No. 3.

THE TRIAL

OF

JOHN GORDON AND WILLIAM GORDON,

CHARGED WITH THE

MURDER OF AMASA SPRAGUE.

MAP

of the vicinity of the

PRINT WORKS

OF

A & W. SPRAGUE.

Surveyed and Lithographed by S.B. Cushing

1844.

Fenner Hotel
Dr Bowen's
Plainfield Turnpike
Carpenter Place
John O'Brien's
wall
Grove of Pines
Ledge
Haystacks
Dyers Bridge
Undulating land
Elevated Plain
Place where the body was found
Foot Bridge
Plank
Gallows Bridge
Pochasset Brook
Foot
Low grounds
Low meadow
Rodney Dyers
Barn
Orchard
Abner Sprague
Valley
Elevated Plain
Dyers
Pond
Place where Gun was found
Esek Dyer
Place where Coat was found
Sprague's Pond
Elevated Plain
Hawkins Hole
Road
Dyers School house
Open plain
path
Foot bridge
SPRAGUES PRINT WORKS
Orchard
N.S. Gordon
Cranston Road
Sprague Mansion
Randalls Pond
TO KNIGHTSVILLE

Scale of Rods
10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 160 170 180 190 200

THE TRIAL

OF

JOHN GORDON AND WILLIAM GORDON,

CHARGED WITH THE

MURDER OF AMASA SPRAGUE,

BEFORE THE

SUPREME COURT OF RHODE ISLAND,

MARCH TERM, 1844:

With all the Incidental Questions raised in the Trial carefully preserved—the Testimony of the Witnesses nearly verbatim—and the Arguments of Counsel and a Correct Plat of all the Localities described in the Testimony, prepared expressly for this Report.

REPORTED BY EDWARD C. LARNED AND WILLIAM KNOWLES.

PROVIDENCE:
PRINTED AT THE OFFICE OF THE DAILY TRANSCRIPT.
MARCH, 1844.

[SECOND EDITION.]

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PREFACE.

The following pages contain the report of one of the most extraordinary murders ever committed in New England. No trial since the celebrated trial of the Rev. Eprahim K. Avery for the murder of Miss Cornell has created such extreme interest or produced such intense excitement in this State as the present.

The deceased, Mr. Amasa Sprague, was a gentleman of high standing in the community—a man of large property and great business ability. He was the brother of Mr. William Sprague, formerly Governor of this State and late Senator in Congress. The murder was committed in broad day-light, on Sunday afternoon; in the heart of a populous region; by the side of a beaten path, constantly traversed, and within sight of the windows of houses in the vicinity. It was attended with circumstances of brutality and barbarity such as the annals of crime seldom present. The head of the murdered man was so shockingly disfigured by the repeated blows of his assailants as not to be readily recognized. The gun with which the blows were inflicted was broken, and the barrel bent by the violence of the strokes. Yet the perpetrators were enabled to commit this deed, in this atrocious manner, and depart from the spot with the bloody weapons of death in their hands without being seen by a human being. The profound mystery thus thrown around the transaction gives an increased interest to these trials.

The accused were Irishmen; they were brothers. Nicholas S. Gordon was charged as being accessory before the fact—John and William Gordon as principals. Nicholas resided in Cranston, on the main road, near Mr. Amasa Sprague's mansion house. John was living with him at the time of the murder. William resided in this city. John and William came over to this country from Ireland in July, 1843. Nicholas had been in this country seven or eight years.

The object of the reporters in preparing this report has been to present, as far as possible, an accurate statement of the testimony, as nearly as possible in the words of the witnesses. Without doubt, much superflous matter has thus been introduced; but they have deemed this course preferable to that of giving a condensed statement, as it presents each witness's testimony in his own words, as it was delivered on the stand.

The only difference consists in the omission of the questions asked by the counsel to the witnesses—the nature of which will be readily perceived from the answers of the witnesses. Whenever the course of questioning has been at all peculiar and the questions have been deemed of any importance, they have been given.

In reporting the arguments of counsel, the intention has been to give in all cases the substance of the argument, and, as nearly as possible, the language of the speakers.

In the discussions upon the intermediate questions on points of evidence which arose in the progress of the trial, we have aimed at presenting the exact point at issue—the nature of the objections raised, and the decision of the Court, with such accuracy as to make the report valuable for legal reference.

The map which accompanies the report is a faithful copy of the plat used at the trial, which was prepared expressly for that purpose by a skilful surveyor. The map is executed by the same hand, and is perfectly accurate in all respects. The dotted line across it represents the track leading from the place of the murder to the house of Nicholas Gordon. Important points along the track—such as where the gun and coat were found; the Gordon house; the driftway along which Mr. Sprague was travelling when last seen alive, will be readily understood by a reference to the map.

"The path," "the regular path," and "the driftway," were used indifferently by various witnesses to denote the cart way on the brow of the hill, leading from Sprague's village over the river above the "footbridge" to the Johnston road. The place where the tracks in the snow cross this path is called Hawkin's Hole.

When the great rapidity with which this report has been issued is taken into consideration, it will not be surprising that some verbal inaccuracies shall be found in it. But the public may depend upon its entire accuracy so far as regards the substance of the testimony and the arguments. The reporters are aware that the sole merit and value of such a report consists in the fidelity and completeness with which it is executed. To attain this they have spared no exertions. Of their success the public must be the judges.

REPORT OF THE TRIAL.

SUPREME JUDICIAL COURT,
Monday, April 8, 1844.

STATE vs. WILLIAM GORDON AND JOHN GORDON FOR MURDER.

Counsel for the prisoners,—Messrs. S. Currey, J. P. Knowles, T. F. Carpenter, and S. Y. Atwell.

For State,—Jos. M. Blake, Atty. General, and W. H. Potter, Esqrs.

The Court met at 10 o'clock A. M.

Present, Chief Justice DURFEE and Associates—STAPLES, HALE, and BRAYTON.

The Indictment of the State vs. William, John and Nicholas S. Gordon for the murder of Amasa Sprague having been assigned for the trial this day.

Mr. Blake, Attorney General, moved that the Prisoners be brought into Court and arraigned.

Nicholas S. Gordon, John Gordon and William Gordon were accordingly brought into Court.

T. F. Carpenter moved the Court that the prisoners have a seperate trial. He stated there must be a severance of the indictment as far as regarded Nicholas, he being charged as accessory before the fact He desired that each of the prisoners should have a separate trial, that each might stand or fall upon his own case, and be unaffected or unprejudiced by the guilt or innocence of the others. The indictment seems almost to demand this, for in some counts it charges the prisoners as principals, and in others as accessories.

Attorney General objected to the prisoners, John and William, having separate trials. They had no right to demand it. It was a matter solely within the discretion of the Court. To this point Mr. Blake cited, 12 Wheat. United States vs. Marchant; 2 Sumner Rep. 37.

The sole ground on which the right to a separate trial can be based is that the prisoners when jointly tried are deprived of their right of being tried by a jury of their own choice. But this point has been expressly overruled and it is laid down in the book that the right of the prisoner is a right of rejection and not a right of election of jurors. Of this right of rejection the prisoners will not be deprived by a joint trial.

The witnesses affecting both are I believe the same. The indictment in every count charges John and William either as principals or accessories at the fact, which in point of law is the same.

Mr. Atwell—This motion is for a separate trial. It is addressed solely to the discretion of the court. We do not make it a matter of right. The question of right has been before decided by this court. But we address ourselves solely to the discretion of the court. These men are entitled to a fair and impartial trial. It is a case of momentous importance to them. It involves their lives. The ends of justice will not be promoted by a joint trial of these men, and the indictment is of such a character as to warrant the Court in granting separate trials. The right of each of the prisoners to be tried by a jury of his own selection is impaired by compelling them to be tried jointly.

Durfee, Chief Justice—The prisoners John and William are jointly indicted for this crime, and as there is no reason shown to the Court why they should be tried separately the Court think they must be tried jointly.

The Prisoners were then arraigned and pleaded Not Guilty.

A Jury was empanelled.

Each of the drawn jurors was asked the following questions:

1. Have you attended to the reading of the indictment against the prisoners?

2. Have you formed or expressed any opinion whether the prisoners are guilty or not guilty of the charges set forth in that indictment?

3. Have you any conscientious scruples of finding a man guilty of a crime which the law punishes with death?

4. Are you related to the prisoners or to the deceased?

5. Are you a freeholder in the county of Providence?

Twenty-two Jurors were peremptorily challenged by the prisoners.

Six were set aside on account of having formed an opinion, and three on account of having conscientious scruples.

The following are the names of the Jurors empanelled:

J. C. Hidden, Foreman,
N. H. Stilwell,
Samuel Ross,
Asa Steere,
Joseph C. Shaw,
Nicholas Carr,
Andrew Windsor,
George Whipple,
Lebbeus Whipple,
Elisha Mowry,
Nathan A. Brown,
Isaac Field.

The Attorney General then informed the Court, that W. H. Potter would assist him in the prosecution of this case.

W. H. Potter opened for the Government.

MR. POTTER'S OPENING ARGUMENT.

MAY IT PLEASE THE COURT, GENTLEMEN OF THE JURY,

I appear before you, gentlemen, at the request of the Attorney General, (with the permission of the court) to assist him in the arduous and responsible duties which a cause of this importance devolves upon him. I would have preferred, gentlemen, that the duty which I have undertaken to perform, had been assigned to another, who would have performed it with much greater abiiity, and more to the satisfaction of yourselves and the Government. The opening of this cause on the part of the Government has however been assigned to me, and I shall endeavor to do it with what ability I have, knowing full well, gentlemen, that the assistance I shall render will be but feeble, and that, do it as I may, it will, relatively at least, be but poorly done.

A crime, gentlemen, of the greatest magnitude, a murder most cruel and atrocious in its character, has been committed. A life most valuable, has been violently and illegally taken. A citizen most worthy and respected, in the peace of God and of the State, upon his own soil and almost at his own door, the sun of whose last day had not then gone down, upon God's holy Sabbath, has been brutally murdered. The highest of laws human and divine has been violated. Some man hath impiously assumed the prerogative of his Creator. Some man has done a deed upon which falls alike the condemnation of God and man.

We read and learn of crimes committed at a distance, under a warmer sun, among a people less obedient to law, and having, as we deem, a lower standard of morals, and are but little affected by it. But in peaceable and law-abiding New England, the commission of a crime like that we are now about to investigate, spreads consternation among us all. It comes home to each of us with the force of reality. Our wonted feeling of security in the protection of the law is impaired.

I have characterized this crime, gentlemen, as most atrocious. The details as they will appear before you in the evidence, will then show the truth of the assertion. The perpetrators of this deed were instigated by no ordinary motive. It was not for gain nor from a sudden heat of blood. They were moved by a hate long harbored, by a spirit of revenge which never forgot its object, and which the life of its victim, alone, could not satisfy.

I need not say to you, gentlemen, that this cause is an important one. The solemnity of the preliminary proceedings in empanelling you as a jury, the charge made, the issue to be tried, and its consequences have already sufficiently impressed you with its importance. It is important to the prisoners at the bar, for upon the event depends their life. Upon your verdict, gentlemen, it depends, whether they shall perish ignominiously upon the scaffold, or live out the full number of days which God

in his providence may have allotted to them. Upon the result of this trial depends their highest interest in this world. Upon their absolute guilt or innocence may depend a still greater interest in another. But that is beyond your jurisdiction, it belongs to a higher tribunal. To that tribunal the innocent, the guilty, all may appeal; but from that there is no appeal.

It is important to the Government, it is its duty, to see that the laws are respected and faithfully executed. In proportion to the faithfulness with which the laws are executed, will be the feelings of respect and security, which will prompt the good to support them, and the feelings of dread which will deter the evil from violating them.

It is important to the community, for the reasons already given. The Government has a right to the obedience of the citizen, and the citizen has a right to the protection of the Government. If crimes like this go undetected, and if detected and proved by proper evidence, go unpunished, every man feels that the legal security for life is diminished He loses his respect for, and becomes distrustful of the protection of the law, and is prone to take the redress of wrongs into his own hands. The commission of this crime must have brought these home to each of us. We all in the pursuits and collision of life make enemies. The deceased, doubtless, as little supposed that he had an enemy who would waylay him, and who sought his life, as either of us do now.

Remember, gentlemen, that in this prosecution, the Government has no feelings of resentment, no passions to gratify. It has but a stern and severe duty to perform. It knows no persons. It asks only to ascertain the truth as regards to this matter. It is equally desirous to protect the innocent as to punish the guilty.

And here gentlemen, allow me to say one word in relation to the brother and relatives of the deceased, who are at present attending the progress of this trial They entertain no other feelings toward the prisoners at the bar, than such as are warranted by the proof. They desire only to ascertain the naked truth. This duty they owe to the memory of the deceased. If the prisoners at the bar are guilty, they wish that guilt to be proved; if innocent, that that innocence should be made apparent. Did they do, or desire either more or less, neither you nor I, gentlemen, could justify them.

With these general remarks, naturally enough suggested to my mind by this cause, I pass to the indictment and proof. You are empannelled, gentlemen, to try whether or not John Gordon and William Gordon are guilty of the murder of Amasa Sprague. The indictment contains a variety of counts, or distinct modes of alleging the crime, so as fully to meet the proof, in all of which, Nicholas S. Gordon, brother of the prisoners at the bar, is charged as accessory before the fact, or as instigating the prisoners to the commission of the deed. In all these counts, the prisoners are charged as principals, in some the one with other persons unknown, as giving the fatal blows, and the other as accessory at the fact, and so on, vice versa. An accessory *at* the fact, gentlemen, is one who is present aiding and abetting the crime; one who knows of its commission and is in a position to render assistance to him who actually does the deed; as one who keeps a look out to give notice of the approach of any person, to prevent detection, or to lend the strength of his arm if need be. In the contemplation of law, these are all principals and equally guilty with him who gives the blow.

I will now endeavor to give you; gentlemen, without going into the detail of the proof, as it always appears in a case of circumstantial evidence, such an outline of the proof to be produced on the part of the Government, as will enable you to perceive its applicability, as it is produced, to the issue you are to try. The deceased, resided in Cranston near his manufacturing establishment, on the Cranston road, so called, owning a farm about a mile north-west from his residence, called the Carpenter place, lying in the town of Johnston and extending up to the Johnston road so called. There was a private path for the teams and wagons, leading through the fields from the residence of the deceased to the Carpenter place and out into the Johnston road, over which the deceased was in the habit of passing on foot to see his stock which he kept there, and which was also travelled by work people and others, passing from the Cranston to the Johnston road. This path starting at the Cranston road, passes Dyer's school house, near Sprague's village, and then out on to an open plain, perfectly in sight from the house of N. S. Gordon, where he and one of the prisoners then lived. The other had lived there some time before, and both well knew that he was in the habit of passing this path, and the usual time of his passing it. Passing over the plain west from Dyer's School House, we come to Hawkins' Hole, a deep, narrow ravine, with a brook, and thickly skirted with pines and other trees. We then rise a sharp hill and bearing to the north-west, continue along to the brow of the hill upon an open plain, leaving the house of Mr. Abner Sprague a little to the left, and in full sight of the path—continuing on, we descend a sharp hill, (the path bending a little before we come to the descent) and come to the river, which there forms the dividing line between the towns of Cranston and Johnston—over this river is a foot bridge, extending some twenty feet on the Johnston side beyond the edge of the water, when the river is at its ordinary height, and being at this point some two or three feet above the surface of the ground. Here is where the murder was committed, the body being found several feet from the end of the bridge, on the Johnston side, lying on the arms and knees, face down and head to the west.

A few rods from the bridge we rise a steep hill. An old wall extends down to within a few rods of the brow of the hill, among the loose stones of which, a man by lying down might conceal himself from a man coming up the hill till he got within five or six rods of him. It was at the brow of this hill that the first blood was seen, and thence sprinkled back along the path on to the bridge some fifteen feet. Here on the ground on the west side, were prints in the snow as though a man was knocked off the bridge, and then foot prints back by the side of the bridge to the place where the body lay—all bearing marks of a desperate struggle—passing on by the old wall, we come to a ledge of rocks, where several men might conceal themselves, and thence still further to a larger ledge, one of them shelving, and making a sort of cavern where three or four men might conceal themselves and overlook the path the deceased took, nearly the whole length. About this ledge and cavern, the ground was much trodden as by persons stepping about there—there is near this a grove of pines ; the ground rising from the river to the Johnston road. The deceased was last seen, as far as we can prove by Mr. Abner Sprague, about $3\frac{1}{2}$ o'clock, passing his house going towards Johnston. The body was found about $4\frac{1}{2}$ p. m., by a man living with the deceased. The weather was very cold, and the ground covered some inches with

snow. A gun lock was dug out of the snow near where the body was found, the next day. A pistol was found the night of the murder at the north-east corner of the bridge—cap exploded, barrel not discharged and loaded to the muzzle. Passing a few rods from the bridge on the Cranston side, a sliver of a gun stock is found by the fence with blood and hair upon it. Getting over this fence at this point, we come into a bog meadow, smooth and leading towards Hawkins' Hole; at the fence where this sliver is found, we find a single track leading to Dyer's Pond (to the nearest of the pines extending north of Hawkins' Hole)—continuing across the pond, the track leads to the nearest large pine tree, very thick at the bottom—here we find a gun broken off at the breech, barrel bent and not loaded, lock gone and covered with blood—then we follow the track a little further on and under another thick tree we find an old coat, also bloody; thence the track continues until it comes out in the causeway leading across at Hawkins' Hole, then on this causeway two or three rods, then off into the thick pines and swamp, until it comes to the nearest point to N. S. Gordon's house, and thence almost a straight line into his back door. From the bridge to Dyer's pond a person passing along these tracks would hardly be seen by a person passing the driftway, and from the pond to the point where the tracks leave the swamp and start for N. S. Gordon's house, entirely concealed. These tracks are far apart and deeply indented, and sometimes breaking through the crust of snow into the water on the bog. We find a pair of boots (which John Gordon, when arrested, said were his,) wet up to the ankles, and which exactly fit these tracks—these tracks are also accurately measured, and correspond with the boots.

The gun found we prove to be Nicholas S. Gordon's, when, where, and of whom he bought it; that he kept it in his store, and prisoner had access to it: we shall prove John to have had it in his hands out on the path the day but one before the murder. The coat we shall prove to be Nicholas S. Gordon's, and worn by John; we prove John to be at home for a few minutes, only a short while after the murder, and then going to a neighbor's and remaining till he heard of the murder; then going with these persons towards the house of the deceased—they going on to see the body, and he turning off at the gate and not going in; we prove that the morning before the murder he had no black eye, and that the next morning he had a black eye and swollen face; also that he has given different accounts of this, and where he was on the day of the murder.

We also prove that the other prisoner at the bar, (William Gordon), was seen by two men on the Johnston road, nearest the place of the murder in company with another, taller man, about 1½ o'clock, and that he then had a gun in his hand; we also prove by these same two men, that as they were coming to Providence they met William Gordon and this other man a little after sunset, (after the murder) near the same place, getting over the wall out of the lot where the murder was committed, into the road; that the tall man had the gun, and the other (William Gordon) in his shirt sleeves, both walking very quick; we next find him (giving him sufficient time to pass from the Johnston to the Cranston road), running up the hill just by the house of the deceased, continuing on dodging under the heads of a pair of horses attached to a sleigh overturned in the road, without stopping to render any assistance, and then hastening into the city with all speed; and also very contradictory accounts of himself of where he was on that day.

This is what we expect to prove on the part of the Government, together with feelings of the bitterest hostility entertained by Nicholas S. Gordon towards the deceased, and often expressed in the presence of the prisoners.

Here, gentlemen, I will say a word with regard to circumstantial testimony.

Facts may be proved by circumstantial testimony in a manner as strong and conclusive to the mind as by positive testimony. Nay, gentlemen. in some cases it may be stronger and more convincing. One, two, or three witnesses swearing positively to a fact, may be mistaken or deceived. They may have formed a design to deceive, they may have been bribed, or they may perjure themselves. If a fact be proved by a number of witnesses, each one swearing to a simple disconnected fact only, the chance for combination to deceive is lessened and the means of detection are increased. When these facts, thus sworn to, all correspond, and together make up a continued chain of testimony, it is more cogent and conclusive upon the mind than any direct testimony. Its binding effect upon your consciences as jurors, is by the law as great. In fact, gentlemen, nearly all the criminal cases from the very nature of the case are, and must be decided upon circumstantial testimony. Men about to commit a crime, disconnect themselves from others, and naturally seek concealment. A majority of the convictions had, are upon this kind of testimony. And I repeat, gentlemen, it is as cogent, convincing and conclusive, and as binding upon your cousciences, as the most positive testimony. So I apprehend you will be instructed is the law by the Honorable Court.

With these remarks, gentlemen, with this explanation of the map, and this statement of facts, I submit the case to you in the first opening on the part of the Government.

THE TESTIMONY.

DESCRIPTION OF WOUNDS.

Dr. Israel M. Bowen.—I am a physician and reside in Johnston, about a quarter of a mile from the place of the murder; was called about half an hour after sunset to go to a man who had been found dead down by the string bridge. When I arrived at the place, I found a man lying on his face, with his head to the west; the body resting on the hands, knees and toes, the face downward.

When I arrived there, there were a numberof the neighbors present. I turned the body over and recognized it as the body of Amasa Sprague; and from appearances had no doubt but that he had been murdered. I discovered a wound on the left side of the head which had fractured the skull, ruptured the membrane of the brain, and the brain had protruded through it. I went myself after a coroner; after I returned with a coroner and jury, I discovered another wound on the head, three inches long; on a line with the other, but farther back.

After the body was carried home I was present at the examination. Dr. Miller examined it. He discovered two wounds on the skull nearly parallel, on the back part of the head. On the right side of the head there was a wound of the skull and the bone fractured. A heavy blow had also been received on the cheek which had depressed the cheek and temple bone of the right temple. There was a contusion on the left temple. The bone was fractured; the fracture running in various directions, and the bones were loose under the skin. The nasal bones at the bridge of the nose were broken down, and the skin bruised but not ruptured. There was a wound across the chin an inch in length. The under jaw was fractured. A wound on the right fore arm appeared to be made with a ball. The ball appeared to enter at the wrist going upward and outward to the top, making a passage about four inches long. The *ulna*, or small bone of the arm was broken.

The wounds were fatal; taking them together, I have no doubt that they were. The wound on the left temple would produce death; two or three of the others might.

The instrument with which the wounds were inflicted appears to have been blunt. The wounds on the back of the head were smoother. They might have been made with the breech of a gun. The wound on the chin was transverse; the edges ragged. In my opinion the deceased came to his death by these wounds.

Cross-Examined—Some of the wounds might have been made with the breech of a gun, those on the back of the head could not well have been. There was nothing about the wounds on the temple which would

contradict the supposition that *they* were made with a billet of wood. Mr. Sprague was a large and powerful man. The wound on the right arm would, I should think, disable it. I could not tell how long the body had been lying in the place where it was found. I did not feel under the clothes to see if it was warm. The wounds on the head bled some when I arrived. It could not have lain there a great while. There is much passing on this path, and some one must have discovered it.

Dr. Lewis L. Miller.—I was called to examine the body of Mr. Sprague. about 9 o'clock in the evening. I do not know by whom I was sent for. I examined the body; it was there in the house. This was Sunday evening. The body was lying on the floor, the head and shoulders a little elevated. The body had been already examined. I made no search for wounds there. A ball wound was discovered very near the end of the *ulna*, or knuckle of the wrist upon the outside. The radius, or large bone of the right arm, was not broken off. It might be fractured. The ball came out on the top of the arm, The wound was larger where the ball came out. Gun shot wounds are always larger where the balls come out. I cannot tell how near the gun was to the object wounded. A wound is always dark where the ball enters. The ball which made the wound might be of the size of 24 to a pound. I should think it larger than the pistol which was found near the spot would carry. It was not smaller than would be used for a small musket.

The next wound which I examined was on the chin, rather underneath, as if the blow had glanced under. The edges of this wound were ragged. It could not have been made with a cutting instrument. The next wound which I examined was on the nose. The blow broke the bridge of the nose to pieces. The bones were crumbled; so much so, that it was not easy to replace them. The nose was turned upon one side.

The next wound commenced on the left and upper side of the forehead. The skull was cut entirely through; the bones broken, the membrane ruptured, and the bones oozing through. This wound was half an inch in width. It might have been made with the breech of a gun. It was not made with a cutting instrument. A part of the skull was beaten in. The bone lower down, the temporal bone was fractured into several pieces.

There was another wound on a line with this and further back. The scalp was cut through, and the skull fractured There were two wounds on the scalp on the back part of the head and a little higher up than the one last mentioned. The scalp was cut through, but the bone was not fractured;—pretty clean cuts. Can't say whether it might have been done with the guard of a musket. The wounds were not smooth like the cut of a sharp instrument. Might be made with a blunt sharp instrument. Probably the edge of the guard of a musket might have done it

The wound which I examined next, was nearly opposite the first wound on the head which I examined, and on the right side. The skull was fractured in this place. There was a wound on the right cheek and temple, which had the appearance of having been made by a flat instrument. The cheek bone was broken in, and the lower part of the skull bone fractured.

I did not discover any other wounds. Two of the wounds pretty certainly would either of them have been fatal, perhaps three. A man could not stand after receiving either of these three. (The witness alluded to the two wounds on the left side and the one on the right side of the

head.) The wound in the wrist would disable the right arm. The arm seemed to have been raised in the act of defence when the ball entered it. Balls glance very often on striking a bone, sometimes comes out near the place where they entered. I have no doubt that the deceased came to his death by these wounds. Undoubtedly they were the cause of his death.

Cross-Examined.—I arrived at the residence of Mr. Sprague about half-past nine in the evening. I can form no estimate as to how long the body had been dead.

PLAT.

S. B. Cushing—I made this map of the premises where the murder took place. [The plat, a copy of which accompanies this work, was here referred to, and was lying before the witness,] the scale of distances which accompanies the plat is correct, and the places are put down in their true relative positions. I began the plat on the 9th of January, and carried on the measurements and completed the drawings at various times afterwards.

LAST TIME MR. SPRAGUE WAS SEEN ALIVE.

Abner Sprague.—I was acquainted with the deceased. Saw him on the day of his death. I was between the path he was travelling and my house. He was going to the Carpenter place. Was in the habit of going there frequently He had stock there. He went on Sundays as well as on other days. I was near enough to know him, but not near enough to speak to him. (The plat was laid before the witness.) Recognize this plat as describing the premises. I was between the house and the path. I was opposite to him when I first saw him, saw him until he had got by almost to my barn. He always travelled this path when going to the Carpenter place. The course of the snow track on the meadow may be seen at places on the driftway. Randall lived on the Carpenter place. Amasa Sprague frequently went to the Carpenter place on Sundays ;—more frequently I should think than on other days.

Cross-Examined—This driftway is passed considerably less on Sundays than on other days, because many of the laborers in the factory live over in the houses on the Johnston road, and pass to and from their houses on week days. When Henry Fenner sold liquor over in Johnston there was much more travelling on Sundays.

BODY FIRST DISCOVERED.

