in the first and second degrees, contending they were not applicable to the facts of this case, and then proceeded.]

Manslaughter, in the third degree, is the killing of another in the heat of passion, without the design to effect death. It will probably be contended that the case of the prisoner falls within this subdivision of the crime of manslaughter, in which case, gentlemen, it will be necessary to understand something about the meaning which the law has attached to dangerous weapon. Of such a kind is a musket or rifle, which, when used against the life of an individual, we know is calculated to take life if properly aimed. So also with regard to a dirk or a sword. These are considered weapons within the meaning of this section of the Statute, for if used with intent to take life, we know they are calculated to accomplish such an object; but it is my duty to contend that it is not so much the weapon, but the manner in which it is used that characterises the act. For instance, if a man with a musket should take aim at another in any that is not a vital part, so far as that act is concerned, the weapon is not a deadly one within the meaning of the cause, and I believe that the prisoner has cause for complaint; that when my friend opened this cause on the part of the prosecution, and quoted an authority cited in Roscoe's Evidence, he read that part of the extract that answered his own purpose, and omitted that which favored ours. The opposing counsel say they will infer the malice from the character of the weapon, to which we answer first, that this bar is not in itself a deadly weapon, neither was it rendered so by the manner in which it was used, if we are to judge of a man's acts by the effect he produces, for the intent to do what he actually performs is the direct, natural and only safe inference for you to draw. The prisoner's intent then, at the time he used the bar, is the question for you to decide; whether it was a weapon that wielded in a savage manner might have produced death, or an irrelevant injury, is not now disputed; for, had the prisoner been so disposed to have used it, he had it in his hands and had the power of taking life. But what has been the proof to which you have as yet listened? They show you that one blow was given on this man's head, and their own witness comes upon the stand and swears that that blow did not occasion death, and that so far from its being a cruel and savage injury, that the probable consequence of that wound, would not have confined

the man from his ordinary avocations for a single day ; and are you to be beguiled into the belief, or is it possible that you can infer that this prisoner intended to commit a deliberate murder, when he had it in his power to have so done and neglected it. Gentlemen, your sober reason will tell you that the only plain and candid inference is, that he intended to do no more than he actually did accomplish ; and although this weapon, if used with a deliberate intent, and in a particular manner might inflict death, yet can you upon your oaths say that, in the manner in which this bar has been proved to have been used, it was a deadly weapon ?

Then gentlemen, if you come to the conclusion that there was an unintentional killing of this man, though you may be satisfied that an act of the prisoner did take life, yet, if involuntary on his part, and in a manner neither unusual nor cruel, you must acquit the prisoner of the chief crime charged, and the utmost extent of your verdict will be guilty of manslaughter, in the 3rd degree.

Such then, gentlemen, are the definitions of the different degrees of manslaughter, of any one of which, you may find the prisoner guilty, if proved and fully made out. Yet, if it shall turn out on evidence that the deceased fell in front of the prisoner's house, and in that fall, received the fatal wound, of which he subsequently died, we contend, that you cannot find him guilty, under this indictment.

[The learned gentleman, then proceeded to argue this question, and cited authorities from 5th Carington and Payne, page 128 ; Kelly's case reported 1st Moody 113 ; and Thomson's case, 1st Moody 130.]

I have now concluded what I have to remark on the law as it is applicable to this case, and will briefly state what the facts are that we expect to prove on the behalf of the prisoner: In the first place we shall give a very different aspect to the facts as testified to by the witnesses first called upon the stand in relation to the conduct of these three persons when before this house ; we shall show that after they knocked at the door, and were informed by the prisoner's wife, that at so late an hour of the night, she could not open the doors, instead of conducting themselves like peaceable and respectable citizens, they commenced a most outrageous assault upon the house, kicking and knocking at the door, and using threats of still greater violence ; that when reasoned with by Rector himself, and informed that his doors were never opened at so unseasonable an hour, instead of then leaving as he advised and endeavored to persuade them to do, they continued their assault and with still greater violence endeavored to effect an entrance into the house ; that this bar being at that time in the staples of the door, fell therefrom, owing to the excessive shaking of the house ; that Rector reached the outer door at that moment, took the bar as it was falling, went out and struck one blow on the front part of the head ; that instantly the person stricken fell to the earth, (and that no more than one blow was struck, will be testified by a

witness who will swear to that fact, and also that there is no possibility of his being mistaken on the point); that Rector then returned into the house and again opened the door, upon being informed by an inmate that he probably had injured the man, his purpose in so doing being to afford assistance, if he needed it; that on looking out he found the young man then getting up and about going away, and conceived from his speedy recovery that he was not much hurt; and, gentlemen, I need scarcely call your attention to the obvious reflection, that had Rector designed to inflict a serious wound, it is scarcely probable that he would have remained until 12 o'clock the next day, when he was apprehended, and not have attempted to escape; we shall further show you that the house has of late been frequently annoyed by young men similar to these, and that within a recent period the house has been broken into and a most gross and lawless assault made upon one of his inmates; and under such circumstances, finding that there were individuals at his door at the unusual hour of 1 o'clock in the morning, and swearing they would break in the door and windows, if they were not admitted, he presumed from the previous conduct that had been exhibited there, that it was necessary for him to resort to some summary process; he opened the door and went out and struck unfortunately this young man probably harder than he intended. There will also then be proof, that after this young man left Rector's, he was taken to a bed and left alone in a chamber in the extreme western part of the left wing of the Mansion House, in the third story of that building; that about 8 o'clock the next morning, he was found in the extreme front part wandering about in a state of slight delirium; that he went into a person's room, and on being asked what was the matter with him, replied, "some one had been taking too great liberties with his head;" that he left that room and was not seen again till he was found in that state which the physician has described, unable to speak or give any account of himself whatever; we shall also prove that when first found, he was in his night clothes, and that his drawers were hanging about his feet; that in that condition he had traced the whole distance from the extreme western to the extreme eastern part of that house; that he had to descend two pair of stairs, one of which was covered with sheet iron, and had to ascend one flight of stairs and part of another, to have reached the room where he was found; and, gentlemen, you will infer that in all human probability, wandering in this state with the strings to his drawers about his feet, traversing this distance in a state of mental aberration, he might then have received the injury occasioning his death by falling, and if he could have so received the injury, then as a matter of course the presumption in a case of this kind will be indulged in. We shall be able to demonstrate without doubt, that Thomas Rector never gave the blow that occasioned the death; that with no instrument did he ever strike that man a blow that produced his decease. It is not for counsel entrusted with the defence

of the prisoner to account for the death of Shepherd; it is their paw only to shew that the prisoner himself did not occasion it; how the injury was produced, perhaps, there is no other eye than His that can pierce the darkness of the deepest gloom, will ever be able to discover. But shall it be said that there are circumstances already proved, sufficient for you to draw the inference that Rector occasioned the death of that young man? Of the danger of convicting upon mere circumstantial evidence, you are well aware; and a jury of discreet and prudent men will certainly require something more than mere circumstances upon which the prosecutor relies to prove the main fact, if the injury be of that nature that it can be accounted for upon any other supposition; and so long as it can be accounted for without supposing that Thomas Rector inflicted that wound, occasioning the death of the deceased, so long you will never base your conviction upon what is so fallible, so dangerous to rely upon, as circumstantial evidence.

Such is substantially the law as we shall contend it to be; so are the facts as we expect to prove them, and it will be for you to say, when those facts are established in the first place, whether you believe that the death of the deceased is so connected with any act of the prisoner as necessarily to infer that the prisoner caused his death—if not, there is then an end to the prosecution, and the prisoner cannot be convicted either of murder or of any degree of homicide. But if you come to the conclusion that the death of Shepherd is established to have been occasioned (however remotely) by the prisoner, you will inquire was that act excusable under the circumstances. If neither excusable nor justifiable, then you will ask, does it amount to murder, and if not, to what degree of manslaughter; and this issue you must pass upon, and I am confident you will render your verdict with all the deliberation which the importance of it demands. You will recollect when reflecting upon what verdict you shall pronounce, that an error on your part will be fatal to this prisoner; that an error on your part, if you should pronounce him guilty, can *never* be remedied. If the effect or the consequences of your verdict was merely to imprison the prisoner, provided he is convicted, if at some future day his innocence were made manifest, and it was discovered you had made a mistake, we know his prison doors could be thrown open and the unfortunate could be restored to the enjoyment of his life and liberty, for the law would give us the power to release him whenever a discovery of that kind should be made. But suppose you pronounce a general verdict of “Guilty,” and it turns out to be an erroneous one, or that some discovery should be made to satisfy you that Thomas Rector did not occasion the death of this young man, can the effects of your verdict be done away; can you restore to life the human being whom your error has deprived of existence; you will see at once you cannot; and it is because an error is remediless, that you will hesitate long before you pass your verdict—you will rigorously scrutinize every particle of the evidence with the most minute and rigid particularity, and as long as there

remains on your minds a single doubt upon which you can repose, and say that you are not satisfied, so long the prisoner is entitled to the benefit of that doubt; so long as discreet men regarding the obligation of your oaths, you will never pronounce a verdict that shall doom him to an untimely and premature death.

Dr. Groesbeck examined for the Defence by Mr. Wheaton.

Q. About what time on the morning of the 11th March last, did you see Robert Shepherd. A. About 1 or 2 o'clock, I think it was.

Q. Where did you see him. A. At the office of Wing & Boyd.

Q. Were you called to prescribe for him.

A. I was told he had received an injury on his head, and was called to dress it.

Q. Who was present when you dressed the head. A. Whitney, Wilson and Cromwell.

Q. Describe the condition you found Shepherd in. A. I found him vomiting,

with a cut on the right side of his head, in the same situation as the cut marked on the cast.

Q. Was any thing said to you about any other injury to the head, except the one you dressed.

A. Nothing more than this. Mr. Cromwell was about putting his finger into the wound, and I told him to desist.—

Q. Did he make mention of a fracture on any other part of the head. A. Not that I remember.

Q. If he had said any thing on that subject, would you not have been likely to have remembered it. A. I think I should.

Q. Have you any recollection of his pointing or calling your attention at all to any other part of the head. A. I do not recollect.

I did not pay much attention to what he did say.

Q. Why did you not pay much attention to him. A. In the first place I did not consider the wound at all dangerous; and in the next place I tho't

he did not know much about it. I knew he had just commenced studying medicine, and thought he would naturally be

much terrified at such a wound, and it would therefore be idle to pay much attention to what he said.

Q. Did you make any inquiries of the deceased as to his symptoms or feelings. A.

No, not then.

Q. Did he say any thing to you while you were dressing his head. A. Not directly—but he complained while I was dressing the wound.

Q. Did you discover any symptoms that indicated danger at that time. A. No sir.

Q. Did you leave Dr. Wing's office in company with him. A. I walked with him as far as the corner of State and Pearl-streets.

Q. How did he walk that distance. A. He walked with the assistance of Whitney.

Q. When did you see him again. A. Between 9 and 10 o'clock on the following morning.

Q. What was his condition when you then saw him. A. I consider him to have been laboring under symptoms of compression of the brain.

Q. Did he speak when you then saw him. A. He spoke once, and muttered something like "Oh my God!"

he was then tossing about the bed. He appeared to be like a person in a disturbed state of sleep, as I supposed him to be at the time, though I was mistaken I presume,—

Q. What room did you find him in. A. The front room in the 3rd story—a small room right over the hall.

Cross examined by Mr. Peckham.—Q. While you were there

did this young man, Mr. Cromwell, put his little finger into the wound. A. He was about to put it in, and I told him to stop.— Q. What was he about to show you. A. I do not know what it was. Q. Might he not have given you some intimation of another wound. A. He wished to direct my attention to the wound in the fore part of the head, and his manner and doing it, was as I have told you. Q. From what he said, did you receive the impression he thought the young man dangerously injured. A. Yes sir. Q. And after the remark you made to him, he stepped back. A. He neither did, nor said anything. Q. Were you present at the post mortem examination. A. Yes sir. Q.— When you found Sheperd in the office, was he delirious at all, or did he have some slight stupor. A. No, he was sick at the stomach. Q. Was he not at the same time delirious. A. Certainly—persons always are, after such a blow. Q. From what you saw at the post mortem examination, and the knowledge of the circumstances, as found after death, are you satisfied that he was laboring under symptoms of compression of the brain, at 9 o'clock on that morning. A. I am satisfied that he was. Q. Dr. March, is a surgeon of extensive practice, is he not. A. He is. Q. Did you hear his testimony given this morning. A. I did. Q. Should you agree with him, as to the capacity of this club to produce that injury on the back part of the head. A. I should. Q. Should you also agree with him, as to there being no symptom in this case, irreconcilable with the supposition that he might have received the wound in Pine-street. A. I saw nothing.

Re-examined by Mr. Wheaton.—Describe to us how, in your opinion, such a wound as that, could be given by this club. A. I do not know. A man being struck with such an instrument as that club, I think such a fracture might be produced on the skull. Q. Is there anything peculiar in the appearance of the fracture, to cause you to believe it was given by such an instrument as this, more than by any other club. A. I should think any other club, something about that size, would produce the same kind of fracture. Q. Would not a round club, have also produced that fracture. A. I should think it might. Q. Could a blow across the head, have given that wound. A. I should think not, from the abruptness of the termination. Q. What is your opinion, in relation to a blow being inflicted by the end of such an instrument, if sufficiently powerful to have caused that fracture; would it not have cut the scalp. A. I think it could have been inflicted, without cutting the scalp. Q. If you should have been called upon to examine this skull, and without knowing anything of the facts of this particular case, been told that it was made with an instrument of this description; what would have been your opinion, as to its having cut the integuments. A. I should have supposed it would have cut the integuments. Q. In what part of the head, is a wound considered the most dangerous, by surgeons, the front, or back part. A. There is no difference. Q. There is no more danger then, from an injury done

the skull, on the back part of the head, than on the front part, or side.—A. No sir, the danger depends on the degree of injury, not on the locality of it. Q. Suppose when you went to dress the wound, any intimation had been given you, by any person, that there was an injury on any other part of the head, would you not have examined it. A. I should have examined it. Q. If this young physician, had intimated that he apprehended an injury on any other part of the head, would you have examined it. A. I should certainly have examined it, if he had told me distinctly. Q. Upon any intimation from him, that he suspected an injury there, would you have examined it. A. I should certainly have directed my attention to it. Q. Have you any recollection of his directing your attention at all, to the back part of the skull. A. No sir.

Re-examined by Mr. Peckham.—If you had examined that skull alone, without knowing what had produced the injury, should you have supposed it could not have been produced without cutting the scalp. A. It could not so well have been produced, without cutting the skin, I judge from the extent of the injury, not from any knowledge of the instrument. Q. Would you, or would you not, think this instrument as well calculated, as any other, to produce that injury, without cutting the skin. A. Yes sir. Q. You have said that a round surface might have produced that injury; would not a round surface been more apt to produce a deeper impression in the centre, and less depression on the side. A. I do not think we can refine so much on the probable appearance of the fracture, as that. Q. Does not the education of a surgeon, give him some information as to the direction a fracture is likely to take. A. I do not think I can refine fractures, so nicely as you could wish them to be refined. I think you are as capable of judging of the probable effects of a blow, as a medical man can be. Q. In regard to the intimation that would have induced you to act from Mr. Cromwell, I understand you to say, you supposed him to be an ignorant young man in medicine. Would a slight intimation from him, have attracted your attention. A. I think it would.

Re-examined by Mr. Wheaton.—Would not a bar with these sharp angles, be more likely to cut the scalp, than the angles were rounded off. A. More likely, I should think. Q. If the blow were struck after the angles were rounded off, would it be as likely to cut the integuments of the scalp. A. It would not of course, if the angles were off.

Dr. Barent P. Staats, examined by Mr. Wheaton.—You are a practising physician, I believe? I am sir. Have you examined this skull, and the fracture? I have. Without relation to the facts in this case, what is your opinion of the instrument that could occasion a wound of this description? Any obtuse instrument might produce a fracture of that kind; I should think any hard, round substance, any instrument with a considerable to it, would be most likely to produce it. Suppose Dr. that head depression was occasioned by a blow from this club, in what di-

rection must the blow have come? If this fracture had been occasioned by that bar, the blow must have been struck in the direction of the centre fracture, from the rear. What is your opinion in relation to a blow being given with an instrument of this description, hard enough to produce this fracture, without lacerating the integuments of the skull? If nothing intervened between the blow and the scalp, but the hair, it would be a very strange affair to have the skull so much fractured, and the scalp not cut. Suppose a round paving stone, had been laying on the sidewalk at the time this young man fell, and he had fallen on it, would it have been likely to have produced precisely such a wound as that exhibits? That skull was very thin, but I could hardly conceive that a man could fall with so much violence on the sidewalk, unless the stone was projecting very high, or unless he was intoxicated, in which latter case the head of a man always goes first.

Q. Suppose instead of being intoxicated, he had been stunned in that case would his head have fallen similar to that of a man intoxicated? In that case, I conceive there would be no difference. Suppose a man standing on a step above the sidewalk, and should be struck, and fall, do you think with as thin a skull as that, such an injury could have been received? This skull is not more than half as thick as ordinary skulls, and therefore it might be possible; if he fell from the height of 10 inches, I should think it very likely to do so. A man being stunned, and falling from that height, what would be the probabilities of his head striking first? These questions are very abstract, and depend on many circumstance; in a short-necked man, it would not be likely—in a slim slight made man, it would be more likely, and such a thin skull as this, would be more likely still.

(This witness testified that he thought it would be impossible to strike the fatal blow while Shepherd was falling, and also from the position that he could not have struck while on the ground without going off the stoop on the side walk, going past his legs so as to get behind him. The doctor then displayed by ocular demonstration, that it was impossible to have struck a hard blow without having left the stoop.)

Cross-examined by Mr. Peckham. If Shepherd had stood facing to Rector, and Rector then struck him, would not the result be to knock him diagonally over to the east, and turn to the north? A. It would be very uncertain; it depends upon how hard the blow was. Suppose a man falling from the effects of a blow, is it possible for a man with a club up to give another blow while he is falling? As that is not a surgical question, I do really think you are as well able to judge of it as I am.

Re-examined by Mr. Wheaton. If this blow had been given with the point of this instrument, would it not as a matter of course have cut the scalp? I think it would. I have no doubt but that it would.

Eldred Worcester being called, proved a diagram of the house in Pine-street. He also further swore that it was 5 feet 10 inches

from the door to the north edge of the lower step of Rector's house. The further you went east the higher was the stoop.—The platform was between 3 and 4 feet wide, and the height of the steps were three feet above the side walk; at the west end of the platform there was but one step.

Miss Julia Johnson examined by *Mr. Wheaton*. On the night of the 10th of March last, were you at *Mr. Rector's* house in Pine-street? I was, sir. What room did you occupy? The front room up stairs in the second story of the building. Do you recollect what time in the evening you retired to your room? Between 11 and 12. After you had been in your room some time, did you hear any noise at the front door? I heard a very loud knocking at the door. Beside the knocking, what did you hear? I heard the conversation of some gentlemen at the door, but did not know who they were; I heard a loud hallooing after they had done knocking. Did you hear any thing said by the persons on the outside about coming in? I heard them say "it was nothing but a God damned old whore house, and if the doors were not opened, they would kick them in." After that was said, what did you hear done at the door? I heard a loud kicking at it. What if any effect did you hear produced by the kicking? The shaking of the house, sir. At the time this kicking at the door was going on, did you hear any thing fall? I heard the bar of the door fall. Had you been sleeping? I had. What awaked you? The noise at the door. After the kicking had ceased, and the bar of the door had fallen, what did you hear on the outside of the door? I heard nothing more at all. Can you tell any where near what time of the night this was? I think about 1 o'clock.

Cross-examined by *Mr. Peckham*. *Miss Johnson*, was any one in your room that night? Yes, sir. Did you get up and look out of the window? No, sir. Do you know how many persons there were in the house that night? I do not.—Have you seen *Mr. Rector* to have any conversation with him since you were brought from New-York here to attend the trial? Yes, sir. I have been into the jail where he was. Did you hear *Mr. or Mrs. Rector* say any thing that night? No, sir, I did not. What was the first thing you say you heard? Knocking at the door. Did you hear one knock or two? I should think it was more than 2 or 3 either; it waked me up. What did you hear next? I heard the conversation pass on the outside of the door. What did you hear the person speaking say? He said it was nothing but a "God damned old whore house, and he would kick the doors in if they were not opened." What did you hear next? I then heard a very loud knocking again; it was louder than ordinary rapping. What happened next? I heard the bar of the door fall, and supposed the panels were kicked in. Have you told me all you heard? Yes, sir, I have. Is it usual to have rapping at that door in the night time? I have often heard rapping at the door. Were you accustomed to hear knocking at that door every night? Not

at so late an hour. Was that a house of public entertainment at that time? Yes, sir. And those who went there usually went there in the night time? In the evening. How long had you lived at that house? About 8 months. In that time how many girls were usually at that house? Seven or eight. Immediately before you heard the bar fall, what did you hear done at the door? I heard a kicking at the door. At what time did Mr. Rector close his house for the night? At twelve o'clock. Did he ever admit strangers after that time? I never knew him to do so. This kicking that you talk about, might it not have been knocking? It might have been. Had Mr. Rector a particular time to close his doors? They were usually closed at 12 o'clock. Did you never know his doors to be open till past 1 o'clock? They might have been, but I do not know of it. Have you not heard raps and the door open after that time at night? I do not know that I have. Did you always go to bed before twelve o'clock? Sometimes before and sometimes after. Have you never heard raps at that door after 12 o'clock and heard it opened. I have heard raps at the door, but never heard it opened. When you have heard those raps at the door, what do you know to have happened? I have heard Mrs. Rector say it was too late to admit them.

Re-examined by Mr. Wheaton. On which side were you subpoenaed to attend this trial and brought from New-York? The question was objected to by the District Attorney.

Nancy Cromer examined by Mr. Wheaton. Did you occupy a room in Mr. Rector's house on the night of the 10th March last? I occupied the west rear room. What time did you retire to your room that night? Between 9 and 10 o'clock. After you had retired to your room, did you hear any noise at the front door? I was awake by the noise; the first I heard was a rapping at the door. Will you describe whether the raps you heard were ordinary raps or not? They rapped very loud indeed, and continued it 3 or 4 times. After the raps, what did you next hear? I heard something fall at the door, and supposed they had kicked the door in. Did you hear any thing said? I heard Mr. Rector say they could not come in, but I heard nothing on the outside but the rapping. At how many different times did you hear this rapping? I heard it repeated 3 or 4 times. How much intermission was there between the different raps? I could not say. Were you required to attend in this case before the grand jury on the part of the people? Yes, sir.

Cross examined by Mr. Peckham. Were you before the grand jury after you had seen Mr. Rector in the jail? I had seen him first. Do I understand you to say that you heard three or four knocks at the door? It was three or four knocks. Was that the kind of noise you heard? (the District Attorney here rapped upon the table, and the witness declared that was the kind of sound, only much louder.)

By the Court. What time intervened between each knock? I should think it was about half a minute between each distinct

knock; the first time I heard them knock, they knocked twice, one rap immediately after another.

Mr. Peckham. How soon after that did you hear the other two blows? Very soon after, but I cannot say how soon. You say you heard them knock four blows in the whole. Are you certain that you did not hear more than 3 or 4 blows? I think that was all I heard. How long did you remain awake after you heard Mr. Rector say he could not let them in? I do not know. I think it must have been half or three quarters of an hour. And you heard nothing more than what you have now related? No, sir. How many girls were there in the house that night? I should think there were 7 or 8 besides Mrs. Rector. Were there gentlemen in all the rooms with the girls? I do not know. I never go into other rooms than my own. There was one with me, and I know of two others. Does not Mr. Rector always know who they are that go into the different rooms? Mrs. Rector always knows. I never saw Mr. Rector up stairs but twice in the world.

Re-examined by Mr. Wheaton. Can you tell about how long the interval was between the first and second raps? No, sir, I cannot. The first and second time I heard the rap, the second noise was right after the other. How long was it after you heard the rapping at the door between the second and third raps? (Question objected to and refused by the court.) How will the rapping you usually hear at that door compare with the rapping you heard there on the night in question? People who came there in the early part of the evening do not usually rap very loud. What was the custom of that house in relation to closing the door after 12 o'clock? (Question objected to, and the prisoner's counsel insisting that though this was a house of public entertainment, Rector had the same right to adopt and enforce such rules and regulations for preserving order in his establishment, as the keeper of any public house or tavern would have; here the court suggested that the law could recognize no custom on the subject. The question might be asked what Mr. Rector had said in regard to opening and shutting that house, and the next question might be put as to the knowledge of the witness as to how late the house had been in the habit of being kept open; but custom or habit in the sense in which those terms were usually applied, was objectionable in its object.) What hour in the night was it usual to close the doors of that house? At twelve o'clock. Have you or not known strangers to be admitted after that hour? Yes; I have known strangers to be admitted between 12 and 1 o'clock.

Amanda M. Smith examined by Mr. Wheaton. Saturday night the 10th March last, where were you? I slept in Mr. Rector's house. Which room did you occupy? The upper room in the lower corner, front room of the house. What time did you retire to rest that night? It was about 11 o'clock. Were you or not disturbed at any time during that night; and if so, state what you heard (if any thing) either on the stoop or

at the front door? I heard some two or three persons on the stoop stamping and knocking very loud at the door, and their noise awoke me out of a sound sleep. Proceed and state what you heard said by the persons on the outside? I heard them tell Mrs. Rector to open her doors. What answer did Mrs. Rector make to that? She said, gentlemen I cannot open my doors; it is too late an hour at night. What reply did those on the outside make to that? They spoke to her again and said, "if you do not open your doors, we will kick your God damned old doors in, for its nothing but a God damned old whoe house any how." After they had made that reply, what did you hear them do? I heard Mrs. Rector then speak to them again, and ask them to go away from her door quietly, as she did not wish her neighbors should be annoyed at so late an hour in the night. What reply did they make to Mrs. Rector then? I heard them again say, "I will kick your damned doors in," and there was a great kicking at the door. The house shook very much, and I heard the panels of the door drop on the floor. Did you hear any thing after you fancied you heard the panels of the door drop? There appeared to be silence after that.