Michael Costello—Worked for Mr. Amasa Sprague three years since next June ; worked at the house. I lived in Johnston a mile from Mr. Sprague's on the Johnston road. Went back and forth to my work, usually going home about sundown. I went home on the driftway; I guess I went by what you call Hawkins' Hole Crossed the foot bridge and went over the hill to my house. I came that way to Mr. Sprague's on Sunday morning and returned that way at night—about sundown. The first thing I discovered was some blood on the bridge. The bridge was

slippery, and I had my tin pail in my left hand and held on to the rail. Looking down to mind my steps, I saw the blood three or four yards before me, and looking forward I saw him lying upon his hands and knees and the tips of his toes, his face downwards. He didn't move; and I looked at him. And I didn't want to go near him; so I thought I would just go up to the house, the Carpenter house, which belongs to Mr. Sprague. And I saw a man drawing water at the door, and I told him there was a man down at the bridge lying in a very bad way, and I thought he ought to be taken care of. He said Dr. Bowen would be back in a little while and would go down. I went to the next house, Thornton's. Saw his son at the door, and told him there was a man down by the bridge lying on the ground and bloody. He said his father was not at home. He told me there was a man in my house, he had heard him speak. I went up to my house. Found a man there; told him and a man who lived in the cellar, and another man, a neighbor; and these three men, Thornton's son and myself, went down. It was about sundown when I got back. We could not make out who it was. We went down and looked at him, and Thornton cried out that it was his father, and then he kneeled down and looked up in his face as well as he could, and said it was not his father. But he said he was dead and no one must touch him; it was against the law. He said he would go for the coroner, I think he called him. And he went off, and we staid there; and some one said the coat looked very much like Mr. Sprague's. Then Henry Fenner's son halloed to his father and said it looked very much like Amasa Sprague. The father said he would go over and see if Amasa was at home. When he got part of the way over the bridge he looked backward and saw Dr. Bowen and other men coming down the hill, and he came back. They turned him and said it was Mr. Sprague.

I was there when the coroner came. The body was found on the Johnston side of the river, about a rod from the end of the bridge The hat lay six or seven feet from the river. The blood went only part of the way over the bridge. It went up the hill the other way some five rods, in the foot path. I saw no man after I saw the body until I saw the man drawing water. Was too much scared to take hold of the body. Heard of a pistol being found while I was there; could not exactly see the pistol. Mathewson stooped down and said he had found a pistol. A teamster came along and took the body home. It was dark; several men were there. The pistol was about a rod from where he lay under the Johnston end of the bridge.

Cross-Examined—Travelled the common pathway in going home from Sprague's village. Went up after I crossed the bridge upon the left hand side ot the wall, straight up. Looked back once in a while. He lay a rod from the end of the planks pretty close to the pathway. It was about sunset when I got there the last time. After I got there the second time it was a quarter of an hour before Fenner got there. The young man and the old man came together. When going up the hill to the Carpenter place, one can see a part of the bog meadow.

At this point in the trial the court was adjourned to 9 o'clock, Tuesday morning.

TUESDAY MORNING, April 10th.

Walter Beattie—Saw the body of Mr. Sprague on Sunday about six o'clock, lying on the ground where he was found. The body was lying on the right side. There was a great deal of blood on the ground, and many peop'e were collected there. There was blood four or five rods up the hill on the foot path. The blood appeared to be scattered along in drops. The path is a common footpath, and not very wide.

JURY EMPANELLED A SECOND TIME.

At this stage of the trial a communication was handed to the Court directed to one of the jurors, and informing him that a grandson of his was dying. He asked the Court if he could be excused from serving on the jury. By joint consent of the Attorney General and the prisoners, under the direction of their counsel, the juror was excused by the Court. The prisoners were again arraigned on the indictment. The reading of the indictment was waived. The jurors already empanelled were re-empanelled. The asking of the ordinary and formal questions was waived and the jurors were sworn in by the clerk; the counsel for the prisoners answering "no objection" to the question "will you be tried by this juror?" Jonah Steere, one of the drawn jurors, was then called, and the questions put, under the direction of the Court, to the first panel, were put by the Attorney General to this juror, the counsel for the defence answering "no objection." The reading of the indictment was again waived, and the prisoners being arraigned before the new jury, answered "not guilty."

The Attorney General said he should again go over the testimony very briefly, from the beginning. It is unneccessary to recapitulate.

CORONER.

Robert Wilson.—I am coroner of the town of Johnston. Was called by Dr. Bowen on Sunday evening, December 31, to officiate as such on the dead body of Mr. Sprague. Proceeded to Dr. Bowen's house, Called the town sergeant. A jury was empanelled, and a brief examination took place, enough to determine the cause of the death. This was between six and seven. It was dark, and the only light we had was from a small lanthorn. We examined the wounds described by Dr. Miller.

PISTOL FOUND.

I went back to Dr. Bowen's house. Before I went, a pistol was found lying on the ground. I examined it briefly. It was a percussion lock. It had been snapped, as if some one had attempted to fire it and failed, and threw it under the bridge. I took it to Dr. Bowen's and presented it to the jury. One of the jurors, with a pen-knife, drew the wad. It was loaded to within an eighth or a quarter of an inch of the muzzle. I put the powder and ball in a phial, and the wad and paper by itself. I delivered the pistol, phial and wad to the examining officer at the prison. The wad appeared to be a piece of a Boston newspaper.

Cross-Examined—It was just before meeting commenced in Olneyville that I was called. I was in the meeting house when called on; the meeting had not begun. It is about two miles from the place of the murder to Olneyville. It was dark when I started. I stopped at my house only a few moments to get paper and things which I thought I should need. I do not know who first called my attention to the pistol. No one seemed to know anything about it. The only person examined on the ground was Mr. Costello. Mr. Albert Waterman took the charge from the pistol. I did not know that it was loaded until I got to the house. The pistol lay partly under the bridge, and was filled with snow. Thought it had been dropped. It may have fallen in the same way.

On the right hand side of the bridge, to one going from Johnston to Cranston, and about half way from the end of the bridge to the water, there were marks of a struggle. Blood was smeared upon the posts of the bridge; the snow was much trampled and thrown about. I was on the ground but once. Fifteen or twenty persons were present when I arrived, standing together mostly. The body was twenty-five or thirty feet from the place where the scuffle took place. The scuffle occurred on the same side of the river where the body was found. I did not cross the bridge to the Cranston side. The conclusion I came to was that some person had come up behind the deceased, and knocked him off the bridge. To get on the bridge again you must go round to the end of it.

Abner Sprague, re-examined.—I knew the time of day from my having been down to the lower end of my place and came back to feed my pigs. Since the murder, at the request of some one, I went up into my chamber, and looked out to see if I could see from my windows a man crossing the bog on the snow track. I could not see the further edge of the pond. Could just see over the brow of the hill, the brush and low cedars on the further side. Might have seen a man's head above the brush beyond the pond.

I was not long out of doors after Mr. Sprague passed. Did not hear the report of a gun. It is seventy or eighty rods from the place where I last saw him to the foot bridge. It might take him ten or fifteen minutes to reach it. The wind was blowing strongly that way.

Dr. Miller, re-examined.—The wounds on the back of the head might have been made with a blunt sharp instrument. I mean an instrument with a sharp corner. The wounds would not have exhibited the appearance they did, if they had been made with the hat on.

Costello, re-examined—Lives close to Thornton's. The body was lying across the path. Railing only on one side of the bridge. There was a track upon the snow as if the back of a man's hand doubled up and bloody had pressed upon the snow.

Knight was the man's name who was drawing water. The hat was upon the upstream side of the bridge. Mr. Sprague had on a kind of frock coat. Don't know if it had pockets or not. Saw no man on the road. The evening was clear and cold. The wind was in my face.

Cross-Examined.—The wind was pretty much in my face. I heard no gun. Last saw Amasa Sprague alive that day. Don't know whether it was in the morning or afternoon.

PIECE OF THE GUN FOUND.

Stephen Sprague—I live in Cranston, a mile or more from Amasa Sprague's. Was at the place of murder the next day. Found a piece of a gun or pistol. I found it on the Cranston side of the bridge. I was coming back from the place where the body was found, and when about to get over into Abner Sprague's meadow, saw some drops of blood, not more than six or eight feet from the Cranston end of the bridge I came along two or three lengths of fence where there was a rail down. I found this piece of a weapon three or four feet from the fence on the side where the cart path was; a little more than a rod from the end of the bridge. There were several round us—one within four or five steps of me, when I picked it up. This was in the forenoon of the day after the murder--Monday. I picked it up, and gave it I think to Daniel Dyer; I am not positive. The blood was on the bog side of the road, and the person appeared to have got over the fence into the bog. The piece seemed to me a sliver which had come off by the breech pin of a musket or pistol. There was blood and hair on the sliver; the hairs sticking to the sliver. (The sliver was here produced) Think it is the same. It looks like the same. There was blood on the snow around the piece. Not much blood—a little blood on the snow makes a great stain.

APPEARANCE OF THE GROUND AT PLACE OF THE MURDER.

Walter Beattie.—Was at the place of the murder on Sunday evening. It was about six o'clock when I left home to go there. I live in Cranston close to the Print Works. Went over and saw Mr. Sprague lying on the ground a few feet from the bridge. The head lay west; the body lay on the right side; the face towards the bridge. There was a good deal of blood where the head was. I saw the blood four or five rods from the body on the foot path which leads up the hill on the Johnston side. There was blood from the brow of the hill down to the place where the body lay. The blood could be traced pretty near to the body, and on the bridge two-thirds of the way from the end of the bridge to the water; on the path the blood went zig zag. On the right hand side of the bridge, going to the Cranston side, the snow was trampled, and there was an appearance of a struggle. There were foot-prints from the place where the struggle was to the place where the body lay, and blood. Most of the blood was upon the posts which support the bridge.

TRACKS FIRST FOUND.

I was at the place of the murder again on Monday morning; David Lawton and several others went with me; we took the regular way to the ground; we looked into the river up and down on both sides to see if we could find any weapons. When we came upon the Cranston side, and had followed the river down a little way, I proposed to go home across the meadow, as it was nearer; we came a little way and found a track, a single track in the snow; I asked what it meant; it went back to the fence, and we could see it the other way as far as a track in the snow could be seen on a smooth meadow. We followed this track to

the pond—Dyer's pond; we could not see it on the ice, but we saw a track on the other side; we went over and found the track coming down to the pond. It was larger than the other and went up the edge of the pond towards Rodney Dyer's house; we followed it a little ways and I said it was no use to follow that track, it was better to see if we could find the other track; we then went back, and a little further down found a taack that seemed to be the same that we had followed from the fence near the bridge; the track was of a man who took longer steps than I should do on an ordinary walk. I followed the track down into the swamp; the last I saw of it was the print of a heel on the top of a cedar bough which was bent over. I stepped on to the same and it bore me; the next step that I took I went in nearly the whole length of my leg. Here I lost sight of the track; went out upon the upland where some men were; then came back and looked again; went through the swamp and down an opening towards Hawkins' Hole. Going down through the opening I saw two tracks, but did not examine them, because there were two.

COAT FOUND.

Tuesday morning, David Lawton and myself and others went over again to the swamp. I went and showed the place where I had lost the track. Luther Mason sprung into the brush, and soon exclaimed that he had found the track again, and Lawton said he had fcund a coat and that there was blood on it. I went and put my hand in the right pocket of the coat and found a box with powder in it, and two pieces of newspaper besides; there was a good deal of blood on the coat; the blood was on the breast and on the right elbow; there was a hole in the elbow, and the blood was on the white lining around it; there was wax also on the elbow of the coat and hairs—black hairs were sticking on it; some of them took the coat; it was blue and considerably worn; the coat was a short frock; we carried it to Mr. Sprague's; somebody proposed to search the river with a boat.

It was suggested that we should go and examine the swamp on the left of the path which leads by Hawkins' Hole; while we were looking here we heard the cry to the north of us—the gun, the gun.

Nathan Pratt had the gun when I first saw it; I had not then seen the place where it was found, this place was very near the place at which the track the day before was lost to us.

The gun was broken—the breech broke off. Part of the lock was there; I went over to Almond Arnold's, where Mr. Pratt boarded, to see the gun; saw blood on the gun. There was hair on the sliver, none on the gun.

(The coat found in the swamp was produced.) This is the coat that was found, and these, I should think, are the articles which I took from the pockets; the blood was on the right arm of the coat and ou the breast.

On Wednesday I do not recollect that I saw anything found; saw the place of the murder examined. Gardner Luther was there with a stake picking the snow where Mr. Sprague's head lay; said he had found several pieces of the lock; I looked and told him that there was all but the tube; a man held out something and said, is that what you want; took it and found it to be the tube.

There was no charge in the gun; I was not at the place on Sunday night, when the pistol was found; did not see the charge drawn from the pistol.

There was blood on the elbow where the coat is torn. Know that Mr. Sprague was in the habit of going to the Carpenter place on Sundays.

AFTERNOON.

Walter Beattie was again called to the stand.

I had boots in my possession, said to have been taken from the house of Nicholas Gordon. They were given to me by the high sheriff; did not put them into the tracks by Hawkins' Hole.

[The Attorney General said he should want to call this witness again, if he could be permitted to do so, to prove another point of the testimony; if he could not he should examine him on that point now. It was decided that he might be called again.]

The gun found was produced, and the witness identified it as the gun found in the swamp. The pieces of a gun lock found where Mr. Sprague was murdered. were compared, and answered well to the parts which remained attached to the barrel.

Cross-examined—I thought at the time it was wax; the hairs were dark colored and of different lengths. The blood on the elbow was upon the white cloth—the lining; the stain was fresher then than now; I took it for blood. It was on the right arm of the coat; I had the coat in my hands some minutes; this was on Tuesday.

Mr. Sprague's cattle were kept on the Carpenter place; they can go over nearly all the farm; the fences are removed; there is no barn; the cattle were not sheltered in winter; they were foddered at the stacks; the stacks are near to Dyer's bridge.

I did not measure the tracks after we crossed the pond; measured the length of the steps.

Mr. Sprague's village contains, I should think, about five or six hundred people; there is a village upon the Johnston road; don't know whether the people of this village remain at home Sunday or not. There is not a great deal of visiting between the villages. Many of the people in Mr. Sprague's village come into town to meeting on the Sabbath.

Direct.—Cannot say whether there is any particular solemnity at the Catholic Church, the day after Christmas or not.

Robert Beattie.—I am the brother of the previous witness, and was with him on the Monday after the murder, when he examined the tracks; I crossed the pond, but did not go any further; was not present when the gun was found; I went home; the step was a long one for a short man; a short man might take steps as long without jumping; the distance from the pond to the bridge is, I should think, one-eighth of a mile; the steps were three feet long.

TRACKS TRACED.

Horatio A. Waterman—Live in Cranston with Mr. Sprague; saw him on Sunday, about half-past two in the afternoon, traveiling up the path from the boarding house to his own house; saw him go into his own house; I went into the house immediately, at the back door, heard his voice in the house until about three o'olock; I heard him apparently get up, walk across the room, and heard the front door open and shut.

I was at the place of the murder; saw tracks from where the body was found across the bog meadow; we took the track from the body on Tuesday in the afternoon, and proceeded across the meadow to Dyer's pond, and across the pond to the place where the gun was found; and from the place where the gun was found to the place where the coat was found, and from the place where the coat was found to Hawkins' Hole, where the track was lost; John DeMerritt and George Wellman went over the crossing into the swamp; I left the two men and took the left side of the fence—they went along the north side; the size of the track was No. 8 or 9 boot; didnot measure exactly; I laid a stick to the track in various places.

It was the same track all along; I should think the man was upon the run; the tracks were wide apart; measured after I got over the pond—the tracks the same; then went to where the coat was—the tracks the same; could perceive the tracks pretty much every step; the ice came nearly up to the tree where the gun was; after crossing the pathway at Hawkins' Hole, the ground was soft; the appearance was as if the man had jumped from branch to branch; in some places the tracks had been saturated with water and frozen, and were distinct; did not see any mud; I went with these men (John De Merritt and George Wellman) to the orchard on top of the hill; saw the measure laid into the track within five or six feet of Nicholas Gordon's door, and also twenty feet back—the measure the same there as in other places; no other track would correspond with the measure, except the straight one that crossed the meadow; I should think that the boot was rather a crooked one.

There were bushes round the tree where the gun was found large enough to hide a gun; the snow was ankle deep in places; should think the tracks had been made a day or two, from their being frozen where the water had soaked up into the snow; it thawed a little in the sun, Sunday, I should think, and on Monday; I spoke to DeMeritt and told him I had found another track going off towards the pond.

Cross-examined.—The tracks were distinct from the place where the gun was found to the place where the coat was found, and from that place to Hawkins' Hole; between the place where the coat was found and Hawkins' Hole every track could be seen two or three rods ahead; do not say that the tracks were made on Sunday; from where the coat was found to Hawkins' Hole, there were no bushes where the tracks were; between the place where the gun was found and the place where the coat was found there were bushes.

The track was perfectly distinct; there were other tracks by the side of it, but none crossing it; I infer that the track was an older one, from the fact that in the wet places, it had frozen; in other places I don't know that there was any different appearance; I should think the snow would have melted a little in the open places on Monday; it was seven or eight rods from the gun to the coat; the sun would shine there for an hour or two

Direct.—The length of the steps was greater in the track that I took to be the older, and indented in the mud and snow; that was the reason why I thought the track older; in different places between the pond and Hawkins' Hole the ofot went in so deep that the water had frozen in the tracks; these measured the same as the tracks in other places; saw no difference in the size of the track, throughout.

John DeMerritt.—I live in Cranston, close to Mr. Sprague's Works; on Tuesday afternoon, directly after dinner, I went to the place of the murder, took the track at the south side of the foot-bridge and measured it, the length and breadth, to the pond; I took the track about the fourth or fifth length of fence from the bridge; I crossed the pond and found the track again; I followed it to the place where the gun was found—from there to the place where the coat was found, and thence to Hawkins's Hole; it came out on the driftway at Hawkins's Hole. The track seemed there to make an angle and then went off into the swamp above Hawkins' Hole; it bore away to the left, towards the edge of the swamp and came out of the swamp about half the distance from the causeway to the fence of an orchard; then along the side of the swamp to the corner of that fence, turning and passing up by the north side of it, in a straight line to the back door of Nicholas Gordon's house. There was snow close to the door, and the last toe track was within fifteen or eighteen inches of the door sill.

Mr. Horatio N. Waterman was with me and another man. We applied the measure very often, once in a few rods. The steps were longer than ordinary; there were other tracks; they were shorter and did not sink so far into the snow; the measured tracks were apparently older; between the place where the coat was found and Hawkins' Hole, the steps were shorter. I measured the track within two or three feet of the path at Hawkins' Hole; it was the same that I had measured between the pond and the bridge. The difference that I observed was that the track I was measuring appeared to be older than the others; the other tracks were measured; they did not correspond; the other tracks were on the east of the measured one; did not observe whether more than one track came out to the path. The path that I was tracing looked the older; the others appeared fresher and newer on the snow. All that I can say is that they looked fresher. There is no opening in the swamp on the south side of Hawkins' Hole; the tracks appeared to make a kind of short turn on the travelled path; on the south side of Hawkins' Hole there was only one track; the swamp is very thick and bad to pass. The track went about half the distance to the fence through the swamp, then came out and went along on the side of the swamp; one could not be seen here from the brow of the hill; there was, I think, only one track that led up to the door; the track on the south side of the causeway corresponded to the track on the north side of the causeway; there was but one track from Hawkins' Hole to the door.

I have seen a pair of boots taken from the house of the Gordons; could not say it was the next day after; I applied the measure I had used to the boots; I applied it to the sole of the boots; it corresponded in length; there was about the eighth of an inch difference in the breadth. (The witness identified the boots as the same in appearance.) The track was about the eighth of an inch wider than the boot, ascertained by applying the measure to the sole of the boot.

I was with Mr. Cushing when he altered the plat, between Hawkins' Hole and the door. (The alteration here referred to is in peneil mark, and to the north of the darker track, going up to the door.*

*In the map which accompanies this report, this correction is made, and the dotted line as it now appears upon that map is the track as sworn to.

Cross-examined.—When I had traced the track south to the causeway, it was lost in the path made by the travellers on the drift-way; it turned out again four rods east of the place where it came on to the causeway; a man other than the one whose tracks I ws measuring, coming along the driftway might have turned out here. It is not very remarkable for men to wear boots of the same number; If the boot was the same size I do not know that I could tell whether it was worn by the man who made the track on the north side of the driftway or not; I should have supposed, if I had not seen the tracks on the other side of the way, that the tracks on the south side were made by a man turning off from the driftway at this point.

I measured this track, I think, at the request of John O'Brien, if of any one; he started with us; I discovered the impress of the entire foot near the door; there were two tracks going out at the back door; the snow was not beaten down at the door: there had not been any snow after the track was made which I followed; a track looks fresher in its general appearance if new; if old the snow becomes crusted;—could not tell from an examination of this whether it was made Sunday morning or Saturday night, or Monday.

Direct—Mr. Mathewson had the boots, I think, when I measured them; I think it was on Wednesday.

David Lawton.—Reside in Sprague's village, in Cranston; I found the coat in the swamp; it was about eight o'clock on Tuesday morning; seven or eight of us went from the store to the pond; we struck the swamp on the east side—the company a little ahead of me; I saw something in the swamp a little ways and stepped in and found it to be a coat; I came out on the upland, and gave it, I believe, to Theodore Quinn; I went into the swamp again and was in the swamp when the pockets were examined. When I came out the company had gone to the house carrying the coat; I did not examine the pockets. (The coat given to the witness.) I think this is the coat.

Cross-examined.—There was not much hair on the elbow; I am sure there was some; I might be mistaken about its being blood; I took it to be blood.

Direct—The appearance is about the same now that it was then.

Nathan B. Pratt—I went to the swamp on Tuesday between nine and ten. I started from Mr. Arnold's boarding house to go to the place where Mr Sprague was murdered; I struck into the swamp a few rods to the east of Hawkin's Hole; went through the swamp to the place where the murder was committed; while there I proposed to go and give a good search in the river for whatever we could find; we looked up and down each side of the stream, and then went to the pond not far from the track; we examined the bushes on the west side of the pond, and then crossed over to the east side about a hundred yards from the tree where I found the gun; followed along the track, looking into the bushes; I went up to the tree to see if it was hollow; bent down and saw the piece of the stock; I took it up and looked at it; when I turned my eyes from the piece of the stock which I had in my hand, they fell upon the barrel of the gun; it was standing up on one end and leaned partly against the tree as if it had been tossed into the bushes and had not had a chance to fall down; the under brush were very thick.

(The witness identified the gun in the possession of the Court as the gun found by him.)

There was blood and hair on the stock. The hair was dark; I gave the gun to the high sheriff, Mr. Potter; a piece of the lock was also lying on the ground near the breach of the gun.

Cross-examined.—I went to the place where the murder was perpetrated on Tuesday; have lived at Mr. Sprague's ten months.

Gardner Luther.—I was at the place of the murder on Monday. Did not find any thing at the place on that day. On Wednesday or Thursday I was turning up the snow on the place where Mr. Sprague's face lay, and found the cock of a gun. I continued picking and found the tube of a percussion lock Afterwards I found a screw head. I carried them to Mr. Sprague's house and gave them to an officer.

Cross-examined—I do not know that Nicholas Gordon ever had this gun. I have seen him with a gun. I think it was two weeks previous to the murder. Can't say whether the gun resembled the gun in Court or not.

ATTORNEY GENERAL.—Did you know of Nicholas Gorden having a gun about the time of the murder?

MR. ATWELL.—I object to that question. It has nothing to do with the guilt or innocence of these men whether Nicholas Gordon owned a gun or not. The Government must first prove that the gun was ever in the hands of these prisoners Nicholas Gordon is not now on trial. The prisoners must be brought into contact with the gun

ATTORNEY GENERAL.—The murder was undoubtedly committed with this gun, and it is perfectly competent for us to prove the ownership of the weapon with which the death was inflicted. It is perfectly competent to prove this fact, that Nicholas Gordon owned this gun, for the purpose of showing that the prisoners might have had access to it, for the very purpose of bringing them into contact with it. The gentleman says we must bring the prisoners into contact with this gun before we can affect them, and yet he objects to our taking the first step toward bringing them in contact with it.

MR. ATWELL.—The Government are beginning at the wrong end with their proof. They ought first to bring the prisoners in contact with the gun and then they may prove whose gun it is, but they have no right to prove that this was Nicholas Gordon's gun for the purpose of inferring hence that it was used by the prisoners.

DURFEE, Chief Justice.—It is competent for the Government to prove this fact, of the ownership of the gun, in the same manner as they prove the corpus delicti. If they do not afterward connect the gun with the prisoners the evidence of course goes for nothing. The Attorney may ask the question.

I do not know that Nicholas Gordon had a gun; cannot say that it was this gun. I should think two weeks previous to the death of Mr. Amasa Sprague, saw him with one; can't say that it was this; it resembled this gun.

Hardin Briggs.—I saw Nicholas Gordon with a gun last fall. I know him, saw him have a full stocked gun with percussion lock, an old fashioned gun altered into a percussion lock. It was in the latter part of fall, or fore part of winter. He had it about 400 or 500 yards west of his own house. The gun had a small bore, unusually small for that size of gun, (the gun shown to the witness) that gun is very much like the one I saw him have, the lock of this gun has been altered from an old lock to a percussion lock.

Cross-examined.—Can not think what month it was. People often go a gunning around there, go on Sundays. The workmen are out gunning Sundays, they are the ones who go out that day chiefly. There are no particular marks about the gun, most I observed was, that it was a full stock, and very small bore.

WEDNESDAY MORNING, April 10.

Walter Beattie—re-called—The back door of Gordon's house cannot be seen from the highway. It can, I think be seen from Stone's house—Stone had a large family.

Cross-examined.—There are trees between Stone's and Gordon's—apple trees. They would obstruct the view to some extent. The Stone family occupied the south part of the house, as I understood, and the north side was left for Dr. Grosvernor, who came out in the summer. It is from the north side, that the Gordons' back door can be seen.

GUN IDENTIFIED.

James Francis.—I left a gun with Mr. Tillinghast Almy for sale. It was in the fall of last year. It was a small fowling piece, percussion cap lock, very small bore, rough made, full stock, not varnished, brass trimmings. When I had it, there was one screw gone, about the middle of the lock. (Gun shown to the witness.) This is the gun, I should know it among a dozen. There is a screw put in where the other was missing; it is not a gun screw and does not go in. I got my pay for the gun after it was sold. Almy is an auctioneer, It sold for $2.50. I owned it but a short time. The wormer is the same; the head, I think, is the same; the ramrod I cannot say about. I left but one gun for sale there last fall.

Cross-examined.—The first time I saw the gun they took me over to the jail. Alfred Wright asked me something about the gun I sold Almy; asked me if I should know it. I told him, yes, by the small bore and a screw gone. They showed it to me and I knew it in a minute. I would swear my life upon it. I should know it among a dozen.

James H. Sabin.—I was clerk of Tillinghast Almy in October, 1843. I find an entry I made on Almy's books, October 5, 1843, relative to a gun. (The books were exhibited. The entry is as follows: "James Francis, one gun, settled.") This is an entry of things for sale. Francis is the name of the person who left the gun to be sold 'Francis, (October 7, sale fowling piece), N. Gorton." I recollect the gun, (the gun shown,) should think this was the gun, but don't know. It compares with this. I know that the gun left by Francis is the same as that sold to Gorton, because it is so entered on the book. The name of the owner is put on the left of the column.

Cross-examined.—I cannot swear this is the same gun but have no doubt of the correctness of the entries. I take the names from the auctioneer. Do not know whether there is any other entry of a gun bought by Francis.

Young Morgan.—I made a ramrod for Benjamin Waterman; Ben Kit they call him. He bought me a piece of wood; I made one; there was a knot in the end of the piece of wood; the plane run into this knot in making it, and made a splinter. I thought I had spoilt it. Took my knife and cut out that part and made it as smooth as I could. But it hollowed in that place, I could not make it smooth. The man goes by name of Ben Kit. He is a kind of a simple man—he held out the money to pay me; I told him to keep it. (The ramrod of the gun was shown.) I think this is the same ramrod I made; I did not put on the screw; made it from three to five weeks before the murder.

Cross-examined.—I judge from the place in the ramrod which I have described, where I had to cut in and could not finish it smooth.

Andrew Briggs.—Fixed a ramrod the last Saturday of October or first of November. I had the ramrod from Benjamin Waterman (Ben Kit). It was a walnut ramrod. (The ramrod of the gun shown.) This seems to be the one This wedge in the ferrule is not put in in the usual way. It is the usual way to put in cross pieces; I did not cross this one. The wedge was oak; I knew from it being made of a piece of a spoke.

Kit is a kind of simple fellow; he knew enough to get rid of work. I put the wedge in in a hurry to get rid of him I will not swear this is the same. It is a little thing to swear to; it looks very much like it.

SEARCHING THE HOUSE.

Jabez J. Potter.—I arrested John Gordon upon this charge at Nicholas Gordon's store. Sheldon, Chaffee, and Ellis, were there; it was Monday evening about 6 o'clock; I went into the shop after arresting Nicholas and arrested John; he had his coat off; I told him he was my prisoner; I went up stairs with him. Sheldon searched, found some dirty clothes in the chamber, and a pair of boots very wet. John said they were his; they were a pair of calf skin boots; they appeared to have been quite wet, but to have got dry some. I did not take them away. We found a bayonet and sword in the garret. When he came out, Nicholas shut the door leading into the house, and bolted it on the shop side. Nicholas said he did not want any body to go in; he locked the door and put the key in his pocket. There was a mark on John's face; did not notice it particularly; heard him say something about a fall Christmas. John did not, I think, ask what he was arrested for. Nicholas did. I saw the clothes afterward at the jail; did not see any members of the family except a woman, the mother of the prisoners.

Cross-examined.—I think that John saw Nicholas after I had put my hand on him, John, to arrest him, but not before. I do not think it was generally known that there were officers round. Nicholas said that was his brother with his coat off. John was sitting right by the door, near the stove. There was a good deal of excitement in the village.

Daniel K. Chaffee.—Was with Potter when John Gordon was arrested; searched the shop; found no gun; looked for it particularly, as I understood a piece of gun was found; looked more particularly in the store than house. When I came out Nicholas bolted the door leading to the house, on the shop side; the window shutters were all fastened on the inside. Nicholas locked the outside door and put the key in his pocket. I noticed a bruise on John's face; quite a large bruise as though he had had a heavy blow. I asked him how he came by that bruise. After

considerable hesitation, he said he came into town Christmas and fell down going home. While in my presence he did not ask why he was arrested, nor did he in my hearing. He was very callous and mute. John said he lived with Nicholas and tended the shop when Nicholas was away. Sheldon did the searching up stairs. There were no clothes taken from there that evening. Did not notice the clothes particularly.

Cross-examined.—John did not ask in my presence why he was arrested; he walked in company with quite a number when he went to Sprague's; some of the way he might have been by the side of Nicholas. He seemed sullen and unwilling to converse; he was very slow and reluctant to talk. Nicholas was handcuffed in the store. I think I found John sitting on the bench, back to the door. When Nicholas was talking about his being somewhere else, John said, I can prove I was somewhere else. I went into town to meeting and after that returned home. People were round the house; saw none round the back door; Ellis was at the back door; I think he started to go round the back way. There was snow on the ground.

John M. Shaw.—I served the precept against William. Tuesday morning I went to N. Gordon's house; there was an old lady there, the mother; she refused to let me in at first. After some conversation she let me into the room occupied by herself; the door was locked going into the store. I insisted on searching. She said I had better not go in, Nicholas had the key. I broke in the door; I searched the house with Mr. Knight, found various articles of clothing up stairs. The clothing was rather behind and under the bed on the floor; found a shirt which, on the elbow, had a stain of the appearance of blood on it, or blood and water. It is fainter now than then; found a dark vest with spots on it; one of the vests had a box of percussion caps and pistol balls; also some powder in one of the vests. The powder was wrapped in brown paper.

Saw a box with powder in it in the store—a tin box. Saw a canister of powder. The powder in the canister, in the box, and in the vest similar, could see no difference between them. (Vest shown.) Think the vest is the same and in the same situation in which I found it. There were a half a dozen balls in the pocket. (The box and paper of powder identified.) The box was such a one as this. There were some caps and a flint in the dark vest. The dark vest is the same one of which I spoke as being stained. Saw a blue coat with metal buttons, which was or had been wet, (coat shown). This is like it. I found two pair of pants,—one pair wet to the knees, and the other parts dry, and one pair wet all over. (Pantaloons identified.) The pair wet all over is positively the same here shown. The other pair I think is the same.

Gen. King brought in some powder. We compared powder from the canister, the box, the paper and the vest, and from other source; all similar.

Found a pair of boots; they were pulled out from under the bed by Sheldon. They were damp as though they had been quite wet. The boots were marked T. (Boots shown.) I think these are the boots. There was a stranger, to me, there, who said he could show me the track to the house. I put the boot in the track in the field back of the house. The boot fitted the track as to the heel perfectly; the heel going in deep. The snow was so hard that the toe did not make much impres-

sion except in high places where the snow was not so hard and there the toe fitted. I was satisfied that the boot made the track.

William Gordon drove into the city in a carriage in front of me.

I saw him in Bowen's office. He said he was in the city all day. He told me of being up by St John's Church at ten o'clock, and at christening at about six o'clock. Did not give any account of the time between ten o'clock and the christening. I asked him if he was in Cranston on Sunday. Said he was not.

Mr. Searle took the clothes. The shirt here, is the same. The spot on it looks fainter now than then. There was a bill of groceries in one of the pockets, bought of Tillinghast Almy. There were a few drops of blood on the under sheet of the bed near the head, the bed tumbled, as if recently slept in

The store was fastened in the usual manner. Searched thoroughly, found no gun there. There was a very small assortment of goods in the store. There was hardware and shawls up stairs Found a hat there. I don't think I know anything more, important to the case.

Cross-examined.—Under the roof in the garret was found a bundle of shawls I think the clothes in the room where the bed was, had been tumbled round before I saw them. The old lady said I wanted to steal. Seemed very ignorant. Only two went out to see if the boot would fit the track. The heel of the boot broke through the crust of the snow, the other part did not. The boots are common sale boots, I should think. The snow was so hard as to bear in almost all places. It would not perceptibiy have dampened boots. I had on thin boots, and did not find any inconvenience from the dampness. Stood round on the snow a good deal.

The vest like other clothes was laying around on the floor. There was a basket for dirty clothes in the women's room, none in the men's. The room was the ordinary lodging room of the men, as I took it. The appearance of the room was as if it had been searched.

GUN SOLD TO GORDON.

Tillinghast Almy.—Was an aucttoneer in this city in October last. According to my books, Francis left a gun for sale, sold to Nicholas Gorton, October 7. I suppose it was meant Nicholas Gordon. I spelt it Gorton, he has laughed at me for my Yankee manner of spelling his name. Both names Gorton and Gordon mean the same man. Mr. Sabin is not a regular clerk of mine. There is another gun entered in June, 1842, to N. Gorton, do not know by whom left. W. H. Green, my boy, made this last entry. There is no entry by whom it was left. The other gun, the entry was to Francis, which shows that he left it there. No doubt of the correctness of the entry.

Cross-examined.—Know no other man by the name of N. Gorton on my books. Gorton and Gordon mean the same man on my books all the way through When I don't know the men and they don't send their names up, I usually say "cash." I found the name on my books, and I suppose Nicholas S. Gorton to be the man meant. I have no doubt from my books that Nicholas Gordon was the purchaser of the gun, because he was a general customer.

COAT SEEN IN THE POSSESSION OF NICHOLAS GORDON.

John Cassidy.—Know Nicholas S. Gordon. Don't know who owns the coat. I thought I saw a coat like that taken out of a lumber wagon at Nicholas Gordon's some six or eight months ago. Never saw him wear it to my recollection.

Cross-examined.—It was so mean a looking coat that I noticed it for its being so mean; I did not examine it particularly; the last time I saw the coat was yesterday, when it was here; Nicholas took it out of the wagon and threw it into the house; I knew Nicholas Gordon very well, but have never seen him wear that coat.

I saw the coat at Amasa Sprague's after the murder; I was asked by William Boyd if I knew that coat; I told him no, and asked if he did; he said he thought it was Nicholas Gordon's; then it came to my recollection, and I said that I believed I had seen Nicholas Gordon throw it out of a wagon; it was in the afternoon that I saw the coat.

Augustus Ellis.—Was at Nicholas Gordon's store when John was arrested; I stood at the back door a little while, until I thought they had arrested them; I put a fastening over the latch, aud went round to the front door; I took my stand by the door, saw no gun found; the store was fastened when the men came out—shutters and doors.

JOHN GORDON SEEN SOON AFTER THE MURDER.

John Kingston.—Knew Nicholas Gordon; his mother lives in the house with him; John made his home with Nicholas; unless he stopped at his boarding house; John Gordon and William, with their mother and sister, came over to this country in July last; I saw John and William Gordon on the Sunday of the murder, between 4 and 5 o'clock; I live, perhaps, half a mile, more or less, from the Gordon's house; I am sure it was not 5 o'clock, and after 4; it was after the company that had been with me, Benjamin Earle and others, had departed, but so soon after, that I thought they must have seen him; we went soon after to Monkey Town; got some drink at King's tavern; John came back with us; he was with us all the time; the distance to King's tavern is about the same as the distance to Nicholas Gordon's; we remained in my house until 6 or 7 o'clock, when a sister came in and said that Mr. Sprague was murdered. Then myself, sister, mother and John Gordon, went to Mr. Sprague's to see the body. When he got to the gate he turned towards home for all that I know. John had on, I thought, a long top coat; thought it was of a bluish color. He wore a hat. I don't know whether it was an old or a new, or what kind of a hat it was.

I have seen a gun in the store of Nicholas Gordon, or some part of the building. It was sometime last year. Don't know what kind of a gun. saw William Gordon with a gun, can't recollect what time. He was Somewhere around the premises. It was in the fall, September or October.

Cross-examined.—Never knew that the Gordon's were quarrelsome or disagreeable It was not dark when we got to the house. Cannot recollect how long we remained at my house after John Gordon arrived before we started. Stayed at King's until we had two glasses apiece, and then came back again. We came out not many rods from Mr. Sprague's door

when we went up to see the body. It could not be over five minutes from the time when Earle went away when John came in. The coat he had on I never saw him have on before; saw nothing extraordinary in his conduct.

William Kingston.—Know John Gordon. Knew him when he came to Cranston in June or July last. He worked part of the time at Dry Brook. I undetstood he stopped with his brother Nicholas when the murder was committed. Saw John at our house on the day of the murder, between four and five o'clock. Earle was at our house that day. Left before John came, about five minutes before. Went with him to King's Tavern. Stopped at the house perhaps ten minutes before we went. Took a couple of drinks at the tavern and came back to the house. Stayed there until we heard of the death of Mr. Sprague. We went up to Mr. Sprague's. John went as far as the gate then left as I thought to go to his brothers. My sister lived at Mr. Sprague's. She came and informed us first of the murder. I have seen a gun in the bed room of the house about a year ago; bayonet on it. It might be a rifle.

Cross-examined.—There was nothing extraordinary in John's appearance, dressed in top coat down to knees, greyish kind of trowsers. Just as pleasant as ever I saw him to be. Saw no difference in him. When he heard of the murder he appeared as much amazed as anybody. It was not dark when we got to King's Tavern. It is not quite so far to King's Tavern as to Gordon's house from our house. It was not lighted up at the Tavern. But light enough to distinguish a five cent piece from six and a quarter. He said he came down from his brothers. It was a pretty clear night I believe.

(It is three-quarters of a mile lacking seven rods from the Gordon House to the Kingston House, as measured by the surveyor.) John had boots on when he come; the snow was so hard it would not wet the boots unless he went in some swamp; did not observe whether his boots were wet or not.

Tillinghast Almy, re-called.—I find in my alphabet of the Ledger "Gorton." In the Ledger it is "Gordon," but seems to be altered in the Day Book it is "Gorton," and also N. S. Gordon, in July, 1843. Some time after that I find it "Gorton" again. I infer that I wrote it Gorton and that he laughed at me for spelling it so.

JOHN SEEN WITH A GUN.

Abner Sprague, Jr.—Live in the house with Abner Sprague. Know John Gordon; saw him within twenty rods of the place where Amasa was murdered on the Friday before the murder in the afternoon. He had a gun with him. I saw him twice. The first time don't recollect when, a few rods from where I saw him last time. I met him going towards the watering place with a gun; I said you're going after them, hey? he said yes, and pointed over towards Amasa's crib; said he saw about a dozen partridges there the other day. I never saw any partridges there, and should think it a poor place for them. The next time I saw him, 3 or 4 o'clock, Friday afternoon before the murder, I asked him if Hunt has moved; he said no, said he did not work there, but thought he should; said he lived with his brother; I asked if he saw those partridges, said no; said he had seen some rabbits over there. He was leaning on the

gun. I told him that it was dangerous for him to lean on a gun in that way. He took it up and half bent it, said it would not go off so The gun was an old looking gun with rust on the lock ; the gun stocked the whole length. It was one of these percussion locks. I was one looking for the gun. I saw Mr. Pratt come out of the bushes with it. I got to him just as he came out; from the appearance of the gun I thought it the same gun I saw John Gordon have; I had no doubt of it at all; I said at the time I thought it was John Gordon's gun. It was all bloody then.

This was the Friday before the murder, because Charles Searle told me it was the last day of registering ; he came up to me just after Gordon had left I saw him coming before Gordon went off, and we stopped and talked three-quarters of an hour after he came up.

Cross-examined.—I took most notice of the barrel. I do not say positively this is the gun I saw John Gordon have, but I have no manner of doubt it is the same. He told me he always kept a gun at home. I don't know but he meant the old country.

The crib is a hundred rods from the house; I have hunted partridges; don't call myself a great marksman ; never knew that partridges come around barns; quails will do so, but partridges are not apt to go where there is no brush. I never saw a dozen partridges *together* in my life.

John was right on the path-way. It is a common travelled path-way. I have not seen another man there this winter with a gun except John Gordon He said he did not know but he should go to Drybrook. The road that he was pursuing was a kind of half-moon route to go to Drybrook. He told me that he had seen a place where a running brook had melted the snow from the grass ; that the rabbits came there to feed, that he had got a couple there the other day and was going there again. He often went past my house. This was the nearest way to Drybrook. He never had a gun then. I never saw him in this driftway except the two times he had a gun.

The first time I ever saw him was when he passed my house and stopped to get some water A second time he stopped to get some sapsons. The difference in the distance to Drybrook between going by our house and going by the driftway is a half or three-fourths of a mile. The route by the driftway is a kind of half-moon route.

The first time he came past the house I did not know him. I asked of the black woman at the house who he was. Did not know that either of the Gordons had been arrested when the gun was found.

Alfred Wright—. I know James Francis. I took him to the jail in a hack to see the gun. Q. Did he describe the gun to you before it was shown to him.

Mr. Carpenter.—We object to that testimony. It is confirming the testimony of a witness who has not been impeached.

Attorrey General —We thought the witness was impeached by the cross-examination, but we do not insist on the evidence. It is of no great consequence.

Benoni Waterman.—I live about seventy-five rods from Nicholas Gordon's. I saw him one day as I passed his store, standing in the door, holding something up to his cheek pointed towards the barn. I called it a pistol. Saw John Gordon the Sunday morning of the murder about 8 o'clock. I did not see that he had a black or swollen cheek at that time. I observed him at the time, but noticed nothing of the sort.

Crose-examined.—Know William Gordon. Don't recollect passing him on the road.

JOHN GORDON SEEN ON THE CRANSTON ROAD.

Nehemiah White—I know John Gordon by sight. Saw him on the day of the murder between one and three o'clock, near a house in Cranston, about a quarter of a mile this side of Sprague's factory. He was going on the Cranston road toward home; no one with him.

William Barker.—I live in Providence near the Tockwotton House. Went to Johnston on the day of the murder I went from the back of John Barton's on Christian Hill; a few minutes past twelve o'clock, not more than five minutes. Bowen Spencer was with me. We were going to Mr. Spencer s father's. We walked through Olneyville, on the Johnston road. Passed two little houses beyond Dr. Bowen's. It was said John O Brien lived in one. A little past these houses met two men coming towards Providence; one a tall man and the other a short man. The short man had a gun. There was another man behind them; don't know whether in company with them or not. We went on to Mr. Spencer's father's. When we were coming back after tea, and had got to the foot of the hill by Simmons' village, the sun was just setting. We turned the corner by the two houses and saw two men coming from the lot, through a gap in the wall. We met them half way between the Carpenter place and John O'Brien's. One man had no jacket on; he was in his shirt sleeves. He held his head down, and they were walking very fast. I said to Spencer, are not these the same men we met before; he said they were. I said it is rather suspicious for men to be out gunning such cold weather and come back without a coat on.

I heard afterwards that a man was found dead. I inquired and learned that a man was murdered; and that it was Amasa Sprague. It was down by the String bridge. Went down there.

I have seen a man who looked very much like the man I saw in his shirt sleeves; saw him in Bowen's office. I went in there at the time O'Brien was being examined. I said to some one that was walking about there, that looks very much like the man I saw with no jacket on. I did not know at the time that it was William Gordon, nor that he was arrested. Mr. Ellis afterwards told me that he was. The tall man was considerably taller. I have never seen the tall man since.

Cross-examined.—It was not later than two o'clock when I first met these men between these two houses. It was one-half or three-quarters of a mile from the hill to where I saw them the second time. (The hill here spoken of is near Gallows bridge. Mr. Simmons's lower mill, as it is called, stands a few rods above this bridge. It was here that the witness saw the sun just setting when on his return to Providence.)

They were coming across the field towards the bar-way, and passed through it into the road just as I got opposite the Carpenter House. The only thing that made me note the appearance of the men when I first met them was that they were out gunning Sunday. The tall man had on a coat not very long. Don't know whether it was next to his shirt, or an overcoat; nor did I notice partcularly the gun. I saw no powder horn, and did not notice whether the man wore a hat or a cap. I did not look at his hat or cap so much as at his face. I did not note the man so much the first time; and don't know that I could have identified him the next

day after first seeing him. The short man had no coat on when I saw him the second time. I don't know whether he had a hat or a cap on. The short man had on a long frock coat and did not hang his head down the first time time I saw him. I don't know whether I could have identified him the next day or not. I believed him to be the same man because they were one a short man and the other a tall man. They had a gun and they appeared to be the same.

Direct.—The size of the short man corresponded with that of William Gordon. I am not positive whether the coat was light or dark. Meeting these two men near the same place with a gun caused us to notice them

Bowen Spencer.—I went out with Mr. Barker. We started from my house about 12 o'clock, or a little after. When we got out by Simmons's mills, by those two houses, we met the two men, one of them tall, the other short. The tall one was dressed dark; the other had on a jacket which came down low towards his knees. It was of a lightish character. The other one of them had a gun. When we came back we met the two men again by the two houses.*

When we came back we met the two men again by these houses; one of them, the short one, was in his shirt sleeves. They were walking quick. Mr. Barker observed that they looked suspicious. They went towards the houses. We soon met my brother, who said they had found a man frozen below. We turned out to go there, but after we got down a little ways we concluded it was too far, turned into a little path, got over the wall. We asked a man about it, and he said the body laid down under the hill. We went down there, and found the body lying on the right side. I have not seen John Gordon; seen William in jail. I have thought he was the man. I have never doubted it myself; but cannot swear to it positively. Cannot say how far it was from the hill where we were when the sun set to the place where we met them. The short one I met face to face; he turned the gun aside. I stepped out of the track and he passed by me. I think the short man had on a hat; cannot say what the tall man had on. Saw William Gordon in the jail. I went to see if he was the man. I did not notice him so much the first time as the second. The tall man had a gun the second time; the short one had not; don't know what colored pantaloons the short one had on. I looked at his head more than anything else; cannot tell how long it was from our first seeing them, until the last time. When I saw these men the first time it could not possibly have been later than two o'clock. I don't know the distance from Barton's, but it could not have been past two.

Benjamin Waterman, (alias Ben Kit.) I carried a ramrod to be made to Capt. Morgan. It belonged to Nicholas Gordon. Mr. Morgan made the ramrod for me. Andrew Briggs put on the ferule and Nicholas put on the screw at the end of it. Briggs put in the wedge.

MR. ATWELL.—Did he put in a cross piece?

Answer—Yes, sir.

ATTORNEY GENERAL.—Did he put in two pieces or one into the ferule?

Answer.—He only put in one piece, sir. It was a week before New Years. I know the ramrod, sir. I should know it the darkest night ever was seen—tell it by feeling, sir. It was the week before New Years.

Ques.—What year?

*One of these houses is omitted on the map; the other is O'Brien's.

Ans.—Don't know the year, sir. Don't keep the run of the years. Can't write nor cipher. Make my mark, sir—that's all.

Jeremiah Stone.—There was a ramrod in the shop when I went there. Ben Kit (Benjamin Waterman)I supposed to have brought it there. He wanted the wormer put on. I tried it and told him to carry it back to Nicholas to fix it himself. The rod was too small for the wormer—told him to tell Nicholas to wind some thread round it to make it longer.

Benoni Sprague. Reside in Cranston near Amasa Sprague; saw William Gordon on the Sunday of the murder; it was about ten minutes past sun down, running up the hill towards Providence. I supposed he was running to stop Mr. Arnold's horses which had tipped over his sleigh. But he passed the horses and kept on. The horses stood across the road up against my garden fence. Some one said, what is that man running for? I said he is going to stop Mr. Arnold's horses, but he stooped under their head and kept on running up past Mr. Amasa Sprague's, toward town.

Almond Arnold.—I do not know William Gordon. I upset my sleigh on the Cranston road a little after sun down, ten or fifteen minutes, near Benoni Sprague's house, south of Amasa Sprague's house. After I got my sleigh righted, I went on towards Providence; passed a man at an ordinary walk going towards Providence. I drove quick, the man was in the track. He did not get out until I drove up to him and spoke to him. The horses' heads almost touched him. I pulled up and halioed to him. As he stepped aside he looked up, and my son said that is Nicholas Gordon's brother. I drove quick until I overtook him. It was about three-quarters of a mile from where I overturned my sleigh. I was five or ten minutes going the distance after righting the sleigh.

Andrew Arnold.—I am a son of Almond Arnold; recollect the day of the murder; came into town; passed a man on the road going towards Providence. We had tipped over before. Don't know how far it was where we met him. It was N. Gordon's brother. I knew him, had seen him at the store, when I went there of errands. Don't know the names of either of the brothers.

Mr. Atwell.—Oh! there is no doubt about it, we admit that it was William.

Dr. Thomas Cleaveland.—I am the keeper of the jail. Had a conversation with William Gordon the day after he was brought to prison. I went into the cell. William was proclaiming his innocence, and telling me the evidence of it. I took down the minutes in a memorandum book and have copied it. He stated that he was in town and went to Church in the morning. Went out to see his mother, got there about two or three o'clock. This was his first statement. The second was that he stopped at the half-way house between four and five o'clock to get cider, and went to see his mother; stayed about ten minutes and then returned. He said he met a woman near the half-way house.

Took his dinner before he went out with some of his friends. Holohan I think. Met this woman about five or six on his return. Have had conversation with John Gordon; said he was in Church, in the forenoon returned home, and got there about two or three o'clock; dinner not ready. Went to Kingston, he and two of the boys went to King's tavern to get something to drink, left King's tavern before sundown; remained at Kingston's until he heard of the murder; never made any other statement.

Cross-examined.—William stated that he was at the half-way house about 4 or 5 o'clock; saw a woman who knew him. He said he got back here to christening though late. Met a woman near the city; did not give the name of the woman at the half-way house.

George Rivers.—Was in Bowen's office after William Gordon was brought in, and questioned him. He seemed willing and anxious to answer. Said he was not in Cranston on the day of the murder; repeated it several times over. Said he was at Church in the morning, in the afternoon was with Nicholas. Went to christening about 4 or 5 o'clock. After some conversation about the christening, he corrected himself; I recollect this particularly, because I did not then know that there was any proof of his being in Cranston. He appeared to be excited; I thought he had been drinking.

Edward H. Hazard.—Was in Bowen's office when William was brought in; he protested his innocence and said, God knows I did not do the deed. Said something about his being at the christening in town, first said it was 4 o'clock, afterwards that it was 7. Rivers called my attention to his different statements. Appeared to have been excited with liquor.

Walter Beattie.—Have walked the distance between John O'Brien's and Nick Gordon's; have the minutes in my pocket. Walked from O'Brien's to the river in two minutes, from the river to Randall's pond, six minutes; Randall's pond to the Gordon house, one and a half minutes. Walked as fast as I could; the walking was good and a man could walk faster than when the ground was covered with snow. We also allowed for crossing the pond, bog and river, four hundred yards, which we walked in two and a half minutes; making the whole time twelve minutes

Cross-examined.—Don't know that the river was frozen over at the time of the murder so as to bear a man; it was not at the bridge. If very high, a man might have waded it, but would get pretty wet. Did not see the river frozen at any place. Don't know how deep the river was at the time of the murder.

Alfred Wright.—Was out there the day after the murder; noticed the river frozen over about fifty yards below the bridge: don't know how hard.

John M. Shaw.—Went with Barker and Spencer where they said they were when they saw the sun set. It was on land not so high as the land west of it. Think there would be fifteen or twenty minutes difference in the sun set there and on a horizon. On Thursday, below Gallows bridge there were two places where I conld cross the river on fallen trees; this was above the route travelled hy Beattie.

Richard Knight.—Went to the house of N. Gordon on the night that the house was searched; saw two vests found, and one said to have been brought in from out of doors. A pair of boots found, which appeared to have been wet; clean on the bottom, white, as if they had been wet. Took the contents out of one of the pockets of the vest; have some powder taken from the canister; it compared with the powder in the vest.

ATTORNEY GENERAL.—Do you know of Nicholas Gordon having any difficulty with Amasa Sprague?

MR. CARPENTER objected to the admission of this testimony, on the ground of irrelevancy to the issue. Suppose that it were proved that some other persons in the town of Cranston or in the State of Rhode

Island had a difficulty with Amasa Sprague, and had threatened him, and that the accused were intimately acquainted with these persons, would it be competent to prove that fact in order to affect the present prisoners? The object of the government in introducing this testimony was to give to the prisoners a motive for the commission of this crime; but the ill-will of Nicholas cannot be presumed to have been shared by his brothers without proof of the existence of any such hostility on their part. It would be piling presumption upon presumption, first to infer that they had ill-will toward the deceased, because Nicholas had, and then to infer that ill-will to have been the motive to the commission of the crime. The fact of relationship makes no difference to the principles of law. If the declarations and threats of one's relatives and friends were to be imputed to himself, no man would be safe; the social relations would become sources of evil instead of blessing. When all that the government want in this case is to find a motive, will the Court lend them the aid of a remote inference to furnish the shadow of an apology for a motive to the jury? Is any malice to be presumed to be transferred into my brother's bosom by the magnetic influence of kindred affections?

The fact that these threats were uttered in the presence of these prisoners makes no difference. If anything is to be presumed from it, it is that they did not sanction them--that they condemned them, since they did not approve them. The testimony ought not to be admitted.

W. H. POTTER contended that this testimony was admissable. The Government offered to prove feelings of hostility on the part of Nicholas S. Gordon, the brother of the prisoners toward the deceased, and threats made by N. S. Gordon in the presence of the prisoners for the purpose of showing a motive in the prisoners for the commission of the deed. It is objected to by the counsel for the prisoners as irrelevant.