Cross-examined by Mr. Peckham. You say you went to bed about 11 o'clock. What time did you get to sleep that night? I should think it was about half or three quarters of an hour after I got into bed. Was there a man in your room that night? Yes, sir. Have you seen Rector since he has been in jail? Yes, sir. Were all the girls who were in the house that night with you in the jail? I do not recollect. I cannot tell how many were there. Was Emily Shields there? Yes, sir, and Nancy Cromer and Maria McNeil were also there. Was Ellen Kenyon there? No, sir. How long did you hear Mrs. Rector's voice before the panel of the door fell, as you supposed? I think it was about a minute. After that occurred, was there silence, and did you go to sleep. There seemed to be silence all but very low talking, and it appeared as if there were three or four men stepping right under my window. Did you hear Rector's voice at all that night? I did not. If he had spoken any thing at that time, would you not have heard it? I should if he had been out on the stoop. Was your window up or down? It was risen a little just before I went to bed. Was your door open? No, sir. Did you hear laughing while the young men were on the stoop? I heard no laughing, but I heard them once shout. After the panels fell as you supposed, what then did you hear? I heard the young men walk to the other end of the stoop, talking very low among themselves. Was that the last you heard of the matter? Yes. How long after this was before you went to sleep? A very few minutes. You heard nothing like a blow or any one struck? No. You heard no groan? No, sir. No supposition of any violence on the outside of the door? None, sir. Were your window shutters closed, so that no light could shine out? I had a light in my room and it could be seen

on the outside. Did you get out of your bed that night, Miss Smith? I did. If any body had struck a violent blow beneath your window, you would have heard it, would you not? I believe I should, as when the disturbance first commenced, I lifted the sash of my window a little more, and sat with my arm on the casement listening. Did you hear more than the voice of one person? I heard as many as two, if not more. You say you heard some one speaking—repeat the language you heard used? “Open your door, if you do not we will kick your God damned old door in.” After Mrs. Rector replied that it was too late an hour then to admit them, what did the voice then say on the outside? It spoke and said, “Open your d——d door, or we will kick it in for you.” What did she reply to that? I had heard a kicking at the door before this; they then knocked against the door. At what time did you hear kicking before then? I heard kicking and stamping on the stoop when I first woke up. By a number of different persons? There appeared to be some two or three stamping on the stoop, and some body knocking at the door, then I heard a shaking of the house and kicks or knocks with a club, louder than they could do with their hands or feet.

Re-examined by Mr. Wheaton. Was the walking on the stoop or on the side walk? It appeared to me as though it was on the stoop.

John Rector, the brother of the prisoner, was then sworn to the service of subpoena's on two of the gentlemen in the house on that evening.

Peter Carmichael, an attorney of the court, was also sworn in confirmation of the particulars testified to by Mr. Worcester. The examination of this witness was closed at a quarter past 11 o'clock, and the court adjourned till nine o'clock on the following morning.

Thursday morning at 9 o'clock their honors resumed. Maria McNeil examined by Mr. Wheaton. On Saturday night of the 10th March last where were you. At Mr. Rector's. What time did you retire to your room that night. Half past twelve o'clock. After you had been in your room did you hear any thing at the front door. I heard a very loud knocking. After you heard the knocking what next took place, I heard Mrs. Rector talking from the window. Where was your room that night. I slept in a small bed room back of the east front room, called the parlor, which was directly in front of my room. What did you hear Mrs. Rector say to them. She told them that the house was full. Did you hear her speak to them more than once. Yes, sir; she said it was too late—she could not let them in. What answer did they make to that. They would come in whether or no. What was then done or said. I spoke to the young man who was in the room with me, and told him there were people at the door—he waited a moment, and then opened the door of the bed room, and went into the parlour. Did you get up and go into the parlour. Yes, sir. After you got up and

went into the parlour, did you hear any thing said by Mr. Rector. I did not. Did you see Rector at the parlour window. No sir, I did not. What, if any thing, did you see Rector do, after you got up. I saw Rector go into the hall, and the young man followed after him; as Rector left the parlour I heard a knocking again at the door. When Mr. Rector passed into the hall and you heard this knocking, what then took place? I heard something heavy fall and supposed the door was broken in. Did you remain in the parlour? Yes. I run behind the parlour door to hide myself—I was afraid there were rioters breaking in at the door—I then saw Rector come to the parlour door, and he spoke to the young man and told him not to go to bed awhile, but wait a few moments. Did any thing else take place before you went to bed? The young man then walked to the parlour window, and when Rector returned, said, "Rector, I think you have hurt the man." What was his reply to that? (Question objected to and not allowed to be put, and exception taken to the ruling of the court.)

Cross-examined by Mr. Peckham. What was the first you heard that night? Mrs. Rector going to the window. Since you left this court room yesterday, have you been talking with any one about this trial? No, sir; not to any one. Is not the parlour the room in which is the window out of which Mrs. Rector had her head? It is. Did you hear Mrs. Rector say any thing after you went into the parlour? I did not. What did you hear her say before you went into the parlour? That she could not let them in—the house was full. Did you hear any thing said by those on the outside in answer to that? They said they would come in whether or not. Did you not swear before the grand jury that you did not hear what was said by those on the outside? I know I did not say so—I am sure of it. Was it Mr. Radliff who was in your room that night? Yes, sir. Did Mrs. Rector talk some time to them from the window? Not long. You could not hear then what they said from the outside? I did not hear any thing while I was in the parlour. Did you hear Rector till after he had shut the door? Mr. Rector went out of the parlour into the hall as I went in and Radliff followed him. Did you hear the outside door open? I heard something fall, and I supposed the door was broken in. Did you say before the grand jury that just as you heard the front door open, you ran behind your bed room door? I said that when I heard something fall, I ran behind my bed room door. Did you hear any blow struck? No, sir. Did you hear any groan? Yes, sir. As regards this rapping at the door, had you been asleep that night? No, sir. Is it usual to hear a rapping at that house at that time of night? Not such a loud rapping. Did this seem to be rapping with their fingers? They knocked pretty hard—it was with their hands I should think. How many knocks did you hear? I cannot say. I did not count them. I cannot say that I heard more than one. How many different times did you hear knocking at the door? Twice,

the last time much louder than the first. *Is that all the noise you heard at the door?* Yes, knocking. *Is this house of Rector's a common bawdy house?* Yes, sir.

Re-examined by Mr. Wheaton. *In regard to this being a common bawdy house, was every one admitted at the door that applied there?* No, sir; not every one. *Were they not very careful whom they admitted into the house?* Yes, sir. *What was the class of individuals that were usually admitted there?* I could not say. *Were those that were reputed to be riotous admitted?* Yes, sir. *Were that class of people entertained at all?* Some of them were. *How long had you resided at this house?* Five or six months. *What time in the night was the door usually closed?* At twelve o'clock—sometimes before. *You have been asked whether you have seen Mr. Rector in jail. What was said by him, if any thing, in relation to the manner in which you were to testify?* He told me to tell the truth; (here the prosecuting counsel objected to the question, and the court decided that it should not be answered.)

Mr. James Berger testified that on the Sunday morning of 11th March, he occupied apartments in the Mansion House, and that about 8 o'clock on the morning, the deceased, Shepherd, entered his room apparently in a state of delirium, with his drawers hanging loosely about his legs.

Mr. Henry Rector was next called, who deposed to having examined the localities at the Mansion House, and that the room where Shepherd slept is the rear north room of the back wing of the building, at the head of the stairs in the third story, the first room on the left hand side. In going from his chamber to Mr. Berger's room, he would have to descend the returning flight of stairs, (the edges of which were covered with zinc) to the platform, and then along another pair of stairs into the hall, and would then have had to ascend another half flight that led to the platform from the first story stairs. He was then interrogated by Mr. Wheaton as follows: *Did you hear yesterday the testimony of Drs. March and Staats in relation to the direction in which the blow must have been given, if the fracture was occasioned by this instrument?* I did, sir. *Did you also hear the testimony of Mr. Whitney, in relation to the position that the prisoner stood in, and that Mr. Shepherd stood in at the time the first blow on the fore part of the head was struck?* I did. *Have you since you heard that testimony instituted an experiment with a living subject, for the purpose of ascertaining whether persons standing and falling in the position you then heard described, it was possible whether that blow could have been received by Mr. Shepherd from this stick?* (This question was objected to, and the court decided it could not be put.)

Matthew Gillespie, examined by Mr. Wheaton.—*On the night of the 10th March last, where did you reside?* I was living in the first house below Thomas Rectors. *Where were you between 12 and 1 o'clock on that night?* I got into the house,

I think, a little before 12. When you got into your house, did you hear any thing, and what, that attracted your attention? I heard a knocking at Rector's door and some talk there, and I raised my window and looked out. In the position in which you were, could you or not distinctly see Mr. Rector's stoop? Yes, sir; as plainly as I see you. I have often got up and looked out before, when there have been people there. Will you describe the noise that attracted your attention? The young men on the stoop made considerable noise—a good deal louder than I should like to hear at my door—I have heard noise there as loud as that before, but always when I did, it has been from fellows who have been there and insisted upon going into the house. How long did this noise and disturbance continue? Some 5 or 10 minutes, I should think. I did not suppose there was going to be any thing serious out of it. After the noise had continued awhile, what did you see take place on the outside of the door? I saw Mr. Rector come out of the house on to the stoop. Was he dressed, sir. I thought he had his pantaloons and shirt and vest on. I saw him strike the blow. When the blow was given, did or did not the young man fall immediately? He did. Which way did he fall? He fell with his head towards the curb stone. About what distance should you say his head was from the step as he fell? I should think it was from 8 to 10 feet where his head was after he had fallen. When Mr. Rector struck that blow, what did he then do? He turned to go into the house, and I think went into the door way. What if any thing else did you see him do while he was on the outside of the door? I did not see him do any thing but strike the one blow. Was or was not Mr. Rector off the stoop at all that night? He was not off the stoop at all; if he had gone, I must have seen him. I looked on till the young man was raised up—he might have come out after he had shut to the door, that I know nothing about.

Cross-examined by Mr. Peckham. Where do you live? I live in the next house east of Rectors. Do you live in the same house now where you did on the 11th March? I reside there. I stay there every night. I do not know what you call *living* there. I have eaten and drank and slept there every night for the last 2 years. I have a family living in Colonie, but I have staid in that house I may say for the whole of the period I have named. What does your family consist of? I have a wife and 4 children. Did you hire any apartment in Mr. Rector's house? No, sir; I never was in that house in my life. What is your business? I am a boatman, and have followed the North River, but I have been butchering since that, and a part of the time I have been out of business. What did you do after quitting the North river? I went into the butchering business, and have for the last two years been living on what I have made. I have been Street Commissioner within that time, and was turned out of office a year ago last winter, I think it was. Do you mean to say you have a fortune above your

debts? Nothing more than enough to live on. I sold my butchering business to Mr. Featherly for \$500. I went into the business and sold out again, for which I received \$300. What pleases you so particularly that you laugh so much? (Submitted to the court that this was not a proper question.)

When did you first make known to any one what you had seen of this transaction? I mentioned to a friend of mine, that I should attend this court, as I wanted to hear the testimony, and should go to clear it up, as I thought I knew something about this case, and wanted to hear the testimony. Did you tell him what you knew? No sir, I did not. When was it you first mentioned this? I think it was 8 or 10 days ago, but I am not positive how long. Who was it to whom you made any mention? Hopp Young. (here there was suppressed laughter throughout the court.) What more did you tell him? I told him I did not want to come as a witness, or to have any thing to say about it. Did you tell any body else of this? I think I did not. Who is this Hopp Young? I know nothing more about the man than you do, I have seen him at different places, that is all I know about him. When was the next time you said any thing to him about your knowledge on the subject? He came to me to-day, and said he wanted to see me. What did he say to you? He said you were saying the other day you knew something about this case; what is it you do know—I told him I had rather not talk about it; while we were talking John Rector, (I believe it was,) came up with Squire Lishar, and they asked me what I knew about this transaction; I think it was Mr. Rector who said “for God’s sake if you know any thing about it, now tell it, and I said I do not want to say any thing about it, and started off to go down Pine-street. How long was this ago? I should think it was an hour or an hour and a half ago. When was the next conversation you had about this knowledge of yours? John Rector next came and gave me a subpoena, while I was in Pine-street. Where you then on your way up to this Court? Yes sir. What next conversation did you have? The next conversation I had, was with Col. M’Kown. How long since was that? Just before I came upon the stand. Did you tell him all you knew? I did, he asked me if Rector went off that stoop, and I told him he did not. Did you know the prisoner Thomas Rector? I knew him by sight. How long have you known him? I might have known him for a year, I think it is about that time. Where had you been that night? I rather think I had been to Simon’s porter house, in the 5th ward, and went direct from Sickles’ porter house, in the 3rd ward, up to the house. I do not think I stopped any where else. Had you been drinking that night? I had drank no liquor—I might have drank a glass or two of beer, I generally drink beer when I am dry. Then whether you drank any thing but beer; you do not recollect? I do not know, when I am dry I generally drink beer, and pay for it too. Are you of the habit of getting pretty dry of an evening? Not more than other people—not

more than Mr. Peckham is. Who was in the room with you in the house in Pine-street? There is a young woman, whose name is Elizabeth Ann Edge. Where is she now? She is at the house *I* suppose. Was this girl up, or in bed? In bed sir. Did she get up when this great fracas took place? *I* do not know that *I* had spoken to her before this fracas was. Did you ever tell her what you had seen? No sir. Have you slept there every night since? Yes. Have you slept with her every night since? (the question was objected to, and the witness apprised by the court that he might avoid answering the question if he pleased.) *I* have every night that she has been here, she has been out of town twice since. Has she been here the greater part of the time? She has, all but 10 or 12 days. How old is your youngest child? *I* think it is about 6 years old. You saw these persons come on the stoop that night? *I* did not see them come up, but *I* saw them while they were knocking. Are you in the habit of staying out 'till 12 o'clock at night? Sometimes. What were you doing at the time you first heard the knocking? *I* think *I* was just about sitting down to eat something. Did you hear the bell strike 12? *I* think *I* did not hear much till *I* heard the clock strike 1, and *I* had got into bed then. How long had you been in bed when you heard the clock strike? *I* cannot say positively, it might have been from 20 minutes to half an hour. How long did you stay at the window after the blow was struck, before you went back to eat? *I* did not go back to eat. Were you eating when you heard the knocking? *I* cannot say positively, *I* know *I* did not eat any thing afterwards. What was your position when you first heard the noise? *I* was sitting in a chair at the end of the table. What did you do? *I* heard the noise once, and then went to the window and looked out. Do you always station yourself at the window when you hear these noises? *I* generally do, *I* have sometimes got out of bed to do it. Have you been in the court room during the trial of this cause? Partly. Have you heard the testimony of these girls? *I* have of one of them; *I* do not know her name, *I* think it was the last one called. Did you hear Mr. Wheaton open this case, when he addressed the jury? No sir. How long did you stand looking out of that window? *I* should think it was 5 minutes. Not longer than that you think? *I* think it was not longer than that; they had knocked several times before *I* raised the window. Was there any body on that stoop when you came home? No sir. What did you do after you left the window? Undressed myself, and went to bed. *I* am not positive *I* did it at the moment afterwards, as *I* might have walked to the cupboard and got a drink. Were these young men at the door any length of time before you raised the window? *I* did not hear them go on to the stoop, but *I* heard them knock two or three times, it was about 5 minutes after *I* heard them knock, that *I* raised the window. Was it an unusual knocking? *I* have heard as loud knocking there very often, it would be unusual to go to any private

man's house and knock so loud. How many men did you see on the stoop? I think when I went to the window, there were but two, one of them had stood off. Who was knocking? I could not tell which of them was knocking—I knew Mr. Wilson, I would not have known him but after I heard the knocking, and Rector came out, I saw him run away. Was it perfectly light so as to distinguish persons? I could see pretty well, I could tell Rector. Could you tell Wilson sir? No because I did not see him every day. How long have you known Wilson? I should say about a year. You knew him by sight some time before that night? I knew the man I had seen, but I did not know his name. The young man who walked towards the east end of the stoop, was he nearer to you than Rector was? Of course, he must have been nearer to me.

Q. You had a better opportunity of seeing who he was. A. Yes I could see him, but he did not look distinct enough, but Rector was a big stout man and I saw him every day. Q. Can you say whether or not that was Wilson. A. I think it was—I have no doubt of it. Q. Were there two left when Wilson run to the east end of the stoop. A. No, one was on the side-walk, the other on the stoop—there were two I think, on the stoop knocking. Q. Was it one of these two that were knocking that run off to the east end of the stoop. A. Yes sir. Q. What became of that one who stood at the door. A. He went off before Rector struck, and went into the street off the side-walk.—

Q. As Rector opened the door did you see this one run. A. All run, but one went faster than the other—the young man who stood on the walk did not seem to run away as the other did—one went off the side-walk, the other remained. Q. How was Wilson dressed that night. A. I believe he had on a frock coat or an overcoat, but I cannot say positively how either of the young men were dressed. Q. Can you tell how Rector was dressed. A. I took more particular notice of his striking.

Q. Was the woman, Miss Edge asleep. A. I think she was asleep when I got into bed. Q. About how far off did this young man Shepherd stand when Rector rushed out. A. He stood right by the steps, not more than a foot from him—there was but one step from the stoop to the ground.

Q. How long has Rector lived there. A. I think he moved there before I hired the next house. Q. Did you observe the position in which Rector struck the blow. A. I do not know his position, but I can swear distinctly he was on the platform when he struck. Q. Was your attention directed to the club with which the blow was struck. A. Both to Mr. Rector and the club, and I thought to myself, you have struck that man pretty hard old fellow, if not killed him. Q. Did he fall from the force of the blow, as though he knocked him off his feet.—

A. No, sir, he fell as though he were dead. Q. Which side did he fall on. A. He fell off on the left side and to the right side of his head. Q. Which way was the young man's face when Rector struck him. A. I think he was looking up the street.—

Q. Can you tell how Shepherd stood. A. I cannot tell; I tho't more of the blow than I did of how the young man stood. Q. Can you tell in what direction he fell. A. He fell right down at once, with his head to the north east. Q. What became of the club immediately after Rector struck. A. He kept it in his hand—directly after he struck, he turned round and went into the house—what made me look particularly was, that I thought he would strike again, and if he did that he would kill the man. Q. Did you go down stairs at all after you saw this blow. A. I did not, owing to the way I was situated—I did not want people to know I had staid there so long as I have. Q. The world know that you do not support your wife and family, do they not. A. No, sir, I support them as well as you do yours. Q. Did you hear the man groan. A. I did not—I thought he was knocked so stiff he could not groan. Q. How long did the young man lay there before they took him off. A. About a minute, they picked him up the moment Rector went in. (The prisoners counsel announced they would here for the present rest the defence; and being then past two the Court took a recess till three o'clock, when,

Matthew Gillespie was recalled by the district attorney. Q. Did you ever tell any one that you did not know a word of this occurrence till after it had taken place. A. Yes sir, I think I have said so, I have been questioned a good many times if I knew any thing, and I have said no. Q. Did you ever volunteer to say that you did not know any thing without being asked. A. I do not recollect ever volunteering to say so. Q. When you looked out you said you saw two persons on the stoop—was one knocking at the door. A. I think they had done knocking. Q. Do you know which side down the man fell. A. It was impossible for me to see which side of his body first struck. Q. Did his head fall on the curb-stone. A. I thought it was either on the curb-stone or pretty near it. By the court, Q. How far do you think Wilson went away from the door of Rector. A. He went down below where he was 40 or 50 feet. By the court, Q. How near to Shepherd was the young man who stood by him at the time Rector struck him this blow. A. Within 3 or 4 feet of him I should think. By the court, Q. At what time did the man retreat who stood thus near Shepherd. A. At the time Rector came out he started off very quick. Court, Q. Did Shepherd stand where he was. A. Yes sir. Court, Q. How high did you lift your window. A. It was sufficiently high to allow me to put my head and shoulders out. Mr. Peckham. How far is it from the room you looked out of to Rector's stoop. A. I should think it was very near 40 feet. Q. Do you mean to the part of the stoop where the young man stood. A. I should think it was between 40 and 50 feet.

Dr. March recalled and examined by Mr. Peckham. Q. Will you explain how in your opinion, that blow could have been given. A. I cannot throw any more light on it than I did yesterday.—Q. Have you heard the testimony of Dr. Staats. A. I have

heard some part of it. *Q.* There is some difference of opinion between you, will you have the goodness to explain in what direction this bar must have been applied to have produced that fracture. *A.* If it was caused by that instrument, in my opinion, the external part of the edge of it was not pressed upon the highest point of the fracture, and that the principal part of the pressure was on the upper and anterior part of the instrument.—With regard to the opinion that the hand of the individual applying the force must have been lower than the object to which the force was applied, if that had been the fact why was not one portion of the bone depressed as much as the other.—

Q. If you have examined the skull you will please state how you understand the blow to have been given. *A.* Obliquely.—

Q. Might that same injury have been inflicted with this stick while the party was standing. *A.* Yes, if the individual who had the club stood highest, for that would fetch him into a position to make the pressure strongest anteriorly. *Q.* Could that fracture have been produced by a person falling on a curb stone.

A. It could not, unless the stone was of a very peculiar form.

Q. By falling on a round curb stone what would be the form of the fracture. *A.* That depends upon the velocity with which the head fell and the size of the curb. If the individual was thrown with sufficient velocity to break the skull then the extent of the depression would correspond in some proportion with the body which produced it; but if with less velocity he might have had extensive fracture without depression.

Cross-examined by Mr. Wheaton—In your opinion was the blow struck with the left hand first. Yes sir. Can you devise any way in which a person striking a left handed blow could have given that injury while the person was standing up. *A.* I do not think so. *Q.* Striking a left handed blow must not the point of the instrument have been applied backwards instead of forwards.

A. No, but the blow would have been on the other side of the head. *Q.* Did you state yesterday, that the direction of the blow corresponded with the central crack. *A.* I do not think I stated that—My impression is, that I stated it was given in an oblique direction. *Q.* Have you altered that opinion. *A.* I do not think I have. *Q.* Did you not yesterday place this bar upon the head precisely in the place you considered it to strike. *A.*

My attention was directed to it solely in reference to the transverse comminution, but not in reference to the depressed portion of bone. *Q.* Did you not yesterday place the upper point of that bar so as to correspond with the fracture. *A.* I did. *Q.*

In placing the stick yesterday did you not have the upper end of it upon a parallel line with that transverse fracture. *A.* I do not recollect. *Q.* Can you give us any reason why you placed the bar just in the position you have marked out upon the skull.

The nature of the fracture and the depression was why I placed it so. *Q.* If the point of the instrument had been elevated, would not the angle have been more apt to cut the scalp. *A.*

That bar sir, is considerably rounded off at the angles. *Q.* Is

the corner much more rounded off than the angles. A. No sir, but there is a much broader surface. Q. At whose suggestion Dr. was the cast of this young man's face taken. A. Dr. Armsby suggested that. Q. Was it made for the purposes of this trial. A. Yes—and the top of the skull was taken off by my suggestion, because I thought if we had to be hauled over by you lawyers, we could not then disagree where the wound was. Q. Would a blow struck side-ways have produced this injury. A. No, not side-ways, but obliquely.

Re-examined by Mr. Peckham—Q. Could that same fracture have been given, the deceased laying on the side walk, and the person striking being on the other side of his legs. A. No, because the wound would have been the other way, and the depressed portion would have been reversed.

Arthur C. Southwick was next sworn—He testified to having been in company with the deceased on Saturday night, 10th March, at Stanwix Hall, and afterwards at the Mansion House, and that when witness parted from him he was not in the least intoxicated—that the deceased was about 19 or 20 years of age.

Franklin Lathrop, the keeper of the Mansion House, deposed that about 20 minutes past 12, Whitney, Shepherd and Wilson left the Mansion House on the Saturday night—that Whitney and Shepherd were perfectly sober and rational, and that Wilson was a little musical and tried to sing, but that he was not so intoxicated as to be incapable of managing himself.

On his cross-examination he admitted that one bottle of champagne was ordered by Wilson, and there was a pipe and bottle of brandy sent into the room, and the greater part of the brandy was returned to the bar.

Dr. Joel S. Wing examined by Mr. Peckham. Q. How long have you practised medicine Dr. A. About 27 years. Q.—Look at the skull in your hand and have the goodness to say what kind of a fracture would have been produced by this club. A. This is an unusually thin skull, and might very well have been fractured by a piece of wood of that size, but the precise character of the fracture it is more difficult for me to tell. It belongs more clearly to mechanical force rather than to any better judgment a medical man would have over any other person. I am not sufficiently conversant with the laws of mechanical force to determine with any certainty. Q. Tell the jury what you think can clearly be shown from examination of that skull. A. Here are no less than 6 or 7 points of fracture, two of them considerably distant from each other, but obviously dependant on the force applied in the middle, and that force applied by a square edge, a surface not round—there are two lines of fracture nearly parallel to each other, and about equally depressed—there are other fractures at a distance from each other, evidently showing that there must have been a very heavy force applied to press in the skull and destroy its cohesion in this manner. Q. Supposing Dr. that fracture to have been caused by this stick, in what direction might it have been appli-

ed to have produced that result. A. *I feel under the necessity of again saying that I am not well enough acquainted with the laws of mechanical forces, to understand distinctly what I wish to express. My first impression is, that it does not make any very great difference what portion of the instrument first struck the head so that it strikes that portion of the skull, which is most prominent. If the blow was so severe as to spring the skull down, it would then make the fractures beyond, but it does not seem to me that anything can be reasoned a priori, whether the angle of the club or the point of it produced that peculiar effect. These fractures are nearly all in a line with each other, and whichever part of the head would at the time be the most prominent, the effect would be the same in whatever part it was struck.*

Q. *Could a person standing 3 feet above another, have inflicted that, trying with an instrument of this kind.* A. *If the head was erect, the instrument must have been elevated; if looking downwards the crown must have been the most prominent point, and where every thing depends on the position of the head, at the time of the blow, it is scarcely possible for any one to tell—the wound certainly might have been occasioned by the end of the instrument, but I do not see there is any necessity for that supposition, for I should think the blow was given in the direction of the line of the fracture, the point of depression is as much as an inch below the lateral fracture, and the depression and blow seems to have come directly in a line with the lateral fracture.*

Q. *Persons receiving a blow on the head, fall in the same way as if their feet were knocked from under them.* A. *No sir, a person receiving a sufficient blow on the head to move him off his centre, will fall in the direction in which he is impelled.* Q. *Supposing a man to have been struck on the fore part of his head, and have fallen, could that have produced that fracture at the back part of the skull.* A. *That blow is almost on the top of the head, which would not cause him to fall with very great impetus unless he had received it in a slanting direction, and in that case he would fall on the left side by which a fracture on the right side could not be occasioned.* A. *In whatever direction the man fell, could he falling in consequence of a blow have produced that fracture.* A. *I should hardly think it possible.*

Cross examined by Mr. Jordan.—*Suppose a man actually did fall, independent of theory, in an angle on the ground, or on a stone, do you think he could break so thin a skull as that.* A. *I do not.* Q. *Suppose he had fallen on a paving stone of the shape of an hen's egg.* A. *I think not.* Q. *You think then that a man falling in an angle, and if his feet were elevated 10 inches from the level where his head struck, that it would not produce such a fracture.* A. *Certainly—not a fracture of that appearance.* Q. *Would it break his skull.* A. *I think a man's skull might be broken, but not if he fell on a sharp point, for that would make a fracture of a different appearance altogether.*

Q. *Suppose a man struck on the side of the head in the act of stepping back with one foot what kind of a fall would that pro-*

duce. A. If it were a vertical blow struck hard enough to stun he would fall down in a sinking posture. Q. Let me ask you if there is a body in motion, and you give it an increased motion and not in a different direction, would it not continue the direction of the motion it had at first. A. Yes. Q. If I stepping back, receive a blow, would I not be very likely to fall in the direction I was moving. A. Not if you receive a vertical blow. Q. Would not stepping back with the right foot have a tendency to turn the head a little round. A. I should not conceive it would. Q. Cannot a good mechanic tell as well as a doctor how a man is likely to fall. A. I should think he could.

[The doctor inclined to the opinion that if a man stood before another with his head inclining a little downward, he would then be in a position to receive a blow upon the exact spot where the physicians unanimously agreed Shepherd must have been struck.]

Abram F. Wood, another proprietor of the Mansion-House, deposed to his having found Shepherd about 8 o'clock on Sunday morning.

Wm. T. McKown, of Guilderland, examined by Mr. Peckham. Q. Do you know Matthew Gillespie. A. Yes sir. Q. Did you hear any remark from him on the day after the death of Shepherd. A. I was inquiring about the circumstances of this case, and he remarked, it was very strange he heard nothing of the noise when he lived next door and that he knew nothing about it 'till the next morning. Q. Where did this take place. A. On the stoop of the Clinton Hotel.

Cross-examined by Mr. Wheaton. Q. What questions, sir, did you put to him. A. I was enquiring about the witnesses who had testified at the police office. Q. Was that enquiry put to Gillespie. A. It was. Q. What answer did he make. A. He did not take much notice about it. Q. Do you remember what he did say in answer to your question. A. He answered that the witnesses had stated there were some blows struck, but that he could not tell much about it. Q. Can you state any other answer that he gave you than the one you have now stated to the district attorney. A. That was the amount of conversation; we were not talking long together. Q. Were you here this morning, sir, while Gillespie was testifying. A. I was, sir. Q. Did you mention this conversation to any one before that time. A. I mentioned it as soon as he testified. Q. How came you to inquire of Gillespie about this matter. A. Because I was acquainted with him. Q. Have you thought of that conversation at all from that time to this. A. I have not. Q. Can you pretend to give his words. A. I have given you the words very nearly. Q. After he told you where he lived, did you make any enquiries of him. A. I thought he lived in the Colonie, and when he told me "it was very singular he had not heard and did not know any thing about it till the morning." I asked him where he did live, and he said he lived in the brick house.

Wm. Whale deposed to the same effect, and that Gillespie told him he knew nothing of the occurrence until he saw the mob around the Mansion-House on the Sunday.

Peter Halpen, examined by Mr. Peckham. Q. Are you porter at the Mansion-House. A. Yes sir. Q. On Sunday morning the 11th March, did you see Robert Shepherd, the deceased. A. Yes sir; he came into the house between two and three o'clock on Sunday morning. Q. Who was with him. A. Mr. Whitney and Mr. Wilson. Q. When he came in did he seem to be hurt considerably. A. Yes sir; when they came in they had him linked one under each arm; Wilson let go his hold of him and Shepherd moved on towards the counter and rested on it. I reached him a chair and he sat down. I then got a light and lit them up to a bed room. I assisted to take off his pantaloons and boots. He was complaining very much of his head. I had hold of him by the left arm and he sat on the bed side. The moment I let go of him he fell back on the bed. I lifted him up with the assistance of Whitney and Wilson. As I left him he took hold of me by the arm and putting his hands up, he pressed his head and said "I am undone."

Mr. Peckham addressed the court, "After the declaration made by Sheperd that he was undone, I propose to show what he said as to the manner in which he received the wound. From the testimony of this witness, it is clear he considered himself then in extremis, and was sensible of the responsibility of his situation."

(A long argument here arose in which all the counsel took part, the court however were universally of opinion that this confession of the deceased did not bring the case within the principle laid down in the cases cited in which declaration made in articulo mortis can be received.) Examination resumed. Q. Where did you next see Shepherd after you left him in bed. A. About 5 o'clock the next morning I met him coming down the stairs. How did he seem to be coming. He came down as tho he were a kind of drunk—rather a staggering along down. Where did you first see him. I saw him coming down a flight of stairs, (about half way down,) leading into the hall where I was. Describe as near as you can how he came down. He came down as if he were drunk, and I staid until he passed me—he went into the Bar room and lay himself on a sofa. Had he any clothes on. I think he had on an overcoat, he had his drawers on but no pantaloons—I cannot say whether he had his arms in the overcoat or whether it was only thrown over his shoulders. Were his drawers buttoned up or were they about his heels. They were about his hips. Where did you see him next. In the room adjoining Mr. Burgher's—the same room where he died. What was he doing there. He was in bed.

Cross-examined by Mr. Wheaton. Do you recollect my calling on you at the Mansion House about a fortnight ago and my asking you to shew me the room where Shepherd was put to bed and you answering me that you did not know where that room was, and you knew nothing about the matter. I did. Do you recollect telling me that you did not see him at all until you saw him in the room adjoining Mr. Burgher's. No sir I never told

you that. Do you recollect telling me that you were not the Porter that let him in. I do, and I told you it was the other Porter that let him in. Who told you to tell me you knew nothing about this matter. No person—I told you so because I tho't you were quizzing me. What do you mean by saying you thought I came there to quiz you. You told me you wanted me as an evidence and I told you I would not come up—that is what I understood by your wanting to quiz me.

Brittan B. Taulman was examined as to the character of Matthew Gillespie and deposed that he had never heard it said that he was not to be believed in common conversation or under oath.

Calvin Peirson deposed that he had measured the distance from the house to the outside of the curb-stone and found it to be 16 feet 2 inches in front of the door.

John O. Wilson examined by Mr. Peckham. Were you in company with Robert Shepherd on the morning of the 11 of March. I was. Did you go with him to Pine Street. I did. Relate to the Jury what occurred after you got there. I saw Mr. Whitney standing on the sloop—he told me we could not get in, I went to the door and knocked, Mr. Rector opened the side window I asked him if we could come in, he said the house was full we had some other conversation, I do not recollect what it was. I then came down off the stoop and went 15 or 20 feet down the street by the fence between Rector's and the next house. What happened next. A minute or a minute and a half after, I turned round and saw Mr. Shepherd lying on the side walk, I walked up and saw Mr. Whitney coming from the street towards Mr. Shepherd, Whitney got to him a moment or two ahead of me, he had hold of his head when I came up, Shepherd was laying on his left side when I first saw him, when I got to him Mr. Whitney took hold of his head and I took hold of his arm and helped to raise him up; we got him to sit on the side walk. I then raised him on his feet and asked him what was the matter; he told me (here the witness was interrupted and desired not to tell what Shepherd said;) I then went after some assistance. I first went to John Van Ness Yates's, and after that to the American. I could not get any body. I then went towards the corner of Chapel-street and Maiden-lane, and met Mr. Whitney with Shepherd. I want to inquire of you where you found the hat of Shepherd. About 4 or 5 or 6 feet distance—it was laying against a bank of snow. Did you go round with him to Dr. Boyd's office. After we had been to the American, I left Shepherd with Whitney and the student, and went for Dr. Boyd. I could not get him, and then went to Dr. March's—not finding him, I again went to Dr. Boyd's, and afterwards for Dr. Groesbeck. Was there any kicking at the door of Rector's in Pine-street. None to my knowledge. Had you been drinking some that night. I had, sir, but not so much but that I knew what I was about. Did you at that time know Rector. I had seen him there and talked with him, and I presume he knows me.

Cross-examined by Mr. Wheaton. What time in the evening of the 10th March did you first see Shepherd. About a quarter past 10 at the Mansion House. Had you been drinking at all when you first saw him. I had drank two glasses of beer before I saw him, but that had not intoxicated me at all. When you first him at the Mansion House, did you drink with him there. Some one asked him to drink and *I* believe he declined, but *I* drank myself—I drank another glass of beer. Where did you go after you left the bar-room of the Mansion House. To Stanwix Hall; Shepherd accompanied me. Were you sober when you went to Stanwix Hall. *I* should think *I* was. Did you go into the ball-room at all that evening. No, sir; we went into the dressing room. Is there not a bar kept in that room. There is. Did Shepherd drink with you at Stanwix Hall. He did not drink with me, but in company. *I* drank once, but *I* do not know whether it was wine or brandy. How many times did you drink there. *I* do not know. *I* drank a number of times. Did Shepherd remain in company with you till you left Stanwix Hall. He was in the same room. Were you intoxicated at all when you left Stanwix Hall. *I* felt pretty well, but *I* cannot say *I* was intoxicated. When you returned to the Mansion House did you go into the bar room. *I* did. How many times did you drink there. *I* do not recollect whether *I* drank there at all. From the bar room where did you go. We went into the reading room at the back of it. Did you call for a bottle of champagne. *I* did. How many drank of that champagne. The company; 6 or 8 in all, *I* think. Did all drink of the champagne. All but one or two who drank brandy and water. What portion of the champagne did you get. *I* cannot say as to that. *I* got my portion of it, *I* should think. Was it before or after you drank the champagne that you began to sing. *I* do not recollect. After you drank the champagne, were you quite intoxicated. *I* felt very well, but *I* was able to take care of myself—I knew what was going on. Did you make considerable noise. Not more than singing. Did you hear Shepherd and Whitney say, “Jack, *I* will not leave you,” *I* did, sir. Were you at that time in need of assistance to get home. *I* do not think *I* was; perhaps *I* was not so good a judge as others.

Where was it proposed to go when you left the Mansion House? To no particular place. *I* think it was at the corner of Maiden-lane that it was proposed to go to Rector’s. Which of you proposed to go there? *I* do not know. We all went there together. Who went ahead? Mr. Whitney—Shepherd and myself followed after. How much ahead was Whitney when you got there? We turned the corner of Pine and Chapel-streets as he was on the stoop. Did you hear him knock? Not that *I* recollect. *I* did not know he had knocked till he told me so. When you got there, did he inform you that you could not be admitted? He told me he could not get in, and *I* said *I* would try. You then knocked at the door—was it a gentle rap or a pretty heavy sound? It was an ordinary rap. How

many raps did you give? Three or four. How far do you think they could have been heard that night? I do not think they could have been heard up stairs, if the door was closed. From the condition you were then in, can you now tell how hard you did rap? I cannot tell how hard. I gave but an ordinary rap. Could you not, sir, have been distinctly heard all round that neighborhood? No, sir, I should think not. Did you get over your intoxication when you got to the house? I did not feel the effects of liquor. I felt well, but it did not affect my walking or my understanding. When on your way from the Mansion House to Pine-street, did you sing any? I do not think I did. I had a conversation with Shepherd on the way up. You say you rapped three or four times—what effect did your rapping produce? Mr. Rector came to the window and said the house was full and the women were engaged. Did he tell you it was too late an hour at night to open the doors? Not that I know of. I have known them to be open later than that. When Mr. Rector told you he could not let you in, what reply did you make? I told him “I would be damned if I did not think I would come in.” Where were you standing when you made use of that expression? On the stoop in front of the window. After you uttered that oath, did you not knock at the door? No; I did no knocking after the conversation, but turned round and went off the stoop. When you and Rector conversed together, was your conversation an angry one or a pleasant one? I should judge it was a pleasant one. You say Rector spoke pleasantly to you—you saw no indications of anger? I did not. Was it more than a minute or a minute and a half before you turned round and saw Shepherd down? I could not swear as to the time. Did you hear any blow? No, sir. Did you hear the door open? I did not. Did you hear any step on the stoop? I do not know whether I did or not. I paid no attention to that or any thing else. Did you hear any one speak before you turned round? I did not. Was the door closed when you turned round? It was. Did you see Mrs. Rector that night? No, sir. Did you hear her voice? No, sir—if I did not see her, of course I could not tell whose voice it was. Did you hear Shepherd fall? No. Is your hearing when you have not been drinking as good as other people’s? I presume it is. In what direction, without reference to the stoop, was the body of Shepherd lying at the time you first saw him? It lay a little to the north-east—the head was nearer the curb stone than the feet. Did his head lay down hill and his feet up? Yes; his head lay five or six feet from the curb stone, and his feet were 2 or 3 feet off the stoop. Where have you seen Mr. Rector to converse with him previous to that night? I have spoken with him in that house. Have you spoken to him more than once? Yes, sir, I have. Do you know whether he knew your name—where you lived, and your occupation? I presume he did. I have seen him pass the store where I was when I have been standing on the stoop.

Re-examined by Mr. Peckham. Q. When Shepherd lay on the side walk, how far was his head from the curb stone. A. About 6 or 8 feet. How long had you been in the place where you were employed. Five years. What place was it. As clerk in the store of Erastus Corning & Co.

Re-examined by Mr. Wheaton. Q. Are you employed in Corning's store now. A. No, sir. Have you been discharged. No, sir; I quit there. I made up my mind to do that. Did Mr. Corning also make up his mind. I do not know. Since that time have you had any particular business. Nothing particular, but attending to this business. Has this business occupied considerable of your time. Not a great deal. It being 11 o'clock, the court adjourned till 9 the following morning.

Friday morning—Mr. Whitney recalled, and in his examination deposed, that the reason for not making any statement of having felt the depression on the back part of Shepherd's head, before the Police office, the Coroner's inquest, or the grand jury, was, that he had not been asked the question. He also deposed that when Rector struck the first blow, he stood near the edge of the stoop in front of the door, and that he (Whitney) did not see him advance beyond it.

Mr. James Gibbons was then called. He stated that he had been acquainted with Matthew Gillespie for a number of years, and being asked by the prisoner's counsel, "What was his general character for truth," the question was objected to by the counsel for the prosecution. The court decided that the inquiry into his character for truth was inadmissible; but they could go into evidence as to the general good character of the witness.

Mr. Henry Rector was then recalled, and testified that he was acquainted with the nature of the different pines; that the bar used by the prisoner was white pine, which was the lightest and softest kind of pine; that the bar was 3 feet 4 inches 1-10th long; 2 inches 7-10th wide, a little less, and 1 inch 1-10th thick, a little less.

The District Attorney then called Helen Kenyon. Q. Where were you on the night of the 10th March. A. At Rector's house in the front room up stairs. Did you hear any noise that night. I did not. What end of the house were you in. The west end, not quite over the door. Was there any room nearer the door than that. I believe Miss Johnson's room was.

Cross-examined by Mr. Wheaton. Were you quite unwell on the night in question. Yes, sir. Do you think you slept pretty sound that night. Yes, sir. What was the matter with you. I do not know; my head had ached all day. Did you take any champagne that evening. Not in the evening. Well, in the afternoon. I had no champagne; but I had drank considerable gin. Did you take the gin to cure your head ache. No. When you take gin, does it usually make you sleep sound. I am not in the habit of drinking enough of it to make me sleep very sound. I drank more on that afternoon than I ever did in

my life before. Not being in the habit of drinking spirits, had it affected you considerably. It did in the afternoon, not in the evening. Did you entirely get over the effects of the gin before you went to bed. I did not feel any thing of it. How long had you resided at Rector's. Four weeks lacking 1 day. About a week before this occurrence happened, was Mr. Rector's house broken into. I believe it was.

Mr. Wheaton here proposed to prove, that about a week before this, 4 or 5 rioters broke into Rector's house and shamefully abused the females, and they then threatened to come again at some other time, and threatened further to carry their designs into effect.

The offer was overruled by the court, but a note of it was taken by the judge. The case for the prisoner here rested.

Charles H. Radliff was called for the prosecution. Q. Where were you on the evening of the 10th March. A. I was at the house of the prisoner on the morning that the young man was hurt. Will you relate what was then done, and what you saw. The first thing I heard was knocking at the door. I raised myself up on my elbows in the bed and heard another knocking, and a voice at the same time speak. I then got up, put on my pantaloons, went out of the bed-room into the parlour, and saw Rector coming from the window to the door that leads into the hall. When I came out, I asked Rector who was there. I then heard a yelp out of doors, and Rector mumbled to himself, "won't you go away," and walked out of the parlour door into the hall and went to the front door. In about half a minute, I followed him out into the hall and saw him take the bar off, and open the door and went out with the bar over his left shoulder; I stood between the parlour leading into the hall and the front door, I saw the bar go down with a blow from his shoulder.

Where did Rector stand when you saw the bar go down? He had the bar over his shoulder when he stepped over the threshold of the door. I cannot say whether he was on the platform or on the first step of the stoop below the sill of the door, when the blow was struck. Did you see the club raised again? When Rector stepped off the stoop on to the side walk a little to the west, and I then saw the young man lying on the side walk.—Rector stepped a little to the left of me and raised his club as I thought to strike the other young man who jumped back off the side walk into the street. How was the club drawn the second time? It was slanting over the left shoulder. Did you see Rector give the second blow or not? I will not swear that he did not give the second blow, neither will I swear that he did, for I do not know. Could Rector have given a second blow to the man lying down, and you not see it? I do not know whether he could or not. I did not see him give one. What were you looking at when the young man started to run into the street? My eye was upon him. After you saw the young man jump into the street what did you next see? Rector then came into the

door. Where was Rector when you saw him with the club up, and when the other young man jumped into the street? I think he was on the side walk when I thought he was going to strike Whitney. When Rector was on the side walk was he up street or down of the young man that was hurt? He was on the upper side of him. Do you recollect seeing Rector come up the steps to get into the house? I did see him coming up the steps. After you saw the young man jump into the street, I want you tell the precise spot where you recollect observing Rector to be after that? When the young man ran, my eye was on Rector, and I then tho't he was coming up from the side walk into the door. I understand you to say that the next time you saw Rector he was coming from the side walk into the door, are there steps that lead from the stoop on to the side walk? The step goes off the sill of the door on to the stoop, and I think there is one or two steps leading on to the side walk from the platform. Will you state whether Rector was coming up the one or two steps that lead to the stoop or going across the step that leads into the door when you next saw him? I cannot say the precise spot. I had one or two objects in my mind when I saw him come from the side walk into the door; whether he backed up and turned round I do not recollect; I saw him coming into the door.

Cross-examined by Mr. Wheaton. Q. Where did you go from when you went to Rector's? A. From Tom Hall's porter house. How long had you been at Hall's before you went to Rector's? I can't say. Do you know at what time you went to Hall's? I do not. I went from the Circus into Chancey's victualling cellar in Market-street into Tom Hall's, and from Hall's to Rector's. Can you tell what time you left the Circus? I do not know; I was there till the performances were over. Who went with you to the Circus? Victor Post. When you got to Rector's did you drink anything? No sir. What time did you go to bed? A little after 12. What room did you occupy? A little bed-room in the south-east corner of the parlor. Was the door from the parlor to your bed-room shut? Yes sir, after I got in it was. Had you been asleep before you heard the noise you speak of? No sir. I was just thinking about going to sleep. I had not spoken for four or five minutes. How long was the interval between the first and second rapping that you heard? I should not think it was more than a minute. Did you hear Mrs. Rector's voice at all that night? I heard a voice, but I do not know whether it was her's; I do not know whether it was a female voice or the voice of a man. When you opened the door of your bed room was Mr. Rector at the window? No, he was coming from the window to the parlor door. Was it before or after he got out of the parlor door that you heard the yelp? Before he got out of the door. What kind of noise was it that you call a yelp? Like a man hailing another in the street. Was it a loud holloo? Yes, sir, considerably loud. I should think a man might hear it as far as from here to State-street. When

Rector passed out of the parlor door into the hall did you follow him directly? Yes sir. How far before you was he at the time he went out of the door? About 4 feet. How long did Rector stand at the front door before he opened it? About half a minute. At the time he stood at the door did the bar fall? No sir. While he was standing at the door did you hear any noise on the outside of it? No. When Rector took the bar off did the door swing open of itself? The door opened, but whether he opened the door or it swung open of itself, I do not know.—Did it open very quickly? Not very quickly. Did you see the bar raised before the door swung open? I guess he raised the club as the door opened. Immediately on the front door being opened, did you advance towards the door? Yes sir. When the door swung open whom did you first see on the outside? Nobody but Rector going out. Did you see any body before you saw the club or bar go down? I do not remember whether I did or not. Did you not swear at the police office that you saw Whitney standing in front of Rector before the bar went down? I did not. What distance were you from the threshold of the door when you saw the bar go down? Within about 1 or 2 feet of it. Can you swear that both of Rector's feet had passed the threshold of the door at the time you saw the bar go down? Yes sir. Did you not swear at the police office that you could not tell whether he had stepped entirely over the threshold of the door at the the time you saw the bar go down? I said I could not tell whether he was on the first step of the stoop or on the platform. do you recollect that the question was put to you whether you could swear positively that Rector had stepped over the threshold of the door, at the time you saw the bar go down? Yes sir, and I swear so now. When the bar went down did you hear the report of the blow? I heard something sound very hollow—it sounded something like the striking on a drum before it is corded up. Did you hear the sound of the blow distinctly? I did. At the time you heard the report of the blow did you see Whitney? After the blow went down I saw a man standing to the left of me—it might have been a moment afterwards. Standing within a foot of the threshold of the door was there any thing between you and Whitney or the man that stood to the left of Rector to prevent your seeing him distinctly? Nothing that I know of. When you heard the report of the blow did you see Shepherd fall? No sir. Did you hear him fall? Not that I know of—it might have been the report of the fall that I heard. Did you not swear at the police office that you heard this man fall and that he fell very heavy? I do not remember. Did you see Shepherd at all before he lay on the side walk? No sir.—Did you see him when he lay on the side walk? I did. In what direction was he laying? Diagonally—north east with his head towards the curb stone. Did he lay about straight, stretched with his feet out and his body reclining on his left side? I do not know which side he lay on. Did he lay about straight—extended? I think he did, as near as I can judge.

Mr. Jordan.—The man you say was laying on the side walk, to the right hand of Rector—Whitney was standing to the left hand as Rector was on the stoop, the man down was on his right hand and the man standing was to the left of him—did Rector when he struck the first blow stand directly in front of you? No sir. On which hand of you did Rector at the time he struck the blow stand? A little to the right of me. Did Whitney stand from 2 to 3 feet to the left of Rector at the time he struck? I did not see him at the time Rector struck—I saw him immediately after, and then he was standing about 2 or 3 feet to the left hand of Rector. As soon as you heard the blow go down did Rector immediately recover the stick and draw it over his shoulder again? I do not remember. Did you see it over his shoulder instantly after the club went down? After I saw the club go down, Rector stepped a little to the left of me, I then saw the club up and Whitney jumped—how the club came raised I do not know. As Rector stepped a little to the left of you in what direction was his face—was it towards Whitney? It might have been, his back was towards me. Immediately after Rector stepped to the left you had an opportunity of seeing the man who lay on the side-walk? Yes sir.

Cross-examination continued by Mr. Wheaton.—At the police office, at the time you were examined was the question put to you by the prisoner's counsel whether you could swear that Rector was off the platform of the stoop, at all? I do not remember, as likely as not. Do you not recollect that Col. McKown and myself appeared as counsel for the prisoner and that you stated at that time you were sure Rector was not off the platform of the stoop? Ask me the question now and I will answer you—I do not recollect all the questions you asked me. Did you not state to the first grand jury that you were before, that you could not swear Rector was off the stoop? I do not remember their asking that question—they might or might not—I shall decline answering the question, if I remembered their asking the question I would answer it. Have you stated to any body else that you could not swear that Rector was off the stoop? I do not know but that I have, I have been asked many times, and have told a thousand stories about the trial—I have even said I was not the man.—Did you state at the police office that Rector could not have struck a second blow without your seeing it? I do not say he struck a second blow now. You have said you saw no second blow, did you hear a second blow? I did not. After you saw Rector with his club elevated, and about to strike Whitney, did you see him again until you saw him coming into the house? I did not that I remember. Was it not immediately after you saw him with his club raised toward Whitney, that you observed him coming into the house? Not instantly—Whitney had time to get into the middle of the street. By the time Whitney had got into the middle of the street was Rector turning to come into the house? He was coming into the house, how he turned I do not know. How much to the east of Whitney was Rector at

the time the blow came down.? *I* should think it was about 2 or 3 feet. Rector you say stepped to the left of you, did not that bring Rector in the same line between you and Whitney?—No sir. How much did it vary from that? Two or 3 feet. By the court, When the club was raised a second time where was Rector from the man down? He was about 2 feet from his feet. By the court, How near was Rector to Whitney when you first saw Whitney? Seven or 8 feet. When you first saw Whitney how far west was he from where Shepherd stood when he was struck? He was between 4 and 5 feet from where Shepherd's feet lay.

Re-examined by Mr. Stevens. Did you hear the man laying down groan? Yes sir, *I* think *I* heard him twice. Was that before or after Rector came into the house? After. Do you recollect what Rector did immediately after he came into the house? He put the door nearly to and stood looking through the crack—*I* cannot swear how long he stood in that position—it might have been a few minutes. Has Mr. Rector or any body on his behalf offered you any reward if you would quit the city during this trial? The question objected to, and the Court held the question must be confined to the act of the prisoner himself or of an agent employed by him.

Henry G. Wheaton, Esq., examined for defence by Mr. Jordan.—Did you attend before the Police Justice at the time Rector was brought up for examination. A. Yes sir, Col. M'Kown and myself, attended as counsel for the prisoner. Q. Did you take notes of the evidence. A. I took notes in pencil. Q. Do you recollect Radliff being examined as a witness. A. Yes sir. Do you recollect whether the question was put to him whether he saw Rector off the platform, and on the side-walk or not. A. I do sir, distinctly—it was on the cross examination, and in reply to that question, I understood him to answer he could not swear that he did see him off the stoop.

Cross examined by Mr. Stevens.—Who took the official notes of that examination. A. I presume Squire Cole did. Q. Did you hear Radliff's examination read over to him. A. I cannot recollect, I may have left immediately after his examination, was concluded. Q. Do you know that it is a part of the law of the land, that the magistrate is obliged to reduce the depositions of witnesses to writing.

The question was objected to by Col. M'Kown.

Mr. Jordan.—*I* appeal to the court against this course of examination—counsel has no right to enquire of the witness what his understanding of the law of the land is.

By the Court.—Mr. Wheaton has already stated that he does not know whether he heard Radliff's testimony read over to him but thinks he left the court, so soon as the examination was concluded.

Q. How did Mr. Radliff swear as to Mr. Rector's being on the threshold of the door. A. On his cross examination, as well as on his direct examination, he swore very differently to

that point according to my recollection. Q. How did he swear on his cross examination. A. On his cross examination, I understood him to swear that he could not say positively whether Rector when he struck the blow, had crossed the threshold or not with both his feet. Q. Are you as certain that he testified on this subject in the manner related by you, as you are that he gave the answer mentioned, in your direct examination. A. I am just as certain that I understood him to say on his cross examination that he could not swear positively that both feet had crossed the threshold, at the time he saw the club come down, as that he said he could not swear positively that he left the stoop. Q. And you are almost as likely to be mistaken in the one as in the other. A. I presume I am.

Squire Cole, examined by Mr. Peckham for the prosecution.—Did you take the examination of Mr. Radliff, at the Police Office in this case. A. I did. Q. Have the goodness to state what he there testified to, in relation to Rector's being on the outside of the door. A. On his cross examination, he testified that Rector was outside of the sill of the door, that he was down on the first step, or on the outer edge of the platform—that he could not swear positively whether he was on the upper platform or on the outside step, when he struck. Q. Was that examination read over to Radliff, and signed by him. A. Yes sir. Q. Did the prisoner's counsel hear that examination read. A. I presume he did, for I observe by my depositions that the prisoner was immediately after examined, and that by the advice of his counsel he declined to answer any questions. Q. Did any questions arise before the Police Office, whether Rector was at any time on the side-walk, or not. A. I was very particular in enquiring whether he was outside the door, but I do not remember whether there was any particular enquiry, as to whether he was off the stoop or not.