The prisoners are charged with the joint commission of the crime in connection with Nicholas Gordon, who is charged as accessory. He alluded to this merely as showing the relevancy of the point offered to the issue. He contended that the testimony already put in; the fact that the prisoners were the brothers of Nicholas; that they lived in the house with him; that the gun was owned by him; that the coat had been worn by him; afford at least primary testimony to establish the fact of the existence of a conspiracy between Nicholas Gordon and the prisoners at the bar for the perpetration of this crime. A conspiracy need not be proved by the declarations of the persons forming it. It may be proved by the acts of the persons engaged in it indicating a common design, in fact any circumstances going to show its existence. If a *prima facia* case of conspiracy had been established in this case, then the act and declarations of each of the conspirators may be viewed as the acts and declarations of each of the rest, and may be admitted as evidence against the others, although the conspirator who makes them is not on trial. The prisoners and Nicholas Gordon are indicted jointly for the commission of this offence. Nicholas being charged as accessory before the fact, must be tried separately, yet any declaration of his might be offered as going against the others. They might pass to the jury for them to judge whether such common design did exist, and whether in connection with the other facts and circumstances in the case they are sufficient to justify the inferring a motive on the part of the prisoners; and it is competent for the Government to offer evidence of acts of hostility and threatning expressions on the part of N. S. Gordon towards the deceased in

the case of a joint crime in which the latter was charged as accessory to the acts of the prisoners, and the whole arising out of a conspiracy between them all to commit this crime.

Mr. Potter cited 3 Stark, on Ev. 401–2.

State *vs*. Ephraim K. Avery, where the declarations of the deceased, her letters, &c., were admitted in evidence as proof against the accused. She was a third person as to him as much as N. S. Gordon is to the prisoners at the bar, and there was no stronger or other reason for transferring a motive from her to him in that case than exists as to N S. Gordon and the prisoners in this case. They were equally as much disconnected.

The indictment was not for a conspiracy but for something more. It charged that the prisoners and N. S. Gordon not only conspired to kill the deceased, but that they actually did it. In proving the greater crime, we must not necessarily prove the lesser We must commence somewhere. The evidence offered is relevant to the issue. It is a fact from which the jury must reasonably draw an inference of the innocence or guilt of the prisoners. It is therefore *competent* testimony. Of its weight, of its adequacy to furnish a motive on the part of the prisoners to commit this crime, the jury, and they alone, must decide. This is the purpose for which the evidence is offered, and these are the grounds upon which the Government rely to show its competency

Attorney-General closed the argument for the admission of the testimony. He said that it had not occurred to his mind that any objection could be made to this testimony; and he thought it would require a technical course of reasoning to convince the mind that there is any objection to it. The law of evidence was more than any portion of the law, founded upon plain common sense. The murder has been proved, and a numerous train of circumstances go to fasten it upon a particular family; would it now occur to any person except a lawyer, that it was not competent to inquire whether in the family by some of the members of which all the circumstances prove the murder to have been committed, there were motives existing for the perpetration of the murder. It is perfectly well settled that when a conspiracy has been *prima facia* established the declarations of one of the conspirators now on trial may be offered against the others. It is for the court to judge whether such evidence of the existence of a conspiracy has been offered as to make out a prima facie not a conclusive case. If so then this evidence is perfectly competent to go to the jury.

Is it not competent for us to prove a conspiracy? If so, this is one step toward that proof.

He contended, in the second place, that it was competent to admit this testimony on the ground of motive It was always competent for the Government to prove a motive for the commission of a crime. Of the adequacy of that motive the jury were to judge Was there ever a case in which the Government were precluded from proving just such a motive as they suppose to have existed. If that motive was not adequate it was for the jury to determine it. Why should not then, in this case, the Government be allowed to prove the existence of just such a motive as did exist, and which they suppose to have instigated that crime, viz: the motive of gratifying their brother Nicholas's revengeful and angry feelings against the deceased. Might not such have been the motive—might it not have been a sufficient motive? If so, shall the Government

be prevented from proving its existence? Suppose Nicholas would have profited greatly by the death of Mr. Sprague. Might not the same objection have been urged against the admission of the proof of that fact? It might have been said that it did not appear that the prisoners were to have the money.

ATTORNEY GENERAL then referred to Selfridge's case upon the point. How would you ever be able to prove a motive in a case of murder committed by accessories and principals, unless you can be allowed to prove the motive of the accessory, and the connection between the parties. The government cannot go into the secret bargains between the plotter of a murder and its actual perpetrator. If shut out from proving the motive of the supposed accessory, they are shut out in many cases from proving any motive at all.

He contended therefore that the evidence was admissible on two points. 1st, As the declarations of a co-conspirator. 2d, As going to prove the existence of a motive in the hearts of the prisoners for the perpetration of this crime.

MR. ATWELL closed the objection:

The Government were trying these prisoners upon an indictment, the framing of which had been within their own control, and now because they have seen fit to frame that indictment in such a manner as to charge Nicholas Gordon as accessory and John and William Gordon as principals, they contend that to be a reason for varying from the well established rules of evidence in this case and allowing the threats of Nicholas, a person not now on trial, to be proved to the jury. The principles of evidence cannot be changed in consequence of the mode in which the Government have seen fit to frame their indictment. The Government offer to prove the declarations and threats of third persons, who so far as the purposes of this trial are concerned are to be deemed strangers to these defendants. They offer not the declarations and threats of the prisoners at the bar, but the declarations and threats of Nicholas S. Gordon, and contend that they are to go to the jury as proof of motive to commit the offence on the part of the prisoners. The ground taken is this, that there was a conspiracy between Nicholas S. Gordon, the declarant, and the prisoners; the prisoners are not indicted for a conspiracy, and no evidence of the existence of any such conspiracy has been offered.

ATTORNEY GENERAL—The ground taken was that these declarations went to prove the fact of a conspiracy.

MR. ATWELL—I am aware of that—the ground taken by the Attorney General in the close, is somewhat different from the ground by Mr. Potter in the opening. Mr. P. contended that a conspiracy had been proved and these declarations were to go to the jury, as the declarations of one of the conspirators. The ground now taken is that these declarations go to establish the fact of such a conspiracy. This ground is not tenable, for all declarations of a conspirator to be legal evidence, must have been made after a conspiracy has been proved. The conspiracy must be proved by other evidence than the declarations, the sole ground of admitting which, is the existence of such a conspiracy. It is not possible to prove John and William Gordon to have been in a conspiracy with Nicholas, by the declarations of Nicholas, for such a rule would put it in the power of every man to jeopardize the life of his fellow man. The existence of the conspiracy must first be established by independent testimony, before the declarations of one of the co-conspirators, not on trial,

can be admitted against the rest. The evidence here offered is that a long time before the murder, Nicholas S. Gordon had threatened the death of the deceased, in the presence of the defendants. Does that fact go a single step to prove the existence of a conspiracy between him and the prisoners? If they were on trial for a conspiracy, would such evidence be deemed competent? In a case of circumstantial evidence, it is not true that every circumstance in any manner connected with the crime, is to be admitted in evidence; on the contrary such evidence is to be closely scrutinized, and courts are to watch over the safety of prisoners, by allowing nothing to pass which does not directly tend to prove their guilt. The fact that the maker of these threats was the brother of the prisoners, does not affect the principle. The malice and hatred of one man are not to be imputed to another without proof. These declarations therefore cannot be admitted either on the ground that they go to prove a conspiracy, or as the declaration of one of the co-conspirators.

Nor can they be admitted on the ground of motives, for these declarations do not go to prove any motive in the hearts of the prisoners at the bar. Suppose it could be shown that a dozen men in Sprague's village had threatened Amasa Sprague, and the prisoners had been by and heard those threats, could they be given in evidence against them? It would be easy in this case to prove that such threats were made by other persons. The threats must be traced to the prisoners, they must have been sanctioned and countenanced by them, to make them legal evidence, or to constitute a motive in their hearts for the commission of the crime.

DURFEE, Chief Justice—Do you intend to prove that any declarations were made by the prisoners themselves?

ATTORNEY GENERAL—We do not.

CHIEF JUSTICE—Do you intend to prove that the prisoners were present and heard these threats?

ATTORNEY GENERAL—We do expect to prove so.

CHIEF JUSTICE—You can go on and put in your other evidence, and the Court will consider this point during the recess.

Benjamin Earle—Was at John D. Forbes, half of a mile from Sprague's —fifty feet from Kingston's house. Came in ten minutes past sunset. Stood in door and saw sun go down. My wife was with me.

Amos D. Smith—Noted the clothing of Mr. Sprague after his decease. The pockets were examined by myself and Mr. Harris. We found in one pocket a silk handkerchief, an apple, and about $60 in money. The money was not in a pocket-book, but wrapped in a paper. By the envelope it appeared he had before taken from the envelope $40. The package was originally $100. Some change in his pocket. His watch was at home. The friends thought nothing had been taken.

George Beverly—Was clerk for Tillinghast Almy; left last July. Knew Nicholas Gordon well. He was in the habit of wearing two different coats. This one he did not wear often. Cannot say so much about this as the other. (The witness referred by this coat to the coat found in the swamp.) Recollect he had a coat of this rusty worn out color. Looked like this across the back. Sometimes, when he came in the night he would wear this if this is the coat—sometimes in the day time. Day before yesterday I saw this coat. I had in my mind the other, the best coat, and I thought I was mistaken. I examined it this morning, and then I recollected that he had two coats. I recollect the other better

than this now ; I thought that the coat was more shabby than this is, if possible.

Cross-examined.—If there were no other shabby old coats than this in the city I should think this was the coat, but there are a great many old coats look something alike. I should never have thought of this coat unless I had been brought here. This morning I showed it. Cannot swear to the coat. See no difference I can point out. The other coat had on a velvet collar; open skirts behind; rather narrow in the back. This one is rather narrow in the back for him. He is wide shouldered for a short man. The other coat is quite a good one.

James Sheldon—Was at Gordon's house when Nicholas was arrested ; found a pair or boots under the bed. John said they were his. They were damp and apparently had been wet ; looked white around the edges ; they were a thin light pair of boots. I did not observe any bruises upon John Gordon's face. It was in the evening when we were there. John said he slept up stairs.

Roger W. Potter—I first saw the boots in the milk-house at Amasa Sprague's with a trunk of clothes, put them into possession of Walter Beattie, and he delivered them to me before the grand jury sat. There was a musket ball in the pocket of one of the vests ; don't know which vest it was; it fitted the bore of the musket. I tried it at the muzzle. There was a round box of powder in the coat pocket. Noticed in the store of N. Gordon two or three similar boxes; could not tell them apart. I compared the powder in the boxes, in the cannister in the store, and the powder in the pistol, all similar. Did not leave the pistol there at the time. Saw the things for the first time at Sprague's.

Stephen Mathewson—Was at the body on the day of the murder. Found the pistol near the foot of the bridge. Turned it over and left it there until some one picked it up. It lay there about half an hour. I did not give it to the coroner; some one else did. It was at the right side of the piece that sticks in the ground that holds the bridge up; on the right hand side of the bridge as you go over to Johnston. (Pistol showed to the witness.)—This is the one, I have no doubt.

Theodore Quinn—Saw the coat here produced. It was put into my possesion by David Lawton. Did not examine the pockets myself. Walter Beattie took the things out of the pockets, put them back again ; gave it to Alexander Boyd and he carried it to the house.

Alexander Boyd—Have seen this coat before ; was delivered to me by Theodore Quinn, on the second of January, about 2 o'clock. Carried it to Mr. Sprague's house and delivered it to Rollin Mathewson. There was an old newspaper, some powder, &c. taken out of the pockets whilst I had it, examined and put back there. There were several persons present when the coat was delivered to Mr. Mathewson. Charles Searle was one.

Charles F. Searle—Seen this coat before ; was present when it was delivered to Mr. Mathewson. He put it under the sofa, for a short time, afterwards took it out and carried it up stairs, and I afterwards saw it in Byron Sprague's possession in a little white trunk.

Byron Sprague—Think I have seen the coat before ; and think it was put in the trunk. I had the key a part of the time; afterwards it went into the possession of Mariana Sprague, my cousin, and was afterwards delivered to Mr. Potter by some one ; don't know whom.

Job Wilbour—Was present at an auction in June '42, in Tillinghast Almy's store. Nick Gordon was present there and bought a gun. It was a light gun, with bayonet and equipage. The one present here in Court is not the gun. I saw John Gordon on Friday before the murder, stopped and looked him in the face. There were no black marks on his face then. Think I saw him on Saturday; saw him at the pump; passed by; saw no bruise.

Russell Clapp.—(This witness was called with reference to the statements of Wm. Gordon in Mr. Bowen's office. His statements in regard to the conversation differed somewhat at first, from those of Mr. Rivers, but he afterwards came on the stand and said that he thought he was mistaken in his recollection of the conversation, and agreed in the statement of Mr. Rivers and Mr. Hazard.)

Alfred Wright—Was in Bowen's office when William Gordon was brought in. He came up to me and said he wanted to be committed. I asked him for what, he refused to say; he walked about, much excited; probably had drank some that day, though he was not intoxicated. I asked him to tell where he was that day, he need not bring witnesses, his brother had been discharged on his own statement. He thought I was a magistrate. He said when I asked him to tell where he was, "By God, that was a question of my own asking;" said he was not there that day. By there, I understood him to mean the place of the murder.

THURSDAY AFTERNOON.

DURFEE, Chief Justice. The Court have had the question of the admissibility of the evidence of threats of Nicholas S. Gordon made in the presence of the prisoners, under consideration, and think that the evidence must pass to the jury for them to judge how far such threats may have affected the minds of the prisoners so as to furnish them with a motive to commit this crime. The relevancy or it may be illustrated by supposing the prisoners should offer to prove that a most friendly and amicable relation and the kindest feelings existed between Nicholas Gordon and Amasa Sprague, the deceased, with a view of showing the absence of all motive on the part of the prisoners. The Court in such case would feel bound to admit the evidence.

MR. ATWELL.—We except the opinion of the Court, and pray your honors to note our exceptions.

ATTORNEY GENERAL.—Do the Court mean to confine us to proof of hostility evinced in the presence of the prisoners? Will it not be competent for us to show by separate evidence the existence of this hostility between N. S. Gordon and the deceased, and afterwards bring home all knowledge of the prisoners?

DURFEE C. J.—You can go on and put in now the evidence of which you stated you had, of threats of N. S. Gordon made in the presence of the prisoners. The Court will decide upon the admissibility of the other evidence when it is offered.

George Aspinwall.—Seen the coat here produced. It was in a trunk of clothing which was brought to the prison before the examination. I examined the trunk. The coat seems to be the same one. Trunk has been in my possession until the meeting of the Grand Jury. Saw John Gordon when first brought to the prison; he had a black eye.

NICHOLAS S. GORDON IN PROVIDENCE AT THE TIME OF THE MURDER.

John DeFoster.—Reside in Cranston; was in the city on the day of the murder; know Nicholas S. Gordon.

ATTORNEY GENERAL—Did you see Nicholas S. Gordon in town that day? if so, when and where.

MR ATWELL.—We object to that question.

ATTORNEY GENERAL.—We propose to prove that Nicholas S. Gordon was in town during the day of the murder, and consequently could not have committed it

MR. ATWELL—That is precisely what I supposed the Government intended to prove, and to the introduction of any such evidence we object. All the evidence thus far goes to fix the commission of this crime upon Nicholas S. Gordon, and we say the Government have no right now to prove that Nicholas Gordon did not commit it, in order to draw an inference that these prisoners did.

HAILE, *Justice.*—Why, Mr. Atwell, suppose the Government should offer to prove that every man in the town of Cranston, except two, was absent on that day for the purpose of fixing it upon these two, would it not be perfectly competent?

MR. ATWELL.—Undoubtedly; but it would not be competent to prove that fifty were away in order to fasten it upon two men out of the other fifty.

STAPLES, *Justice.*—This murder was committed as the Government contend, with Nicholas Gordon's gun and Nicholas Gordon's coat. Now, if the case was to go to the jury on this evidence, would you not contend before them and with great force that Nicholas Gordon was the perpetrator of the murder? If so, is it not perfectly competent for the Government to rebut such a presumption by showing that Nicholas was in a situation where he could not have used that gun or coat, on that day, and thence we infer that the prisoners at the bar who had access to the gun were most likely to have used it?

MR. ATWELL.—But the Government ought first to show some connection between the prisoners and the gun and coat, before they can rightly draw any such inference.

STAPLES, *Justice.*—I presume the Government think there has been some testimony to that point already put in.

BRAYTON, *Justice.*—Here are three persons who have access to a certain instrument with which a murder has been committed. You wish to discover who did use it. Proof that one of these three was absent and could not have used it, is certainly proper evidence to criminate the other two.

DURFEE, *Chief Justice.*—The evidence may be admitted.

John DeFoster, continued.—I saw Nicholas S. Gordon about $3\frac{1}{2}$ o'clock; did not speak with him; saw him by the Catholic Church. The Church usually comes out at that hour. I don't know but might be later than that.

William H. Greene.—Saw N. S. Gordon on the day of the murder about 5 o'clock in this city.

Cross-examination.—Am clerk at T. Almy's. I know Nicholas Gordon well; he traded at the store; don't recollect of ever seeing Gordon have the coat on which is here exhibited; have been in the store four years, and Gordon has traded there during that time; was there while Beverly was there. Don't think I ever saw that coat.

Ann Gleason.—Recollect seeing Nicholas Gordon in Providence on the day of the murder; saw him at our house from $3\frac{1}{2}$ to $4\frac{1}{4}$.

[Note. The fact of Nicholas being in town, was not contested by any evidence on the part of the prisoners.]

THREATS OF N. S. GORDON AGAINST THE DECEASED.

Miss Susan Field, (a young woman.)—I know all the Gordons; knew Nicholas three years ago; have not been at his house since August last; have met him in the streets since August; went to his store frequently before that, sometimes as often as three times a week; sometimes not so often. John and William came over in July. Nicholas said in their presence that he sent the money for them to pay their passage over and went down to Boston for them. Nicholas had two coats, one a bottle blue, a long coat, an old one; the other was green. He did not wear the old coat often. Have seen him wear it. He used to let his dog lay on it. Saw this coat in the old shop. He had black pantaloons and blue; I saw John have on the old blue coat one rainy day. It was small for him. I have seen John wear Nick's black pants. Nick had two or three vests, one a kind of brown vest, of broadcloth, one dark green, of same, a buff one that was plaided off with stripes, a nankeen colored cotton one. I never saw William or John with Nick's vest on. John had the first day I saw him, a pair of dark brown trowsers, ribbed, badly worn. William had a pair of black, and of blue trowsers. John had a nankeen colored vest that was spotted. (The coat found in the swamp was here produced and shown to the witness.) That is the coat I saw Nick's dog lay on; it is the one I called the bottle blue; he used to use it in the wagon in the place of a cushion; saw the dog lay on it by the side of the counter in the store. (The clothing found in the Gordon house was here produced and shown to the witness.) The buff vest is the one I saw John wear, the brown vest is the one I described as being Nick's; he used to wear it every day; the black trowsers are the ones I saw John wear. John and William had nothing decent until they began to wear Nick's clothes. I have seen John wear the blue coat with brass buttons; (the hat found at N. Gordon's house, a very old and ill shapen one, was here produced and shown to the witness.) Witness laughed, and said, I guess I don't know that hat. I never saw anything like it before. I saw a gun in Nick's store; saw a pistol there; it belonged to Nicholas; it was lying on the shelf. I never saw but one gnn there at once; the pistol had a percussion lock. I heard Nicholas say Amasa Sprague had taken his license away from him, and God damn the man who ever took his license from him; he would be the death of him. They took John Holloway's license from him, but God damn him, he shan't take mine away. I'll have my revenge. I'll be the death of him. John was present and an Irishman when this was said. The Irishman said, No, Nick, you don't mean so. Nicholas said, Yes, by God, I do mean

so. I would run him through just as quick as I can wink, and he struck his fists together. Nicholas was the head man of the family. The rest did as he said. I described the clothes before I saw any of them. As soon as I heard of the death of Mr. Sprague and how it was, I told the woman whom I live with that I suspected who it was, and told her what I had heard Nick say, but told her not to say anything. I afterwards heard the Gordon's were arrested. This woman went down street and met Shaw, the constable, and told him she wanted he should come to the house. I described the clothes to Mr. Shaw, to Mr. Samuel Staples, and to Gen. Greene, before I saw them. I told Mr. Shaw about what I heard Nick say.

Miss Field, cross-examined.—Mr. ATWELL. Where do you live?

A. I live at No. 20 Benefit street.

Q. Whom do you live with?

A. With Mrs. Susan P. Garner

Q. Was not Mrs. Susan P. Garner formerly known as Susan Parr.

A. Her name is Mrs. Susan P. Garner; I have nothing to do with any other name.

Q. Was she not called Susan Parr?

A. I have told you her name once, and shan't tell it again.

Q. How long have you lived with Susan Parr?

A. I shall not answer you when you call her by that name; when you call her by her right name I will answer you

Q. Well, how long have you lived with Mrs. Susan Parr Garner?

A. Since August; she wanted me to help her.

Q. What time did you say John and William Gordon came over to this country?

A. In July last; I know they came over in July; I know they came then, because I was out in Cranston when they came.

Q. Where were you staying in Cranston at that time?

A. I was out on a visit to my mother who lived out there; I was at my mother's house.

Q. How often did you go to Nicholas' shop?

A. I went sometimes three times a week; sometimes, perhaps, I wouldn't go more than once a week.

Q What did you go to the store so often for?

A. I went to buy things.

Q. What did Nicholas keep in his store?

A. He kept thread, needles, pins and tape; some groceries; he did not keep calico or shawls.

Q. What did you use to buy when you went?

A. Well, I bought pins, and needles, and tapes, and thread, and other things that I needed.

Q. Did your stock of pins, needles and thread, require to be replenished as often as three times a week?

A. Sometimes I went for my mother, and sometimes for myself. Whenever I went home, I always calculated to carry my mother something. I never calculated to go empty handed, when I went to see her.

Q And you had to go three times a week to get pins and needles, did you?

A. Whenever my mother wanted anything, I went down there to get

it; I liked to trade with Nicholas; got things about as cheap of him as of anybody.

Q. When did you cease visiting Nicholas' store in this manner?

A. Since last August when I came in town; I have not been out there since.

Q. Why did you leave off going to see Nicholas?

A. I told you once; it was because I came in town.

Q. Did not your mother continue to live out there?

A. She did.

Q. Why did you not go out and visit her?

A. I was sick in August, and the winter was very cold.

Q. How many times was you at Nicholas's store in August?

A. I don't know how many times; I never counted them.

Q. Well, about how many?

A. Well, perhaps I was there ten times; perhaps more, perhaps less. One day I was there three times.

Q. Did you know what clothes William and John had when they came?

A. I know what I saw them have on; that is all I know, of course. I don't know whether they had other clothes; how should I know what clothes they had, except what I saw on them? I am not in the habit of going into people's bed-chambers to examine their clothes.

Q. How did it happen that you broke off going to see Nicholas so entirely?

A. Because I did not go out of town.

Q. Is your mother living there still?

A. Yes.

Q. Why have you not been in so many months to see her?

A. I told you once I was sick, and after I got well, the winter was so cold I did not go.

Q. Did Nicholas sleep at his shop?

A. I can't tell whether he slept there or not; I was not there when he went to bed.

Q. How did you happen to know so much about his clothing?

A. I know what I saw. What clothes I saw him have on, I know about; I don't say he did not have other clothes than these.

Q. You know William and John, do you not?

A. I know them when I see them.

Mr Atwell.—There they both are; which is William, and which John!

Witness turns, points to William and says, that is the one I am not so well acquainted with, that is John; that one, pointing to John, is William.

Mr. Atwell.—There, you may go now.

Attorney General.—Miss Field, which is the one that tended the store?

A. Pointing to John; this is the one

William Manchester.—Have heard Nicholas S. Gordon speak about Amasa Sprague.

Q Were there threats made in the presence of either ofthe prisoners?

Ans. No.

Mr. Atwell.—We object to this testimony, of course. We do not wish to argue the point.

Attorney General.—I now propose to prove the expression of hostile feelIng and bitter enmity on the part of Nicholas S. Gordon towards the deceased, althongh not made in the presence of the brothers.

Mr. Carpenter and Atwell.—To all such testimony we object.

Mr. Atwell.—We shall not argue the point, but leave the Court to decide it; it is too plain to require any discussion.

Attorney General.—The grounds on which we offer this testimony are these. 1st. We think that we have made out by the testimony thus far, the existence of a conspiracy between these men. We offer these declarations as the declarations of one of the co-conspirators, which are to be taken as the declarations of all. 2d. On the ground that we have proved the prisoner to have been greatly under the influence of Nicholas and dependent upon him, and therefore these threats, and this animosity on the part or Nicholas, constituted a motive in John for the commission of the act.

Durfee, C. J.—The Court think the testimony is inadmissible. Any threats made in the presence of the prisoners may be introduced. You must prove the existence of a conspiracy by independent testimony before the declarations of a conspirator not on trial can be offered in evidence against the others.

Hardin Hudson.—Has heard Nicholas talk about Amasa Sprague; was talking about losing his license. John was present at the time; the other one I never saw before. Nicholas talked about losing his license; said it was all Amaas Sprague's doings, and he would have his revenge on him yet; seemed in a passion; did not think he meant what he said. I laughed at him. He was in a great passion, and kept so, for all my laughing at him; said he would come up with him if he lived. John said nothing about it; kept on about his business. Nicholas kept on talking. John did not seem to take any part in the conversation.

John M. Shaw.—Have had conversation with Miss Susan Field. She described the articles of clothing; some of which I had not seen myself, and a pistol, which I then knew nothing about. Her description corresponded with the things. She described an old coat, light blue, very ragged, which he used to have on the seat of his wagon, and wore sometimes on stormy days. Described another coat like this one in court; one vest only of the lot here, and one not here; the dark one; green one she did not describe. Her description was full and particular. Susan P. Garner told me on the Monday after the murder, there was some one at her house who could give some information; I went up there; saw Miss Field; she told me about threats; that she should suspect the Gordon's; said Nicholas did most of the talking; never heard such conversation from John or William; said Nicholas threatened Mr. Sprague in the prsence of John and William; he used such language that John, perhaps, might answer, "don't talk so loud before folks."

Aitorney General.—We now propose to prove that Amasa Sprague, the deceased, did oppose and prevent Nicholas S. Gordon from obtaining a license. We understand the Court only to decide that the *declarations* of Nicholas Gordon not made in the presence of the prisoners, cannot be allowed to pass to the jury. We offer to prove this as a fact known to the prisoners, on two grounds. 1. In connexion with the fact that

the threats made in the presence of the prisoners against the deceased, related to this act of his. 2. As an independent fact, showing the existence of a cause of hostility in the Gordon family.

MR. CARPENTER.—We object to the admission of the testimony; we do not propose to argue the point.

The Court consulted upon the question.

DURFEE, C. J.—The Court think the testimony is admissible.

Charles P. Searle.—At a June town council, Mr. Sprague asked me to appear and request the town council not to grant a license to Nicholas Gordon. I went up and made this known to the council; Nicholas Gordon was present; the subject was postponed to the next meeting.

At the next town council, Mr. Sprague appeared in person, and opposed the license; the license was opposed. I informed the council that at the request of Mr. Sprague, I appeared to oppose the license; the reason was, the bad effect upon the workmen, who were running there all times of day and night. There were other licenses granted; several taverns and a store license was granted.

Elisha C. Lawton.—Is a member of the town council at Cranston; Amasa Sprague opposed the granting of a license; the license was not granted. He had no license up to that time.

Cross-examined.—It was given in evidence that the neighborhood was as much opposed to his having a license, as Amasa Sprague. The first remonstrance was rejected, on account of being written in pencil mark.

Next month Amasa Sprague appeared in person and opposed it; this was in July.