Cross examined by Mr. Wheaton.—Have you any distinct recollection of what Mr. Radliff swore to, except as you find it in your minutes. A. I depend more on my minutes, than on my recollection. Q. Do you recollect that the question was distinctly put to the witness, whether he swore that both the feet of Rector had passed the threshold of the door, before he saw the blow go down. I know he was cross questioned as to that particular point, but I do not remember the particular answers he made. Q. Do you not recollect that on his cross examination, the question was distinctly put to him, whether he could swear that Rector was at any time off the stoop. A. I believe it was. Q. Do you recollect what answer he made to that enquiry. A. I cannot swear positively, I find no entry of his answer to that question on my minutes. Q. Do you recollect when cross examining Radliff on that particular point, the question was put to him in different ways? I do. Do you suppose that you noted down all the answers to those questions? I did not—but I think if I had understood him to say that when Rector struck the blow one foot was inside of the door, and the other out, I should have put it down.

Col. *M'Kown* examined for defence. Were you present at the police office when Charles Radliff was examined? I was—I attended with Mr. Wheaton as counsel for the prisoner. Did you hear any questions put to Radliff in relation to his being able to swear whether Rector was at any time off the stoop or not? Yes—he was interrogated 2 or 3 times on that subject. I remember it distinctly, for it was at the time considered by us a material point. The first part of the inquiry was, whether Rector was outside of the door at all, and if he was, how far he had got when he struck the blow. I understood him to say that one foot was over the threshold of the door and the other not, but Squire Cole corrected me and said that the witness meant the prisoner might have had one foot on the step leading up, but he swore positively that Rector was not on the side-walk.

Cross-examined by Mr. Stevens. Had you at that time seen or conversed with any of the surgeons who had attended Shepherd. Yes, I had conversed with Dr. March, and had attended the post mortem examination and had seen the fractures. Was not your inquiry in relation to the place, or to the extent which Rector had passed, without reference to the precise spot where he was when the blow was struck? We supposed that it could not be shown that Rector was out of the door, though I do not mean that the object of our enquiry was limited to that; when Radliff swore that Rector had one foot on the platform, and the other on the step, the enquiry then was, if he was out of the door how far was he out. Do you recollect whether Radliff was interrogated as to the position of Rector when he saw the bar go down. I do not recollect as my object was a very different one, after having seen the post mortem examination.

Re-examined by Mr. Wheaton.—In putting the interrogatories to this witness, was it your object to show Rector was not off the stoop. It was my object to show he was not out of the house.

Mr. Robert H. Pruyn, was called for the prosecution, and examined by Mr. Peckham.—Were you present at the examination taken by Squire Cole in this case. Yes sir, I had business at the office on that morning. Did you hear Radliff's examination. Yes sir. Was any question put as to the position of Rector, either before or after the blow was struck, as to whether he was off or on the stoop. I do not remember having heard any thing about it.

Cross examined by Mr. Wheaton.—Do you recollect any question being put to Radliff in relation to the subject whether Rector was at any time off the stoop. I do not. Was your attention drawn particularly to what the witness swore to. I was naturally desirous of understanding the case, as it was a subject of considerable interest at the time. Did you understand there was any importance attached to the question of his being off the stoop or not? I knew his skull was badly fractured behind, but I do not recollect distinctly. Do you suppose that you can recollect everything the witness stated during that protracted exami-

ination? No sir, *I* cannot recollect every thing. Do you suppose that you have as distinct a recollection of what was said as though you were interested in the result of the cause? *I* suppose sir, you as his counsel would naturally have a more distinct recollection of it, than myself, but *I* do not know that *I* could have paid more attention to it had *I* been employed.

At 3 o'clock on Friday afternoon, it was announced that the evidence on both sides was closed, and the court took a recess till 4 o'clock.

Friday, 4 o'clock, P. M.—The court re-opened.

James McKown, Esq. then proceeded to address the jury. I congratulate you, gentlemen of the jury, that after the laborious and tedious investigation which this cause has undergone, you have at length arrived to near the termination of your labors; and I congratulate you, too, (and it is matter of congratulation to the public weal and interest,) that you have shown, during this investigation, by the strict attention you have paid to the examination of witnesses, and the elucidation of facts, that you are sincerely desirous of arriving at the *truth*; that your desire is to do justice between the public, and the unfortunate individual arraigned before you. But *were* it possible there *could* be men impanelled, fair, discreet, intelligent and unprejudiced, to pass upon this momentous case, we believe that such have been selected in the present instance; but you cannot be ignorant any more than we are of the great difficulties that have intervened in procuring such a jury. This individual comes upon his trial, and the traverse of an indictment of the highest criminal nature, not as most individuals do who come to that bar, but as you have seen with a mountain of prejudice against him. You have seen in the selection of the individuals called to act as jurors in his cause, that prejudices not only had been most extensively excited against him, but that it was not owing merely to accident that these prejudices had been thus extensive—no, gentlemen, there must have been *design* that this man *should* suffer death or bonds at some rate, be he guilty of the crime with which he is charged, or be he innocent. I impute it to no individuals particularly, that these prejudices have been thus widely circulated and so skilfully cherished; but rather to that waywardness of our nature, that in its insatiate desire for *revenge*, sometimes oversteps all the limits of law and of order. You have before you positive proof, that this prejudice has not been confined to the city in which the unfortunate act happened—it has circulated through every county in the state—it has flown over every hill and swept through every valley—it has made its resting place wherever the rumour of the transaction has reached—it has been equally the topic of conversation in the mansions of the wealthy and in the more lowly habitations of the less fortunate, and wherever it has reached it has left like the prophet's curse, its baneful influence behind. You have seen when man after man has been drawn indiscriminately from the jury box, that they have candidly admitted they have formed deep and lasting impressions and prejudices against the cause of the prisoner: no less than 36 of your fellow jurors, when they were called to pass upon this cause, stated with a frankness and honesty due to the solemnity of the occasion, that they had prejudices fastened on them, which it would take evidence upon evidence to remove, and that light must shine into the darkness by which their minds were beclouded, before they could come into that box as fair and impartial jurors. Out of 46 that were selected, as an extra number for this court, your panel wa

exhausted before one half of your number was obtained. You perceived that the sheriff was ordered to exercise his discretion in summoning 24 more individuals who it might be hoped would come fairly and honestly to the adjudication of this cause; how many that excellent officer called upon before he obtained that number is not known; but you cannot doubt that before he elected the individuals whom he selected and returned to this court, perhaps double that number had told him they were not qualified to act, and we did then but barely obtain the number required to form the jury to try the present issue. Gentlemen, I have said that my solemn impression and conviction is, that this is not an accidental prejudice; there have been occasions for it more than ordinarily happens. A young man fell in the bloom of his life, having an extensive, influential, and most highly respectable connection—ranking in society of the first order—acquainted with all the young men of his class and age, who felt a deep interest in the occasion of his death; when he was cut off in the beginning of his days, the first impression of the human mind, (however unfair it may be) is *revenge for his death, and death to the man*, however innocently the occasion of it. You have seen, too, in the progress of this trial, how every link in the chain of testimony has been attempted to be filled up by notes sent from all quarters of the room to the public prosecutor; not leaving this cause to its ordinary progress, but exhibiting an interest that amounts to a *persecution* of the individual whose cause was to be adjudicated upon by you. I know not, gentlemen, that this is properly subject matter of complaint to be brought before you; but I do well know that since this excitement is so extensively manifested, it behoves you as honest men to guard yourselves from all those prejudices and all those feelings that have been so extensively felt and exhibited; and although when you entered that box you were not conscious any of you had a bias against the prisoner, there is that secret sympathetic working within the human mind which renders it not improbable that he may have a prejudice within his bosom, of which he is himself unconscious. It behoves you, gentlemen, in passing upon this case, to examine yourselves closely and carefully; to scrutinize your every thought; and as you would wish to be judged of in that dread hereafter, when you must meet at a still more solemn tribunal this prisoner face to face, to purify your minds from every prejudice or feeling that would in the least divert your judgment from the strict rules of law, and from deciding correctly on the facts. I am indeed satisfied from what has already taken place, that a fairer, more intelligent, more candid jury, could not have been obtained within the limits of the county for which you act; yet, admitting this, I repeat that it still behoves you to be careful that you enter upon this investigation without having the least prepossessions against the prisoner. I am aware, that in the long and tedious investigation this cause has undergone, you are well acquainted with the prominent questions to be produced before you. It is, however, proper that you should distinctly understand what the precise legal issue is which you are to try; that is, what are the precise charges made against the prisoner at the bar to which he has pleaded “Not Guilty,” and puts himself with confidence upon a jury of his countrymen to pass upon the question of his guilt or innocence. Let me, therefore, read to you the substance of the indictment which contains five specific and distinct charges, and upon which he is to be convicted, if convicted at all. * * * * *

We are not now here, gentlemen of the jury, to discuss the question whether the prisoner might not have been found guilty of murder, if the

deceased had fallen in consequence of a blow struck by Rector's hands, and in the fall had received a mortal injury. It is enough for us to treat the issue as it stands, and we shall attempt to convince you that the law applicable to this case is, that if you are not satisfied that the death of Shepherd was occasioned by the striking of a blow with this club, then held by Thomas Rector in both his hands, the indictment is not sustained, and the prisoner is not guilty of the crime for which he is arraigned. We shall not contend that an indictment charging that the prisoner had struck a blow or blows with one particular kind of instrument, and it should turn out to be another, that it would not be sufficient; nor will it be necessary to contend that when a prisoner is arraigned for murder by poisoning, if a particular kind of poison is charged to have been given, and poison of another kind equally baneful is proved to have been administered, that that variance might be material; but we shall contend before you, and then call upon the court so to charge you that as the indictment charges that the blow or blows struck by the prisoner was the occasion of the death of the deceased, and it turns out that there is no proof to establish the fact, that the blow or blows did occasion the death, then the indictment is not sustained, and you must render your verdict of acquittal.

(The learned counsel then cited from Roscoe's Evidence, pp. 576-7, and the case of Rex vs. Martin, 5 Carr & Payne, p. 128.)

This principle of law then, is established beyond all controversy, that the indictment must charge the mode in which the deceased came by his death, as the proof sustains it, and if the proof varies from that, the variance is fatal to the sustaining of the indictment. It becomes then a most material and important question in the discussion of this cause to ascertain how you are satisfied the fact to be—whether you are satisfied that the prosecution have produced proof about which you can have no reasonable doubt; are you satisfied that the prisoner struck the mortal blow on the head of the unfortunate Shepherd which occasioned his death? for it is incumbent on them to show this not by inference or by conjecture—not by supposition or by theory, (for no man is to be deprived of his life or liberty by mere inference and supposition,) but by positive proof; and I call upon the prosecution to direct your attention to one iota of the testimony that has been brought before you in the four days' examination of this cause, that proves the mortal blow to have been struck by the hand of Rector. Does the companion of this unfortunate young man prove that fact to you? did he see the blow struck on the back part of the head? from what part of his testimony can the prosecution infer that fact? or does he not rather testify not only that he did not see that blow given, but from the position in which the parties were seen by him, it was impossible that it should have been given by Rector. Nor does the witness, Radliff, any further sustain the position necessary for the prosecution to make out that this 2nd blow was struck at all, or in any way by the prisoner at the bar. Even Radliff, desirous as you must have observed him to be, to give the strongest possible coloring to the case on the part of the prosecution, will not venture to swear that a second blow was at any time struck by the prisoner, nor did he, an eye witness of the whole transaction, at any time see Rector in any position in which it would have been possible for him to have struck that mortal blow. Opposed to this then you have the evidence of the witness Gillespie, who it will be recollected, was in the brick house next to the prisoner's. His testimony is clear, positive and conclusive; it is that hearing this disturbance on the night in question, he elevated his window and

looked out; that he saw the prisoner come out of his house and saw the blow struck; he saw the man fall and the prisoner retreat; and he is positive that no second blow could have been or was inflicted on that occasion; that blow that he saw struck all concur in swearing was the blow on the front part of the head occasioning the gash in the scalp, which you have observed on the cast taken by Dr. March of this young man's face and head. This witness too was in a position to know and to observe the whole of the transaction; he remained a calm, unimpassioned, uninterested spectator, and if to be credited at all, puts all doubt upon this occurrence at an end; and I refer with confidence to this testimony for the position I take, that there is not the least ground or shadow of suspicion on which to support this indictment, except from theory, and from wild and speculative notions of what *might* be possible. If you are satisfied then, that there is not a particle of testimony to support the presumption that the second blow was in fact inflicted by the prisoner, the first position that I assume is incontrovertible, viz. that the prisoner cannot be convicted under this indictment for any offence whatever, since the offence is not charged to have been committed in the way in which it has been proved.

In giving credence to the testimony of witnesses, two requisites are always observed by a jury. The first is the capacity of the witness from the situation in which he is placed, to give a correct relation of what he assumes to state, and the second is the probable disposition he may have to deviate from the truth. Allow me to make a few observations, as regards the relative situation of the parties in question. That this young man, Mr. Whitney, would be sincerely desirous and willing to state the truth, so far as he knows what did transpire, it is not for me (nor have I any wish) to raise the doubt. Warm and ardent as he is in his feelings towards his deceased friend; regretting as he does the melancholy accident which terminated the career of the young man who was his companion so few hours before; excited as his feelings may be against the man who was the supposed occasion of his death; give him all the credit for the fairness of his testimony that you can; but at the same time my duty makes it necessary for me to call your attention to the fact, (it is but a youthful affair perhaps, and I say it not to prejudice him in after life, but in all kindness of feeling towards him,) that this young man coming as he did from Schenectady—going round to the different hotels in the city—spending a part of the evening in a dancing assembly; indulging freely in liquor, until the dead hour of midnight had passed, and then wending his way towards a house of dissolute character, could not have been otherwise than excited by liquor, whatever he may think. Young and unaccustomed to the use of ardent spirits, as for his own sake I sincerely trust he is, the very account he himself gives of the quantity he drank, would have unsettled a stronger mind and older head than his; and it is not every man who is excited by liquor can tell the precise degree of excitement he is under at the time; nay, it often happens that the more he becomes intoxicated, the less willing he is to believe himself under the influence of intoxicating liquor at all. He thinks no doubt that he was not more than a little excited, and able to understand all that transpired. He speaks what I am sure he himself believes, but when you find him at one hotel where he stopped taking brandy and water, going into the Mansion House and drinking again; taking more at Stanwix Hall, returning to the inner room of the Mansion House with his boon companions and drinking champaign, (a bottle of which was brought in, together with a bottle of brandy,) it is not to be believed that a young man unaccustomed to the use of intoxicating li-

quors, could have been without a degree of excitement, that must have impaired more or less his sense of reasoning and his otherwise keen perception at the time; and if he was under this state of excitement in a somewhat greater or less degree, it is very difficult for him to judge correctly of the transaction that happened in Pine-street. It is for you, gentlemen, to determine what amount of consideration you deem proper to give to his evidence; that he has given it in a clear, lucid and intelligent manner, I admit; but that he knows now whether he was under the influence of liquor, I do deny. One of his companions at all events was admitted to be almost in a prostrate condition from the quantity he had drank. Wilson himself, with the appearance of candor, though perhaps it was too much with the hardihood of being confirmed in vice, avows that he was intoxicated and knew nothing of what did transpire in Pine-street; nay, when he left the Mansion House, his situation was such that Whitney and the deceased willing to render him all the friendly offices in their power, say, "Jack, I will not leave you." In this situation, clearly indicating that if they were not all more or less excited, they were sensible that one of their companions was in such a situation, it was not safe to leave him to go home alone; it is under such circumstances that I ask you to look with caution at the testimony of this young man. I know much will be said by the opposing counsel of the source from whence we have denied the testimony produced on the part of the prisoner. Gillespie comes upon this stand a most unwilling witness; a man who had seen the whole of this transaction; but for family reasons which it was well he had the sense of propriety to consider he is unwilling to have it known that he is in a situation in which he could have known any thing of this occurrence. He had accidentally declared that he knew something of it, not telling what he knew; but the information having reached the prisoner's counsel, it was thought advisable to subpoena him on the part of the defence. All that can be said against this man, has been already said by himself. That there is a spot upon his character in one respect may be true; he has had family difficulties, and perhaps misfortunes; but when the prosecution attempts to impeach his character, and call upon the stand his nearest and most respectable neighbor the witness says he knows nothing against him as a man of truth and veracity. Family difficulties he has had, as who has not; but in other respects, except that which he himself has told you, he is a man unimpeached for truth and veracity; a calm, quiet spectator of the transaction he witnessed, having no motive on earth to misrepresent; no friendships to fulfil; no feelings of revenge to gratify; he testifies on the part of the prisoner, a man in whose house he never has been, and to whom he never even imparted that he had within his bosom a knowledge of the facts that were so essentially important for his defence. Let me for a moment advert to the only other witness, between whose testimony and Gillespie's, there is the least variation. How had Radliff spent his time on the Saturday night in question, is an important inquiry. The first we hear of him is about dark at the circus; he remains here till the performances are concluded; then goes to a cellar in Pearl-street where he drinks; to another in North Market-street, where he again drinks and remains till near 12 o'clock, then goes off to Rector's, where he arrives shortly after that hour. Whether there are any secret heart burnings, some collision of feeling, some secret feud or private jealousy between this man and the prisoner, I know not; though if I am rightly instructed, such is nevertheless the case; he was however an inmate of Rector's house on the night in question; he came to the door supposing some of his compa-

nions might be there inquiring for him, destitute you see of that shame which makes the most abandoned endeavor to conceal the place of their infamy; he swears that he saw one blow only, but that he saw *any thing* of the transaction he has related to you, I do not believe; and that he has this day given testimony so entirely different from his evidence on a former occasion, has been owing to his desire of making himself available for the purposes of this prosecution; and I ask you whether this man is more entitled to credit when he comes in collision with any other witness, than the man who stood below and saw the whole transaction. But, gentlemen of the jury, should I be mistaken in the view I have taken of this matter, and should I, contrary to all expectations, be informed by the court that this indictment is sustained, it becomes then incumbent upon us to inquire what is the legal effect and consequence of the act proven against the prisoner, if proved it be. * * * *

It has been stated in the opening of this case, that this man, the prisoner, was not subject to the same protection of the laws of his country that other individuals are, and that the rules that applied to the protection and peace of his dwelling, were not such as applied to yours and to mine. I take occasion to deny this principle in toto. If this man was engaged in an improper or immoral business—if he violated the laws of his country, those laws were competent to punish him for all violations of moral rectitude he was guilty of—but I deny, in the strongest manner, that every rule of protection that applies to your habitations and to mine, does not apply to his. Though he kept a house that invited people into it at all times, still it was *his* house—in the emphatic language of the law it was his castle, and it would be a refinement of injustice, repugnant to every liberal and manly feeling, to give to the besotted drunkard and the midnight brawler, the right to invade the peace of his domicile, and to obtain forcible ingress into it. That the prisoner is justified in opposing force to force in the protection of his dwelling-house, cannot be doubted, and the question then becomes whether the injury given to this young man was inflicted in a cruel or unusual manner, though without design to effect death. If an individual comes to your house in the dead hour of the night, after your family has retired to rest, and a peaceful and calm sleep has fallen upon all its inmates, and swear by all the oaths in which drunkenness and obscenity are so prolific, would you upon taking down a piece of wood like this bar, from your door, hesitate to strike the man who so invaded your house over the *hat*—would you have hesitated to hit the man with such an instrument as this is, and deem it to be done in a cruel and unusual manner. I claim the right to do so—so does every other man in the community. Had he taken a bayonet and run him through, or a sword or a dirk, it might have been unnecessary force to resist the violence with which he was assailed, but when he takes a pine board that almost falls into his hand, and uses it in a manner not so as to produce any serious injury, it is beyond my comprehension how this case can come within the definition of the statute, and this instrument be termed a dangerous weapon, or used in a cruel or savage manner; and I put it to the feelings of any man who hears

me, whether he would not have felt himself justified, and whether the law would not have justified him in so using this weapon.

In the several cases of manslaughter in the 1st, 2d, 3d & 4th degrees—there is this requisite in the whole of them—there must be malice against the individual, or malice against the human kind, the absence of which deteriorates from the crime, and makes it excusable homicide. It becomes then, necessary, to inquire whether it was upon any sudden and sufficient provocation, that Rector went out of his door, and struck those who assaulted his house. Laying aside the testimony of the witnesses as to the number of knocks or the loudness of them—laying aside the threats that were made to break in the doors and the windows, and taking the testimony of the rioters themselves, you will be satisfied there was sufficient provocation for him to sally from his door and knock down the first man among them. Had the unfortunate, lamented Shepherd been this day living, and the parties, engaged as they were on the night of the 10th March last, had they been all indicted for a riot, and admitting it could be shewn that Shepherd had done no act, but stood by and saw the riot going on, he would have been held in law to have been as much a rioter and trespasser as those who committed the aggravated assault. How are the facts, as derived from the witnesses own mouths. Whitney went up first to the door and knocked. Mrs. Rector came to the window and said she could not let them in, as all the girls were engaged but one, and she was unwell—he then told Wilson what Mrs. R. had said, who again knocked, and the prisoner came to the window. After being again informed it was too late for them to be admitted, Wilson, with an oath, swearing “by God or Jesus Christ,” that he would come in. Thus, after having been civilly and quietly told both by Mr. and Mrs. Rector, that they could not be admitted, and to be replied to by an oath, is it not natural that the blood of any man would boil at such an indignity; and if you add to this, the provocation testified to by the inmates of the house, can you blame him that, acting in the heat of passion, he should have gone out and struck this man with more violence than under other circumstances would be excusable, but which this insult necessarily occasioned. I will not detain you, gentlemen, by going through in detail with the evidence of the 5 girls who were the inmates of the house, but in order to rebut the inference the public prosecutor would have you to draw that theirs is a manufactured story got up for the purpose of this defence, I would merely beg you to observe that in giving their relation no two of them uses precisely the same language—no two of them hearing exactly the same expressions—no two of them deposing to exactly the same, violence being used. A relation which shews that the assault committed was one of a most aggravated and violent character. Had not then the prisoner a right to apprehend that the threat used by Wilson would have been carried into execution, particularly when accompanied by oaths so terrific, unless resisted by a force sufficient to put these mid-

night disturbers of the peace away. And had Rector no right to take the means allowed him by law to repel the aggression?—Had he not the right to repel force by force, and to adopt the means that were necessary to destroy the power of the rioters and assailants to carry their purpose into effect? With regard to the degree of violence used we have, in addition to the girl's, the evidence of Gillespie, confirmed by Radliff, who was in the back room with his door shut, and of whom I should do no injustice to say he was in that position in the house that he might not have heard the violent kicking at the door, by which this attack was commenced; and coming as he did from all the cellars in the neighborhood, filled with intoxicating liquors, it is to be presumed that he would not have those senses about him that would enable him to hear accurately. It will be contended there could not have been so much violence because the noise was not heard by Helen Kenyon, who, it turned out on the cross-examination, had taken so freely of gin that day, that she had to go to bed before the usual hour for retiring; and what she may have thought was worse, poor Helen had to go to bed alone. She did not hear anything that took place when all the thunders in the heavens would scarcely have awakened this poor gin drunken woman; and the prosecution have to resort to such kind of testimony to negative the evidence of those who have their senses about them, and are able to hear and qualified to judge of what actually did transpire. I say as a rule of law, here was an occasion of sudden passion, and here was, in the language of the Statute, a sufficient provocation to act in the heat of passion; and if this be not sufficient provocation for the owner of a house to sally out and punish those who invaded the peace of himself and family, I am a loss to know what is. True it is, he kept such a house as is alleged—true it is, it was one of an immoral description, but it behoved him therefore the more carefully to guard himself against the police and the officers of justice, who had their eyes upon him; and although it is of course to the prisoner's discredit to have been engaged in an occupation so revolting, yet continuing there it is much to his credit that he had hitherto so conducted this house as to be in the least possible way offensive to public decency, and so far not to disturb the peace of the neighborhood, that these vigilant officers, watching for some act upon which they could indict him for the nuisance, could find none. It is the rule of natural feeling; it is the impulse of the human heart; it is the written law of the land, that a man may repel force by force in defence of his person, habitation or property. He did so repel force by force. His habitation was attacked—his own personal safety endangered, and are you under these circumstances to say that there was no provocation for the act he committed, and no justification for its unforeseen consequences.

Laying aside then the positive testimony of the witnesses who have been produced on that stand, let us consider whether from the circumstantial testimony and from the hypotheses of the scientific men, there is even a *probability* that this fracture on

the back part of Shepherd's head was the result of a blow inflicted by Rector. I speak now of probabilities, for on all sides it is a mere matter of conjecture. Scientific as are those gentlemen, skilful as I admit them to be, yet most fully do I agree with that witness who stated that the force and effect of blows and the position of the parties belonged more to the science of projectiles and natural philosophy, and the skill of engineers and of architects than it did to the science of medicine or of surgery; and I do not believe that those gentlemen are better qualified (learned and skilled as I know them to be) to speak of the probable effect that a blow would have, struck by a man in one position upon an individual in another, than any other man in the community. The witnesses who swear to the first blow having been struck, swear also that Shepherd fell instantaneously, from the effect of it, and it is matter of deliberation for you what length of time must it have taken him to have fallen, to have given his assailant an opportunity of striking him a second time if the blow was struck while in the act of falling. Whitney pretends to account for his not observing whether there was a second blow by the supposition that the blow was to have been aimed at him, and he turned and run off. In the time that it took for him to turn and run away that blow must have been struck, which is a supposition so absolutely impossible—so irreconcilable with any degree of truth or of probability, that it would be a waste of your time to detain you in order to convince you that it is preposterous to suppose he could have had time to have inflicted that second blow. But, gentlemen, fortunately for the prisoner, this matter is not left merely to conjecture. There is the positive testimony of Gillespie who was looking on and viewed the whole transaction, and swears that no second blow *could* have been struck without his seeing it. It may be satisfactory to your minds, gentlemen, when you retire from this Court, to deliberate on your verdict, to place one individual in the position in which the prisoner at the bar was proved to have been, with an instrument of 3 feet 10 inches in length in his hand—then place another in the position occupied by the deceased—place the party representing the prisoner upon an elevation of 3 feet above the other—then let the person lay in the north east direction, and I pledge myself that if you try this experiment as I have seen it tried, all doubt will certainly be removed from your minds, and that so far from being able to strike this blow, you will be altogether unable even to reach the person's head. The prosecution finding they were circumvented by the application of facts, were compelled to shift their ground and to call up their useful witness Radliff, to prove that the prisoner went off the platform of the stoop on to the side walk and round the legs of the deceased. The proof of all the rest is to the contrary; and you are shewn (as certain it is) that he did not testify so on a former occasion.

But, gentlemen, it will be urged before you, that the deceased did, at all events, receive his death wound in Pine-street, somehow before he was picked up, because Mr. Whitney, after having

testified for several times in this matter before, now for the first time fancies that when he put his hand under his head, he thought he felt a depression on the back part of the head. Mr. Whitney must have known that this was a most material incident, and yet did not swear to it at the police office, because he was not asked, when the first thought that would have struck any man of common sense, would have been, "I know he got his death in Pine-street, for I felt his skull give way at the pressure of my fingers." Oh, but says the counsel, he is fortified in that, for when he took his friend to Dr. Wings office, so strongly was he impressed with that idea, that he mentioned it to the student whom he met in the office. That Whitney believes such to be the fact *now*, I am not permitted to doubt; but that he believed it then I do deny, because he has too much humanity about him; he was too much attached to the unfortunate Shepherd, that he would not have used all the means in his power to have communicated such facts, as to a certain extent, would have left it in the power of his physician to have preserved his life. But he is fortified, say they, by the student, Mr. Cromwell, the young man who had been in the complicated study of surgery & medicine *for a whole ten months*—the young man who tho't he felt in the gash at the front part of the head a fracture, when all the physicians you it is impossible—but he also says, he thought he felt something in the rear part of his head, but when inquired of, whether he communicated his knowledge, he says no—he was too modest to communicate a fact upon which the patient's life or death depended. For the sake of his humanity and of his science, I deny such was the fact. I therefore feel at liberty to contend, that there is not only an absence of any testimony to show that Shepherd received his death blow in front of Rector's door in Pine street, but also that it is a matter yet in mystery, and known only to that great Being who knows all things. But, gentlemen, it is incumbent upon the prosecution to prove the prisoner's guilt, and it is not for us to account whether the deceased got his death by falling on the stones in the street, or whether he got it when wandering unprotected and alone about the Mansion House, with the strings to his drawers about his feet, up and down flights of stairs covered with zinc and iron. If he has fallen down and thus received the fatal injury, it is not necessary to our defence to show you when and where he may have received it. If we are to argue from probabilities, the probability is, that the deceased received this mortal injury either by the fall in Pine street or at the Mansion House.

But, gentlemen, you will hardly endure with me to go into detail, as I am to be followed by my able and learend friend, whose business it will be, and whose capacity has the power to give you a full exposition of all the most prominent topics in this case. I have only to ask you to consider the plain, obvious, and only inference that *can* be drawn from the testimony. I call upon you as men sworn to do your duty between the prosecution on the part of the people and the prisoner at the bar.

I implore you as men regarding the sacred obligations of the oath you have taken. I adjure you as men not divested of the common attributes of humanity, not to wander from the testimony nor pronounce your verdict upon far-fetched inferences, nor to decide upon wild speculative and unfounded suppositions. If the prisoner has been guilty of derelictions of moral conduct, let him be indicted and tried, and if convicted, punished for them; but in this case, divest your minds of all the circumstances not immediately connected with the issue before you, and you will then decide with the solemnity and honesty the occasion merits. I cast aside all the imputations that have been and will be made against the prisoner—he too has his rights before this community, and he is a man having connexions as dear in the affections of the prisoner, and esteemed as highly as those of the deceased. You are bound to regard him in the same light as any other man, and to place the deceased *and his* friends on the same and only footing that you would place the prisoner *and his* friends. Counsel in the opening of this case said it was a case of blood, and blood was cried for to avenge the death of a human being. If such was the idea intended, I say it is a degradation to the enlightened character of the times in which we live—this community is *no Moloch* that cries for the *blood* of the victim—that there has been an individual deprived of life we all admit, and none regret with more unaffected sorrow than the unhappy Being the involuntary occasion of it, but that you should extend the desolation still further by taking from him the life of the accused, or by imprisoning him, because blood has been shed, I say is neither consistent with the character of the laws, or the humanity of the times. You are not to sacrifice one man because another's life has been taken. You must believe this man guilty from the testimony, and most clearly guilty, before you pronounce the awful sentence of guilt upon his head—that sentence to him is irrevocable—from that sentence, if you err, there is neither appeal nor is there any mitigation—you could not recall those awful words of guilty once pronounced, if you would—if then you err, do not err upon the side of injustice. We ask nothing from your sympathies and humanities if he is found clearly and indubitably guilty, your solemn responsibilities require you so to declare, but until you are fully satisfied of that, your duty to your God, to your country, and to yourselves, require you to give to the prisoner at the bar the benefit of whatever cloud may exist. I commit him, gentlemen of the jury, fearlessly—I leave his life in your keeping, and I do it with the utmost confidence, not because he may not have been imprudent, but because I believe that this indictment has charged him with no crime of which he is proved to be guilty, and I will not, cannot believe, that a jury so deliberate and reflecting as you are, can come to the conclusion that this indictment is maintained by the evidence.

Mr. Jordan—"Gentlemen of the Jury, were it not for the immense and absorbing importance of this cause to the Prisoner

at the bar, *I* should deem it inexcusable in me to trespass any further on your time and patience, after the full and able summing up of the worthy and respected member of this bar with whom *I* have the honor to be associated; but, Gentlemen, you have arrived at that point of your labors when you are about to have the life and liberty of a fellow being finally committed to your hands. To me there is something in the occasion, (and *I* have no doubt it is equally felt by the Court and Jury,) that is calculated to impress us with a solemn sense of the responsibility we are all under, for while we are anxious that the guilty should not go unpunished, you, as Jurors, ought to look to it that innocent blood be not shed; and when *I* speak of my client as an innocent man, *I* speak of him as a man, not indeed free from sin—not pure—not without frailties—but as a man innocent, in my humble judgment, of the crime for which he is this day on trial, and as *I* hope that God who protects him will give me the power to demonstrate him to you. *I* have never yet learned, Gentlemen, until *I* heard it from one Gentleman at the opening of this cause, that there was one law for saints and another for sinners. If there is to be that line of discrimination drawn in our statute book, *I* think it probable that sometimes it might be well defined, but sometimes it would necessarily be very obscure. *I* will not indulge for one moment in the gloomy apprehension that such a doctrine can be promulgated from that Bench, or entertained by an enlightened, sensible Jury. What, Gentlemen, do men depend upon for their lives and liberties? the laws of the country. Let it be once understood that these laws are not universal, and what then do we depend upon? the caprice of a Court and Jury. To-day a man will be convicted of a crime of which he is innocent—to morrow the guilty will be returned upon society unpunished—in one section of the country we may see men lynched because their political opinions differ from their neighbors—in another you will see them tarred and feathered because their notions of civil and religious liberty may be different and unless we all have the same body shield of the laws to protect us, there is none other than the God above us, upon whom we shall have to look for protection. *I* do not think the learned counsel who undertook to infuse such doctrines into the minds of the Court and Jury, has been successful in the accomplishment of any such object. *I* think too much of your candor and intelligence, to entertain a supposition so much to your discredit, and *I* shall therefore resign my client into your hands with all his frailties and infirmities on his head. That he has them *I* know and the world knows, and as his respectable and talented relative who was produced on that stand well knows, and none more deeply regret. *I* do not pretend to present him as an unerring mortal, or as standing even upon a level in point of morality and respectability of character with a great portion of this community, but *I* present him as a human being, whose life is as dear to him as your's is to you—as a being who may yet be the object of that saving and redeeming influence upon which

we must all rely for salvation, and *I* ask you not to cut him off from his day of repentance, not to deprive him of the opportunity of reforming that course of life which, from my soul, *I* believe it to be his resolution to perform, in case he should have an opportunity to do so.

I know there are Jurors in that box who, in the midst of this excited community, are impartial, because you have sworn that you are so; but you will recollect that out of 59, the number who appeared and were sworn upon the holy evangelists, 5 or 6 peremptory challenges only were made on the part of the prisoner, and the rest of them, coming from all quarters of the county, deposed that from the stories they had heard and from the newspaper publications, they had seen, their minds were poisoned by the reports so studiously circulated, and that they would be very willing to hang this man without Judge or Jury. Some there were among them who would be very willing to give to this man *the form* of a trial, but who were indisposed that he should have anything but the form. Out of the whole number who swore they had made up their opinions prejudicial to the cause of the prisoner, we know not how many of them had had their minds poisoned by daily rumor and by the newspaper publications, without knowing anything of the facts of the case. All they knew was that Shepherd, the lamented young man, was dead; and the story was, Rector had struck the blows that had killed him. These facts were obvious and from these they have made up their minds, without being informed that Shepherd himself, in an unguarded hour, had done that, that in a moment of more sober reflection he would not have done, and which act of his had led to his death—they were not told that Shepherd had invaded this man's house, which was his castle, and they did not stop to enquire whether the blow inflicted by Rector did, or not occasion the death, but everywhere the hue and cry of Rector's guilt went forth, and one public journal in this city (not ranking as *I* believe with the more respectable newspapers) incessantly prostituted its columns by trumpeting forth these stories to the full extent of its circulation. Now, Gentlemen, under all these circumstances—excited as we are—excited as is this whole community, there is after all, this consolation, that when justice marches into this hall and takes her seat, she comes with grave and solemn cadence, tuning her footsteps to the solemnity of the occasion, and the very manner in which you were selected, under the sanction of the laws, as Jurors, tells you that the majesty of that law has declared that she will not permit one citizen to be deprived of his life without a fair trial, and if we had exhausted the whole county of Albany, if every man qualified to act as a Juror had been called upon the stand and admitted he had imbibed opinions prejudicial to the cause of the prisoner he would have been prevented from sitting in that box and the action of this Court would have been suspended until the prisoner could have been safely put upon his defence having nothing with which to contend save the evidence itself. All we ask of you, Gentle-

men, is that you bring your minds to the task before you—that you are prejudiced *I* do not, will not believe—we ask you to look at the testimony of this case and enquire not whether young Shepherd is dead, for of that there is no doubt; but whether Thomas Rector the prisoner inflicted the blows that killed him, and inflicted them too in such a manner that the law pronounces either murder or manslaughter, for if he did not it is excusable homicide and the law will not punish him for the act. You are perhaps, Gentlemen, not aware of the full extent of your powers and duties as Jurors upon this occasion, and were I certain that the Court would particularly charge you upon this subject *I* would not at the close of this trial, when your patience must be so nearly exhausted, trouble you with the few remarks *I* am about to submit to you. Yet permit me to say that even from the very foundation you are not constituted Jurors as you would be if called upon to act in a civil cause—you are even drawn differently from the ballot box—it is your power and duty in this case to judge of the laws, as well as of the facts, and tho' the power of deciding what evidence shall be received or rejected, belongs to the Bench, yet beyond that this learned court cannot decide, & such is the tenderneess and humanity of the common laws of this country and of England, that no man can be tried for an offence worthy of depriving him of his life and liberty without his peers, who are the Jury, being also constituted his judges. Now, since you are the judges of the law and the facts in the traverse of this indictment, *I* do humbly insist that it becomes your solemn duty to listen to us with attention and patience—to write on your memory what the law is, and carry it into your room for meditation, and when you come to deliberate on your verdict, if the prisoner is not guilty, then find him so; but if he is guilty, and you are so satisfied from the evidence, we cannot expect, nor do we ask you to do otherwise than convict him. Before *I* proceed *I* will call you to one other point in this case, and that is as regards the law of self protection, for it is not every killing of a man that the law deems either murder or manslaughter, and *I* ask you to impress it deeply in your memory that if a man assault me, either with the view of dispossessing me of my house or of doing me some grievous bodily injury, the law gives me the right to kill him if I cannot prevent him accomplishing his object without. But if I am attacked while in my house, the law regards it very differently. The law has declared each man's house to be his sanctuary, and it is an invasion of private rights and an invasion upon the laws for one man to attack another in his sanctuary, or to create such disturbance on the outside, that he cannot enjoy it in Peace; *I* ask you is this unfortunate man to be tried by that law or is he not—are you under pretence of laws to *murder* this man because he has been the unwilling cause of the death of another who committed a most violent and aggravated assault upon his house—does justice call for such an exhibition? does the law of the land, like another Moloch, cry for the blood of such victims? no, God forbid that such should ever

oe the law; God forbid that Lynch law or any other law than the law of the land under the supervision of Almighty Power, should be what we must all look to for protection and safety. God forbid there should be more than one law for the bold and the free—for the saint and the sinner—the miser and him who is prodigal, and even the man who would grind the face of the poor and rob the widow and orphan, even that man would be entitled to be tried by this same law and if not clearly *proved* to be guilty, it would be a violation of the conscience of a Jury to pronounce him so.

Having thus, Gentlemen, I trust satisfactorily shown to your minds the great responsibility that rests upon you, in relation to judging correctly of the law, taking that matter into your own hands, always paying respectful attention to the charges of the learned Court, who are supposed to be, and naturally are, better judges of the law than the Jury can possibly be, from the very limited attention you are enabled to give to it, I say taking the opinion of the Court in regard to all matters of law with due respect, I have pointed out to you the duty you are to perform. I have also shown you what right a man has, in his own defence, and in the protection of his house, and in what manner and to what extent the law justifies him in repelling and resisting aggression.

Although this subject has been gone over by the gentleman who opened this defence, and although very ably remarked upon by him and my associate counsel, who last addressed you, yet it is necessary you should have a thorough knowledge of the law that has committed the life of the accused into your hands. I shall now endeavor to call your attention to the laws defining the offence with which the prisoner stands charged, and neither in the discharge of this nor in any other part of the important duty that is entrusted to me, shall I, as was anticipated, attempt to make a flourish or oratorical display. If I can but put this case clearly before you, I shall cheerfully leave to that gentleman and his associates the rather questionable pleasure of rhetorical display, and none know better how to garnish a bad cause by culling the flowers of rhetoric and gleaning in the garden of the graces, than the gentleman who opened this cause for the prosecution and his learned associates. I shall be content to address myself in language divested of all ornament and metaphor to the law and to the facts of the case, and truth and common sense will address itself to your understanding and to your heart in more forcible language than if I were gifted with an irresistible flow of language, and with the most overpowering and convincing eloquence. The punishment of murder is death as you are aware, and the culprit is to expiate his offence upon the scaffold. In cases of manslaughter in the first degree, the punishment is sentence to the state prison from 7 to 14 years; in the 2nd degree, from 4 to 7 years; in the 3rd degree from 2 to 4 years; and in the 4th degree 2 years imprisonment in the state prison or in the county goal. Now, gentlemen, inasmuch

as you may legally, if the facts warrant it, convict of either murder or manslaughter under this indictment, you will, I trust, bear with me while I endeavor, in my way, to present to you distinctly the law on the subject, what constitutes murder, and what constitutes manslaughter in any one of its several degrees—and I hope from a consideration of the importance of this cause, and the anxiety I have to do all I can to free this unfortunate man who stands accused here, in the hope that justice may triumph over excitement and prejudices; and will excuse me while I again treat of this subject, although the ground has already been so fully gone over by my learned associate.

Let it go forth to the world, let it go into Bethlehem, Guilderland, and New Scotland, that a man was assaulted in his own house and instead of sallying forth with a deadly weapon struck the assailant with a piece of pine board, (call it not a club, Mr. District Attorney,) let this information go forth to the world, and let the community, who live beyond the excited atmosphere of this city, judge whether it was a deadly weapon. Let us who are liable to be invaded in our castle know that a jury of discreet men have pronounced a piece of white pine board a deadly weapon. Let posterity read the undying record that a man was *hung* because he struck a blow with such an instrument and upon the principle that it was a deadly weapon. What would posterity say? What would the world say? What would *you* say when you recovered from the prejudices that have pervaded this community, and should reflect that under the pretence of law you have pronounced a blow struck with a piece of pine board an act of murder, and that too in a case where the party using it was doing no more than apportioning his resistance to the force with which he was assailed. I claim it as my right to have acted in this way as it is also your right, and I trust the time will never come in which we shall be debarred from exercising such rights. Acting upon sudden provocation, and in the heat of passion, the prisoner was not bound to make use of that caution, and that care that he would have been were he not laboring under the influence of passion. The laws allow much for human infirmity; and if a man abuses and insults you, the law will not measure in golden scales the degree of force you may make use of in resisting that assailant, and if, instead of taking a really dangerous weapon, you should take such a thing as that bar, and if death results from the blow no man would think of imputing it to be murder; but if done in the heat of passion it would be excusable homicide.

Gentlemen of the jury—I am trespassing on your patience, I admit, much too long, but I feel it all important that you should understand the law as applicable to this case. With the limited opportunity I have had of looking through this voluminous mass of evidence and redundancy of facts, I hardly know where to take hold of the matter of fact most important in the traverse of this indictment. To place this occurrence in its strongest light it will be necessary to simplify the evidence as much as

possible, and although there is a vast mass of testimony, yet after all, there is but little of it which is applicable to the disputed point. There is the testimony of Whitney and Wilson, as to what they know of the occurrence, of Cromwell and the physician as to the probable effects of the wound that was received by Shepherd, also the testimony of Radliff, who professes to have been present at the scene of action, that are important; but the testimony of the witnesses called to identify the club, about which there was no dispute, is not important. With regard also to the man called to testify how he was put to bed in the Mansion House; how he was treated while there, altho' it may have much to do with the case itself, is nevertheless unimportant as regards your final decision. There is no dispute that Shepherd was put to bed in an upper room of the third story of the extreme rear of the Mansion House. There is no dispute after they put him to bed his companions went and left him. There is no dispute but that in the morning, about 5 o'clock, he may have been seen walking into the bar room. There is no dispute that he went into Burghers room, and that he expired about the hour of 2 o'clock. There is no dispute that he is dead, and we all sympathize with his afflicted relatives. These then are the witnesses on the part of the defence; of whom the doctors are most material and important; but the testimony of Mr. Wood, and of the other gentlemen called to prove the height of the platform, the number of the steps and the localities, they are not important, so that we shall have no trouble with them.

But gentlemen, there is another class of witnesses who are all important, and that is the class of witnesses on the one side to show the provocation and the class of witnesses on the other side to testify to the same point and to correct them in their misstatements. I need not say gentlemen, to you, that to this question these girls are most important witnesses. I am well aware of the prejudice with which testimony of that kind is usually received, & I may as well at once dispose of the only remark I have to make in relation to the truth and credibility of the witnesses on both sides. Our important witnesses are these 4 girls of the house and Gillespie who resided in the next dwelling, a short distance only, below Rector's. These, I believe, are all the witnesses we have in relation to the disturbances that took place. As to the character of the testimony, I ask you are you prepared, are you already determined to discredit entirely what these girls have said—are you going the whole length of saying, where the life of a fellow being is at stake, although the law allows them to be competent witnesses—although the law presumes them credible witnesses (leaving you at the same time to make such deductions from their credibility as you may think fit,) I ask you if you have made up your mind that these girls are entitled to no credit whatever? Morally depraved they may be; but so also is the habitual drunkard, and so also is the man that frequents houses of prostitution. Fallen from the more rigid rules of virtue—degraded and despised in the estimation of the world,

I admit them to be. I know also there is a degree of moral pollution about this class of women that scarcely attaches itself to any other class; yet I am free to say, I think it does not necessarily follow, that they have no virtuous sentiments left. I believe there are as warm affections and as much generosity to be found in the hearts of this class of women, as are to be found in many of those who maintain the reputation of a more rigid virtue; and though I do not believe they act under the same sanction of their accountability to the moral author of their being that persons do who lead a different course of life, yet in what respect do they differ from the infidel, who believes in no hereafter, or the universalist who believes that be he righteous or be vicious the same end awaits all. What higher sanction does he act under? what greater moral restraints issuing from his obligations to his God does he feel that is not also applicable to this class of women, and yet *has* the law of the land pronounced them incompetent witnesses? are you prepared to say you will discredit them altogether? no, gentlemen, I know you are not—you are prepared to credit them if you believe their story consistent—you will believe them if there is no contradiction in their testimony, and the more especially if they are corroborated by the statements of witnesses who do command your confidence. But the sanction of an oath is not the only obligation under which they testify—there is another sanction which operates on this class of females as powerfully as upon any class of persons. It is the temporal penalties inflicted on perjury that restrains them. They have in general no greater inclination or desire for being deprived of liberty and locked up in the dungeon of a prison, when they have no object, no malice to gratify—no passion no interest whatever to subserve than other people, and as they act under the full sanction of that obligation, I do submit to you whether when that class of persons come forward on that stand and tell a history probable in itself, and corroborated by all the witnesses on both sides, you will sport wantonly with the life of a fellow being, by altogether rejecting their testimony. Are the gentlemen on the other side prepared to do so? they have themselves called one of this class of persons, and for myself, I am bound to say that I have seen nothing in their mode of swearing—nothing in their manner of telling their story—nothing in the story itself that would induce me to believe these women had not given a true and correct narration of the facts, and I ask you if they had entered this court, and taken their oath, and you had been ignorant of the course of life they were leading, whether they would not have commanded your confidence as much as any lady that walks the streets of Albany. There was a promptness and a caution that stamped their testimony with the character of truth, and you could not have failed to observe that beyond a certain point they would not swear in favor of the prisoner, and from that point the ingenious system of cross examination pursued by the opposing counsel, could not shake them. We have

also, the testimony of Mr. Gillespie, if that man is to be believed—if he has not committed rank perjury, then there must certainly be an end of this prosecution for murder at all events, or even for manslaughter, unless you believe the first and only blow struck by Rector to have occasioned the death of young Shepherd. What situation is Gillespie presented to you in, he is a man that has been an officer in this corporation; and having by his industry realized a little property, has for the last two years been living upon his means. True it is, he is living in one respect an improper course of life—true it is he is separated from his family, but he has not deserted them, for it seems he does support his wife and children—true he is living in a state of adulterous intercourse with another woman, which is wrong—but need I say there are men in this community, perhaps, within the knowledge of some of you, who have been unfortunate in their marriage connections, and for want of that congeniality of sentiment and affection, which alone can render that holy compact what it ought to be, the union of interest and affection, have found it necessary for their mutual happiness to separate from their lawful wife, and after uniting themselves with others lead a very respectable course of life and rear up families, and educate them, so as to make good and respectable citizens. It is not therefore this fact alone, that is to cause you to discredit this man—it is a dark blot upon his character I know, but it does not affect his credibility. Whether he is a man of truth and veracity, not whether he is of good moral character, is the question for you to consider, and the very respectable witness whom the prosecution called for the purpose of impeaching his character, stated that during his long acquaintance with him, he had never known any thing against him in that respect. I ask you, if that man's story is consistent; if it is not contradicted, for what reason will you discredit his evidence. Is the breath of malignity to cast a slur upon all the testimony my unfortunate client is able to produce in the world. Here is a man who would be believed in an ordinary case; whose credibility never has been impeached, and testifying to a probable story, for what reason is he to be discredited. Oh, but say the gentlemen, he is contradicted by himself, and if relating a different story on a former occasion, from motives explained here, is sufficient to destroy the testimony of the witness, then let me tell you, he is not the only man whose character for credibility is destroyed, but for whom, no effort has been made to support their character for truth and veracity. Listen to his reason for declaring he knew nothing of the transaction; it was from his intention not to come here as a witness.—He knew there was a festering spot upon his character, and a dark blot upon his moral reputation—he knew he would be exposed to the ridicule of his more pious neighbors, and to the contempt of an unfeeling world, who cannot glide below the surface of things; he knew that his domestic discomforts, (perhaps provocations) could not mitigate in his favor, the harsh sentence that would be recorded against him; he felt that the

odium of society would be directed against him, far as the history of his unhappy union and subsequent misfortunes, might reach, and his object was not to come here and expose the unfortunate relation in which he stood. Yet in an unguarded moment, he apprized a friend that he had some knowledge of the transaction, and this friend disclosed it to some third party, by whom it was communicated to the prisoner's counsel, who got the first intimation of it, within ten minutes before he appeared on the stand to testify. He had before been implored by the prisoner's brother to communicate what he knew, but he had the self control to resist the prayer that affection and fraternal interest prompted. He had before listened to the moving entreaty "for God's sake do not let him suffer the infamous punishment of a murderer," and been firm in his determination to retain his secret closely confined within his own bosom, and when he did appear before you he did not come voluntarily, but was forced by the process of this court. He appeared a most unwilling witness, and told his story—and I think a perfectly credible one—he was willing to tell every thing of which he had any knowledge, careless whether it was in favor or against the prisoner. He told you it was a very hard blow, sufficient in his opinion to have killed the man, and I submit to you the question whether this man having no inducement on earth to testify falsely, has or has not committed foul perjury, when he has been brought into this court upon compulsory process—testifying as strongly against the prisoner, as in his favor; when he could serve no purpose, answer no object, gratify no passion, indulge no resentment, and but expose the infamy of his own situation.