Roger W. Potter.—Brought in William Gordon from Fenner's Ledge on the day of his arrrest; did not seem to me to be affected by liquor; walked perfectly well to the carriage; got in and rode as well as a sober man. He talked a good deal; said he could prove he was in Providence all day, not in Cranston at all. I think I cautioned him not to talk too much before me; I remarked when he came into court, that he had changed so much that I should not have known him; had shaved off the hair around his face.

S. B. Cushing—recalled.—I have made the calculation of the apparent time of sunset on the 31st of December, 1843. At the place where Spencer and Barker were at sunset on that day, it would be 4 o'clock 16 minutes; at the place where the body was found, it would be 4 o'clock 20 minutes; at Sprague's house, 4 o'clock 24 minutes; at Kingston, 4 o'clock 25 minutes.

ATTORNEY GENERAL.—We have no more testimony to offer in the opening.

MR. ATWELL—We propose now, under the last ruling of the court, to summon witnesses to prove that Mr. Sprague has had difficulties with others; and, also, to show that they had an opportunity to commit the murder.

DURFEE, Chief Justice.—Well, sir, you can offer such evidence as you deem expedient, and if the court think it competent, they can suffer it to pass to the jury.

MR. POTTER'S CLOSING ARGUMENT.

MAY IT PLEASE THE COURT:

After going so minutely, Gentlemen of the Jury, as I did in the opening, into the outline and nature of the testimony in the cause, I shall not now trespass, for any great length of time, upon your attention. I shall state to you the principal facts, the main points upon which the Government will rely, without commenting npon the evidence as I proceed. To do this is not my province, and I feel that it will be more ably done by the Attorney General, who will follow me in the close of this case on the part of the State.

I think, gentlemen, now that you have heard the testimony on the part of the government, that you will not charge me with exaggeration in the statement which I made of it in my first opening. The proof has fullly come up to the statement which I then made.

I will here gentlemen, before commencing my remarks on the evidence, call your attention to the definition of murder as given in the books; because the language there used will give you a more clear and distinct idea of it than any that I can command. *Cited* 1 *Russell.*

The homicide being proved, the law presumes it to be murder, and it is for the accused to show any circumatances going to extenuate or excuse the offence. With the law as thus stated I presume the learned counsel for the prisoners will agree. The counsel for the prisoners, however, make no question of law in this case. They admit that such is the law, and those who are guilty of the commission of this offence, are guilty of no lesser crime than murder, I need not therefore dwell upon this point.

The indictment, in all the different counts, charges Nicholas S. Gordon as accessory before the fact, in the commission of the murder. The prisoners at the bar are charged in all the counts as principals; in some counts, the one as giving the fatal blow and the other, with other person or persons unknown, as accessory at the fact, aiding and abetting the commission of the crime, and so on alternately, alleging the murder to have been committed in different ways. But in point of law both these are equally principals, and, if guilty at all, equally guilty of the murder.

The testimony in the case is wholly circumstantial, made up of a great number of distinct facts testified to by different witnesses; but though thus circumstantial, the links in the chain are so close, and each so strongly connected with the others and all tending to the same result, as to afford to the mind the most irrefragable evidence of the guilt of the prisoners at the bar. I will say, gentlemen, that in my short experience I have never had, nor in my examination of the records of criminal jurisprudence, have I ever seen a case so strong and conclusive.

We prove these three men to be brothers. One of them, Nicholas, having been in the country several years, the other two having only come over last summer. We prove the existence of feelings of hostility between one of the brothers, Nicholas, and the deceased. We show the cause of that hostility. It arose out of a fact which was calculated to produce bitter and revengeful feelings. It was an injury inflicted in that

point where men are most susceptible. The deceased had been the means of preventing Nicholas S. Gordon obtaining a license, and by that means deprived him of a part of his gains. It was taking so much out of his pocket; thereby giving him the strongest motive for the commission of this act. In accordance with these facts, we find this man entertaining towards the deceased feelings of the direst hatred and revenge—not only *entertaining* these feelings, gentlemen, but expressing them in language as clear and as strong as language can express the feelings of the human heart. We find this sort of feeling to have been expressed repeatedly in the presence of the prisoners, accompanied by the most vindictive threats against the life of the deceased; they not dissenting from them, but on the contrary, in some instances expressly yielding them their assent and in others only cautioning Nicholas not to make such threats in the presence of others. And what is more natural, gentlemen, than that these prisoners, whom he had sent for to come to this country, who had lived with Nicholas S. Gordon,—he being, comparatively well off in the world,—whose passage money he had probably paid, whom he had clothed, fed and sheltered, one of whom at least at the very time of the murder depended on him for his daily support—should have sympathised with that brother in his feelings, in his partialities and his resentments; that they should have participated in his joys and sorrows, and in his friendships and his enmities. Such feelings, gentlemen, are common to human nature. They exist to some extent in almost every family. The father takes side with the son in all his quarrels, and the son takes side with the father. From the mere natural relation and sympathy the friend of the one becomes the friend of the other, and the enemies of the one the enemies of the other. This then is the relation in which these persons stand toward the deceased.

We find the deceased murdered. It is in a spot well known to these prisoners, along a path which he was in the habit of travelling on that day. The prisoners knew of this habit. They lived in the neighborhood. They knew if they had concerted the murder, when and where it might be perpetrated.

Starting at this point, gentlemen, we have proof the most cogent and convincing in regard to John Gordon. The morning after this murder, we find tracks leading from the place where the body lay, across a swamp to where the gun and the coat were found—thence through the swamp by a concealed route to the nearest point to N. S. Gordon's house, and thence directly to the back door of the house. There was a regular beaten path leading from the spot of the murder where any person passing in that direction, and having no motive for deviation or concealment, would naturally have gone. But, gentlemen, the man who committed this deed, coming from the scene of crime, red with the blood of his victim; the fatal weapon of death in his hands and the bloody coat upon his back, certainly had a motive for concealment. These would have been damning evidence of guilt, if a human eye should rest upon them. He dared not go along that beaten track. It was daylight; if he, in this condition, should meet a man upon the road, his fate would be sealed; the gaze of the eye of his fellow man would be as fatal to him as the ball which had just issued from his gun; the man would be amazed at his appearance; if he continued in the path, he would in less than five minutes, come upon the dead body of the deceased. The connection between the two, would furnish the most positive evidence of his guilt. He had,

therefore, a most powerful motive for concealment, and the swamp where the gun and coat were found, was the nearest place of concealment. This, too, was the way to the house of N. S. Gordon, where he might exchange his clothes. The man who did this deed, which man we say was John Gordon, took that track. He goes along the fence three or four lengths from the bridge, gets over the fence, drops a sliver of the breech of the gun, thence directly to the nearest of the thick pines in the swamp, there the gun is hid, thenee to the coat, and thence is directly tracked to the door of Nicholas Gordon's house, where John Gordon lived. There we find a pair of boots wet, and which John Gordon acknowledges to be his. I wish now to call your attention to the kind of evidence by which John Gordon is thus identified with this transaction. It is as strong, as conclusive, and as irresistible as any evidence of the most positive character can possibly be.

We find a single track leading from the dead body of the murdered man. We find it going first up to the spot where the gun covered with blood—the instrument with which the murder was, without doubt, committed—was found; going onward, from thence to the spot where the bloody coat, which was as undoubtedly worn by the murderer, was found, and thence through the swamp to the house of N. S. Gordon. We find the boots which went through that swamp at such rapid strides, the wet boots of John Gordon. This chain of circumstances seems to fix the guilt of the perpetrator of the deed beyond a doubt, even if there were no other circumstances in the case—standing uncontradicted and unexplained. There were no other tracks at the time. They were carefully examined. They were measured with great care and exactness, by men of the most unimpeachable character, and who have testified to the facts here upon the stand with great clearness and candor. The heel prints and the toe prints were both examined—the marks on the bushes were noticed. There were a part of the way, that is, between the place where the coat was found and the causeway at Hawkins' Hole, other tracks at the side of the above, which were also examined. The measure of the first did not correspond with any of them. The tracks were examined by men who were in search of the murderer. They found tracks on both sides of the pond; they found them in the swamp; below Hawkins' Hole, in the swamp on the other side of the beaten track, through that to the nearest point to Nicholas Gordon's house, and thence in a straight line to the back door of N. S. Gordon's house. Now the man who made that track, if he had no motive for concealment, could have gone to N. S. Gordon's house by a beaten path direct, and much shorter than the route through this wet and tangled swamp. Recollect, in this connection, gentlemen, that a man going from the place of the murder to the swamp in the line where the tracks are found, cannot be seen for the greater part of the way by one passing along the beaten track; and also bear in mind that there was no other place so handy for the immediate concealment of the gun and coat—this must have been the first object of the murderer—there was no other swamp near—that a man passing along where the gun was concealed, can be seen only by one going in the same line with himself; the cedars conceal him from view on either side. Well, when the man who took that track got to the driftway by Hawkins's Hole, if he was going to Nicholas Gordon's, he would, as I before remarked, if he had no object for concealment, pursue the beaten path leading in the most direct way to that house; a path well travelled, and which was the usual passage

way for those going in that direction; but the person who made these tracks, goes over the fence, across the big meadow, into the dense and very bad swamp, on the other side of Hawkins's Hole, goes through it until he comes to the spot nearest to Gordon's house, and then takes the nearest route directly to the back door of that house. Gentlemen, it would seem as if the human mind could not resist the force or this testimony. It would seem as if the man who committed the deed left behind him evidences of his guilt, literally written in letters of light.

We have the track from the spot of the murder, to the weapon with which it was committed, to the coat which the murderer wore, from thence by a secret and most unfrequented and difficult path to Nicholas Gordon's back door, where John Gordon lived. We have the boots acknowledged to be John Gordon's, wet at the time; and exactly filling these tracks. We have John Gordon with the very gun in hand nearly at the place of the murder, almost at the very day, with the coat almost as it were on his back. Truly, gentlemen, the circumstances and the proof almost seem to point this man in the very commission of the act; they stamp his guilt indellibly upon him.

The identity and ownership of the gun is proved too by evidence more cogent and convincing than is often in the power of the Government to present. It is proved to have belonged to John Francis, to have been left by Francis for sale at Almy's, to have been there bought by Nicholar S. Gordon, on the 7th of October last. We have thus traced it beyond the possibility of a doubt, to Nicholas S. Gordon. We show the prisoners to have had access to it; nay, more, we show upon this very spot, this very gun in the possession of John Gordon. We find him pass in this direction twice with it, under the pretence of hunting, though at seasons when there was little hunting to be done, and when there was no game to be found. We find him passing in other directions frequently, but without the gun. Here is the brother of a man whom he had heard threaten the deceased—with whom he lived, and with whom he had cause to sympathize fully, with gun in hand, almost at the very spot of this transaction, and this gun is identified, identified I say beyond the possibility of a doubt, as being the weapon with which the deed was perpetrated. The particularity with which the gun has been identified in all its parts, from the minutest portion of the lock to the stock and the ramrod, makes the most conclusive and irresistibly convincing piece of circumstantial testimony that could possibly be presented to the human mind.

We pass now to the coat. This is another strong point in our testimony, and the clearness and particularity with which it has been identified, is to me as astonishing as the other. It is proved on the very back of one of the prisoners. It is proved to be Nicholas S. Gordon's coat—proved so by a variety of witnesses, all of whom give their reasons. It is proved by Miss Field, and the particularity with which she described it before it was shown to her, and the way in which she puts the coat on the back of one of the prisoners, is as convincing as the evidence in regard to the gun It was an old coat. Nicholas flung it sometimes on his wagon seat to sit on, sometimes threw it by the counter in his store for the dog to lie on, sometimes wore it on rainy days, and sometimes John wore it. It has blood upon it. The man who committed the deed wore it. It is traced to John. All the testimony connects by connected and indissoluble links, the prisoner at the bar with this horrid deed.

Well, gentlemen, soon after the murder was committed, we find John Gordon on the Cranston road, coming to the Kingstons. He says tea is not ready at home, and he had come down there. He and the Kingstons go over to King's tavern, take two glasses of liquor each, come back to the Kingstons, and he is there when the news of the murder is brought. They all go up, as is most natural in such cases, to see the body. I say, gentlemen, most natural was it, when such a man as Mr. Sprague was found murdered, that the people of the vicinity should go to see his body. The curiosity which is natural to the human mind, would have prompted them to do so. But mark, gentlemen, they all start for the avowed purpose of going to see the body of the deceased John Gordon goes with them as far as the gate at the house, and there turns away; they go in; he does not go in. Think ye, gentlemen, curiosity is not as strong in his breast as that of other men? WHY did *he* not go in? Why go up to the house door with those who had expressed the intention of going to see the body and then turn away. Why does he do this? If he is the same ~~man~~ man who had used the fatal gun and wore that bloody coat, who had made those long tracks with those wet boots not two hours before, he surely had a strong motive for not going in—for shunning that house. If he had a human heart in his bosom, he felt that he could not go in and look upon his victim. Human nature could not have endured that sight unmoved. He felt that his nerves, braced as they were by two drinks of liquor, were not strong enough to bear the sight of that murdered man, now that the fiendish passion which had instigated the atrocious deed had been sated—now that the excitement of action was gone. He feared that some quiver of the lip—some involuntary motion of the countenance would betray the fearful secret which was struggling in his breast; that some searching eye would detect sure indications of his guilt.

We prove also that John had no black eye on the morning of the day on which this murder was committed, or on the day before. We prove that he had a bad bruise and swelling on his face on Monday night. We prove that he made false statements about this bruise; that he said he got it on Christmas, by a fall. We prove that persons who saw and observed him the day before, saw no bruise on his face. It must have been a bad bruise to have continued thus swollen and black for more than a week. Put this fact with the others—put that fact with the gun and the coat, the track, the boots, the fact of his not going in to see the body, and it becomes a fact of great weight, particularly when taken in connexion with the false statements, showing a desire to assign some other day for its cause than that of the murder.

I pass to William Gordon. He also is a brother of Nicholas S. Gordon; has been present and heard threats against the deceased. He also has been in some measure dependent upon that brother, and had reason to sympathize in his hatreds. We prove him in the vicinity of the place of the murder, just before and after the commission of the act. He is seen with another, a taller man on the Johnston road, with a gun under his arm, before 2 o'clock, in the vicinity of the spot. He is met by two men, one of whom had particular reason for noticing his appearance; for they met face to face in the track, and one had to turn out into the snow, to let the other pass; and as you well know when two men meet each other in this way, each is reluctant to turn out, and they are apt to look each other in the face. These two men went out into Johnston, on a visit to a relative, and took tea there. When these two men returned, they

met the same men whom they had before met on the road. They had no doubt of their being the same. They saw them coming across and out of the field where the murder was committed, into the road. One of the men had no coat on; he was in his shirt sleeves; he now had no gun; but the tall man had a gun; this other man, gentlemen, is probably one of those persons to the Grand Jury unknown, as is charged in some of the counts of this indiciment. The men, gentlemen, who swear to these facts, are not swift witnesses; they are cautious and careful. One of the men whom they met was in his shirt sleeves. Most natural was it, that so bitterly cold a day as that, (31rst day of December,) they should have observed a man out in the open air in his shirt sleeves; common huemanity would cause us to notice such a man, and on such a night to almost shiver from mere sympathy for him. Most natural was it, when they saw this man walking fast, holding his head down, that they should have said, "that's a suspicious looking chap." Most natural, was it gentlemen, when they heard soon after of the murder of Mr. Sprague, and were walking home, talking over the affair between themselves, that they should have expressed their suspicions of these men, whom they had met under these circumstances. I know not how a human mind could have been constituted which would not have entertained such suspicions.

We next find this man, who was seen in his shirt sleeves on the Johnston road, and identified by two witnesses as William Gordon, the prisoner at the bar, coming up the hill by Benoni Sprague's on a run. We find him there at a time of day giving him ample opportunity to have reached there from the place on the Johnston road, where seen by the two witnesses. The distance is proved to have been walked in twelve minutes, and the river is proved to have been generally frozen over above the place of the murder, and to have been so narrow in some places that a man could jump across it. When we find him on the Cranston road, he is not walking at a natural pace but is found going at a dog trot up hill, and by Benoni Sprague's house. He might well want to get where there were more people, to mingle in the crowd where he would be less observed, and to get there as soon as possible. He must first get a coat; this he accomplishes by stopping at N. S. Gordon's; but home is not a safe place for him. He wishes to be further from the scene of the murder.

There is another little circumstance which goes to show the state of his mind. A sleigh has been overturned, and when he is first seen running he is thought to be running for the horses, but he passes directly on, under the heads of the horses, and continues running. He is afterward overtaken on the road by Mr. Arnold in a sleigh with two horses, both of whom had bells. They ride almost over him without his moving out of the track. He is so absorbed that Mr. Arnold is obliged to call out to him before he pays any attention; he then looks up and Mr. Arnold's little son says, "that is Nick Gordon's brother."

Then you have the contradictory statements of these two men as to where they where on that day; statements so plainly false, that they can be attributed to no slip of the memory—statements which, if innocent, they could never have made, but such as if guilty it would have been most natural for them to have made.

These, gentlemen, make the principal points in the case. I have adverted to them more minutely than I meant to do; when I commenced. And I ought perhaps to ask the pardon ot the Court for exceeding the

limits within which my duty as opening counsel for the Government confines me.

There are other points. The blood on the shirt; the pistol; the powder and balls found in the pocket of the coat, and in the vest; the wadding of the pistol and the pieces of newspaper—to which I have not particularly alluded, but which, with this mere reference to them, I leave to be commented on by the Attorney General in the close.

The frequency and magnitude of crimes, gentlemen, in our country, of which almost every journal which reaches us bears testimony, devolves upon all men, concerned in the administration of the laws, a high and responsible duty; and upon none more imperatively, gentlemen, than upon jurors. To them we look for the protection of our lives and liberties, for the maintenance of law and the safety of society. If jurors, when evidence is presented to them, which satisfies their minds beyond a reasonable doubt, from false sympathy, from fear of the consequences, from a regard to the prisoner or from any other motive swerve from their high and solemn duties—the community can have but little confidence in the protection of the laws. Remember, gentlemen, that the State has rights as well as the prisoners. Remember that you owe a duty to the community as well as to the accused.

Gentlemen, I caution you against mingling sympathy for the criminal ~~into~~ sympathy for the crime. Your duty is only to enquire into the guilt or innocence of these men of the crime with which they stand charged. You are to be satisfied that that guilt is proved by satisfactory evidence. Evidence, in the appropriate language of one who for many years filled with distinguished ability the office of Attorney General of this State—evidence is that which satisfies the mind; no better definition of it can be given.

What you have to ask, gentlemen, is simply: does this evidence satisfy your minds of the guilt of the prisoners at the bar? If it does, you are not to look to the consequences. You have nothing to do with that. Your oaths call upon you to say, under the law and the evidence as given to you, whether they are guilty, or not guilty; the consequences do not rest upon your heads. The pardoning power is not vested with you. You are to do your duty fearlessly, manfully, and without fear or favor. You are not to be swerved from it by any considerations whatever. So perform it, gentlemen, to the prisoners at the bar, so perform it to the State, so perform it to the community and yourselves, that when your verdict shall have been rendered and passed irrevocably from your control, and the time for reflection comes, you may feel the inward satisfaction and sustaining power arising from the conscientious discharge of a high duty and the approbation of your consciences.

With these remarks, gentlemen of the jury, I submit this cause to you in the opening on the part of the government.

FRIDAY MORNING.

MR. CARPENTER'S OPENING ARGUMENT.

MR. T. F. CARPENTER opened for the prisoners.

He said he had no doubt the jury were so impressed with the deep importance and solemnity of the duties, which developed upon them, as

to have suspended their opinions upon the question of the guilt or the innocence of the prisoners, and formed as yet no settled opinion upon the case.

He had no intention of occupying much of the time of the Court. In his first opening his sole object would be to present briefly some of the points upon which they should rest in the close.

His view of the case thus far was, that the only evidence which had been introduced, connecting with any certainty either of the prisoners with this transaction, was the testimony of Barker and Spencer implicating William Gordon. They met two men on the Johnston road near the place of the murder, one in his shirt sleeves. Those men, he had no hesitation in saying, were the real murderers of Amasa Sprague. These men testify that the man whom they saw was William Gordon. If William Gordon was the man seen by them, and if he was one of the two men met on the Johnston road with a gun in his hand, and afterwards in his shirt sleeves on a bitter day in December, then there is a chain of evidence which fastens this crime upon him, almost beyond a doubt. Was William Gordon that man? Bear in mind that this is the most cogent evidence which has been introduced into this case. It carries with it the most forcible conviction to the mind.

Now they proposed to prove by indisputable evidence that William Gordon was in Providence on the day of the murder at 3 o'clock; that fact can be established beyond all reasonable doubt. It was not requisite for the prisoners to prove this fact, because it was not necessary for them to prove that he was somewhere else on the day of the murder, it is for the Government to prove he was there. He should not attempt to prove where he was, if two honest and intelligent men had not sworn that they in their opinion saw him on the Johnston road in the vicinity of the spot.

They proposed to prove that John Gordon was in town and attended church the morning of that day, and remained until afternoon. This proof would be offered to remove suspicion from the minds of the jury in regard to the prisoners. It is not essential for every man who is suspected to prove where he was on that day, but he should offer such evidence as would satisfy the jury that John Gordon could not have committed that murder.

The proof offered by the Government is wholly circumstantial in its character. Circumstantial evidence is always to be regarded with distrust. It is a dangerous reliance in a matter of life and death. Of the laws governing this species of testimony, he should speak more at large when he came to comment on the evidence.

He should offer some evidence in regard to certain facts which have been proved by the government, and which, though they do not necessarily connect the prisoners with this crime, tend to prejudice your minds against them. His object would be, not simply to obtain their acquittal, but to obtain it by the introduction of such testimony as would remove from the public mind that suspicion of the prisoners' guilt which otherwise might be fastened upon them during their whole lives. The boots that were found, the tracks that were found, he should, in the close of his opening argument, examine step by step; the confessions, as they are called, would not escape his attention. They were substantially true, and with very little variation, which was easily accounted for, were the

same story which the prisoners now, and always, from that day to this have persisted in.

Without going further into detail, he should proceed to call their evidence, the applicability of which, the jury's previous knowledge of the case would enable them readily to perceive.

WILLIAM GORDON'S ALIBI.

Jeremiah Bagot.—Know William Gordon, have known him since he came to this country. I saw him on the Sunday of the murder; I saw him at my house. It is the next house to the Catholic Church on Broad street. He came into my house when I was eating my dinner, near as I can judge about half-past one o'clock. He did not stop five minutes. I did not get up from the table from the time he came in until he went out again. N. Gordon and Michael O'Brien were there at the same time. They all went away together. I don't know where they went; did not see them again that day. Saw John Gordon in the Catholic Church at mass. He sat in No. 10 and I sat in No. 11, he on one side of the aisle and I on the other. Saw him after church; he came into my house and asked for Nicholas's paper; took it and went out. I looked at the clock, said it was quarter past twelve. I looked to see if there was time to go to the Post Office before it was closed; it closes at one o'clock on Sundays. I have often seen John and William Gordon. They generally called at my house on Sunday. They seemed to be very nice men; I never saw anything wrong in them. William worked in this city with a man named O'Brien, a tailor; he lived in the city at the time of the murder; don't know for how long.

Cross-examined.—It was the Boston Pilot which John took for Nicholas. It was about half past one o'clock when William came in; did not look at the clock; I started to go to the Post Office; met Nicholas down by the corner; asked him to come home to dinner; the bells rung for one o'clock as we got to Richmond street; went home and sat down to dinner, and while at dinner William came in.

Michael Holohan.—I know William Gordon, known him from a while after he came here. I saw him on Sunday, December 31st, the day of the murder; saw him in the Catholic Church at mass; saw him between 1 and 2 o'clock; came to my house, he and Michael O'Brien; remained there until half-past two, pretty near. He dined with me, together with Michael O'Brien and the man that boards at my house, Jeremiah Ryan. I was going to a funeral down street. I got up and said I must leave them; or I should be late to the funeral. William Gordon was sitting by the stove, got up, said he was going home. He left me, went toward Hoyle tavern. I went up toward the main street. My house is on Pond street; as I came out into main street, saw the clock; it was half-past two. I met the funeral near Mr. Martin's planing works. I thought John and William were very honest and peaceable men; John used to come to my house more than William. When I left he was going home.

Cross-examined—I came through Graves lane to get into main street. Can't say what time church was out that day. William came some time between one and two o'clock; I had no clock or watch in the house. Can tell when he left because I looked at the clock in the street. As to the time when he came in, cannot tell, except from my judgment. It

was some over half an hour after mass I think before William came to my house.

Jeremiah Ryan.—I boarded with Michael Holohan the day the Gordon's came there; don't know what day it was; am acquainted with John and William Gordon. Saw William that day; I heard the next day that Sprague was murdered. It was to the best of my belief between 1 and 2 o'clock when William came in with Michael O'Brien. They staid to dinner. I was present when they went out. Michael O'Brien stopped with me. Holohan and William Gordon went out together. To the best of my belief William remained about an hour from the time he came in till he went out.

Cross-examination.—Nicholas came in soon after; some one asked what time it was; Nicholas drew out his watch, and said it was near 3 o'clock. William had then been gone some time; O'Brien went out with Nicholas when he went out. I depend on my judgment alone for the time, there being no watch in the house. Nicholas stopped some time in the house after 3 o'clock, can't tell how long William had been gone when Nicholas came home

Michael O'Brien.—Am acquainted with William and John Gordon; saw William on the day of the murder; first saw him at church at mass. Saw him after church; saw him standing at the door of the church; next saw him at Mr. Bagot's; after that at Mr. Holohan's. I asked William if he would not go in; said he didn't care if he did. Dinner was not ready when we got there. William was going, but they said he should not go until he had had some dinner; he staid till a few moments after dinner; he and Holohan went out together; the time when he went out was about half-past 2 o'clock; can't recollect exactly; judge from the time I left it was about half-past two. Have known them since they came to this country; used to see John in town; saw him the Sunday of the murder. I called to see if Nicholas was going to town; he had gone. John said he was going and we came together. Some place this side of Cranston met another man named Martin Norton. When we got to the half-way house, John said, "Mike," said he, "see how my pantaloons are bursted." I looked, and said that was bad. I let him have my coat to hide the tear. It was a darkish colored coat. John took it and put it on.

It was longer for John than I. I did not see the coat again till I saw it on John in jail. The pants were badly split. I got the coat in jail. Never knew anything against William or John Gordon; thought them quite nice men. I was at the christening; saw William Gordon come in; can't tell the time. It was late, and we were sitting down to supper; he had the same clothes on as in the morning. I had been there more than an hour when William came.

Cross-examined—Noticed that John had a swollen cheek; it was on the right cheek, I think. Saw him in the morning. Got home from the christening about 10 o'clock. Mass is about 12. Went to the post office; came to Bagot's about 1 o'clock; stayed a few minutes and went to Holohan's; met William at Bagot's house. It was after one; can't tell the time only from my judgment. At Holohan's dinner was getting ready. William was there about an hour in all

Martin Quick.—Acquainted with William Gordon; not much with John. I saw William on Sunday, December 31. Boarded in Knight street. After mass we had a luncheon. I stopped until about 3 o'clock. Met William over by the High street Bank; said he was going out to his

mother's. I said, "it is cold, I would not go out." Said he must go out and see his mother; she was sick, or he would not go out. He asked me if I would not take something to drink. We went into three taverns and could not get any. When I got down by the church they were just coming out from Vespers. This is generally about half-past 3 o'clock; would not take five minutes to walk down there. I mentioned this to a great many, after I heard William was arrested.

It was in the fourth tavern on the right hand side going out to Olneyville where we got our drink. William said he would go across there; did not see him afterwards. I heard William had been taken up, said it could not be him as I left him at 3 o'clock; mentioned this to Mr. Bagot and to Mr. Holohan within a day or two afterwards. Did not mention it immediately; did not wish to leave my work. Have not contributed any money towards this defence.