How is he contradicted by having told a different story? What is the situation of their witness Halpen—has he not told quite a different story—has he not told Mr. Wheaton, when that gentleman was seeking information necessary for this trial, that he was not even the porter that let the young man into the Mansion House, and knew nothing about it, and was not this a most depraved lie. You find Radliff in the same situation, for you find from his own admission, that he has denied knowing any thing about the occurrence, and that he has gone even further, and stated that he was not the man who was in the house that night. Are the prosecuting counsel willing to consent that such admissions shall destroy the testimony of their witnesses, and if the evidence of Radliff, who was in the house, is to be admitted, why not also the evidence of the girls, who were likewise there, and if the evidence of Radliff, after his statement that he was not the man who witnessed the occurrence, is admissible, why not also of Gillespie, who has only made a similar statement. Let us take a retrospective view of the evidence on the other side: So far as you think Whitney and Wilson were in a condition to judge of what *did take place*, they are probably entitled to your confidence, but there is a motive for these young men to give only the best side of the testimony for themselves. It would not be a grateful thing, for their minds to admit that they

had got into a drunken wassail, and then wandered forth like Milton's Son's of Belial, "each his several way pursuing as inclination led," and their sense of reasoning being deadened by the fumes of wine, they went off to satiate their lustful passions at a common brothel, swearing and hooting, and disturbing the peace of the neighborhood, by their midnight orgies. I say it would not be a grateful thing for them to admit that so intense had been their devotion to the jovial God, that not only was their power of reflection gone, but that even their faculty of perception slumbered, and so far as they are able to give their testimony, and shield themselves from such a disclosure, so far are they willing to go. But were they in a situation to know any thing of what they testify. Look at that unfortunate young man Wilson—unfortunate in being the companion of Shepherd, and particularly unhappy in his condition on that occasion. Look at Whitney and Wilson, and yourselves judge, whether two tender youths, two beardless boys, are likely at their early age, to be so confirmed in the drunkard's habits, as to be superior to the effects of the liquor they had drank. According to Wilson's admission he had drank 2 gills and a half of Brandy, a quart of Beer, (how much more he does not know,) and one sixth (nearly half a pint) of a bottle of Champagne at the top of all the rest of these intoxicating fluids, and all this poured down the throat of a youth who to all appearances is not more than 18 or 19 years of age; a sober young man ordinarily, but who upon this occasion, got into a drunken frolic, and yet would have you believe that he was perfectly conscious of what he was about. Why what construction did Shepherd and Wilson put upon his condition—what was it that caused them to proffer their friendly services to conduct Wilson home?—what, because they thought "Jack" was not in a condition to get home safely without assistance. They did not think that young man Wilson perfectly conscious at that time—do you think him capable of judging? There was a knocking down of Shepherd, a violent assault, his companion running for his life, and crying out do not strike me—and yet this young man knew nothing of the occurrence, 'till he saw Shepherd prostrated on the pavement, and Whitney assisting him to rise. And yet is he brought here as a witness, and for what? why to bring this man to the gallows, or to confinement in the states prison. Giving him credit for the best motives in the world—admitting an entire absence of all bias or prejudice against the prisoner; yet what credence can you place in his oath, or with what scales will you apportion your confidence in the truth of the statement of the girls, and yet believe this drunken witness, who was called for the purpose of contradicting them. If the evidence of these females, corroborated as it is by Gillespie, be true, this young man Wilson stands contradicted. He swears he made no noise, and that there was no noise made. Radliff unwittingly swears, there was sufficient noise to induce him to get up and go to the door. The girls swear there was a violent attack at the door, and shaking of the house. Gillespie too, swears he heard the noise, but Mr. Wilson swears he heard nothing—literally no-

thing. He admits he went to the window, and spoke to Rector, for he has some faint recollection of being told that the girls were all engaged, and he admits too that he turned round and said "I will be damned if I don't believe I will come in." Now, was there no uncivil language used? was there nothing improper then, in telling a man refusing to admit him into his house, that he would be damned if he would not come in, and what other interpretation can you put upon such language, but that it was as Rector understood, a threat to invade his dwelling. Painful as it is, to pursue this subject further, it is our duty to take a glance at the condition of Whitney also. I have not the least doubt, Whitney supposes he was sober that night, yet would you take a drunken man to be the judge whether he was sober or not? I do not mean to say he was intoxicated, but from his own account he must have been much excited: Two gills of Brandy, taken between 8 and 12 o'clock, (how much more, I do not recollect) half a pint of Champagne poured on the top of this half pint of Brandy, was sufficient to have intoxicated a confirmed drinker, and he must be a real toper indeed, if that quantity did not produce more effect upon him, than he can now recollect.—Radliff too, is another witness introduced on the part of the prosecution. He swears that he was in bed in the back-room; that his door was shut, but hearing the noise he got up, and went out, but that it was nothing more than an ordinary rapping. I should like to know, Charles Radliff, how you came to get out of bed from the damsel you were lying with, if it was an ordinary rap; it was sufficient to get you out of bed, away from the blandishments and seductive allurements of this syren, and shake you into your breeches. Why did he and the girl get out of bed, foregoing their lustful embraces, if it was not a most tumultuous rapping. Impure as the prosecution would have her—pure as they would have Radliff, this he does not deny: that the rapping it was, that brought him and his fair one out of their bed-room. Does not this fact corroborate the testimony of the girls, and of Gillespie? But this is not all—Radliff swears he heard a yelp at the door—that was not an ordinary noise. I should like to know what Whitney and Wilson mean, when they swear there was no noise at that door. What brought these persons out of their bed-room—what induced the girl to run for protection behind the door—what meant that yelp. If these facts are true, and I have no hesitation in saying you will pronounce them so, then there is no alternative but that these young men must be mistaken. We do not indeed, pretend that the noise made at that door, was loud enough to awake the dead, but we say it was more than a gentle rapping, as sworn to by the witnesses for the prosecution. We are perhaps, bound to believe Mr. Whitney, when he swears there was no kick at the door, but even in this, the girls are not contradicted, for they do not swear that there was any kicking—all that they depose to is, that the noise sounded like kicking; as it was doubtless natural they should think that it was impossible to produce so much noise by merely striking with the hand. Do

these girls stand contradicted thus far? or are they not rather corroborated by the sounds at the door, and by the threat made use of. In relation to this threat, they say they heard this language "open your God-damned doors or we will knock them in, for it's nothing but a God-damned whore house any how." Is it not likely gentlemen of the jury, that he who used such profane language, swearing by God, or by Jesus Christ, should also have given utterance to that other language sworn to by the witnesses, and which I blush to repeat. It would be all of a piece, it would be all the same kind of conduct, and yet these girls are to be entirely disbelieved, and these remarkably sober young men, are to have your entire confidence. And for what—why for the purpose of convicting a man of the highest penal crime that the law recognizes. Think you gentlemen, if you were to go to a neighbors door, and knock at the dead hour of night, and were not heard—you would not be likely to take your feet and kick against it, or to take your fist and thump against it. What did these young men go to that house for? why to get in; they were intoxicated to a greater or less degree; they were there at an unusual hour of the night, and it is not unreasonable to suppose when they got there, they felt a little turbulent, and if they felt so, would they not kick at the door—would they not threaten to break in the door? Did they not swear profanely they would go in at all hazards, and if this be likely, the story told by these girls is perfectly true and probable. When these young men had knocked at that door two or three times, and had been as often refused admittance by Rector and his wife, then it was that Wilson swore he would come in, and Rector answered you had better try it, and when he uttered that oath that he would come in, is there any thing improbable in supposing this intoxicated young man to have passed right from the window to the door, and to have given some most violent thumps with his fist, or feet and then started and run for fear that Rector would come out. What did Gillespie see? He saw the two young men run off the stoop, and one run down the street, and the other across the street, just as Rector came out at the door, and is there any thing unreasonable in the supposition that after the utterance of this fearful oath by Wilson, he made a violent assault on that door, and hearing Rector approaching, they both started off and ran, leaving the unfortunate Shepherd, who was doubtless the least guilty of the three. I will suppose that he had not been guilty of any one of these knockings, yet he stood there unfortunately connected with these disturbances of the peace, and as Rector came out, seeing him there, he levelled a blow at him which struck him on the head. You will probably be induced to say, gentlemen, that all this is a mere exposition of the probabilities of this case, yet I think the testimony of Radliff, as regards the yelp of Whitney and Wilson, as regards the number of times they knocked, and as regards the threat and oath of Wilson, most important, as it goes to corroborate and confirm the testimony of the girls, that the young men did stamp and shout upon that stoop, and that they did threaten to come in at all hazards.

There is but one remaining question, gentlemen of the jury, upon which I feel disposed to remark to you, and that is as regards this blow. I beg you to bear in mind that Drs. March and Groesbeck, and all the rest of the doctors, tell you that that blow could not have injured the young man; and had he not received some subsequent injury, he would have been now in all probability a living man. After all, gentlemen, the important inquiry for you is, did he strike this second blow alleged against him; and if he did, was it done in the heat of passion, or upon sudden and sufficient provocation, to excuse him of being guilty of murder or of manslaughter? I have undertaken to demonstrate there is no evidence of any such blow, and I do suppose myself that that wound was received by falling at some other place by accident, or if received in Pine-street, that it was occasioned by the young man's falling and striking his head against the pavement. You will recollect that Dr. March supposed this fracture might have been occasioned by a fall, if the young man had fallen on a stone a little rounding. Drs. Groesbeck and Staats inclined to the same opinion, though Dr. Wing came forward and testified that he did not believe a man from falling on the pavement could break even so thin a skull as this is; but the doctor was candid enough to tell you he was not sufficiently acquainted with the properties of mechanical forces to be able to give you a sounder opinion than any other individual could give you. Admitting that this young man, in his delirious wanderings at the Mansion House, did not receive this injury, yet what is there unreasonable in the conjecture, that he may have got it by accident in falling on the pavement in Pine-street. Mr. Whitney, indeed, undertakes to swear that when Shepherd was falling, he fell in an angle of about 45 degrees, with his left side towards the pavement; but I do not believe that Whitney was at all capable of judging how or in what direction he did fall. Suppose the young man to have been in the habit of retreating at the time the blow was given, would not the precise direction in which he would fall be in some degree dependent upon the circumstance of which foot he had in motion at the time? If he was stepping back with his right foot at the time he received the blow, I submit to your candid consideration, whether that probably was not the way in which the young man may have fallen. We are not bound to account for this young man's death, if it can be accounted for, even upon reasonable probability, in any other way than that charged, and it is no doubt of satisfaction to you as it is to me, that the probabilities are in favor of this supposition, and you will I believe gladly acquit him, for I am confident you do not thirst for his blood as the other members of this community do. It has been attempted to be made out to you that Shepherd must have received this second blow either while he was falling, or after he was down. Did he receive it in falling? There is this view of the case, if Radliff tells the truth—he tells you that he saw the first blow go down, and that the young man fell instantly down—that Rector then recovered the club and stepped

off to the left to strike *Whitney*, and so exposed the body of *Shepherd* to his view; and will the gentlemen argue; will they attempt if they have ingenuity enough left; will they prostitute the reasoning powers God has given them by the attempt to make any one believe that the witness *Radliff* could be otherwise than perjured; and yet that this young man could have received a second blow in the act of falling and *Radliff* not have seen it. Did *Whitney* see this blow struck when he was at a distance of no more than 6 feet from the prisoner? he does not pretend that he did; does *Wilson* pretend that he saw it? not at all; does *Radliff*? no, *Radliff* tells you it was not then struck, and you are bound, in my humble judgment, to believe that this blow could not have been received while falling, and that if the deceased got it in *Pine-street*, he must have got it after he lay upon the ground. *Dr. March*, you will remember, testified that the blow must have been received in the direction of that central crack, in which opinion *Dr. Groesbeck* agreed. *Dr. Staats* marked the direction of the blow exactly in the centre of the crack; and *Dr. Wing* at least admitted the conclusion that the blows could not have been given in that direction, unless *Rector* had gone down from the stoop, on to the side walk. *Dr. March*, in the first place, thought the blow could be struck by *Rector* from the stoop; but the doctor did not recollect that the feet and body of the deceased lay in a vertical direction from the top of his head; afterwards however he was candid enough to confess that it would have been impossible to have administered that blow, unless the prisoner had gone off the stoop and gone over to the other side of the legs of *Shepherd*. The ingenious gentlemen who oppose us, and who seem to have omitted no probability their ingenuity could devise; seeing they were at last driven from their effort to prove that this blow was struck, either while the deceased was falling or after he had fallen, and while *Rector* was on the stoop; seeing it was necessary to get *Rector* on to the side walk, opposite the legs of this young man in the rear of him, call upon their useful witness *Radliff*, whom they cautiously kept concealed, until they had ascertained in what way it would be necessary to establish this blow must have been given, and he swears that *Rector* passed down the steps of the stoop on to the side walk, and beyond the legs of *Shepherd*. Fortunately it happened, gentlemen, *Col. McKown* and *Mr. Wheaton* were both present before the Police Magistrate—they knew what this man swore to there—they knew he swore positively and resolutely that *Rector* did not go off the stoop at all, and it was by this most fortunate interposition of Providence, that we were enabled to detect the fact; and unless you believe that these two intelligent and highly respectable gentlemen both mean to have been guilty of perjury, I think it difficult, and the District Attorney too will think it difficult, to get over this testimony. He swore there that *Rector* was not on the side walk, and there is a great deal of importance to be attached to this evidence; and if the testimony of these two gentlemen is to be believed, then there will be an end of this their last

shifting position. Gentlemen, *can* you believe this man Radliff to have spoken the truth here to-day, when he is called as a witness to shift the issue to what ground they needed, and to establish any and every part of the prosecution, that would otherwise fail for the purpose of making this man guilty of this crime.

I am not disposed, gentlemen, to trouble you with any further observations on this subject. When you retire to your room for deliberation, you will consider that the law has constituted *you* the judges of this man; and that the issues of life and death are in your hands; and that this knowledge will induce you to give very solemn consideration to the law, in regard to what constitutes the offence for which he stands charged, or can be convicted. I hope you will bring your minds to the task of examining and investigating the facts, with the patience, with the candour, with the intelligence I know you to possess. I hope, if there is any doubt in this case, you will take that course which the law in its mercy points out, for even the rigid rules of the common law are found in union with that suggestion contained in holy writ, that it is better for ten guilty men to escape than for an innocent man to be punished; and so long as there is a rational doubt in your minds, it is your duty to acquit the prisoner. The object of punishment you will also take into consideration—it is not to take vengeance on the culprit. Look to it, then, that you do not indulge the disposition to take vengeance on this man, and to take it out of the hands of him who has said, “Vengeance is mine.” Though this man has been morally guilty heretofore—though he has lived a life of great moral delinquency—though his course may have been one of vice, and his career that of iniquity, there is no danger but that he will meet his punishment. He is in the power and sight of an unerring judge, and although human laws may not reach his course of life, yet there is no danger of his going unpunished; but inasmuch as human justice is so fallible, so long as you have a doubt in relation to his guilt, it is your duty to give him the benefit of it, for it is a maxim of the law that he is entitled to it. I hope that now this community have heard the whole of this case, the great excitement that we have observed has subsided; but whether it has or not, you have nothing to do with it. You entered that box impartial and unprejudiced jurors, and having heard the whole evidence, I hope and trust that you will take the trouble to reflect and investigate for yourselves, and that this whole people will be satisfied that the only guilty cause of the death of this young man is or was, the young men who suffered themselves to take him who was considered innocent and virtuous—to beguile him into their habits—to get him to a house of merriment and intemperance, and whether he partook with them in their carousal or not, to take him to the scene of action, and then what is much more lamentable here, begin their riotous conduct—commit every act of violence, and give utterance to that obscene language that brought out the enraged in-

habitant of that mansion, who struck the blow under circumstances which produced the death of that young man, (if such was the case.) Judging of the circumstances and of the evidence, it is for you to say whether he is guilty or not guilty. If he is guilty, painful as the task will be, you have the right to convict him, and you must take him and deal with him as you hope to be dealt with yourselves in the dread hereafter, and pass that sentence you wish should be passed upon you, should you ever be placed in a situation of being unfortunately the cause of the death of a fellow being.

Mr. Jordan concluded a powerful and impressive speech of 4 hours duration at half past 10, and the Court adjourned till 7 o'clock the following morning. Friday morning 7 o'clock the District Attorney addressed the jury for the prosecution.—Gentlemen of the jury: Very much has been said to you on this subject, and the facts themselves have been tortured and presented in different aspects. You have already listened to several hours conversation from the lips of eloquent, ingenious and able men in defence of one side only of this case. You have been flattered, and then again your fears have been appealed to; and then an attempt has been made to enlist your sympathies and feelings on behalf of the prisoner. And first by the opening counsel you were induced to believe that the prisoner was remarkably anxious to find an impartial jury, and that no gentleman should obtain a seat in that jury box who had “either formed or expressed any opinion on this case.” Gentlemen, it will perhaps sometimes do where the case will warrant it, and where the memory of persons are short, to state facts as they do not exist. How did that statement accord with the fact in this case when one gentleman came upon that stand and finally got into the jury box, unobserved by me? Did the learned counsel put his usual interrogatory to him? No; nothing of the kind; and when I moved by the same desire that there might be a fair and impartial jury impaneled in this case appealed to the learned gentleman to have that juror interrogated, his reply was: “No—he is there—I will assent to nothing,” and I call your attention to the circumstance to satisfy you that the profession of the counsel and his practice are very much at variance. There was something in that jurymen that the gentleman thought would be favorable to his client and when my request was to be permitted to enquire of him whether he was impartial between the parties, the reply was, “No, you shall not question him as to that;” yet the gentleman professes to want a fair and impartial jury. But I have the pleasure of knowing that jurymen, and I have no doubt that even if his opinion has been somewhat affected one way or the other, from his intelligence and integrity he will do justice in this case, and not allow himself to sit in that box with the intention of thwarting the laws of his country.

The learned counsel to whom you last listened has told you he has obtained a jury as fair and impartial as this county can

afford. Did he doubt your intelligence and integrity that he must needs flatter you on that subject? But that was not enough; the gentleman must also appeal to the prejudices that have been fleeing about in this community; he must talk about the prejudice of the public mind, and ask you who has got up that prejudice and excitement. Able ingenious and learned as the gentleman is, he has not made this enquiry without an object, and therefore it is that I feel myself disposed to give to him the satisfaction he requires by replying to it. Certainly it was not Robert Shepherd, the deceased, who got up this excitement, for he lies in the cold and noiseless grave, from whence his voice cannot be heard. He had neither father nor mother to feel an interest in his fate, for he *was an orphan*. No anxious father, no tender, affectionate mother did he leave to cry for vengeance upon the inhuman perpetrator of a deed so foul and cruel; but it was the spontaneous burst of indignation that thrilled, as with one voice, this whole community, and imparted but one feeling at so gross a violation of the rights of humanity and outrage of the laws. Not got up, not excited and inflamed by us, but it was the feeling that arose from the case itself, as it existed, and it was that feeling which they have this day turned to their own account, and which has had the effect of allowing the prisoner to select only those persons as jurymen of whom he liked the appearance or whom he thought would be favorable to him, and to those whom he did not approve has given him the opportunity of saying, "sir, your mind is made up—stand aside from that jury box." For whose benefit then has it been that this excitement has been fanned into a flame, and so sedulously kept alive? Why, manifestly for the prisoner's. And since nearly the whole of this community have passed an opinion upon the question of his guilt, the result of it has been, that he has derived from it the opportunity of obtaining those only as jurymen whom he wished should sit in that box. But not even here are his counsel content to rest. They tell you that you are under a most high responsibility. They tell you (what you very well knew) that you are acting under the sanction of a solemn and imposing oath, which is very true, but not so in the sense alone to which they allude to it. It is not so, simply whether you pass upon the life or the death of this man. It is not so, simply whether he is to live or to die; but it is also important in regard to the preservation of the peace of this whole community. It is also important in regard to whether the laws of your country are to be upheld or prostrated, and whether the voice of justice is to be upheld or the laws of humanity outraged with impunity. If the prisoner depends upon the laws for his acquittal, upon what also did the murdered Shepherd depend for the preservation of his life?

This, gentlemen, is, I admit, an extraordinary case; but it is the case of a human being having been deprived of life, by force and violence, and this community are regarding you with

anxiety, as the delegated authority of the laws, to see that this death is examined into, and they expect that you shall respond to them, and tell them who caused that death, and who is answerable, and to answer for it. Remember, gentlemen, your verdict is to be published to the world, and when that is done, the testimony goes with it, and you will be responsible to the public sentiment, whether you uphold the laws, or allow them to be trampled over and prostrated, and to leave the guilty individual—the rioter over law and order—the shedder of man's blood—(as was suggested) to the all-seeing Eye of Heaven. This community will ask of themselves, is this testimony clear and conclusive? Does it convict the prisoner of murder? Does it make him out guilty of that crime? And shall he go unpunished, and vice and iniquity triumph over virtue and innocence, on account of the beguiling eloquence, and the manly, fervid, powerful addresses of the learned Counsel, whom the wages of infamy have allowed him to hire? Shall society and the witnessing multitude record the fact, that this Jury have been beguiled of their senses? That in listening to the seductive strain of eloquence that has flown from the lips of the gentlemen by whom you were addressed, you have been beguiled of your reasoning powers, and have lost your ability of discrimination? I trust not. I trust you are aware of the high responsibility of your situation, and knowing that it is not long ere this whole community, excited as they are, will read the whole of the testimony to which you have listened, and they will demand of you—they will enquire it at your hands—whether they are to be protected in the laws; whether they are to look to them for safety and redress; or when one of our brother citizens is murdered; when you, or I, or any other man is knocked out of existence, that we are to exempt the blood-stained murderer from all human penalties, and leave him to the tender mercy of all-seeing Heaven. If so, gentlemen, we had better pass no more laws, and repeal those already in existence: our legislative halls had better be closed: our courts of justice may at once be shut, for it would be better that men should know they are to have no other laws than self-protection, than that men who place their dependance upon the protection of the law, should be deliberately murdered, and the criminal, under the cover of the same law, be absolved from all punishment. No, gentlemen, let it not be as it has unhappily been heretofore. Let it no longer be a by-word and a reproach upon our laws and institutions, that a man may slay his fellow man and escape punishment, because the wages of prostitution afford him the means to procure a witness like Gillespie, and instruct powerful and able counsel to appear before you and feelingly to appeal to your humanities, and to tell you that if you have any doubt about the man's guilt, you had better return the murderer upon society, in order to let him go to Heaven and be punished there, when you must violate the oaths you have taken, and called upon your God to attest, to free him from the punishment he has most justly incur-

red for his crime here. But you, gentlemen, you and I and this court, and every member of the community, have an immediate and vital interest in the determination of this case, and it is proper and just that we should exhibit that interest, for it is only to the correct administration of the laws of the land that will ensure safety individuals. We ought to have that interest that we may make our minds clear, that we may rely upon that law for the protection of our lives, and the security of our properties, and when it comes to be established that a jury after having evidence conclusive of a prisoner's guilt, are to be wheedled out of a fair and honest verdict—then let us hasten to proclaim to the community, that Lynch law henceforth prevails; that the knife, and the dirk, and the pistol, are henceforth to do the work of justice, and when your brother or your friend is murdered, then go and commit summary vengeance on the individual, because the laws of your country refuse you justice. I have no greater interest in society than you have, and if you determine to establish this doctrine, you equally well serve my interests, as you subserve your own, but reflect that you exercise a most fearful responsibility on this community. It either satisfies them that justice may yet be done, or it satisfies them that lawless violence may be committed with impunity, and that the demand for justice has become no more than a solemn mockery. To you is confided in some measure, the protection of the institutions, and of the liberties of your country.—You may certainly acquit this man, but reflect, remember, and tremble, lest in acquitting him, you do it at the expense of many lives of your fellow citizens; for if justice is not to be obtained from a jury, it will certainly be summarily taken, and you may from mistaken motives of humanity, or from a false delicacy of sentiment, save this man's life, but by the act you may be the means of the sacrifice of 50 others.

I make these remarks, gentlemen, from no other motive than to bring your minds back to the case from which they may have been induced to wander, by the eloquent addresses of the counsel by whom you have been appealed to on behalf of the prisoner. It is my desire to avoid all attempts to prejudice you against this man—personally, I have no enmity against him—but while on the one hand, his blood would most assuredly be upon my head, did I seek to induce you to convict him, if he is an innocent man; yet, on the other hand, my duty as public prosecutor renders it incumbent upon me to press for conviction if he is guilty; and I should violate the duty I owe to the people whose officer I am, did I to avoid pain and distress to my own feelings, hesitate to conduct this prosecution with whatever zeal and ability I am able. I ask you then to bring your minds back to the case—throw off that sickly sensibility of doing injustice—discard while you are in that box this desire to leave justice to heaven—go with me through the evidence, and if this man is guilty, acting in accordance with your oaths, pronounce him so, for it will be in vain I perform my duty in the produc-

tion of witnesses, if you have made up your minds to throw aside all evidence and to acquit him—but if he is not guilty, then I beseech you, I implore you, with as much earnestness as the opposing counsel have done to acquit him; yet if he is guilty, I implore you with the same zeal and with the same anxiety for the correct administration of the laws of the country to pronounce him so. Let me, therefore, beg your patient attention to the testimony as it exists in this case, and should I so far forget my duty as to attempt to give any false coloring to it or to distort it from its fair interpretation, I trust to you and to the court to correct me; but if after considering it as it is, it makes the prisoner “guilty,” I have then discharged my duty—see to it that you discharge yours.

The first inquiry that presents itself is, was Shepherd killed; was he murdered; and if so, by whom? and then we come to the further consideration, what is the nature of the offence? and I beg your attention to my comments on the evidence, in order that if I have any improper views of the case, you may correct them. The first question I shall submit to you is, where did Shepherd receive the wound of which he died? and that is perhaps after all the material inquiry for you to decide. There is no dispute of the wound on the back part of the head, having been the occasion of Shepherd’s death; neither is there any question that the prisoner was seen on the morning of the 11th March, give one very severe blow, and that he was also seen in a position to have given him another blow. I would also call your attention to that part of the case, where it is in testimony, that the wound was found by young Whitney immediately after the blow was received; and I am confident that not only you, but every individual who shall read the evidence in this case, will agree with me in the opinion, that you have rarely listened to a young man of more intelligence or of more frankness—giving a statement unvarnished and unprejudiced, and changing neither to the right or left, of what he believed to be truth of the case. Here let me advert for one moment to the injurious manner in which the learned counsel who last addressed you, attempted to induce you to discredit this young man. He had a little too much respect for your common sense to attempt to impeach the character of young Whitney—he believed indeed that he was prejudiced; but that not answering the purpose of inducing you to discredit him, it was necessary to go a little further, and all other stratagems failing, it was requisite to make the young man drunk. You remember Whitney says that he thought he drank once during the evening, and that he might have drank two or three times of brandy and water while at Stanwix Hall; and so anxious is the gentleman to particularize, that he actually went to the trouble of measuring the precise quantity the witness drank, and declared it to be half a gill each time; that the witness then went over to the Mansion House and drank part of a glass of champagne, (and here again the gentleman’s anxiety and goodness manifested itself, for the *part of a glass* was imme-

diately set down as *half a pint*, which the gentleman measured to the witness for his allowance.) I presume, gentlemen, you know that when a young man arrives in town, it is the most natural thing in the world to be asked frequently by his friends, "will you drink with me?" and if he accedes, he sips a little brandy and water, (it may be), but it is the *ingenuity* of counsel only without any evidence, that has measured to the witness his precise allowance--the same with respect to the half pint of champaign which, allowing for the exaggeration, the gentleman says, would have turned a much older head than his. You know the ordinary strength of champaign, and yet the learned counsel has to revert to such a pretence as this, to break down the testimony in the case, and to induce you to believe that nobody is worthy of credit but the prostitutes who have testified;—if this is to be the evidence to defend the prisoner, I am sorry for his defence; and I am sorry for the intelligent gentlemen who are obliged to lend their abilities in so unworthy an attempt. But the prosecution do not rest here. Mr. Lathrop, one of the proprietors of the Mansion House, swears that he saw him up to the moment of his quitting the house, and that he was as sober then as I am at this moment, and not at all affected by liquor; and I trust that the ingenuity of the learned gentlemen, in forcing down the throat of this witness half a pint of brandy and half a pint of champaign, will have but little effect with you, when you have the evidence of Mr. Lathrop, that up to the moment of their quitting the Mansion House, Shepherd and Wilson were perfectly free from the effects of liquor. Abandoning this ground as untenable, the prisoner's counsel next proceed to say that Whitney was prejudiced in favor of not admitting that he had acted wrong, and if you adopt this suggestion you cannot but believe that the witness came upon that stand with the intention of committing rank perjury. And what could have been his motive—to bring this man to the gallows—to swear away his life? You will agree with me, that it is possible a man may be warped in *favor* of a prisoner in the generous attempt to save his life; but it is difficult to believe that a man of integrity would come forward to testify *against* a party to take his life, when he knew the testimony untrue. Well, then, there is nothing to impeach Whitney; and he tells you that he saw this man come out and strike one blow—that the prisoner lifted his club again and was in the act of pressing forward to inflict another blow, when he ran into the street, and there lay the deceased in a position to receive the second blow, and there was the instrument ready to strike, and there was the man with this deadly instrument in his hand. Recovering from his alarm, Mr. Whitney returns to his companion to lift him up and finds him laying diagonally across the side walk, with his left side down, and on putting his hand under the head for the purpose of lifting him up, he thought he felt the skull press in, and his fingers slipped off. This, then, is conclusive of the fact, that the two wounds were received in Pine-street. Cromwell then comes upon the stand and swears that

receiving from Whitney an intimation of another injury, he examined the patient's head, and then felt that strange sensation which has excited the ridicule of my learned friend. Gentlemen, will you believe Cromwell or will you not? What earthly object had he to come upon this stand and swear falsely against the prisoner, whom he never had known—upon whom he never had laid his eyes until he saw him in this court room. What object then had he to testify against this prisoner, whom he had never seen, and against whom it was impossible that he could have had any malicious feeling. All the symptoms, too, as testified by all the witnesses, tend to prove that these two wounds must have been received in Pine-street. Dr. March says that every symptom of the patient was entirely consistent with the supposition that both of the wounds were received there. When Shepherd was struck down, the blow did not penetrate to the brain so as to injure that, and it would not be until the lapse of some short time, that the muscles would resume their ordinary action, and the blood flow as before; and it would not be till then that the blood would flow from the arteries that had been cut, and so soon as that begun, the patient would feel more sensitively the pressure of the blood that would coagulate upon the brain, and hence insanity would ensue. The next subterfuge to which resort is had, is, that the deceased *may* have received his death wound in the Mansion House, and to destroy this supposition Peter Halpen, the porter, is called, and when he proved he saw him come down the stairs (where was the only place they pretended he could have received this injury,) safely, there was no longer any foundation for this pretence. If, then, it is as I submit, clearly proved that these two wounds must have been received in Pine street, and if we can answer this inquiry satisfactorily, you have little trouble in coming to a satisfactory conclusion.

The next point to which *I* beg your attention is, by whom and how, were these two wounds inflicted, which is a most important and material point in this cause. It appears by the testimony, that certainly one blow was struck. No man disputes it—every circumstance confirms it—the hat of the young man exhibits the precise spot where the blow was given. Whitney says that Rector, after striking the first blow, was in the act of pressing forward with his club raised, but of course he could not tell whether the end of the club went down, because his back was towards him. Then comes the testimony of Radliff, who confirms Whitney so far as he goes. He says that after having struck the first blow, Rector pressed on; that he went down on the side walk when Whitney ran; that his attention being attracted by Whitney running, and expecting that Rector was going to strike him, he did not observe where the end of the club went down. That the whole transaction occurred in a minute of time, and there was this man with the club in his hand on the side walk, in a position to have inflicted this second injury. Radliff swears too, that the second blow might have been given,

and he not have seen it; that he did not see the first blow, for that Rector was then in the position to intercept his sight of the object, and when the second blow was struck, the witness' eye was on Whitney, upon whom he expected to have seen the club descend. Consider in what position Radliff stands before you, and if you find him unworthy of credit, in a case of this moment, you will disregard his testimony.

The gentlemen have said that we kept Radliff as a last resort, that we did not call him until he knew what it would be necessary he should swear to—but if we may be permitted to know our own motives best, I may be allowed to state that the reason why Radliff was not introduced at an earlier period of the examination was, because we knew he would state facts for Rector, as strong as he possibly could. He was a friend of Rector's. He was an inmate of the house at the time of this occurrence, and it was because we did not know how far he might allow his feelings of friendship to influence him in giving his testimony, that we stood aloof, and hesitated calling him, until after we had seen what would be the course of the prisoner's counsel with respect to him. The gentleman has told you there is no evidence of his being friendly towards Rector, but that the contrary is the case. How is it then, that he happened to be in his house on that occasion? How was it that Rector spoke to him as a friend, desiring him not to go to bed until after the disturbance was quelled? That he was a personal friend of Rector's these facts which cannot lie, establish beyond a doubt, and for that reason we rested this case to give to the prisoner's counsel the right of examining him, if they chose. But no! they would call not him, for they knew that *death* lay in Radliff's mouth, if the truth should happen to come out. If they had confided in the innocence of the prisoner, why did not they call Radliff, and the inference then would have been, that here was a looker on of the whole transaction, and if a second blow had been struck, he *must* have seen it. Finding that the prisoner hesitated to call him, no alternative was left, and we were bound to produce him before you. No sooner had we got him in that box, and he stated his knowledge of the occurrence, than the prisoner's counsel, interrogates him in his usual fierce manner, "did you not testify in such and such a manner, before the police magistrates? Did you not testify so and so, before the coroner's inquest, and before the Grand Jury?" and when the witness replies "I do not recollect the question being put to me," the gentleman then assumes a graver tone, and enquires "did you not swear sir, when at the Police Office that Rector was not off the platform of the stoop at all," and the witness replying differently from what was expected, the gentleman was sure, certain, he had got him there, and to end all doubt about the matter, steps himself upon the stand. For the enforcement of justice, Squire Cole is sent for from his sick bed, and there is produced the written testimony of the witness, as read over, and subscribed by him, in which is confirmed every particle of the testimony

that he has this day given. But the prosecution does not stop here. Mr. Pruyn who had business at the Police Office that morning was called, and stated that he had a distinct recollection of the examination of Radliff, and that he believes no such question was put to the witness. What then does the whole amount to—it is the recollection of Mr. Pruyn against that of Mr. Wheaton. Is then Mr. Radliff broken down in his testimony? Certainly not, but it does shew with great force, the position that I assumed to be correct that Radliff would not tell one word against the prisoner's interest, and when at length he did tell that Rector was on the side-walk, & in a position to have struck that second blow, it was wrung from him by the closest system of cross questioning. Finding they are in a failing condition here, the gentlemen have recourse to their refuge. "Oh! say they, Radliff had been to a porter house, and had drank a glass of beer. he had been to all the cellars in the neighborhood, and was not capable of judging." That would be singular indeed—they do not pretend he was drunk at all; but they contend that it discredits a young man that he happened to be at the porter house that night. He did not testify as did that scoundrel Gillespie, that he was in the daily and nightly habit of frequenting such places. But he happened to have been at the Circus that evening, and stopped at a porter house for a few minutes. on his way up to Pine-street. But say the gentlemen, it changes the whole aspect, and nature of the prosecution. It overturns the whole case, and evinces the desire to sacrifice the prisoner at all hazards. Is that so? Shepherd is dead, his father and mother are both dead, his uncle you have occasionally seen within the bar during the progress of the trial. But you have seen nothing, nor will you see anything in him, that characterizes a man bent on vengeance, a thirst for human blood. Even at this moment, you do not observe him here, and no one now appears, except the man whom the law has delegated to conduct the case on the part of the people, and those whom he found necessary to associate with him. Did the prosecution assume the position that Rector was not off the stoop? Certainly not. We proved that he was on the edge of the stoop when he struck the first blow, and that he was in the act of pressing forward with the club raised. Would that leave him on the stoop long? the inference would seem that he went off the stoop at once, and it was that scoundrel Gillespie, who alone stated on the stand, thereby committing rank perjury, that Rector was not off the stoop at all. It was therefore a fiction of their own, it was the artificial defence of the prisoner's counsel, that originated the idea the blow was struck while Rector was standing on the stoop, and it was not until the court had demonstrated the impossibility of a blow struck while standing at an elevation of 3 feet, that they have abandoned their first defence, and find it now necessary to break down the testimony of this witness, otherwise they know and feel his fate is sealed.

I have then established the first position I assumed, by in-

controvertible testimony, unless that man Gillespie, who has been bought by the wages of prostitution, to come here and give evidence that is untrue, is to be believed. I have then satisfied you that Rector was in a position in which he might have inflicted that injury. All we got out of Radliff, you observe, we are compelled to wring from him, he gives his testimony in the manner of a man who is compelled to answer unpleasant questions, and you will bear in mind the observation made by his honor, the Judge, that there was nothing in the young man's testimony, or in his manner of giving it, that did not deserve credit. With respect to the testimony of the physicians, do not all those skilful gentlemen declare that this club was the very instrument that would have inflicted a wound of that description. Dr. Staats, and Dr. Groesbeck; both called for the defence, coincide in this opinion. Here then is the instrument of which the gentleman speaks as having the story circulated, that a man was hung for the striking of another with a piece of pine board. Put this piece of "pine board," into the hands of that giant, and place him in the position to strike that blow, and my word for it, the piece of "pine board," will become a most fearful and terrific instrument of death.—As a further ground of defence, the gentlemen contend that the deceased received this injury in falling, and they talk about the Indictment, as though that should have been framed otherwise than it is. Is there the least particle of testimony, that warrants the conclusion that the deceased received this injury by falling on the back part of his head, if such had been the case, would it not have been as easy to have included it in a count to that effect? But knowing the testimony, and the whole facts of the case forbade the idea that he could have received this injury in falling, I was indisposed to add anything to it that might have a tendency to distract the minds of the jury, from the truth and facts of the case. * * * *

But gentlemen, what is the answer they make to this case. They attempt to prove that Rector was not off the stoop at all that evening, and the man whom they produce for this purpose is Gillespie, who testifies positively, that he saw Rector come out of the house—he saw him strike the deceased—he saw him raise the club the second time—he thought he was going to strike Whitney—he observed him run into the middle of the street, and he then saw Rector turn round and go quietly into the door of the house. If this man Gillespie, is to be believed, there is of course an end of this case, so far as the murder is concerned. But it is an enquiry worthy of your most serious reflection. how that man stands before you, and if I do not satisfactorily prove to your minds, that this scoundrel is in every possible way unworthy of any credit, and that he has told nothing like the truth, then believe his account, and disregard the evidence of all the other witnesses if you see fit. Where is he contradicted by *facts*? You remember when on that stand he swore distinctly, and positively, as to his knowledge of the position of these two young men, Whitney and

Wilson ; that they were both together on the stoop before the door, and the moment that Rector appeared there, Whitney ran one way, and Wilson the other. That fact he had to swear to, because that was one he could not avoid seeing, if he had seen any thing, and he swears that he distinctly saw the deceased on the side-walk, within a foot of, or close to the platform ; that he could distinctly see Whitney and Wilson ; that he could also distinctly see Rector the moment he came out of the door, and yet could not tell a particle of what clothes he had on, nor could he tell how either Whitney or Wilson were dressed. Are Whitney and Wilson then to be believed, who both swear to a fact of which it is impossible they could be mistaken, or is that scoundrel Gillespie, who disgraced that stand by committing rank and foul perjury, to be credited.—The testimony of Whitney is, that after Wilson had gone to the window, and rapped, and had conversed with Rector he immediately left the stoop, and went below a distance of 15 or 20 feet to obey a call of nature. Can Whitney be mistaken in that fact, of which he has a distinct recollection? Can Wilson be mistaken in what he was doing, or what required him to go off the stoop. Clearly not, Whitney knew well where Wilson was, and what he was about for he stood there waiting for him. Wilson must have known what he was actually about, and yet here is the wonderful point as counsel would have you believe, that Whitney and Shepherd should have remained standing there, waiting for their companion instead of moving off at once, and leaving him. But say they, Wilson is not to be believed because he had swallowed all the Champagne and Brandy and Water, and Beer, he could possibly force into his stomach. Upon that point, I shall answer in the words of Wilson himself, that he may have drank once at the Mansion House, before going to Stanwix, that while there he drank two or three times, and that he again drank on his return to the hotel. But has he conducted himself on that stand in such a manner as to satisfy you that he is justly chargeable with intoxication on that occasion. Has he convinced you that he was in such a situation that he could not have known how he then behaved? Does his testimony confirm that belief. He walked with Shepherd all the distance from the Mansion House, to Rector's without assistance; he conversed with him without difficulty, and being told by Whitney, they could not obtain admission into the house, feeling pretty merry he replied like any other man in his condition would, "I will try then." Did he act like a drunken man, after the occurrence took place, was it the act of a drunken man, to return to his prostrate companion, and after deliberately enquiring where he was hurt, to start off without delay to the American for assistance? Was it the act of a drunken man to return, on finding he did not succeed, and subsequently to go twice to the office of Dr. March, and afterwards to proceed to Dr. Groesbeck? Was that acting like a man who was intoxicated so, that he did not know what he was about, or was it

not rather the act of a man who might have felt well and lively, but who was bent on procuring assistance for his wounded companion, if possible? Was he then in a condition to know whether he was standing on the stoop, or not, and did he not know for what purpose he left it, and how he was immediately afterwards engaged? Yet here comes this Gillespie and swears to a fact altogether irreconcilable with this state of things. Gentlemen, he is contradicted by testimony which cannot lie, it shows why Wilson was in the precise condition he was, and why he did not see any of the fracas, and why he did not hear the blow. These are material facts that cannot be contradicted, and yet Gillespie dares to swear they were both on the stoop, both hammering at the door, at the very moment Rector came out. But there is another statement in which he is convicted of falsehood, in declaring that Whitney ran the very moment the door opened. Whitney swears that he stood on the walk until he saw his companion stricken down before his eyes, and he ran, thinking that the next blow was coming at him. But the crowning point in this catalogue of falsehood, is that Shepherd stood on the lowest step of the stoop, and yet that his head fell on the curb stone, and if this is true you must believe that the deceased was knocked a distance of at least 6 feet!! and although this pure, truth-telling witness, in his anxiety to account for this injury at the back part of the head, makes the deceased to have been removed by the violence of this blow at least 6 feet, yet the learned gentleman, (with what consistency I cannot determine,) insists that Shepherd must have fallen perpendicularly, for that blow was a vertical one. The object of the witness being to exempt the prisoner entirely, he forgot the position in which he first placed him, and drove him a distance of 6 feet, to get him into the situation in which it was necessary to place him. But the idea is too preposterous for you to entertain, and you will agree with me, that here is another most palpable and wanton falsehood.

But a little further. The witness is asked, "did you ever tell any one voluntarily that you had no knowledge of this occurrence?" no, he never did. To refute this untruth, we called upon that stand as respectable a young man as can be found in the city of Albany; against whom the breath of suspicion never has been raised, and who happening to be in the court room when this scoundrel testified, thought it his duty to further the cause of public justice, and being subpoenaed, came upon that stand and stated what the witness had previously informed him; and if ever Matthew Gillespie told the truth, the time was when he voluntarily told Mr. McKown that he knew nothing of the matter. To whom did Matthew Gillespie communicate this great secret that was lodged so carefully in his bosom? to one "Hop Young," whom he met at a porter house 7 or 8 days ago; to whom he said in great confidence, that he meant to attend court and see if things went right; that he knew something that would set the matter at rest. Now comes the solemn mystery. His counsel

tells you that he never breathed a word of this secret to any individual, till within 10 minutes of his appearance upon that stand, when he mentioned it in conversation with two very respectable individuals, John Rector (the prisoner's brother,) and Squire Lisher. Whenever a case is attempted to be supported by *bought witnesses*, detection is sure—some clashing of testimony, some contradiction is inevitable—the witness will either convict himself, or his evidence will be irreconcilable with some previous statement. What was the language of the learned counsel who opened this case to the jury? did he not state that a witness would be produced on the part of the defence, who overlooked the whole transaction, and who would swear that Rector never was off the stoop during that night; and how is this reconcilable with the statement of his associate counsel, that within 10 minutes of the period when he gave in his evidence, the prisoner's counsel had no knowledge that he was acquainted with any of the facts. Let Mr. Gillespie then stand in the base and foul attitude of conspiring with this other man John Rector, to prevent the course of justice in defeating this prosecution. That John Rector is a respectable man, *I* deny—that he is so pure, so delicate, in his notions as to scrutinize particularly what this man would say as long as he would testify to the needful point, *I* also deny; and that he is above tampering with any witness who might be rendered serviceable, *I* do not believe. What excuse do the counsel make for the previous statements of this scoundrel respecting this occurrence? They talk to you of his peculiar situation in life—he had been unfortunate in his affection—he had deserted his wife and family to the support of the world—he was living in open public prostitution with a woman to whom he usually went at 12 o'clock at night from public houses—and they tell you of the delicacy, a pure and virtuous man would naturally feel upon being compelled to disclose the degradation of his condition; yet upon my inquiring of him whether he was not living in open adultery, and the court apprizing him that he need not answer any question that would proclaim his iniquity, “oh,” says the witness, “*I* care nothing about it;” and immediately discloses the very matter that he pretends had caused him to keep his mouth so closely shut previously. With respect to this perjured witness, *I* have but one more remark to offer. He tells you that about 2 years since, he had accumulated money to the amount of three or four hundred dollars, and that if he had paid his just debts, they would have consumed the whole of the money. He tells you further, he has been living in open prostitution with that woman till this time, when his treasure must necessarily be about exhausted, and he is now naturally desirous of recruiting his funds. That fact, taken in connection with his conduct and appearance before you, speaks volumes. The prisoner is a man of some property, which he has gathered from that fountain of corruption that he has hitherto kept; and these means, from having been the wages of prostitution were unscrupulously employed in being made the wages

of perjury. But the attempt to bolster up this man's character is scarcely worth even a passing remark. There is a point of degradation beyond even that of a common liar, and when a man sinks so far, it is in vain that you ask of his acquaintances what is his character for truth and veracity, for there is other conduct so much more glaring, that their attention has never been called to that particular. You would scarcely think of speaking of a woman of the town as a common liar, but in calling her a strumpet, you would embrace every particular in her character that was bad. So it is with Gillespie: he was at that depth of degradation, that common lying was no disgrace to him. I have now done with Gillespie—with that man who, in the presence of his Maker, has committed perjury, of which every man in this court as well as myself is fully satisfied.

I advance now to another part of the defence. These girls who have been formerly employed by the prisoner, and hired in his house as the means of corrupting the youth of the city, and of undermining the morals of the people, are now employed to come here and swear this man clear of the consequences of guilt, a purpose equally unworthy and criminal in them and him. So far, however, from their defeating this case, they entirely confirm it. Three out of the four girls, (all whom they dare produce from that house,) entirely corroborate the testimony of Whitney and Wilson; one of them, Amanda Smith, tells you that hearing this violent knocking and noise at the door, she raised her window and listened to the disturbance. If you believe this girl at all, her evidence is conclusive. She was in the exact position to have heard all that took place—she heard the persons occasioning this noise, walk under her window to the other side of the stoop, where they silently conversed, but she heard no blow, no fracas. One of the conclusions then is inevitable—either she has not told the truth, or she did not hear the same persons.

We have now established three points from which there is no escaping. We have clearly proved that these wounds were inflicted in Pine-street—we have shown they must have been inflicted by the prisoner; and we have, I think, satisfied you that this Gillespie is utterly worthless, and that so far as these girls tell the truth, they support the case made out on the part of the people. Then, gentlemen, the conclusion is inevitable—Shepherd was killed, and there sits the man that killed him. No human power can change the effect of this testimony, no ingenuity can smooth it over, or destroy the inevitable conclusion from it.

What then was the provocation under which it is pretended this man acted, and what was the occasion of this sudden heat of passion that is to justify an act so atrocious? To adopt the learned counsel's own statements—the force used must be in proportion to the resistance to be overcome. What was the resistance to be overcome? Here stood these two youths, Shepherd and Whitney, fragile young men, not yet sufficiently matured in years to have obtained their full strength—there stood

Wilson, so drunk that he could injure no one—three weak, feeble boys, whom in the hands of this giant, were but as feathers, whom he could have scattered to the winds of heaven; and yet he must needs rush out with a club so deadly, so formidable as that, and strike so violent a blow as to crush down the crown of the hat. These gentlemen say he has a right to protect his castle. I admit it to the fullest extent of the principle contended for; but he had no right to repel the aggression with any greater force than he was assailed with. The learned counsel contend that these young men were there with an improper object—that they were there with an immoral design, but he forgot to deal with these girls in the same strain of indignation. I listened with astonishment, with wonder, that a man capable of such a nice discrimination of virtue and of decency, imbued with the principles of our holy religion and morality, should have so far forgotten himself as to have pronounced a panegyric on these girls, telling you they were capable of as warm and tender friendships, as the more virtuous of the female sex.

Gentlemen, this is not the ordinary case of a man's house being attacked at night—it has nothing to do with that case. This prisoner has no right to say that these persons who went there for the very purpose for which he kept an open house, were there for an improper purpose, or with an improper design. His lips should be shut on that subject. If these young men had been at the house of a respectable private citizen, knocking at the door at that hour of the night, the occurrence might have excited some distrust; but here it was an ordinary event—it was to be expected—it was to be anticipated—it has happened a thousand times—it excited no other feeling in his bosom than the ordinary transactions in which he was engaged; but that feeling of regard for the laws of his country, of respect for the life of his fellow-being, had become deadened, and he walked out of that building perfectly reckless as to what he should do, and totally indifferent to the resistance to be overcome. At the moment he stepped out, there was no resistance to repel; it was to drive this man from his *hallowed* ground, that he crossed the threshold of his door, and then committed the deadly act. It was not therefore, in defence of any thing; it was to repel no assault; and if his object was only to drive these boys away, he had seen their size and knew, they were not likely to become very dreadful or formidable opponents, and with the strength that God has given him, he might have walked out and scattered the boys like chaff before the wind; but with this bar, this cruel, deadly instrument, he sallies out and expends the full force of his ferocity and strength in a blow upon the head of the unfortunate Shepherd. Put this weapon into the hands of that man, and you make it at once an instrument of death; destruction is the consequence of a blow struck by that giant. He might have struck with the flat part of that bar, and not aiming the blow at a mortal part, have produced no serious injury, but nothing but the death of the victim would appease his fury, and to effect that he put forth his whole strength in the blow that fell on Shepherd's head. * * * *

I have now, gentlemen, discharged *my* duty. To me it has been a most unpleasant and a painful one; to you yours may be so likewise. It must ever be a painful thing to pronounce a man guilty of murder: but the solemn responsibilities you have assumed, render you liable to the community that you discharge that duty which the frankness, with the inde-

pendence, with the integrity that belong to the lovers of liberty, who love their country and are desirous to maintain her institutions. If I have set down any thing against this prisoner that is not true; if I have distorted the evidence, it has been unintentional. I have sought to do the prisoner justice. I have likewise sought to uphold the laws of my country. It would be no gratification to me to know that I could get a jury to convict that prisoner, if I believed him innocent; no petty vanity resulting from success could compensate me for the remorse I should feel; that would be but a paltry triumph indeed unworthy in me as a man, degrading to my office, and disgracing the occupation in which I am engaged. I leave the case with you; if, after hearing my associate counsel, you still entertain a rational doubt of the prisoner's guilt, I ask you to pronounce him not guilty; but if you are satisfied of his guilt, remember the responsible position in which you are placed as the guardians of the laws, remember the crime he has committed, and do your duty according to the evidence.

Mr. STEVENS. I shall take it for granted, gentlemen of the jury, that however solemn and imposing the duty may be you have now to discharge, that you are each of you collectively and individually prepared to discharge that duty as the laws of your country require, be the consequences what they may. I shall take up none of your time in endeavoring to impress you with the idea, however awful or solemn the duty may be which you have to discharge, between the prisoner and the laws of God and your country, still it is your duty to discharge it fairly. Did I suppose that there was an individual that was not prepared to do this, my lips should be closed or only opened to warn the community of the danger of such a man. I take it for granted, that however awful (and it is awful) your duty may be, and however you may regret that the laws of your country shall require you to pronounce a verdict of guilty in this case, that you evince your fear of God and your love for the laws of your country, by a scrupulous regard of the oaths you have taken. It does not belong to counsel and especially to counsel who have the ungracious task of associating in a criminal case, and who have no more interest in the result than any of you have, to admonish the jury that they must come up to this task like men. I take it for granted, each individual is prepared to do this, and I also trust that whatever may be the public prejudice in this case, however it may have raged, that it may excite now no feeling against the prisoner in your minds, and if the testimony be such that you cannot say you believe the prisoner guilty, that you will not be induced to find him so. I want men in that jury box who have firmness to discharge their duty, and I have the sanction of your oaths for saying that it will be discharged—painful as that duty MAY be, and heart-rending as it ever *must* be to persons who are engaged in administering the law in a criminal case.—There is but one preliminary remark I shall make to you before I proceed to call your attention to the proof that sustains this prosecution. It has been remarked by the public prosecutor with whom I am associated, that the counsel for the prisoner have taken pains to caution you *against* the court. It is true,

gentlemen, what counsel have told you, that by the laws of the land you must say, whether this prisoner is guilty or not guilty, and that you must decide both the law and the fact; but those very laws which have made you jurors have also made the learned gentlemen who sit upon that bench the judges, and suppose that jurors will learn, and take the laws from the bench. The bench acts under the same responsibility that a juror does, and when a learned judge tells a juror that such and such is the law, that juror knowing that he is not and cannot be very well versed in law, it would be a direct violation of the oath you have taken, and it would evince as great a disregard of law, as much as if we should prove by two witnesses that they stood by and saw a man take a pistol from his pocket, present it at another, and deliberately blow his brains out, if a juror should say I have a doubt, and should therefore acquit the person so charged.—Such a juror would be guilty of moral perjury. It is not such men that are to protect our lives or property. You are not impaneled for the purpose of taking vengeance on Mr. Rector.—The laws of the land have not declared that from him, who takes life, his life shall be taken in *vengeance*; but because the law has a tender regard for the lives of those who are left, the man who has once shewn such a brutal disposition, is not to be permitted to have an existence among men. You are placed in that box, not as persons to administer vengeance, but to protect *me*, to protect the court, and yourselves hereafter from aggressions of that kind.

And my labors will be much shortened, gentlemen, because I shall merely lay down the propositions of law, that I contend for (and leave it and the court to say whether they be or be not the laws applicable to the case. * * * * *

In this particular prosecution, three several propositions will present themselves for solution; about some of which there can be no dispute; about some of which there is a dispute, and upon which the prosecution depends. The propositions I beg to submit are,

- 1st. Did the wounds on the head of Shepherd produce his death?
- 2d. Did the prisoner, Thomas Rector, inflict those wounds?
- 3d. If he did, did he so with malice prepense, a forethought or expressed or implied?

If all these propositions are established in the affirmative; if the jury find from the testimony that they are bound to respond to these propositions, your verdict then must be that the prisoner is guilty.

As to the first proposition, did the wounds on the head of Shepherd produce his death? you cannot of course expect me to detain you one moment on that subject. It is a matter of which there is no doubt; that the wound on the top part of the back of the head produced death, there is no dispute.

The second general proposition is, was this injury inflicted by the prisoner, Thomas Rector? and, gentlemen of the jury, permit me to say that this proposition presents the real and only question in the case, because, if the proof shows circumstances which tend conclusively to prove that the prisoner inflicted that wound on the top of the back part of the head, which caused Shepherd's death, I suppose and hope to be able to illustrate to you that the prisoner is guilty of murder, and it is for that

reason I propose to call your attention (not very minutely) to the several features of this branch of the case.