Michael O'Brien, re-called.

ATTORNEY GENRRAL.—How long did William Gordon stay after dinner?

A. Can't tell.

Q. Was it five minutes or twenty minutes?

A. Might be five, might be twenty; can't tell; he stopped about an hour in all; it was about 10 o'clock when I got back to my boarding place from the christening. Nicholas asked me to go in and have some supper; told him no, it was too late.

Q. Whom did you see at Nicholas's?

A. His mother, the little girl, John and Nicholas.

Q. Did you get your coat?

A. No.

Q. Why?

A. I had no occasion for it.

Q. It was a cold night, was it not?

A. Yes.

Q. You did not intend to give John your coat, did you?

A. No.

Q. Was anything said about the coat?

A. No.

Q. Why did you not take it if it was a cold night?

A. I was warm walking and had no occasion.

Q. You said nothing about your coat then?

A. I don' know that I did; did not tell him I wanted it or speak of it; did not see the coat there. Nicholas walked home with me from the christening. Heard nothing said at Nicholas's when I was there.

Q. You had heard of Mr. Sprague's murder, had you not?

A. Yes.

Q. Was nothing said about it?

A. I don't recollect there was; not a word.

Q Did not you and Nicholas talk about it going out?

A. I don't recollect we did; I to Nicholas or he to me.

Q. Where was you when you first heard of Mr. Sprague's murder?

A. At a tavern near Hoyle tavern.

Q, Who was present?

A. There were a good many; can't tell their names.

Q. What was the first thing you said after hearing of the murder?

A. I don't know; I believe the first thing I said was to ask for something to drink.

Q. Did you say nothing about the murder?

A, I can't recollect that I did.

Q. Do you recollect saying you were "damn glad of it," or any similar expression?

A. I don't know that I said so; can't recollect any thing about it.

Q. And you don't know that a word wassaid about it, walking out, by you or Nicholas?

A. I do not recollect.

Q. You knew Mr. Amasa Sprague, did you not?

A. I did.

Q. You had worked for him, had you not?

A. Yes, worked for him four or five years.

Q. And you heard of his being murdered and said nothing about it, made no remark?

A. I don't recollect saying anything about it; I had drank considerable; I was able to walk, but had as much as I could carry.

Q. When you got into Nicholas's was nothing said there about the murder?

A. Don't recollect there was.

Q. Not a word?

A. I don't know.

Q. You passed Mr. Sprague's house after you left Nicholas, did you go in to see the body?

A. I did not.

Q. Were there a good many people there?

A. There were.

Q. Why did you not go in?

A. I had drank a good deal, and did not want to go before so many people.

Q. Had you not heard any of the particulars of the murder?

A. No, sir.

Q. Had you no curiosity to hear about it?

A. I don't know as I had. I did not think it a fit place for me as I was then.

Catharine Holohan.—Know William Gordon; saw him Sunday of the murder at my own house. He came in betwixt one and two as near as I can judge Staid to dinner, and about half an hour after dinner, as near as I can judge. Went out with my husband; stopped an hour at my house; was not in any hurry, until my man said, "I must leave you; I am going to a funeral." Whilst they were at the house the Sunday School bell rung. It rings at 2 o'clock.

Dennis O'Brien.—Live in Back street, in Providence. Am a tailor; William Gordon worked and boarded with me last October. The Sunday of the murder, William left my house, dressed in his Sunday suit, which he has worn every day since he has been living with me. Saw him again a few minutes past 6 o'clock in the evening. He was dressed in the same clothes he was when he went away in the morning: blue frock coat, silk velvet vest, blue pants and hat. Came from the christening about half-past 8, with Nicholas and O'Brien. He went back again to the christening; told him not to be out late. He appeared the same that night as the first day he came to me. He came home about half

past 9 o'clock. I heard of the murder of Mr. Sprague next morning; William turned round and said, Mr. Sprague, says he, I can hardly believe that Mr. Sprague is killed; did not converse with him particularly about the murder. A good many came in; he joined in conversation with the others. I have always found him a fair man and attentive to his work. Told me he was going to church; I said to him you will be late. Said he would go to the High street church; expected to see his mother there.

John Gleason.—I was at the christening. Nicholas Gordon and John O'Brien came there some time about sun down. It was light enough to see faces. We took supper at a quarter past 6. William came in just as we were sitting down; sat down and eat supper. Observed nothing peculiar in the appearance of his countenance or dress; same as at church. He was free, sociable and pleasant, like the rest; and sung two very pretty songs. William went out once, and returned back after a few minutes. William sat next to Nicholas; but no conversation between them.

FRIDAY AFTERNOON.

Thompson Kingston.—Am acquainted with John Gordon. Known him since Sunday after he came to Cranston. Remember the Sunday of the murder; I lived with Amasa Sprague; was in his service. I came into town that day to go to meeting. I staid after the afternoon service. I stopped at Peter Carrighan's. I left his house about sundown or a little after. Went out by the Cranston road. Met William Gordon. I met him this side the half-way house. We both stopped and spoke with each other; did not take notice how he was dressed; spoke some five or eight minutes. Saw no difference in his appearance from usual. He said he had come out to see his mother; he thought she would be displeased with him if he did not come out and see her. He was going direct back to the christening. It was light enough to see him. I knew him before he got up to me. I left Providence in time, I thought to get home before dark. The house I left last, is at the end of the town. It stands opposite to a street called Cranston street. I had to go from there to Mr. Amasa Sprague's. I intended to get home before dark. I never knew anything about the character of these men. I went in from Mr. Sprague's to the Kingstons to tell them of the murder. I thought perhaps they had not heard of it, and saw John Gordon there; he came with us along the road. One seemed as much amazed as the other, when the fact was told; and saw nothing different in their countenances. My brothers worked in Mr. Sprague's employ. I live now with Mrs. Amasa Sprague. My brother and John came up to the house with me. My brothers are still in the employ of Mr. Sprague. They had heard of the murder of Mr. Sprague when I got home.

THE OWNERSHIP OF THE COAT BY N. S. GORDON DISPUTED.

Tillinghast Almy.—I never saw the coat exhibited here on Nicholas Gordon, to my knowledge. I did not recognise it when I saw it in court. I

often traded personally with Nicholas Gordon. I do not say that I never saw this coat, or that I ever did see it; I say I do not recognize it. I don't know but I had as good an opportunity to see Nicholas Gordon as George Beverly had. I was away some during the summer. Beverly might have been at the store more than me. If he wore the coat, I think from my knowledge of the man, he would have worn it in the evening. I was usually there evenings.

Cross-examined.—I think Mr. Beverly is an observing man; that he would notice a man's coat sooner than I should. I can't say I have seen this coat—I may have seen it twenty times, but I cannot identify it. Beverly remarked a man's dress more than I did; he would sometimes make an observation about the fit of a man's coat.

John Fleming.—I know Nicholas S. Gordon; used to see him five times out of ten when he came in town; he stopped frequently at my house with his wagon; he has been at my house for eight years, late and early. I never saw him with such a coat as that. I should have remembered it if I had. He wore a blue beaver cloth, worn thread-bare, with velvet collar. I have known John and William since the 20th or 21st day day of June. [Nicholas's greenish coat was here produced, and shown to the witness.] I have seen Nicholas with this coat on frequently, but it is not the one I refer to That was a beaver cloth. I never knew anything against John or William. They were not quarrelsome.

Cross-examined.—I live now on India Point; moved there on the 27th of October last. The beaver coat is a sort of kersey coat, dark blue; had a faded velvet collar. I saw another old snuff colored coat; I put down my name for $5 towards this trial, but when I was robbed I took it off, because I thought I could not afford it. I have not taken an active part in preparing the testimony.

Jeremiah Bagot (re-called.)—I have been acquainted with Nicholas S. Gordon for about seven years. Seen him frequently. He often called at my place since I moved up by the Catholic Church. I have been there since 1839 or 40; bought it in 1841. He stopped there pretty much every week. Saw him in damp and dry weather I never saw him have this coat in his possession, or wear it since I have known him. In the winter, services commence at 2 o'clock. It did last winter on the 31st December. They usually last from an hour to an hour and a half, according to the length of the sermon. The Sunday School commenced at 1 o'clock last winter. I have never seen Nicholas wear the beaver coat spoken of by Mr. Fleming. If I had seen him wear such a coat as the one produced here, I should have remembered it.

John O'Brien—I have known the prisoners since last June. I never heard anything against their character more than any of the neighbors. Known Nicholas since 1836. Seen him often. He boarded with me when he kept his store a year ago last July. Lived with me from 2d July to last of August. He was sick. I have seen all his clothes since he came to Cranston. All the clothes I see with him were brought to my house when he was there. I never saw him with such a coat; summer or winter, wet or dry. I have been in the store very often. I never saw this coat there. I have seen all his clothes; never saw this coat.

Cross-examined.—I heard Mr. Fleming when he was examined I don't know but I have seen him wear another coat. I had a chance to see him morning and evening. He had another overcoat, a bottle green. Never saw any other overcoat besides the green coat. It was a long coat. Never

saw him wear a top coat. He wore the blue one at my house. I never knew him to wear any other overcoat within three years besides these two; the one here and the green.

Abby N. King—I have been acquainted with Nicholas S. Gordon for three years or more. He left boarding with me a year ago last June. He has not boarded with me since. I had charge of his clothes so far as to do his washing. His clothes he kept at my house. A few weeks at first he did not bring his clothes, then afterwards he brought them. He came to our house in September and staid until June or July following. I was asked by some person to see the coat found in the swamp, at the time of the grand jury. I never recollect seeing the coat until I saw it in the grand jury room. I did not then examine it particularly; only noticed that it was blue twilled cloth. (The coat was here shown to the witness.) I have never seen it before except here. He had a bottle green, which was given to me to cut up. He had taken away a part of his clothes after he left my house before he took away his trunk. The trunk was there for some time. When I was moving the trunk one day it came open and I noticed some old clothes in it. This coat was not among them. Mr Charles Searle requested me to look at this coat. (The coat with velvet collar was here produced and shown to the witness.) This is something of the make and color of a coat which he bought when he boarded with me. It is very much worn now, but that was two years ago. He took his trunk away the Thursday before the murder of Sprague. I had asked him to take the trunk away before. His clothes were hung around a clothes room which I let him have to keep them in.

William Arnold—Am acquainted with John Gordon. Saw him on day of the murder about thirteen rods from Rufus Sprague's house. He was going towards his house, as he said, from church; stopped and talked with him about buying some potatoes. Should suppose it was 2½ o'clock. Rufus Sprague's is about fifty rods this side of Amasa's.

Cross-examined.—He was going toward Nicholas.

Question by a Juror.—Did you see any bruise on his face?

Answer.—I did not.

Joseph W. King.—Am acquainted with John Gordon. Saw him on the Christmas day. Saw him lying in the Cranston road about three miles out. He and William were together. William was a little ahead. When I first saw him his heels were in the air. He was trying to get up, but fell back two or three times. He was drunk. I took them both in my team to Nicholas's. Said they had been having a social cut. It was somewhere between 10 and 11 o'clock.

WET CLOTHES ACCOUNTED FOR.

Margaret Gordon—(a young woman, sister of the prisoners).—Came over to this country in June last. Lived a part of the time in Cranston. Lived in this city with John J. Stimpson; lived with him nine weeks. Lived with Nicholas while in Cranston. I came in town to live against his wish. Saw part of Nicholas's clothes. He might have had clothes which I did not see. Could tell those I have seen. (The coat found in the swamp was shown to the witness.) I never saw that coat. I lived in the house, but was in the store only four or five times. I left home the day after William; was only out there once until Christmas. I went

home the day before Christmas. Saw John Christmas day. It was 2 o'clock when I got home; John was there, his clothes were wet. He said he had got a fall. He went after a fowl over to Fenner's; came back in a short time. It was a turkey. John killed it. My mother was there, and Mr. Morrison and Michael O'Brien. All John's clothes were wet; told him to go up and change them. I supposed he went and changed them after killing the turkey. He was a little the worse for liquor. He had a mark under his right eye; said when he fell he got it.

Cross-examined.—We met John and William coming home from the first service when we went in town. It was a little after 2 o'clock when we got home. John had dark blue pantaloons. Did not notice what clothes he had on afterward; noticed that he had on dry clothes. Could not tell what colored coat he had on when he changed; dark blue coat on when he got wet.

Michael O'Brien—Was at Nicholas Gordon's on Christmas day. William, Mr. Morrison, John, Nicholas, Margaret, and the little girl, were there, and Mrs. Gordon. Was not there when the turkey was killed. saw John that night; his clothes were not wet as I noticed, when I got there. Saw the bruise on his face; it was under the right eye, on cheek bone. Did not ask how he got the bruise.

ATTORNEY GENERAL.— Do you recollect, Michael, on reflection, what remarks you made about Mr. Sprague's murder that Sunday night with Nicholas?

Ans.—I did not think I should have occasion to make any remarks.

Q.—What do you mean by that?

Ans.—I never expected to be called here.

Q.—Well, did you say any thing about it to Nicholas, or any one; and if so, what?

Ans. I do not think I made any remarks about the murder; if I did, I don't recollect them.

ATTORNEY GENERAL.—That's all.

John O'Brien.—Measured the tracks from the corner of Rodney Dyer's field—this is the measure—(witness here produced a piece of shingle). Waterman and John Demeritt were with me when I measured them. They are larger than John Gordon's boots.

Patrick Morrison.—Was at Nicholas Gordon's house Christmas day before the murder. Was there when John and William came in from meeting. John went for a turkey. John was reeking wet when he got back with the turkey. Said he fell in coming over the swamp. He was a little the worse for liquor. Did not see John change his clothes. He did not at once on account of killing the turkey. He wore a blue coat with gilt buttons, and blue black pants. John cut off the head of the turkey and some of the blood got on his pants. Saw a bruise on his face. Said he fell by the side of the bridge in the swamp and liked to have killed himself.

John Heap.—Saw Amasa Sprague on the day of the murder. Should think somewhere about 3 o'clock; not positive. He passed by my door. I live on the lane, or driftway, as they call it.

Catherine Cameron.—Saw Mr. Sprague on the Sunday of the murder; just as the church was out. It was about four o'clock. He was going towards Rodney Dyer's school house, where church was held, just as we came out of meeting.

Cross-examined.—Judge that it was 4 o'clock, only, from meeting being just out.

James Sheridan.—Was on the road between Providence and Cranston on the day of the murder, in the morning. Saw John Gordon on the road. He had a long top coat on. I observed it was a kind of bottle green. The collar of the coat was turned under and I put my hand to it and fixed it. Saw the same coat on O'Brien at the jail. I never heard anything against the Gordons.

William Tately.—Worked with John Gordon at Drybrook as long as two months, perhaps more. Boarded at the same place with him. Never heard anything against him. He was peaceable and quiet, as far as I knew.

John Delany—(a young lad).—Am acquainted with John Gordon. Know him by sight; saw him on the Sunday of the murder; saw him on the plain of the Arsenal House. He was going out; he passed by me; It was, I think, about 25 or 30 minutes past 2 o'clock. I had a little boy with me.

Cross-examined.—When I left Dean street, believe it was about two; the boy with me said it was. I looked at the clock, but do not recollect the time; did not calculate the time until I was summoned. My brother told me the time the day I was summoned. I asked him if he recollected the time; I did not, and do not now, only that it was about two o'clock.

Patrick Hawkins.—Worked at Drybrook when John Gordon worked there. He was there in latter end of August till in November; remained until the works stopped; boarded with Benoni Waterman part of the time. He helped the madder dyer about his works; madder makes a stain like blood; a man working there could not help staining his clothes. John seemed to be a prudent, quiet man. I recollect a vest which he had which was much stained; a buff ground, I believe a red speck in it. His shirts were stained; he used to work in his shirt sleeves.

SATURDAY MORNING.

Edward Coil.—Resided in Cranston at the time of the murder; was opposite Mr. Sprague's store in the furnace room on the day of the murder. Mr. Sprague came in there about 20 minutes after three, talked a little while and then went out, never saw him again.

Seneca Stone.—Occupied the James Mason house, near Gordons, in December, 1843—have lived there 21 years. People were in the habit of going a gunning round there both in winter and summer. There was a road from my house toward the Gordons, down by Hawkins' Hole; people coming from Fenner's sometimes come that way. Should think a man might be seen passing across the field to the back door of the Gordon house from the Cranston road. Have known Nicholas Gordon for five years, has been my nearest neighbor. Saw him frequently, sometimes three times a day, in all weather; never saw him with the coat on which has been produced here.

Elsie Baxter.—Live in Sprague's village; was at meeting in the afternoon of the Sunday of the murder. He was within a few steps of the school house as the meeting broke up. It was, as near as I can judge, about half-past three o'clock.

ACCOUNT OF JOHN ON THE SUNDAY OF THE MURDER.

Ellen Gordon, (an old woman, the mother of the prisoners).—Was at home at the house of Nicholas on the day of the murder; at home all day. John came from church; could not say when, but should think it was two o'clock. He had Michael O'Brien's coat on; told me he shifted the coat on the road, on account of the pantaloons being torn—it was torn before he went away. He went and shifted his pantaloons, put on grey ones; he came and sat where I was cooking dinner; dinner was not ready when he got in; we had salt beef, turnips and potatoes. Boiled the water, put in the beef and potatoes and boiled them after he got home. He eat dinner, staid a little while and walked out at the front door. Did not see him again until after 7 o'clock, when he came back; told me had been to Kingston's; said he had heard of Sprague's murder and came home to tell me; had on the same clothes that he had on when he went out and went to church in, except the pantaloons. He came home a little past two. I put in the beef after he came in; kept it so late because I did not know what time he would come; the sun was pretty low when he went out. William came in soon after John had gone out. Said he had been to dinner in town; could not stop long for he was going to the christening. I had a bad cold at the time William had a child there. She was 7 years old last July. William came to see me. I was unwell; had not seen me since Christmas day; was unwell then and grew worse. Was at home Christmas day, after I came from church; got home about 2½ o'clock. John went for a fowl after we got home. He got a fall and wet himself all over; said he got a slip and fell down; he had drunk a little too much liquor; had a mark a little over the eyebrow of right eye. He went over towards Johnston to get the turkey. I wanted to change his clothes, but he would not until he had killed the turkey; then he changed his pantaloons and put on dry. Did not see anything in John's hand when he went out on Sunday. Saw nothing but the bare clothes on his back.

Cross-examined.—Willam's wife is dead.

ATTORNEY GENERAL.—Where did you say the bruise was on John's face?

A. It was over the eyebrow of the right eye.

Q Won't you put your hand on the place.

A. I can't put it on the place exactly, it was somewhere over the eyebrow.

Q. How did John come home on Christmas day?

A. He came home on a team; William told me he fell in the road two or three times; we met them as we went to church, on the Cranston road.

Q. How long did John remain at home on Sunday?

A. Until near 4 o'clock. I had no clock, can't tell the time exactly.

Q. Did he come home again until he said he had been to the Kingston's?

A. No, he did not come home until near 7 o'clock.

Q. After he first came home, did he not go out and then come home and then go out again?

A. No, he did not go out until after dinner.

Q. Did you not state over at the prison that he came in, found dinner was not ready, went out, came in and went out?

A. I do not recollect saying so. I don't recollect what I said over at the prison, for I was so confused and troubled I did not know what I said.

Q. Are you now certain that your statements are correct?

A. Yes, I am certain they are. William was there but a short time; came out to inquire how I was. John and Nicholas both went in town. It was something after four when he came, to the best of my opinion.

Q Did you not state at the prison that it was about 3 o'clock when William came in?

A. I do not recollect it.

Q. Are you now sure it was 4 o'clock?

A. Yes, I am sure it was.

Q. When did Nicholas get home?

A. About 9 o'clock; John O'Brien came with him; came in, but staid only a few minutes. I was in the kitchen when Nicholas and John were arrested; there was a room between me and them; did not know what was going on; was at home Tuesday when the officers came to search.

Q. Did you leave the house at all on Monday?

A. I did not.

Q. Did anybody come there?

A. Nobody came to the house except William; he came early to know what the fuss was. John and Nicholas were then at Mr. Sprague's. William staid all night; slept up stairs.

Q. Did any one else come to the house?

A. Did not know of any one coming.

Q. Did Nicholas own a gun?

A. I don't know much about it. There was a gun there soon after I came there.

Q. Did you ever see John with a gun?

A. I might have seen him, can't say.

(The clothing found at the Gordon house, was here shown to the witness.)

The buff vest is John's; I boiled it to get the madder stains out. Nicholas had a vest like the dark one. Do not know the blue coat with brass buttons. The shirt belongs to Nicholas. William lived two months with Nicholas before he went to town. Know nothing about Nicholas having a pistol. I washed their linen for them. John had three or four pairs of pants, dark and light ones; a grey pair and a dark brown ribbed pair. [Brown pants shown.] Don't know about these. There were a good many old clothes there when I went there.

The brown ones are not the pair John owned. Have seen the blue coat with velvet collar; It is Nicholas's. I had nothing to do with the store; was seldom in there. Nicholas told me not to go in there. John wore blue pants to church Sunday, and put on grey when he came home. The grey ones he had on Christmas day. Did not wet his coat on that day; if it was wet he hung it up to dry again. Saw some boots which the officer took on that day. I was so confused I did not care if they took everything.

Q. Were there any wet clothes in the house the day the officers came?

A. No, there were not.

Q. Are you sure?

A. Yes, I am sure there were not wet clothes in the house unless it came in through the roof and wet them.

Q. The house did not leak did it?
A. No sir.
Q. Could not the clothes have got wet and you not know it?
A. Don't think they could; I was not out of the house day or night. I did not wet them, and did not leave any vacancy for any body else to wet them without my knowing it.
Q. You did not wet them?
A. No, I did not. The grey pants were the ones John wet. They were dried again.
Q. When were they dried?
A. They were hung up the same day; remained two days and were dried. It was toward four when John eat his dinner; he went out about four.
(Coat found in the swamp shown.)
Never saw such a coat as that on either of my boys.
Q. Did Nicholas have any overcoat?
A. He had a frock coat, but don't know of any other coat than that produced here. Heard them talk about one given to Mr. King.
MR. CARPENTER.—Mrs. Gordon; do you mean there were no wet clothes in the house on Monday, or that you had not wet any?
A. I never wet a stitch of clothes for any of them from the Friday before.
(Mrs. Gordon requested leave to go out of the court room into the open air. She seemed very feeble and sickly. She was permitted to do so.
Dennis O'Brien.—I measured Nicholas Gordon for a suit of clothes; never saw him with such a coat as this produced here.
Otis Stone.—Lived with Seneca Stone in December last. Known Nicholas S Gordon five or six years; saw him sometimes three or four times a day; sometimes not so often; never saw him have the coat here produced, on, or any of his family. Saw him in all weather.
The prisoners counsel stated to the court that they had then no further witnesses. There were two more whom they wished to examine. They stated what they expected to prove by them, and the Government proceeded to put in rebutting testimony.

REBUTTING TESTIMONY.

Richard Knight.—I measured the boots found, with a stick. They compared, as near as I could measure.
DURFEE, C. J.—This testimony is cumulative. The evidence of Demeritt and Waterman has not been impeached on this point.
ATTORNEY GENERAL.—I offer it in contradiction of John O'Brien, but will not press it.
Q. Did Mrs. Gordon make any statements to you relative to the time John came home on Sunday?
Mr. CARPENTER.—We object to that question. Mrs Gordon was not questioned in regard to any conversation with Mr. Knight.
ATTORNEY GENERAL.—I thought I questioned her on that point. I intended to do so. If I did not I must recall her upon the stand.
Ellen Gordon (re-called.)—
ATTORNEY GENERAL.—Did you make any statement to Gen. Knight where John was on the day of the murder?
A, I don't recollect anything about what I said.

Q. Do you recollect telling him that John came in about 5 o'clock, and said Amasa Sprague was fixed?

A. I don't recollect saying so; don't know what I said. I was out of my mind that day; was so agitated that I did not know what I was about.

Richard Knight (*re-called.*)—Saw Mrs. Gordon the morning after the arrest of John and Nicholas. She told off a very straight story. Did not seem more agitated than now. I asked her who gave her the first knowledge of Sprague's death. She said her son John, when he came from church. I asked her what time of day this occurred? She said she did not know. I asked her if it was sunset. Said she thought it was not. John came in; said Amasa Sprague was done for. Said no more; staid but a few minutes; I had no victuals and drink, and he went out and came back late in the evening. This was Tuesday forenoon before 12 o'clock.

(Mr. Knight after taking his seat, got up and referred to Charles F. Searle.)

Mr. ATWELL.—You need not have got any one to endorse your statement before it was contradicted.

Amy Dyer, (*a young woman.*)—[The clerk hands this witness the bible, and requests her to hold up her right hand, for the purpose of taking the oath.]

Witness.—No, no, no, sir. I take no oath, I can tell what I know without the oath.

ATTORNEY GENERAL explains to the witness that the oath was administered in that manner out of respect to the Catholic form.

Witness.—I want no swearing. I can tell what I know without that.

ATTORNEY GENRAL.—Have you any conscientious scruples against taking an oath?

No, sir, I will take no oath.

DURFEE, Chief Justice.—The Court have no remedy but to commit the witness, if the government insist upon her testimony.

ATTORNEY GENERAL.—We will waive the testimony; it is not very material. You may leave the stand Miss Dyer, if you will not take the oath.

Solomon E. Risley.—Preached at Dyer's school house at Sprague's village the day of the murder. Services began at 2 o'clock and ended between 3 and 3½. I judge about a quarter past 3.

Rodney F. Dyer.—Was at the meeting at the school house the day of the murder. Think it broke up between 3 and half-past 3 as near as I can judge.

G. T. Beverly, re-called.—(Velvet collared coat shown to him.) If I had been shown these two coats together, I should have said this is the coat Nicholas Gordon used to wear. I think this coat looks more like Nicholas Gordon's than the one found in the swamp. It looks more like Nick Gordon's than any one I have seen. I think it is the one I mentioned having seen him wear on rainy days.

Mr. CARPENTER.—You think, then, now, that you have never seen Nicholas Gordon have the other coat?

Witness.—I cannot say that I have never seen the other coat, for he used to have an old coat in the wagon. I cannot say that it was the blue coat.

Hardin Hudson.—Have noticed the coat found in the swamp. Think I saw Nicholas Gordon wear it; he wore it drawing lumber, and had it to

ride on in the wagon. One day it drizzled, and he had this coat on; it was a very rough looking coat; this was last Spring; (the velvet collared coat was shown to the witness.) This I have seen hundreds of times. When the first one I spoke of got old, he used to wear this common.

Mr. CARPENTER.—Have you been on the stand before?

A. I have.

Q. Was you sworn?

A. I was.

Q. You were sworn to tell the truth and the whole truth?

A. I was, and calculate to do so.

Mr. CARPENTER.—That is all, sir.

Job Wilbur re-called.—The day that I met John Gordon in the road was the Tuesday before the murder; I noticed his appearance. He had on a thick darkish coat, a rough looking one; (coat found in the swamp shown.) It would compare very well with this coat. I don't think the velvet collared coat looks much like it.

Cross-examined.

Mr. CARPENTER.—Have you been on the stand before?

A. I have.

Q. Have you had any difficulty with N. Gordon?

A. Had no particular difficulty with him; he complained of me for selling without a license; I did not like that very well.

Q. Have you been to his house since?

A. I have not been there often; I went to him and told him I thought it was a mean trick; he said it was; but people came down drunk from my store to his, and he was accused of doing it.

Q. There were no hard words between you?

A. Nothing particular.

Q. The conversation was all very mild and pleasant and good natured was it?

A. I don't know as it was.

Mr ATWELL.—We request nothing further.