Was this injury on the back part of the head inflicted by Thomas Rector? The first enquiry which must necessarily be made, and which you must satisfy yourselves of is this: At what place was this wound inflicted. Now let us recur to the testimony, not in detail, but to the result of fact. When Robert Shepherd arrived upon the stoop of Thomas Rector, in Pine-street, about 1 o'clock in the morning of the 11th March, he was in perfect health. Do any of you doubt it? Have you any of you a right to say that under your oaths, you have any doubt of that? A young man about 19 years of age, and in perfect and good health and spirits, which he could not have been, if that fracture of the skull had existed at that time. Then it is clear that fracture was not inflicted before he went to Rector's stoop. Now let us take another proposition. Was that fracture inflicted after he left there: I take the deceased now, at the time Mr. Whitney assisted him up, and walked him towards the American Hotel, and took him to the office of Drs. Wing & Boyd. Was it inflicted before the time of their arrival at the Drs. office, and at the time he died. Gentlemen of the Jury, how are you to say upon your oaths, that you find a fact to exist, or not to exist? This is a matter you must bear in mind, for which you are put into that box. You are sworn to find a verdict according to the evidence; that evidence is the thing then which proves the facts. You know nothing about them, how are you to say then that a fact has occurred at all, or when it occurred? Why from the evidence? Let me pause here one moment—because although counsel may advance a thousand theories and hypotheses, and present them to you, yet to you who act under oath, it is a little important to know with some certainty, the premises on which you act. You are asked to suppose that this fracture was inflicted on the head of this young man, between the time of Mr. Whitney getting him up, and the time of his death, and you are asked to say, for the purpose of acquitting this prisoner, that this fracture was received some time during that period. Let me suppose that you do say so, and that that Being who sooner or later causes all the actions of our lives, to pass in review before our mental vision, shall put these questions to your consciences: Did you regard an oath taken in my name? Did you find such and such was the fact? Was there any proof that warranted you in so doing? Are you then acting under the solemnity of an oath, prepared to believe that this injury was received between the time Whitney raised the young man up, and the time he died? Suppose there was no positive evidence as regards this point, are you prepared to do that? Permit me to say, that no juryman, unless he be a very ignorant, silly man, or a very wicked man, could say so. But what are the facts: Mr. Shepherd was in the company of Mr. Whitney from the time he was raised up till he got to the office of Wing and Boyd—does not Whitney prove then that he could not have got the injury in that space of time? After he got to the office, he was in the presence of Whitney and Wilson and Cromwell, till he left the office; he could not have got it there then. After that he was in the company of Dr. Groesbeck, Mr. Whitney and Mr. Wilson, till he got to Pearl-street; then Dr. Groesbeck left and he was in the company of Whitney and Wilson, till he reached the Mansion House; it could not have happened then during this time. When he arrived at the hotel, the porter, Peter Halpen, came and let them in, and Shepherd was in company of all three of them, till he was deposited in his bed between 3 and 4 o'clock on the Sunday morning. Up to this time then he could

not have received this injury. Where is he next seen? About 5 o'clock the next morning, he is seen by the same porter coming down the stairs in a feeble manner, (to express it in the porter's words, "drunken-like;") goes into the bar room, throws himself upon the sofa, and the porter does not see him again until he is called into Mr. Burgher's room. A little before 8 o'clock, he is in the parlor of Mr. Burgher, in the front part of the Mansion House, with his drawers tagging at one foot, with nothing but his shirt on, with Mr. Burgher's hair brush in his hand. What does this indicate? what does this clearly prove? does it not indicate that he was under an alienation of mind? that his faculties had departed? and how could they have gone? The blow on the front part of the head could not have produced an alienation of mind, except at the very time he was struck senseless, and insanity would not have come at all from that wound, unless fever had intervered. How came these symptoms then? the physicians tell you that this fracture was directly calculated to have produced these very symptoms, and that they would naturally ensue within 5 or 6 hours after this knocking in of the skull, which stunned him, for its first operation deadening the circulation of the blood; that when he recovered from that stupor, the blood would resume its circulation; that shortly after, compression of the brain would commence and progress till it terminated in death; and that when the compression got to a little extent, the mind would be wandering; proving as clearly as could have been proved if one of you had seen the whole transaction; had seen the wound on the back part of the head, and had seen the gradual effect of it upon the brain, that there is not the shadow of a pretence for the supposition that the wound was inflicted between the time Whitney assisted to raise him up and the time of his death. Now then, gentlemen, this is putting the case in its weakest point of view; in its weakest aspect; and I am now going to show from the testimony, that this wound was inflicted between the time that Rector came out of the door with this bar drawn over his shoulder, and the time this young man was assisted to rise by Whitney, Whitney says that he went up to him as soon as Rector went into the house to assist to raise him up and in putting his left hand under the right side of the back part of the head, he thought he felt the skull give in, though he said frankly it might have been no more than imagination. Mr. Cromwell tells you that in consequence of the suggestion made to him by Whitney, he examined the patient's head, and when he put his little finger into the gash on the front part of the head, it did not appear to affect the deceased; but when he examined the place indicated by Whitney and placed his hand upon the spot suggested, he immediately shrunk, manifesting that it gave him pain. That could not be if the skull was whole, but he tried it two or three times, and every time he pressed on it the patient shrunk and endeavored to shake off the hand. We need not read books to prove how perfectly natural such conduct on the part of the injured individual would be, because I should despair of proving any thing to any intellect that would require a book to prove that when a man is hurt and in pain, he would naturally get away if he could. What does that prove? that this injury was there then? it proves that Whitney was correct when he thought he felt this giving way of the skull—and it proves that the injury was received previous to Mr. Cromwell's examining him while in the office of Wing and Boyd. Gentlemen of the jury, where was this wound inflicted? I ask you to answer the question when you come to retire and to reflect on this case—the wound was there, was it not? it must have been inflicted by some means to get there—it was not there when he

arrived at Rector's stoop—it could not have happened after Mr. Whitney got him up—then it must have been inflicted while he was there at Rector's, and between the time that Rector was first seen with this club drawn to knock him down, and the time when Whitney assisted to raise him up. You have indeed, gentlemen, power of seeing, but you may as well close your eyes, because you will not see as to steel your minds against conviction, because you will not be convinced. You may refuse to pay any attention to this reasoning, but you cannot satisfy your oaths or your own good sense, and yet escape from that conclusion. Let me ask you for one moment in relation to the question, “who has seen Rector inflict this blow on the back of the head;” whether any body has seen the wound inflicted at all? How do we find out that it must have been done at this time and place? It is from the proof of circumstances. They prove the fact not only *as* conclusively, but *more* satisfactorily than it could be proved by a witness swearing to it. A witness may forget; his memory may deceive him, but circumstances cannot deceive you. The counsel might with equal propriety have asked you, who swears that he saw this wound inflicted at Rector's stoop? Nobody. But is it not proved to you as clearly as any thing can be proved, that it was inflicted there? We have come then to the conclusion which is inevitable—the wound having been inflicted at the prisoner's house at the time we mentioned; we have established the proposition that the wound was inflicted at the prisoner's house at that time. The next question is, was it inflicted by the prisoner, or was it received in some other manner? The fact is demonstrated; there is no getting rid of it, that this wound was inflicted at Rector's house, and between the time Rector was seen in the attitude of striking Shepherd, and the time he was picked up. That is proved. It must have been made there, because it is seen it could have been made at no other time, nor at any other place. Then the question recurs, was it done by Rector or in some other manner? In what other manner *could* it have been done? In what other manner is it pretended it *could* have been inflicted? Now I wish to call your attention to a distinct proposition, for it presents the case with fairness and clearness. We have established that this wound was given at that particular time—was it given by a blow or in some other manner? Let us look at what the counsel pretend—that it may have been occasioned by a fall on the side walk. It is proved the deceased was struck a most tremendous blow with this bar on the fore part of the head, so as to crush down the hat and cut into the head almost to the skull; that blow the counsel say knocked him down, and in falling on the side walk he may have got this fracture, and if you are satisfied that he got this fracture in the way pretended, then the manner in which the death occurred is not charged correctly in the indictment, and the prisoner is entitled to take advantage of it. Now let us look at the evidence—are you authorised by that to say that he did get this fracture by falling on the pavement or on the curb stone? The side walk is 16 feet wide—the stoop is 5 feet some inches, leaving 10 feet beyond the front part of the stoop before Rector's; that side walk is paved with brick—the snow had been shovelled off of it, but in some spots the snow had frozen, and was left on the walk. Mr. Shepherd was knocked down by the prisoner (as his counsel say) by the blow struck on the fore part of the head and fell on his right side; we say he fell on his left side, and that his right side was up hill. Whitney saw him falling on his left side, and got to him as soon as Rector went into the house; he was then on his left side; his head was then 5 or 6 feet from the curb stone; his feet were towards the

steps of Rector's stoop, and his head was 2 or 3 feet nearer the curb stone than his feet were. Drs. March, Staats and Wing have been called upon this subject, and have been examined upon the supposition that this young man had fallen backwards on the side walk so as to fracture the skull on the back part. They are all asked, could that fall have occasioned the fracture? they all concur in saying they deem it impossible—that falling from his feet, could not have caused the fracture, and that he must have fallen from some distance, or been in some manner propelled by a considerable force to have occasioned so extensive a fracture. Are you to say then, you believe that was the way in which that fracture was occasioned, when every medical man tells you it was impossible, and when it appears that this fall was not occasioned by any propelling force, which threw him with accelerated violence; but being stunned by the first blow, he would simply sink down from the muscles of the legs relaxing. How, I ask, men of your consciences, when you are acting under oath, are you to believe that was the way in which that fracture was inflicted? That is not all—this man fell on his left side; that is proved, if there is any thing proved in this case; and falling on the left side, it would seem to me to be difficult how this injury on the top part of the rear right side of the head could have been received. Did he fall on his left side? when Whitney saw him he was falling on his left side; when he got to him he was lying on his left side; when Wilson got to him he was lying on his left side; when Radliff saw him he was on his left side. But it is said he may have been receding back at the time the first blow was struck; but is there any evidence of that, and if he had fallen back where would have been the most natural part to have hit? why, if he had fallen back as is supposed, and struck his head upon a projecting stone, he would certainly have hit the back part of the head. But again—there seems to me to have been a wonderful paucity of reasoning or recollection in the learned counsel, who presented this supposition to you. Suppose that the blow was directly vertical, and that the deceased receded on his right; yet let them tell you how his head could have got down the street to have been in the situation they would have him, when Whitney got to him. Are you prepared to swear that you are satisfied from the testimony, he received the injury in falling, because giving in your verdict is swearing how you believe the testimony warrants the facts.

Now, gentlemen of the jury, let me present this case to you for a moment, as the Counsel opposed to us supposed that it ought to have been presented, in order to have convicted Rector. If the indictment had been so framed, could you have said that the facts warranted you in coming to the conclusion that the deceased received this injury in falling? With how much more force of truth would the same able Counsel have urged that the fracture could not have been occasioned in this way. It then **MUST** have been occasioned by a **BLOW**. Recollect, gentlemen, we have not enquired **WHERE** that blow came from. We have got the time and place where that wound was inflicted, and we have also ascertained that it could not have been received in falling, even if he had fallen on the spot where it is proved he did not, and the only remaining question is **WHO** dealt that blow? I shall endeavor to answer that question by shewing you **WHAT** proves Rector inflicted the blow, and that it is not necessary any body should have seen him do it. In the first place, Rector was in an attitude—had the means and the disposition to have inflicted that wound. That he had the means—that he was there—that he could have done it, is proved—that the fracture was occasioned by a blow, is also proved and that blow must have been dealt by somebody. It was done at this moment of time because we have shewn you that it was not done previously, nor was it done afterwards. Who could then have dealt that blow—why necessarily, either

Rector, or Whitney, or Wilson, or Radliff. There was no other person present who could have done it—it must have been done by one of these men, and which of them did it? We present now this position to you—we say a thing to have taken place, and that that thing must have been done by one of two or three men; but how are we to prove that some particular man did do it? In no other way than by calling a witness who saw it; but of a thousand cases of murder, there are nine hundred and ninety-nine in which there is nobody—no person who ever sees the act committed that deprives a fellow being of his life. How then do we prove it? Why as in this case: we prove the blow to have been given by one of four persons—we prove that three of the four persons did NOT strike it—we prove that the fourth was in the act of committing violence on the person who received the blow—is there then any other proof wanting. Let me put you the case of a crime of a different description, which you would not hesitate in considering fully proved by circumstances. One of you has a gold watch, and while you are sitting in your room, you take it out of your pocket and lay it on your table: while you are there some one man comes into the room on pretence of business, but immediately after he has gone, you find your watch gone to. You recollect it was on the table when the man came in, and that nobody else has been into the room, and you know that the watch could not fly off of itself. Suppose upon proof of that kind it should be asked who has sworn that he saw the prisoner steal the watch—why nobody has seen him take it, but who could doubt it—do not all the facts prove that he took it? Just so in this case—the witnesses who prove Rector in the place to have given that blow, prove also that he was in the condition to have done it—the facts that shew that blow to have been given at that time, shew also no other human being COULD have dealt it. What then remains? Why that the prisoner dealt it. And is there a man who has heard this testimony who is either so ignorant or so corrupt as to say that it is not conclusive. No, there is none—there can be no man, who fears his Maker, or regards the sanctity of an oath—there is no man who regards his own life or the lives of his fellow-citizens, can say he has a doubt upon it. It may be that a man who would be an accomplice in such an act, would quibble because no witness saw the blow struck; but a man who would come to such a conclusion is not a proper person to administer the laws of the country.

I have gone through with the leading facts of this case, and I do not deem it my duty to take up any more of your time, with only one exception. I wish to call your attention to the results of the evidence, which prove that Shepherd died from the effects of that wound, and that the wound must have been inflicted at Rector's house, and all the testimony shews the wound must have been produced by a blow. The testimony also shews no man could have dealt that blow but Rector; and to prove that he could have inflicted, and was possessed of a disposition to do so, it is necessary I should, for one moment, again advert to the facts of the case, and I will do it very briefly, because the most able manner in which it has been presented to you by the learned District Attorney, forbids my occupying the ground he has already travelled over. The prisoner's defence is, that this blow could not have been inflicted by Rector, as he stood on the stoop, and Shepherd lay on the ground, and they wish you to infer from the testimony of Gillespie that Rector was not on the side walk at all. There are two facts proved by witnesses who are unimpeachable: that a blow which would have occasioned that fracture, might have been dealt while Shepherd was falling, or it might have been dealt while he was on the ground. The prisoner's Counsel contend that Rector struck twice before Shepherd fell, and they would have you infer that this fracture must have come of itself, because they say it is not proved that Rector was off the stoop, and on the side walk. But I say we do prove that Rector was on the side walk, by the testimony of both the witnesses sworn to that fact. Did Whitney see him on the side walk? No, certainly not; but Whitney saw him when he dealt the first blow, standing right on the edge of the stoop, in the attitude of striking, and in the act of pressing forward, with one foot on the steps, so that it naturally follows he would be likely to go down on to the walk. Then, Radliff, confirms Whitney. Radliff, who was in the hall and saw Rector raise the

club, and with one foot on the edge of the platform, or on the steps deal this blow, and saw him raise the club, as he thought, to strike Whitney; saw Rector jump on the side walk, and when his eye was next on Rector, he was either entering the door-way or on the stoop. There is no discrepancy in this evidence, and it clearly proves that this man was on the side walk, with a disposition to inflict this injury, and with an instrument ready to inflict it. It is said, gentlemen, that Mr. Gillespie contradicts this state of facts, and that Radcliff has been contradicted by Mr. Wheaton, and that Radcliff's testimony must be laid aside, and Mr. Gillespie be believed. But with great deference to Mr. Gillespie, no such thing. When we shew that this wound must have been inflicted at Rector's stoop by a blow dealt by him, no man can prove that Rector did not deal it. That is impossible; no man can prove an impossibility, and as to Mr. Radcliff being contradicted by Mr. Wheaton, Mr. Wheaton is contradicted by Mr. Radcliff, by Squire Cole and by Col. McKown; and therefore Mr. Wheaton is not to be believed, and Mr. Radcliff is corroborated by Squire Cole, and by Col. McKown. The question asked by Mr. Wheaton of the witness was, did you not testify that you could not see Mr. Rector off the stoop? and when that question was asked, it was to ascertain where Rector was when he struck the first blow. The witness is then asked 'did you not swear that you did not see him on the side walk after he struck the first blow?' and he replies: 'I do not believe I did—I have no recollection of the question being asked me, but if it was put to me, I answered it as I do now, that he was off the stoop.' Mr. Wheaton then mounts the stand, and being asked what reply Radcliff made to that last question when it was asked him before the Police Magistrate, says that he swore he did not see him off the stoop that night. How has he contradicted him? now, says Mr. Wheaton: Mr. Radcliff is not a lawyer, it is true; but if there is nothing else about him that renders him unworthy of belief, he is entitled to just as much credit as you are. Mr. Wheaton says Radcliff stated he could not swear that both feet had crossed the threshold of the door at the time the first blow was given, but Squire Cole testifies Radcliff swore, that when the first blow was struck, Rector was on the edge of the stoop. Does it follow then, that Mr. Wheaton, a respectable man, (MORE respectable we can find none,) has committed perjury? certainly not! but it follows that Mr. Wheaton, intellectual, learned, great as he is, is after all, a poor weak mortal, and has no better memory than any other mortal, and poor Radcliff, because he does not move in quite so high a sphere, is to be disbelieved. But I deem it of some importance that Radcliff should not be trodden down without my lifting a finger in his behalf, because he has been forced into that stand by means of the process of the Court, in which I have been instrumental. Mr. Wheaton is one of those sincere, ardent, and warm-hearted men, who often let their anxiety for their client run away with their discretion. Col. McKown was then examined, who, like a skilful officer, had his plan of defence clearly marked out. He believed they could not prove that Rector was beyond the threshold of the door, and he knew if they could not prove that, no blow COULD have been given; and he too stated he understood Radcliff to testify that he could not swear that Rector was off the stoop at all, but when asked whether he was not interrogating the witness at that time, as to the position of the prisoner when the blow was struck, the Colonel then explained that he had understood the witness to mean that Rector was not at that time over the threshold of the door, with both his feet, until informed by Squire Cole that the witnesses's meaning was, he did not know whether Rector was standing with both feet on the edge of the platform of the stoop, or whether one foot was on the steps of the stoop, when the blow was struck. For Mr. Wheaton then to undertake to contradict this man, is like an infidel's undertaking to prove from the Bible that there is no God, forgetting that that book records that it is THE FOOL who hath said in his heart there is no God! Mr. Wheaton says Radcliff swore that the prisoner was not off the stoop; so he did, but it was that he was not off the stoop when he struck the first blow. Mr. Praym is called upon, and he recollects no such enquiry being put. If one of these two men, Radcliff or Mr. Wheaton is to fall by the correctness of the story, it is Mr. Wheaton.

As to this Gillespie, I have nothing to say. His character has been truly represented to you by the District Attorney. I take it for granted, some of you are men of families, and I will not disgrace you by asking whether you can believe a man who could come before you from an adultrous bed, where he has been these two years, after deserting his wife and children. All I can say is, if you credit him, I no longer consider you innocent or honest men. We have proved that in two or three particulars he has sworn falsely, and if he has lied in one statement, how do you know he is to be believed in any; and the rule of laws (there can be none other upon which it will be safe to act,) is, that if a witness is falsus in uno, he is falsus in omnibus. That regulation is necessary so long as society shall hold together—so long as we not became a nation of barbarians, existing without law and without order—so long as we have any thing like government—so long as the laws must be administered by men, it will be impossible to arrive at the truth by witnesses. if, when you find an individual who is capable of prevarication and falsehood, you do not disbelieve him throughout. I now dismiss this branch of the case with a knowledge and a conviction that it is demonstrated beyond a reasonable doubt, that the blow which made that fracture, was dealt by Rector, and that that blow caused the death of Shepherd.

The next consideration to which I call your attention is this: was that blow dealt with malice prepense or a fore-thought; that is, expressed or implied, and I use these terms because as a professional man I am more accustomed to such terms than to any other. We have already shewn that this blow was dealt by Rector, and that it was a blow that occasioned the death of the deceased. Was it dealt with what the law terms malice prepense? It is necessary correctly to understand precisely what the law means by the term, malice. It does not mean hatred against any individual—it does not mean revenge—it does not mean cunning against any other man; but it means the doing of an act without any justifiable cause, whereby life is endangered.

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Let us now enquire what is pretended to be the JUSTIFICATION for this act, and it is necessary you should attend particularly to this, in order to understand what feelings you ought to be possessed of as moral and upright men. It is said that his house was attacked, and forcible entrance threatened to be made into it, and that all this man did, he did to prevent that unlawful intrusion. If two or three individuals should go to your house, a private dwelling, at the dead hour of night, and threaten to break in, and you did not know what their object was, and it became necessary you should prevent their breaking in, and in so doing should accidentally kill a man, I tell you, you would be justified in doing so. But if a man should come to your house, and wake you up, and get you down stairs, and tells you he wants to get a pail for the purpose of procuring some water to put out a fire, and he says 'if you do not let me in I will break in,' and that was his object, and you should kill him, you would be guilty of murder. If a man keeps a tavern, where persons are entitled to call at all times of the day and of the night, if a traveller should go there and demand admission, and the landlord should tell him to move off, and he were not to do so, and the landlord were to take a club and knock him down and kill him, he would be guilty of murder, and the distinction between his case and that of a private citizen, would be that he keeps a public house where every man would have a right to go at all hours. How are the facts in this case? The prisoner at the bar, in plain language keeps a common bawdy house—a house of ill-fame; in which he had lived and kept females for the purpose of prostituting them to the vicious for gain. It is a species of vice that is perpetrated only in the dead hour of the night, and invites and entices people to ruin and to the gates of death. When a young and unexperienced man goes there, and knocks at his door, making some noise, has he the right to say this is my castle—my sacred fireside, in which I reside with my family, and in which the law justifies me in retaining in peace. The Counsel say he has as good a right to say so as either of you; but I hope I never shall live to see the day when these twelve men or any other twelve men in this country will hold the same doctrine, and I am yet to learn that this corrupter of the morals

of the young—who hold out a snare to them to come and pollute themselves. After he has thus in a manner succeeded in blunting some of their finer feelings, that he is at liberty to leave his house and beat out the brains of a young man who was there, and a Jury say because he kept a public brothel, he is to be protected and acquitted. The time has not yet come, and I trust is far distant, that will witness the verdict of a Jury founded on such a justification.— Was there any thing wrong in these young men going to that house when they were originally invited by the prisoner who caused them to go there. Who was guilty of the first wrong—who is guilty of the sin, when a man in the full vigor of life, with perfect health, and without any corporeal infirmity descends to be the pander of vice to the young men of the city in which he lives—who is the most to blame, the panderer or the poor victim—the subject of his seductive acts? Was there any cause for the apprehension of violence—did he anticipate any injury to himself or his house? none at all. He walked deliberately to the door—he opened the door with this club on his shoulder at the time these two young men were off the stoop on the side walk. He knew he kept a common bawdy house, and that it was the common practice for people to be there at all hours of the night—he knew there was nothing to be alarmed at—he knew they were there with no other purpose than to indulge in those vices, into which he had already initiated them, and I want to know what honest man will say that he was justified in dealing the blow that inflicted that wound. I should like to know, gentlemen, and I put this case to you, if instead of murdering this poor Shepherd—this child, scarcely arrived at years of maturity—he had cuffed his ears with his open hand, would he have been JUSTIFIED, if he had been indicted for that assault? I apprehend not. How then is he to be justified in murdering the man? Suppose there had been in that house on that night, three disengaged girls, for the use of whom he wanted ten dollars a piece, do you not suppose these boys would have found their way into the house? There is not a particle of doubt but that they would have obtained ready admission into this sacred castle of the prisoner's. This defence, gentlemen of the Jury, I have said to be a made up defence, and without trespassing on your patience at any length, I take the liberty of stating to you my reason for that belief. I presume, gentlemen of the Jury, that the prisoner intends you should believe the testimony of Miss Smith and Miss Johnson, in relation to the noise they heard—alluded to the noise said to have been made by these three young men. Now mark how singular a case it is: On Sunday morning, the 11th March, Shepherd about 1 o'clock was struck this fatal blow by Rector, about twelve or one the following day, he breathed his last. On Monday, Col. McKown, one of the ablest and most indefatigable advocates of innocence the county affords, was called upon to undertake this defence. He tells you his understanding was, that it could not be proved Rector was out of the door, consequently that it could not be proved he struck the blow. On the third Tuesday in March the Grand Jury assembled in this city. Before that Jury met, these girls had all been closeted with Rector in his cell. We are not permitted to ask what transpired there. What follows? Miss Smith swears she heard this knocking—that she was up stairs right over the stoop in the front east room—the window was up and she sat there listening—she heard this noise—she heard them say 'that it was nothing but a God damned old whore house;' and what then? after they had done that, they walked to the east end of the stoop for a minute, and then went off. Who then were the persons the prisoner wanted you to believe made this noise? Had not the testimony been too strong, the defence then would have been that the prisoner could not have gone out of the door that night. But they were driven from this position, and from one position after another, as it always is with guilt.—Justice presses on, driving them from one fastness after another, 'till the iniquity is detected, and, as in this case, I believe before God, the time has come when detection has fastened upon the prisoner. Now, gentlemen, it is for you to say (and it is a solemn and important task,) whether that law which has this tender regards for the life of a man—for the lives of all of our citizens, that if one life has been wantonly taken, the life of the offending individual shall be taken as a punishment, has in this case been broken, and whether you are pre-

pared to do your duty and pronounce it broken, or whether like accomplices of the guilt you are to say to the guilty individual, go, prey upon the world—commit other depredations—so long as you keep your murderous hands off me, I shall not find you guilty. It is to you, and to the court, and to that God who has hitherto blessed our happy country, that this question must be submitted, and by you determined.

We have received a request from His Honor, Judge Cushman, requesting that the publication of his Charge might be deferred until after the final settlement of the questions raised upon the Prisoner's Bill of Exceptions.

The Jury having been absent for three hours, at 7 o'clock, P. M. returned into Court with a verdict of "GUILTY."

Owing to the hurry of the Reporter in transcribing his notes of the Trial, the following inaccuracies in the printing of the work have been unavoidable:

ERRATA.

In Page 13, line 43, for "Occipatos pontalis," read "Occipito frontalis"—the same whenever this error occurs.

Same Page, line 46, after the words "and there is also a similar muscle in the part," read "connected to each other by a broad tendon."

Same Page, line 50, let the word "muscle" be the beginning of the sentence; and instead of the word "gristle," read the words "and fibrous."

Page 14, line 13, instead of the word "cracked," read the word "fractured."

Same Page, line 34, instead of the words "anterior prominence," read "parietal prominence."

Page 15, line 35, instead of the word "inverted," read "enfeebled," and in the following line instead of "occassioning the increased action of the arteries about the heart," read "occasioning the blood to accumulate about the heart, and larger blood vessels."

Same Page, line 49, after the words "and being weak and feeble, were the" read "symptoms of the."

Page 16, line 32, instead of the word "centre" read "counter."

Same Page, line 37, instead of "I was in a good deal of agitation, &c." read "there were many persons passing in and out of the room, and among them a good deal of agitation and confusion &c."

Page 21, line 44, instead of the word "irrelevant," read "irreparable."

Page 24, line 1, instead of the words, "their pew" read "our part."

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