ATTORNEY GENERAL.—Have you any prejudice against the Gordon's?

A. I dont think I have.

John OBrien.—

ATTORNEY GENERAL.—Who was present when you measured the tracks by Dyer's bridge?

A. Mr. Waterman and Mr. Demeritt.

Q. Did you measure at another time?

A. No, sir.

Q. How did you measure the tracks?

A. I cut a bit of a tree and put it in the track and measured it with my thumbs.

Q. And this is the measure is it? (The Attorney General referred to the piece of shingle handed into Court by Mr. O'Brien on his previous examination.)

A. That is the measure.

Q. Did you cut this piece of wood from a tree?

A. No, this is not the one I cut. I made this from that.

Q. When did you make this?

A. I made it yesterday.

Q. Did you not say when you handed that measure into court that it was the measure you put into the tracks?

A. No, I said it was the measure, and so it is; it is the same length the stick I cut.

Q. How do you know?

A. Because I measured that stick; I measured it with my thumb; it was just ten inches long; my thumb is an inch wide, and my thumb went ten times across the measure.

Q. So you measured the stick you cut with your thumbs, then made another measure out of a shingle yesterday by putting your thumb ten times along on it, and that you swear is the true measure of their track?

A. Yes sir, it was ten inches long.

Q. Does not the width of your thumb depend on how hard you press it on the wood?

A. Yes sir.

Q. And you are sure that you pressed your thumb just as hard on the stick you measured last January, as you did this one?

A. Yes sir, it was just ten inches.

Q. How do you know it is just ten inches; did you measure it with a carpenter's rule before you brought it here?

A. I did.

Q. But the first one you only measured with your thumbs?

A. I measured it with my thumbs; they went just ten times across it; it was just ten iuches, and so is this.

Q. And this is the only means you have of knowing the two measures to be of the same length?

A. Yes. I never saw the coat produced here before. I heard different people say the coat belonged to Benoni Sprague.

ATTORNEY GENERAL.—Who did you hear say so?.

A. I heard a great many.

Q. Well, who were they?

A. A great many different people.

Q. Well, mention one of them.

A. I heard James Sheridan say so.

Q. Anybody else?

A. Yes, a great many.

Q. Give their names.

A. I don't know who they were; a number of persons; I know James Sheridan for certain; did not hear him say so within one or two days after the murder; don't know as I did in a week after.

John Demeritt, re called—Measured the tracks from Dyer's bridge to the rocks; compared exactly with the other tracks;* took them from the side by Dyer's, before you cross the bridge; traced them by a couple of hay-stacks along a wall to the first ledge to a gap where a man could go through to the second ledge, thence to the pathway; there they were lost on that side of the river. John O'Brien did not give me any stick, nor cut any, nor apply any to the track in my presence; he did not have any measure; there was mud around Dyer's bridge, which made a distinct impression.

*The tracks here referred to are omitted on the plat; they commenced a little to the right of Dyer's Bridge, to the south of the hay-stacks marked on the plat, run along the wall to the first ledge of rocks, through a gap in that ledge to the second ledge, which is the cavern rock, thence to the path leading to where the body was found. The reader will understand the subsequent testimony, and the argument better, by dotting this track on the plat.

Horatio N. Waterman.—Was with Demeritt when he measured the tracks; they went toward the bridge. Mr. Demeritt cut the stick to measure the track; he kept it; I had it sometimes and measured with it. Did not see John O'Brien have the stick at all, or measure the track; he did not to my knowledge.

Abner Sprague, Jr.—Saw John O'Brien when he bought a turkey Christmas day; he bought it of Ben Fenner; I saw no appearance of his being drunk; there was no bruise on his face then; the bridge he had to pass over was a cart bridge.

Edwin C. Larned.—I took notes of the examination of Mrs. Gordon at the examination at the prison. I was requested to take them accurately and carefully; I endeavored to do so; these are notes which I took. (Witness here read his minutes of the examination at the jail, which varied in several material points from the same testimony of Mrs. Gordon as given on the stand.)

I saw no particular difference in Mrs. Gordon's appearance; do not think she appeared any more agitated then than now; her manner and appearance were much the same. She was told she was not a prisoner, that she was discharged, and was now brought in as a witness.

The following is the important parts of her examination at the prison as taken down by the witness: "John was at home about 2 o'clock; he remained a little while. He said he would walk out and perhaps dinner would be ready. He came in, dinner was not ready and he walked out again; came in about 4 o'clock. He walked out on the road and came back about 7 o'clock.

Nathan Ormsbee.—Was at Cranston on Tuesday after the murder; saw two men with boots, fitting them into tracks; they were measuring at the time. I went down from String Bridge to the meadow; I found afterwards they were measuring on my track. They put the boot into it, and it exactly fitted; the boot was smaller for the other track than for mine; when they found they were in my track they went to another. The men were strangers to me; Mr. Beattie was pointed out as one, by the witness; Mr. Rollin Mathewson, designated as the other.

Benjamin Fenner.—Think I know John Gordon; was at my house Christmas day, I think; did not discover he had been drinking, think he came for a turkey.

Q. Did he pay for it?

A. Oh! sister Polly attended to that. I don't know whether he carried it home or not; think it was in the forenoon.

MONDAY MORNING, April 15.

Abner Sprague Jr., recalled.—With John Gordon, Friday before the murder; talked with him fifteen or twenty minutes, saw no bruise on his face then

Rollin Mathewson.—Was over to the bridge with Mr. Beattie on Tuesday with the boots; don't recollect putting the boot into a track supposing it to be *the* track and some person saying it was *his* track; I did not put the boot in the track because there was no one track to be traced; there was no track, I think, which was the same for five successive steps.

Walter Beattie, recalled.—Don't recollect of putting the boot into the

track, and some one saying I had got on to his track; think I should have recollected it if he had. The bog was so broken up we did not find the track at all there, and concluded it was no use to look.

Nathan Ormsbee, recalled.—I think Mr. Mathewson was one of the men measuring the track. The measure just fitted my track.

David Lawton.—I was present when Beattie and Mathewson were there with the boots. They did not think they had the track; the snow was so beaten up we could find no tracks. I did not see them apply the boot to tracks, and a man come up and say they were his tracks. Was there all the time.

Hutchinson Tillinghast.—Testified to the same facts stated by the last witness.

ACCOUNT OF WILLIAM GORDON TO NEAR SUNSET OF THE SUNDAY OF THE MURDER.

Joseph Cole.—I have seen William Gordon, but don't know him by name; that (pointing to the prisoner) is the man.

On the 31st of December I went from my brother's house on Atwell's avenue. I had promise of work from Mr. Sprague; boarded with Mr. Knight. My brother went with me a part of the way. We went by the Cranston road; saw a man whom I thought was Nicholas Gordon. I walked slower, as I did not wish to overtake him; for I owed him a trifle and had not had the means of paying him; finally plucked up courage, and went up to him. Said, I thought he was Nicholas. He said no, I am his brother; and told what his business was; that he was a tailor and talked about wages, &c. Stopped at Mr. Knight's that night. Heard of the murder. When we got out to Mr. Knight's it was within a quarter of an hour of sun down. Knight's house is the next large house after Mr. Sprague's. William asked me to come along to his house. I said no; it is against the law. By that I meant that Mr. Sprague had forbidden the workmen to go to Gordon's store; and if I went there should not get any work. Went to New Jersey after I could not get any work there. Knight told me there was nothing against William, and I thought he was discharged.

Cross-examined:

ATTORNEY GENERAL.—When did you first see William Gordon after you met him on the road?

A. I first saw him in a carriage coming up to the Court house the first day of the week.

Q. When did you first mention the facts you have now stated?

A. I mentioned them to Mr. Knight on Tuesday after the murder.

Q. You saw William brought up here to be tried, did you not?

A. I never saw him from that day until just as I saw him standing here.

Q. Did you not see him in the carriage coming up to the Court house?

A. No, sir.

Q. Did you not say so, a few minutes since?

A. No, that was Nicholas. He was in a carriage just along Cove street.

Q. When did you next mention the circumstances?

A. To my brother after Mr. Sprague's murder. I did not mention it till after I heard of the arrest of the Gordon's. I knew the man a little.

Q. Did you send any word to Nicholas or his friends?

A. I did not.

Q. Why did you not?

A. I thought I had mentioned the matter to Mr. Knight, he was a competent man, and that was sufficient. I told it to my brother and to a lamplighter by the name of Donelly; I told him it was Gordon, the tailor.

Q. Why did you not mention these circumstances to Wm. Gordon's friends; you knew Nicholas, did you not?

A. No.

Q. Did you not say you knew him and owed him?

A. I knew him but little, bought something of him and owed him a trifle.

Q. By whose suggestion were you summoned to appear in this case?

A. Chiefly by my brother.

Q Who did he tell to summon you?

A. I cannot say.

Q. Have you attended in the Court house during the trial?

A. I was here the first day about ten minutes.

Q. Why did you not communicate this fact at that time?

A. I thought I had once told it to Mr. Knight; he knew me, he was a competent man, and he would call me forward if it was important.

Q. You knew who was on trial, didn't you?

A. They were reading the indictment when I came in.

Q. Then you knew about it, didn't you?

A. Yes, of course I did.

Q. Why did you not tell about it?

A. I thought the man who walked with me had been discharged.

Q. Did you think William Gordon was discharged, after you came into the court room?

A. I did.

Q. Where do you live?

A. In Cranston.

Q. Who told you William Gordon was at liberty?

A. I understood it from Mr. Knight; this was when sitting at table at dinner, on Tuesday. I thought from what Knight told me, the man I saw on the road, the tailor, was set at liberty. I don't know that Mr. Knight said so, but he took it so calm, I judged so from his manner.

Q. He did not tell you so?

A. No, sir.

Q. Did you not a moment ago say that he told you so?

A. No. I said I understood him so.

Q. Then you thought so?

A. I did.

Q. Where was this conversation?

A. At dinner table with Knight, on Tuesday.

Q. When did you first understand that William was not discharged?

A. The first was when I understood that one of the men on trial was a tailor.

Q. When was that?

A. Last Saturday in the afternoon. I then told it to my brother.

Q. Did your brother say he was at liberty?
A. No, sir; he said he thought he was not.
Q. When did he first ascertain it?
A. I can't say. He is in court; he can answer for himself.
Q. Did your brother suppose William had been set at liberty?
A. I suppose not, or he would not have told me that he did not think so.

Q. Did your brother and you have no conversation together about this matter?

A. My brother had some conversation with me about it.

Q. Well, now if your brother had this conversation, did you not think this fact of enough importance, when these men were on a trial for their lives, to come forward and state it?

A. I did come as soon as I found out for certain; but I did not find out for certain until last Saturday.

Q. But you and your brother had a discussion about this?

A. Yes, sir.

(*Mr. Knowles* here arose and stated to the Court that William Gordon had told him of his walking on the road with a man whom he did not know, and described the man; he had been ever since in search of him; but did not hear of this man until last Saturday.)

Q. Where did you meet this man?

A. By the Arsenal, by the house on the other side of the road. I never saw him, to my knowledge, until that afternoon. He said to me he was a tailor.

Q. Has not the subject of this trial been much talked of in the community, and particularly among the Irish?

A. This is the first time I have spoken of it in public anywhere.

Q. Was it not talked about in your shop?

A. I did not remain many days. I went out of town. It may have have been talked about three or four times.

Q. Where do you board?

A. At my brother's house.

Q. Was it not talked about there?

A. Not much; they did not concern themselves much with such matters.

Q. Who did you find at Knight's, when you got there?

A. I cannot say. It is a great family when they are all at home.

Q. How high was the sun?

A. Can't say; it was just in the gloam of the evening.

Q. Had the sun set?

A. It was close on sundown.

Q. How long after you arrived did you hear of the murder?

A. I had had my supper, came out after supper, lit my pipe and sat smoking, when news came. It was not an hour after I got home.

Q. Mr. Knowles.—When you heard the indictment read, did you then know or suppose that the tailor who had walked with you, was at liberty?

A. Yes, I have always thought so.

John Cole.—Lived in the city about five years My brother left my house to go to Mr. Knight's on the Sunday of the murder. Went out on the Cranston road. Heard the Gordons charged with the murder, and from all the stories, thought them guilty. I told my brother so, but

he said no: I walked out with one of them, and could clear him. He was confident that the tailor was discharged. I told him the tailor might be one; but he seemed positive about it. I enquired of Mr. Bagot about them, and he said the tailor was on trial. I told him the circumstances; he said, he is the very man we are looking for; we have searched for him. I told him it was my brother; and my brother came up as soon as he knew it.

Thomas Cleaveland, recalled.—It is my impression that William told me another man walked out to Cranston with him, whom he did not know, and that he treated him to cider, at the half-way house.

MAN SEEN BY DYER'S BRIDGE ON THE SUNDAY OF THE MURDER.

James Stratton.—Was in my own house on the day of the murder; live on the Johnston side. Could see part of the way over Dyer's bridge. I stood at my window; saw a man coming round by the brow of the hill, by Rodney Dyer's. He put his shoulder to a tree, and staid there some time; some ten or fifteen minutes. He came from the brow of the hill towards the bridge; went along till he came to another tree; then came toward the bridge. The man had a gun, and was shorter than I am. I do not know the time. Saw the man before and after I saw O'Brien go along. He wore a dark frock. He looked pretty stout; had a gun; saw him an hour in all, to the best of my knowledge; cannot fix the time when I first saw him. He wore a black hat of common size; was in plain sight; the distance about one eighth of a mile.

Question by a Juror. How came you to notice the man so long? Did you suspect anything wrong?

Ans. No, I did not. I said that was rather a lazy gunner.

Francis M'Clocklin.—Live next house to Stratton's. On the Sunday of the murder, saw a man in the potato field walking along the stone fence, going towards the ledge of rocks; heard the report of a gun afterwards. From the time I saw him till I heard the report, was about fifteen minutes. Could not see if he had a gun; he was a tall man; taller than either of the prisoners. I remarked the loudness of the report. There was a tree between this man and me, the first sight. He was walking leisurely from the end of the wall towards the ledge of rocks; don't know where he came from. My testimony was taken down before Mr. Mathewson did not know William; should have known John, if I had seen him in the clothes he used to wear.

Attorney General.—Can you tell whether that man was William or John Gordon?

Ans. I cannot say. I can only say the man seemed to me a taller and stouter man.

John O'Brien.—Went a gunning on the Sunday of the murder. (The witness described the route which he took on the plat to the jury. This testimony was not important, and was given in such a manner that it could not be noted down.) When I got by the haystacks, (see plate) I looked around and saw a man standing by the oak tree, by Dyer's bridge, under the bushes; don't know who it was; he drew back when I saw him; can't tell who the man was; never saw him about there, to my knowledge; pointed out the track to Mr. Mathewson and Mr. Knight.

Rollin Mathewson, re-called.—Explained to the jury on the plat the route which O'Brien told him he took on that day.

Richard Knight, re-called.—Pointed out the route O'Brien designated to him as the one he took on that day; these two witnesses explained this on the plat to the jury, and pointed out some differences between O'Brien's descriptions.) I know Joseph Cole; he has boarded with me, and his two sons; don't know whether he came to my house at the time of the murder; don't know that I ever had any conversation with him about this matter. I never told him anybody was discharged. Cole had been discharged from Sprague's works two or three times; twice certain. I never told him anything about a woman in the case, for I knew no such thing. Never had any conversation with him about the Gordon's. I do not say I do not recollect telling him William Gordon was discharged. I say I did not tell him so. I could not have told him so, for he was not discharged. It was our policy to keep everthing secret, for the purpose of discovery; and I should not have said anything about it; never was told of any man's walking out with William Gordon.

John Forbes.—Worked at Drybrook in the dye-house. John Gordon worked there; he helped me to run the dyes; the dyes stain cloth a red color, resembling blood; John's clothes were stained; his conduct was very correct.

John E. Nichols.—(This witness was called to prove that Mr. Sprague was not in the habit of carrying a pistol.) I went often to Mr. Amasa Sprague's; never knew him to carry a pistol except once, when he went to Chepachet. He carried then one of Colt's revolving pistols; think I should have known if he had been in the habit of carrying a pistol; never knew of Mr. Sprague having any other pistol. I was in the habit of being at his house a number of times a week; was his clerk.

The testimony was here closed on both sides at 12 o'clock, Monday, 15th April. The whole number of witnesses examined on both sides was 102. Time occupied in the examination, six days.

Mr. Carpenter commenced his second opening for the prisoners, at 12 o'clock, and continued until the adjournment, at 1 o'clock. He resumed his argument at 3 o'clock, and continued until 7 o'clock, when the court adjourned. He resumed it at 9 o'clock, on Tuesday morning, and concluded at 1 o'clock, having spoken nine hours. He went into a full examination of the testimony in consequence of the closing counsel, Mr. Atwell, being unable from ill health to argue the case at length.

Tuesday afternoon, at 3 o'clock, Mr. Atwell commenced his closing argument for the prisoners. He continued until 6 o'clock, when the court adjourned. Wednesday morning at 9 o'clock. Mr. Atwell resumed his argument, and concluded the defence at 11 o'clock, having occupied five hours.

Mr. Blake, Attorney General, concluded the closing argument for the prosecution, at 6 o'clock, having occupied about five hours.

CHARGE OF THE COURT TO THE JURY;

DURFEE, CHIEF JUSTICE:

This is so entirely a question of evidence, gentlemen, that the Court can do but little more than to give you their advice upon certain points, and leave the case to your sober judgment. The indictment consists of

various counts which charge the same crime in various ways, for the purpose of meeting the facts which might be developed by the evidence. The prisoners are jointly indicted, but their pleas are several, and the verdict must therefore apply to them separately. You will be called upon to say whether John Gordon is guilty or not guilty, and whether William Gordon is guilty or not guilty; and you will pronounce both, or either of them guilty or not guilty according to the evidence given you.

The crime charged in the indictment, is murder—murder is the "unlawful killing of another with malice aforethought." The killing, or *corpus delicti*, as it is technically called, must be clearly proved. *That*, in this case, has been most fully shown. There can be no doubt that a most atrocious murder has been committed. I have been for many years upon the bench, and many capital trials have passed under my observation, and I will freely say to you, that no crime has ever come to my knowledge of such atrocity. It has no parallel in the annals of the State, nor one which can exceed it in the annals of any one of the United States. I make this observation not for the purpose of affecting your minds toward the prisoners, but with reference to the crime itself. As the State then, has clearly proved the commission of the crime, the next enquiry is who committed it, and in this case that is the sole enquiry. The presumption of law is, that every man is innocent until he is proved to be guilty. And it is in consequence of this presumption that the State are under the necessity of making out their case, not by slight presumption, but by the most clear and satisfactory evidence, before the accused is called upon to offer any evidence in his defence. And whenever your minds are fully satisfied on the view of the whole evidence, that the prisoners or either of them are guilty of the crime with which they stand charged, it is your duty to say so, without looking to the consequences of your decision. The accused may nevertheless be innocent; all human testimony is liable to err, or lead to error; but you have done your duty; there is the evidence and there are your oaths; and if that evidence satisfies your minds, you have no other course to pursue under your oaths, but to decide according to it The idea that a jury, conscientiously deciding upon legal evidence, that an individual is guilty of murder, commit a crime, if the accused should turn out to be innocent, is not to be tolerated. It is your duty to render such a verdict, if the evidence satisfies you, and in no other way can you keep the oaths you have taken.

The evidence in this case is circumstantial in its nature. Evidence is of two kinds, positive and circumstantial. But much of that which is called positive evidence will, if critically examined, turn out to be circumstantial. It is very rare to find a case of murder proved by strictly *positive* testimony. It is perhaps an idle question which of these two kinds of evidence is the strongest. The evidence of circumstances is equally conclusive with positive testimony, where it equally satisfies the mind. If but one person swear that he saw a man kill another, that is positive evidence, but the witness may be prejudiced. Were the same fact to be proved by a series of circumstances it would require perhaps twenty witnesses. In this case there has been more than a hundred sworn and examined. It is plain therefore, that there is less danger from false swearing in a case which is proved by circumstantial evidence where the testimony of each witness constitutes a link in the chain, since their is less danger of perjury in the whole twenty or hundred, than in one.

In regard to the principles which govern circumstantial testimony, all that can be said, is, that the circumstances must be clearly proved upon which your opinion is to be formed. As to what circumstances are sufficient, no rule can be laid down—they must be such as to satisfy the mind beyond a reasonable doubt of the guilt of the accused; they must be such as you would act upon in the most grave and important affairs of life. The combination of circumstances which constitute the chain of evidence must be such as irresistibly to fasten on the mind the conviction of the guilt of the accused.

Much has been said in this case about motive. It is not in all cases necessary to prove the motive for the commission of a crime. There are cases in which the crime is clearly proved where the law infers a motive although no motive be shown We have in this case permitted to pass to the jury, evidence of hostile feeling, and of its cause, and of threats expressed by Nicholas S. Gordon, the brother of the accused, toward the deceased, made in the presence of the prisoners, that you may draw such inference from it as you think the facts shall justify you in drawing with regard to motive. You are to give it such weight as you think proper; you are to determine for yourselves what effect his declared enmity would have upon the minds of the prisoners situated as they then were in relation to Nicholas S. Gordon. If you think this hostility good ground for inferring the existence of a motive in these prisoners to commit this crime you will do so; if not, you will not do so. But the right of the Government to show the existence of any relations between the deceased and the accused, which may aid you in coming to a correct decision upon the facts which the evidence in the case reveals, we do not doubt. We have allowed evidence to pass to you of the identity of the gun with which the murder was committed and the gun owned by Nicholas S. Gordon, in order to show that the prisoners had access to it, and might have used it if they pleased.

We propose now to offer you some views in regard to the most essential part of the evidence in this case; which for the sake of greater certainty we have committed to writing.

And first we will consider the evidence in relation to the opportunity which each of the prisoners had (if any) to perpetrate this deed. We begin with that which has been offered on both sides to prove where William Gordon was on the day of the murder, and particularly at the hour of its perpetration. Without attempting to recite it, we shall content ourselves with advising you generally, as to the manner in which you may estimate its value and effect

If you regard the facts on the part of the State, and on the part of William Gordon, in relation to his opportunity to be present at the murder, as supported by evidence of equal force, then, since it is contradictory, or at least conflicting, it can, when taken together, yield no legitimate inference—no safe conclusion. It will suggest an hypothesis or supposition consistent with his innocence, just as readily as one consistent with his guilt. From such evidence no inference can be drawn that will not be accompanied with its doubt. And on the ground that he is to be presumed innocent until he is proved guilty, it will be your duty to return a verdict of acquittal. You will understand me here as speaking in relation to the testimony of Barker and Spencer on the one hand, and of the countrymen of William Gordon on the other. In making these remarks, I do not mean to weigh the credibility of the witnessess, or to consider their opportunities for knowing and identifying the accused.

That is a matter for you, gentlemen. I take the evidence as it is presented. You may come to a different result after determining what is entitled to credit and what is not. But I will make this remark, that when a witness testifies to facts, not inconsistent with the undoubted evidence in the case, and his character for truth is in no way impeached, and his testimony is not brought in question or doubt by the cross-examination, or by his previous declarations, or otherwise, he is entitled to full credit as a witness, who ever he may be.

This is all I feel necessary to say in relation to William Gordon. Let us now pass to the other. Did John Gordon have an opportunity to be present at the murder

If you believe the mother of the accused he clearly had not. But you will have to estimate the credit to which she is entitled, and in doing this, you will necessarily consider the relation in which she stands to the accused ; her manner of testifying here; the consistency of her story with undoubted facts in the case; her declarations to Mr. Knight, made a day or two following the murder, as to the time of John's absence, what he said on his return ; and her evidence given before the magistrate, and read here by the witness who took it down in writing; and if you should not consider her entitled to credit here on the stand, then the question of opportunity must be decided by other reliable testimony in the case. And if on the whole you should be led clearly to infer that he had opportunity, you will then pass to the other facts, clearly proved ; and consider whether they be or be not consistent with the hypothesis of his guilt. For though he might have a motive, and though he might have opportunity, yet these alone are by no means sufficient to justify a verdict of *guilty*. It is necessary to prove that he *used* his opportunity ; and to prove that he was present at the deed, and in some way partaking in it. Not that it should necessarily be proved that he struck the blows or any of them, but that it should be proved that he was present and in any way aiding and abetting, or in some manner giving countenance and encouragement to him or them who did inflict the fatal wounds.

With a view to this point let me ask you : Is it proved to your satisfaction that the tracks *from* the body were traced to Nicholas S. Gordon's house, where John Gordon dwelt; that the instruments with which the deed undoubtedly was done, belonged there; that the bloody coat belonged there; that the pistol found near the body belonged there; that the boots which made the tracks belonged there; and that of all persons who could have made those tracks, John Gordon alone was there shortly after the murder? If it be so proved to your satisfaction, the coincidences are appalling, and it is for you to say whether this combination of circumstances be, or be not such as to force the mind necessarily upon that full conviction of his guilt which excludes the reasonable doubt.

But you will still feel it your duty to ask yourselves whether this combination of circumstances may not yet be consistent with some presumption of his innocence growing out of the evidence in the case. For if the evidence in the case suggests another hypothesis, consistent with the innocence of the prisoner, and which accounts for these extraordinary coincidents, it will create the reasonable doubt, and you will return a verdict of acquittal.

The hypothesis set up in the defence, is, that the man seen on the Johnston side was the real murderer, and that he was *not* John Gordon. To test the truth of this hypothesis, it will be your duty to enquire whether

it be or be not consistent with the undoubted facts in evidence. To this end you will ask yourselves: Did this unknown man wear boots of like size with those which John Gordon claimed as his? Did he, instead of returning by the route on which he came, shape his course towards Gordon's house? Did he happen to have the gun that was seen in the possession of John Gordon but a few days before, or one so like it, that the witness cannot well see slightest difference? Did he have the pistol here shown? Did he happen to have the coat with the short hair upon it; and a coat so very like to the one in the possession of the Gordons that it may not be easily distinguished from it? Did he direct his footsteps to Gordon's back door, and there stop without entering the house? If there be evidence to justify you in coming to these conclusions, then a hypothesis is established which may as well account for this combination of circumstances, as does the supposition of John Gordon's guilt account for it But you are not at liberty to *suppose* these facts to be so. They must be *proved*, or they must be fairly inferred from the evidence in the case. If they cannot be so inferred, and if there be no sufficient evidence to support this hypothesis, the mind is necessarily thrown back upon that inference in relation to John Gordon which is forced upon it by the combination of circumstances proved, and there it must rest.

A word as to weighing testimony and I shall have done.

If witnesses be of equal credibility, and have equal opportunity to know the same facts, and they contradict each other, no legitimate inference can be drawn from their testimony, and leave the mind in doubt. If witnesses be of equal credit, but one has a better opportunity to know the facts than the other, that one must be believed in preference to the other.

Questions of identity are often questions of belief. I say this in reference to the testimony relating to the gun, the coat, the pistol, and some of the testimony in relation to persons of the Gordons. So questions of time are also questions of belief, where a person has no artificial means of measuring it, and in all these questions, we must be governed mainly by the belief and opinions of those who are the best able to judge, or have the best opportunity of judging, and their judgment may be rectified and reconciled by these undoubted facts in the case which make up the great body of the evidence. Gentlemen, this is almost exclusively a question of evidence, and the Court, as I have said, can do little more than give you advice. You will now, after giving every piece of evidence its proper weight and considering the facts proved in their combination, come to your conclusion. If satisfied beyond reasonable doubt of the guilt of either, or both of the prisoners, make the result known by your verdict, but if you be not thus fully satisfied of their guilt it will be equally your duty to return a verdict of acquittal.

The Jury retired at about half-past six o'clock, and the Court took a recess.

At a quarter before eight the jury returned their verdict. The prisoners were required to stand up before the jury. The clerk inqured of the foreman,

"Have you agreed on a verdict?"

Foreman. "We have."

Clerk. "Gentlemen of the jury, who shall speak for you?"

Jurors. "Our foreman."

Clerk. "Prisoners, look on the jurors—jurors, look on the prisoner; what say you, Mr. Foreman, is John Gordon guilty, or not guilty?"

Foreman. "GUILTY."

Clerk. "Gentlemen of the Jury, as your foreman hath said, so do you all say?"

Jurors. "We do."

Clerk. "Prisoner, look on the jurors—jurors, look on the prisoner; what say you, Mr Foreman, do you find William Gordon guilty?"

Foreman. "NOT guilty."

The verdicts were then recorded.

Clerk. "Gentlemen of the jury, hearken to your verdict, as the Court have recorded it. 'We find John Gordon guilty of the felony whereof he stands indicted. We find William Gordon not guilty.' Is that your verdict, gentlemen?"

Jurors. "It is."

William Gordon was then discharged.

MOTION IN ARREST OF JUDGMENT.

THURSDAY AFTERNOON.

MR. KNOWLES, in behalf of the prisoner, John Gordon, moved that his sentence be deferred until the next term of the Court, or until some day subsequent to the trial of Nicholas S. Gordon, advocating the motion upon two grounds. The first was, that Mr. Atwell, of counsel for the prisoner, had been constrained by severe illness, to leave the city, and consequently was unable to make and support that motion for a new trial, or in arrest of judgment, which his associates, the honorable court, and all who had attended at the trial, (in view of the facts to which Mr K. adverted,) had every reason to believe he would make were he now present.

The second ground was, that under the circumstances the prisoner might well claim what humanity and public policy would seem to dictate, that he be suffered to live until his brother, the alleged instigator, Nicholas S Gordon, should be tried. It had been well said, that the murder of Mr. Sprague was without a parallel in this country. It might with equal truth be said, that the conviction of the prisoner in this case, was without a parallel.

The case was peculiar. The paternal relation between the prisoner and Nicholas S. Gordon was really the controlling fact, from which the evidence affecting John, derived all its relevancy and force. John Gordon is pronounced guilty of murder, because Nicholas S. Gordon is—*not proved*, but—assumed or suspected to be the guilty instigator. On the trial of Nicholas S. Gordon, facts might be elicited, which would show that John Gordon is innocent It was within the power of Nicholas S. Gordon, be he guilty or innocent, to explain all those facts, which are supposed to warrant the verdict against John. Indeed, he is the individual to whom we should naturally first turn for an explanation in relation to the gun, the coat, the tracks, &c, of which so much has been heard in this trial. He has, as yet, had no fit opportunity to furnish such

an explanation. On this trial that opportunity will be afforded. Till then, let the prisoner live.

MR. POTTER, on the part of the Government, replied: That if he rightly apprehended the gentleman, the grounds of his motion were, that the verdict of the jury was based upon the testimony admitted, and which was objected to as illegal, and that if the sentence was postponed until the trial of N S. Gordon, something might possibly come out tending to exculpate the prisoner. He meant to state the grounds of the gentleman fairly, and he believed this to be the substance of them. He was surprised to hear the gentleman assert that the verdict of the jury was as unprecedented as the crime. Such an assertion, on such a motion, struck his ears strangely. Up to the time of the rendition of the verdict of guilty against the prisoner by the jury, he was taken and deemed to be innocent; but after that verdict was pronounced, he was deemed to be guilty The verdict is presumed to be a true verdict. And after the very long, full, and as he believed, truly impartial trial, which the prisoners had had, with the summons of the State at their command, surrounded by their friends and countrymen, who, to their credit, had been active in procuring all the evidence in behalf of the prisoners, and defended as they have been by four such able counsel, he was not a little surprised to hear such an assertion made. The gentleman assumed the whole question, viz., that the verdict of the jury and the ruling of the court was wrong. The gentleman says he was ignorant of the points ruled. The court had minuted the point, and would inform him on request, very briefly. Or he would state previously the points ruled. And if the gentlemen were too modest to say themselves that they could apprehend them at once, as clearly as any one else, he would say it for them. It needed no delay. They were as competent to judge of it, and act upon it, as any counsel; not meaning to derogate at all from Col. Atwell's high reputation as a criminal lawyer There was, therefore, no reason for a postponement on this account. But the gentleman says, and he (Mr. P.) believed he quoted his exact language, *that something might possibly come out on the trial of Nicholas S. Gordon tending to exculpate the prisoner.* That possibly, perhaps, peradventure, something might come out to exculpate the prisoner. That Nicholas might then explain things.

Why, may it please the Court, Nicholas has had ample opportunity to explain. At the court of examination he was asked if he had anything to say. His lips were hermetically closed His brothers had been on trial for their lives. One would suppose if he could or would explain away the proof the saving of their lives would have been a sufficient inducement. But the so called reason is too general; there is nothing definite about it; it applies as well to every case and every verdict as to this. Admit this to be a reason, and a sentence could never be passed. Human judgment is fallible; and in every case there might be a possibility that time and circumstances would afford proof that in any particular case, it was so. He thought that unless some other and stronger reasons than these were given, that the sentence of the law should be then pronounced. That when a crime of this magnitude had been committed, and a man after so full and impartial a trial by a jury of his country had been convicted, high considerations of public policy, grave considerations, affecting the administration of public justice aud the welfare of the community, required that the law should take its ordinary course. That the

crime, the conviction and the execution should be seen together. That men should see that the penalty of the law followed quick upon its violation. The Court he knew would give these considerations due weight. He deemed that no sufficient reasons had been given for postponement of the sentence; none which were not equally applicable to any other case.

The Attorney General said, after the very appropriate remarks of Mr. Potter, he had but a few remarks to make. He would not oppose the motion did he not consider it his duty so to do. As to the point ruled by the court, the counsel for the prisoners can at once be informed of them and argue them. Gen. Carpenter has already argued one of them in the course of the trial. He deemed them perfectly clear, about which there can be no doubt. The counsel could argue them now or in the morning. The other reasons given he considered too general. A sentence could never be passed. They applied equally to all verdicts. That his duty constrained him to oppose the motion on these grounds. That the reasons are totally insufficient, and the sentence of the law should be pronounced and executed.

Gen. CARPENTER. The notice is not a matter of right but addresses itself to the sound discretion of the court.

The Court said that they saw no reason for a postponement of the sentence. That the court would be in session the next morning, and if the counsel for the prisoners thought best to petition for a new trial, they could be ready to do so in the morning, and the court would decide upon matters then brought before them.

FRIDAY MORNING.

Attorney General moved that John Gordon be brought up for sentence. Prisoner brought in. Attorney General then moved that the sentence of death, the legal penalty affixed to the crime whereof he had been convicted, be pronounced upon him.

Mr. Knowles then presented a petition for a new trial, which he read and filed, and moved that on account of the necessary absence of Mr. Atwell, principal counsel for the prisoners, on account of severe sickness, that the trial of the petition be postponed till the next term.

Attorney General said that a sense of duty compelled him to oppose the motion. That the questions to be argued had already been argued once, the counsel were familiar with them, and that that petition should then be tried or on the next day. An adjournment of the court to some earlier period than the next regular term was suggested. The court said that there was no time until July that was not already occupied.

ARGUMENTS OF THOMAS F. CARPENTER, SAMUEL Y. ATWELL, AND JOSEPH M. BLAKE, ATTORNEY GENERAL.

ARGUMENT OF THOMAS F. CARPENTER.

SUPREME JUDICIAL COURT,
Monday, April 15, 1844.

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

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

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

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

From the questions asked of some of the witnesses by the Attorney General, we judge that the impression has gone abroad that the counsel in this case were to be largely paid, and that large sums had been raised by subscription among the countrymen of the prisoners for that purpose.

I cannot speak for my colleagues, but for myself I will say, I have never received, nor had the promise of receiving, one single cent for my labor and services in this cause. If I do receive anything, it will be from the gratitude of some persons of whom I am now ignorant. But, gentlemen, so long as I am able to stand in this house, it shall not be said that any man on trial for his life, on a charge of murder, was convicted, because there was no member of the Rhode Island Bar to be found willing to volunteer his services in defence of the prisoner.

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

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

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

The learned gentleman who opened this case for the Government has told you that the friends and relatives of the deceased appear here from a sense of duty to the deceased. All duties to him ended when his mangled corpse was committed to the bosom of the earth. The duties of fraternal love had been up to that period most fully and faithfully discharged by the distinguished gentleman who has appeared here during this trial. Gentlemen, that was not the reason; let me assign a nobler and better, a more rational, and, I trust, truer cause. He appears here out of a sense of duty to his family, to himself, to his friends, to me, to

you, and to all his fellow citizens. If one man can be thus taken off from the community, another may be taken. The friends of the deceased appear here because it is their duty. It is their duty to do all that can be done to ascertain the perpetrator of this atrocious crime, and bring him to punishment. It is a matter almost of self-preservation to them. With any other motives than these, I do not believe them to be influenced; and before I go into the argument of the case, I would most distinctly say, that I do not believe the friends of the deceased, with all the power of almost unlimited wealth at their control, would purposely throw any obstacle in the way of a fair, full and impartial trial of these men. On the contrary, the friends of the deceased have been ready to insist that one of the witnesses summoned by us, and who was unwilling to come, should be compelled by process of law to appear and testify in behalf of the prisoners. If we have encountered difficulties on account of their doing what they and we esteem to be their imperative duty, we blame not them in the slightest degree.

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

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

The learned counsel who opened the case for the Government, has said, that when such an event happens as the death of Amssa Sprague, every man must take it home to himself; but let me tell you, that when a case of this kind happens—that two men stand before the bar of this tribunal in a foreign land, friendless and strangers, on a trial for murder—every man should take home also their condition to himself. On you, gentlemen, depend the lives of these prisoners; the duration of their earthly career rests with you. The humanity of the law presumes every

man to be innocent, until proved to be guilty. If you have any feeling at all, it should be in favor of the prisoners, not against them. That kind of prejudice which is created by the statements of newspapers, should not be suffered to tinge your minds. It is unnecessary for me to attempt to combat it; but it will exert its influence upon us almost insensibly, unless we search our hearts closely. The impressions of years since are now producing their effect upon our actions, and the prejudices we have imbibed, we know not how silently mould our opinions and guide our judgments.

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

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

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

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

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

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

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

The Government seeks a conviction upon circumstantial evidence only. Now I do not say that circumstantial evidence may not carry to the mind

the strongest conviction. If the circumstances are such as to be consistent with only one hypothesis, they are as forcible as any evidence. The train of circumstances may be so clear and convincing, that the mind has no more doubt than if a virtuous and upright man should swear that he saw the transaction with his own eyes. But there are many instances given in the books, where terrible mistakes have been made by juries relying too fully upon this kind of evidence.

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

The Court here adjourned until afternoon.

WEDNESDAY, 3 p. m.

Gen. Carpenter resumed his argument.

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

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

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

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

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

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

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

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

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

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

Men in this world, gentlemen, do not act without a motive. No principle in ethics is better settled than this; and before men will make any great risks upon themselves, they must be actuated by some very powerful moving cause; they do not for a mere trifle hazard all, both here and hereafter. These truths are all grounded in our minds, so perfectly established by reason and experience, that we know them as well as we do the faces of our fathers.

A question arises in the outset. A murder has been committed; what motive could have actuated so horrid a crime? Some men become so sunken and degraded, so lost to all the better and nobler feelings of humanity, as to take life for mere gain. In the case before us, money was not the object. It was not the day of the week on which the deceased would have been likely to have had much money; on other days he would have been in the possession of large sums. What he did have was found untouched upon his person; not a dollar of money, not an article of property was taken from his possession. The object of the assassin was evidently revenge—the basest and blackest of passions—revenge not for some small injury, but for some injury considered to be great. I reason

from the principles of human nature to these conclusions. Had John and William, the two boys who sit there, any such motive of deadly hate to prompt them to the murder of Amasa Sprague? It is a question for you to ask, and for you upon your consciences and your oaths, to answer.

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

The prisoners being such men, and under such circumstances, we are to prove a motive in them for the commission of this crime. If the crime was proved upon them by positive evidence, no motive need be given; but now we are to seek for a motive to confirm our suspicions, and establish their guilt. If no adequate motive can be found, you cannot find them guilty; for motive is an essential part of the testimony, in a case of circumstantial evidence. The Government felt this necessity; a motive is wanted, and one is speedily discovered. Nicholas S. Gordon, the brother of the prisoners, a man of much talk, a sportive, swearing little Irishman, beneath the size of ordinary men, has talked in his blustering, threatening style, about Amasa Sprague. Well, what has that to do with this case? Why Nicholas Gordon is the brother of the prisoners, and Nicholas Gordon had some petty difficulty with the deceased, about a license; and because he is their brother, and because he got angry and talked threateningly against Mr. Sprague, therefore the prisoners murdered him. This is exactly the force of the argument on the part of the Government. Such an inference as this it will not quite answer for you to draw, in a capital trial, where two lives of your fellow men hang in the balance. There must be some shadow of a connection instituted between the prisoners and these threats, before they can affect the prisoners. To do this, they bring Mr. Harding Hudson as a witness; for gentlemen, I don't mean to say a word about Miss Susan Field, the inmate of the house of Miss Susan Parr, and who said she could answer questions faster than the counsel could ask them, and who pretended that she knew each of these men well, and yet could not tell them apart when called upon to distinguish them.

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

It is no unusual thing for people to have disputes about licenses; it would be a very unusual thing to kill a man for opposing a license; and still stranger would it be for a man, on account of his brother's license being taken away, to perpetrate a murder so bold and atrocious. Gentlemen, is it not next to impossible that such a deed could have been done

from such a cause? Do you suppose the prisoners are differently constituted from other men—that because they happen to be Irishmen, they are not made in God's image, and endued with human natures? Where, I ask you upon any principle of reason, common sense, or experience, is the motive which could have actuated these men to the commission of this crime? Crimes of this description, done in the broad face of day, and within hail of hundreds of human habitations, do not proceed from any such imaginary, fanciful motive, as this which the Government attempts to impute to the prisoners at the bar. Crimes of this nature, where the party is determined that the deceased shall know it is *his* hand which inflicts the fatal stroke, may be perpetrated in open daylight. If John or William Gordon had wished to murder Amasa Sprague, because he had in connection with many others, (for you will remember that Mr. Lawton says the whole neighborhood were as much opposed to the license as Mr Sprague,) opposed the granting of a license to their brother Nicholas, they would have taken an opportunity when it could have been better concealed.

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

This question of motive is important for two reasons:

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

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

The weakness of this motive might easily be tested thus: Suppose, if you please, that Amasa Sprague had threatened Nicholas Gordon in the presence of William Sprague. Nicholas Gordon is found murdered, and William Sprague is suspected of the crime. It would certainly have sounded strangely to have said that a sufficient motive for the commission of such a crime was proved in the fact that once or twice William Sprague had been present when Amasa had used threatening expressions toward the deceased; and Amasa Sprague could prove an alibi, and therefore William must have done it! Is not that this case precisely? If so, is one rule to be made for one man, and another for another? When the Court permitted this evidence to pass to you, His Honor, the Chief Justice, remarked to you that it might go for what it was worth.

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

Mr. CARPENTER.—I so understand it.

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

It is therefore wholly incredible and unaccountable, that they should have committed this murder from a cause so trivial.

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

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

These two men, Barker and Spencer, left Barton's house, near the Hoyle tavern, at five minutes after twelve o'clock. They went out on a visit to the father-in-law of one of them, and went by the Johnston road. After getting about three miles out of town, somewhere near the Carpenter house, and a short distance beyond the place of the murder, they met two men on the road, coming toward Providence, one a tall man and one a short man, with a gun going toward town. They (the witnessess) pursued their way to their place of destination. On their return home to the city, they arrived at Gallow's Bridge just as the sun was setting, and a few minutes after saw two men, whom they conjectured to be the same they had met before—the one a tall, and the other a short man, coming out of the corner of the lot where the murder was committed. They continued on and passed these two men; they were the same they saw before; the short man was now in his shirt sleeves and had no gun; the tall man had a gun. They said, these men are suspicious looking chaps. These men were no doubt the murderers of Amasa Sprague. It was not five minutes afterwards, before they heard that a man had been found dead. Now these men both swear that the men they saw the second time, were the same men they saw the first time. The short man, they swear was William Gordon. Now, gentlemen, they did think so, without doubt; they swear to you as they thought. Was it so? This is the only link which connects either of these prisoners with any certainty with the murder of Amasa Sprague. This is the strongest circumstance in the case. If either of these men were seen coming direct, as it were, from that scene of blood, without a coat, on a bitter winter's day, and without the gun which he had before been seen with, it is the strongest evidence of guilt which could be presented to the mind.

But, gentlemen, Barker and Spencer are mistaken; they did not see William Gordon on the Johnston road; they could not have seen him; they made that mistake which men are apt to make when suspicion is aroused against a man. Men then begin to see things which they never dreamed of seeing before Every thing is construed into guilt. As the

proverb has it, "If you want to whip a dog, you will find a stick in every bush."

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

The government on the supposition that the man seen in his shirt sleeves on the Johnston road, was William Gordon, have to make out that after he was seen on that road, which was about sunset, he crossed over the river, returned to Nicholas S. Gordon's, procured a coat, and was proceeding down by Benoni Sprague's house on the Cranston road, at ten minutes after sunset. That was their theory, and wild and impracticable as it was, they would have asked you to believe it. But where was William Gordon? He is proved to have been in church at mass in the morning. He was seen there by several persons. If human testimony can be relied upon, there is no question of the fact that William was seen at church, and after church, in this city. Church was not out until after 12 o'clock, at the earliest. It would take him at least five minutes to walk from the church to Barton's house; he has then to go out of town, passing by Barker and Spencer, on the Johnston road, unobserved, change his dress, get a gun, come back and meet them on the same Johnston road, proceeding to the place of the murder, on his return. But let us trace him. It is proved that he was seen at Bagot's, in Providence, between one and two o'clock. He left his employer's, dressed in his Sunday suit, in the morning, to go to church, stating that he hoped to see his mother there. He did not find her there, and thought it his duty to go out and see her. He was about doing so, when he went with Michael O'Brien into Holohan's, and the Irish hospitality of that family was a most fortunate thing for poor William. If an Irishman has but a crust of bread, he will share it with you; and as William got up to leave for home, they said, no, you shan't go without your dinner. After dinner, Mr. Holohan sat awhile, not to be guilty of the rudeness of leaving his guests immediately. Holohan says at length, "I must go, I have an engagement at a funeral," and got up to go. William then says he will be going, and he and Holohan go out together. They come up to what is called High street, and Holohan observes the Universalist clock, and sees that it is just half past two o'clock. He fixes the time exactly, because he was going to a funeral at that time, and was afraid he should be late. It was half past two o'clock. Up to this time William had been in the city of Providence. Of the truth of this there can be no doubt. That, then, would render it impossible for him to have been on the Johnston road, at the time when the two men were first met by Barker and Spencer; for they swear it could not have been later than 2 o'clock, when they saw these men, and at half past two William was still in this city. But let us follow him. He is going out, as a dutiful son ought to do, to see his sick mother, and inquire after her health, and to visit his only child. Surely, if any reason could excuse a man for travelling about on the Sabbath, these would be sufficient. He is hurrying along, when he happens to see one of his countrymen, Martin Quick, in the street, and Irish fashion, he must stop and talk with Martin awhile. Martin Quick has appeared here; you have seen him on the stand. He

is a man of honesty and respectability. Let them sift his character to the bottom; they have had time to do it; and depend upon it, if a flaw could have been discovered, you would have had it pointed out. The witnesses who appear here for the prisoners, are tried as by fire. The government has its emissaries everywhere. William begins to feel as if he wanted something to drink. It is a cold day, and he has a long walk before him. He crosses over, accosts Martin, and asks him if he won't have something to drink. There is a row of taverns along there beyond the Hoyle tavern; they went into three without success; finally, in the fourth, they got something to drink. They come out. William says, my way is across here, and goes on his way homeward. Martin comes down street, and just as he reaches the Catholic church, which is about a five minute's walk distant, church is out, and he concludes it must have been about three when he left William on the road. Now can it be doubted that Martin Quick tells the truth? If not, I lay it down as a thing certain, that William Gordon was in Providence at three o'clock, on Sunday afternoon. I therefore leave the testimony of Barker and Spencer entirely out of the case, for it is plain, if human testimony can be believed, that they were mistaken.

We find this man on High street, as late as 3 o'clock; he is then going toward Cranston, and in the incipiency of this trial, this is as far as we could trace him. He would have been safe enough then; but he had said that he met a man on the road, and had described him. We were unable to find that man. He told us Mr. Knight could tell us about him, if he would, for he went in there. Mr. Knight could tell nothing about it. But by the providence of God, just at the close of the trial, that man is found. He discovers the importance of his testimony, and comes here and tells you his story. He tells you he overtook William Gordon on the Cranston road, by the Arsenal; that he thought it was Nicholas; that he accosted him. walked out with him as far as Mr. Knight's, where he (the witness) boarded, and left him going towards home. That it was nearly sundown when he parted with him. Now, gentlemen, the fact that Gen. Knight does not recollect having any conversation with this man does not prove anything. It is not extraordinary, that at that time of excitement and agitation, a trivial circumstance should have escaped Mr. Knight's memory. I do believe Mr. Knight is mistaken about this matter, and that this man is right. So that there is no contradiction here. I think therefore I might, without dwelling on this matter longer, safely leave William Gordon in your hands But let us trace him further; he goes to his mother's, stops a few minutes, find the sun has left, and hurries back to the christening. He sets off at a run, fearing he should be late; you will recollect that he came very near losing his supper, as it was. He is seen coming up the hill by Benoni Sprague's at a trot. After a while he gets tired, and relaxes into a walk. About three quarters of a mile further on, he is overtaken by Mr. Arnold. Now mark how every portion of this testimony corresponds. William Gordon goes out with Cole. Cole says he left him on the road, to his mother's house, about sunset; he goes to his mother's, stays but a few minutes, turns about for town, runs up the hill, is seen by Benoni Sprague, passed by Almond Arnold, goes on and meets Mrs. Kingston, stops a minute, and talks with her, and gets to the christening at six o'clock. There is a perfect alibi, every part is fitted into the other. It is a complete dovetail. Well, gentlemen, I think by this time William Gordon may put his

hand to his neck, and not feel the halter round it. When he was arraigned, he shook his handkerchief, and said he was as innocent as that. Let me follow him a moment longer, to show the course of things. He arrives at the christening. "Whom did he sit beside?" asks the Government. "By the side of Nicholas." Nicholas was at the corner of the table, and of course made room for his brother. He stays until Nicholas says it is time to go home; he goes out with them, goes into Dennis O'Brien's a few minutes, and returns to the latter end or the feast. Is there anything in these circumstances which can be hinted into evidence of guilt? Did anything remarkable transpire at the christening? Nicholas was pleasant and talkative, and William sung two very pretty songs. I do not think it would be proper for me to dwell upon the consideration of William's case longer. His innocence is too clearly established to require any additional argument. But I must use William further in this case, for the hypothesis of the Government is, that all three of these brothers were concerned in this transaction—Nicholas as abettor, and the other two as actors in this bloody deed. Now by positive testimony —not by any circumstantial testimony, we have been able to prove a negative, to prove that William Gordon was not and could not have been there. We have proved this to a moral certainty. Has the government made such a mistake in regard to William Gordon, when too they thought they had connected him with this crime by such positive testimony, so that they have nothing left now to call upon, but to suppose that he had some knowledge of the affair? then beware how you rely too implicitly on their testimony in relation to John Gordon. When you see a case of circumstantial evidence got up in this way, and one half of it breaks away entirely, beware lest the other half, if you trust too much to it, shall also crumble under your feet. With these remarks, I leave the case of William Gordon in your hands.

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

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

The first circumstance, or train of circumstances, upon which the government rely, is the circumstance of the tracks across the meadow through the swamp, and as they say, to Nicholas Gordon's back door. Now so much do the government rely upon this circumstance, that the open-

ing counsel for the State said it seemed as if the tracks were letters of light, indicating the guilt of the accused, or in other words, that his guilt was written by them in letters of light. I will show you, gentlemen, that these letters of light are an ignis fatuus, that shines but to bewilder, and glitters to deceive.

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

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

I agree, gentlemen, that the person who committed that murder, in all probability made those tracks across the meadow and through the swamp to Hawkins' Hole. The questions I would now consider are, whether the tracks which begin at the place of the murder, which were discovered on Monday, and the tracks on the south side of Hawkins' Hole, which were discovered on Tuesday, are the same tracks, and made at the same time. Whether John Gordon made the tracks from the spot of the murder to the back door of Nicholas S. Gordon's house. Whether this is so proved that if it stood alone in the case, you could convict the prisoner on the strength of it. Now, gentlemen, there are several reasons which, as a mere matter of suspicion, would lead me to doubt exceedingly whether the same person made the tracks on the left side of Hawkins' Hole, which made those on the right side, and through the meadow. I ask you, how do you know the same person made these two lines of tracks—entirely separate and distinct from each other, divided by a common highway? If these two series of tracks formed one continuous line the whole distance, I should tell you that any other hypothesis, than that they were made by the same person, was repugnant to all reason and experience, and therefore you were compelled to believe that they were made by the same person—as strongly as if some person had sworn to you that he stood by and saw them made. Because you can frame no other hypothesis consistent with the facts. We know of no way in which a man can rise in the air and fly from a track, and another man spring up from the ground and take his place. From the place of the murder to Hawkins' Hole, this reasoning holds good. So far, there is one continuous track. But when we get to the drift way, this continuous track ceases; it ends upon a regular beaten road, where no tracks can be traced. It does not begin again on the other side of the drift way exactly opposite to where it left off, but further up, as if the man had been coming from another direction. You have then on the other side of the swamp another track, going off from the driftway into the swamp, some three rods distant from the point where the meadow tracks come to the beaten path of the driftway. Now if you were to ask me if I believed

or could say to a moral certainty that the same person made the tracks below Hawkins' Hole, who made the tracks above it, I should tell you it did not amount to a probabiiity. I would not hang a dog upon such evidence as that; much less a fellow being. Do you not see the difference at a glance? Suppose a man coming along that driftway which is travelled by everybody who goes a gunning in that vicinity, had observed game in that swamp, he would have turned off from the driftway and gone in there—a man coming from Henry Fenner's, as some of the witnesses themselves, and especially Demerrit, the chief witness admitted, might have gone in that way—or a man coming along the beaten road from Sprague's factory, might have turned in there. Doubtless if John Gordon committed the murder, he would have taken that route to his house, rather than the main road; but in that supposition you must not take the very fact sought to be established by these tracks for granted. Is the correspondence, size and appearance of two different lines of tracks so remarkable? Why, Mr. Ormsbee tells you that they put these very boots into *his* tracks, and they fitted exactly; and he is not contradicted. Rollin Mathewson does not contradict him. Walter Beattie does not contradict him; they merely do not recollect a fact which he does recollect. There is nothing remarkable in this similarity of tracks. There is nothing impracticable in the theory, that the tracks below Hawkins' Hole were made by one person—the tracks across the meadow to Hawkins' Hole, by another person. There is no certainty that the tracks on the south side were even in the same direction with those on the north side. Was there any range taken, by a tree, or house, or anything, so as to fix the direction? No, not at all. And it appears by the evidence that you have to go nearly three rods out of the straight course in the beaten public pathway, and at a right angle, before you would get from the tracks on the one side to the commencement of the tracks on the other side of Hawkins' Hole. Is it probable, if a man was coming from the swamp on the north side to that on the south of the Hole, that he would have gone three rods out of his way, instead of continuing on in a straight line? What becomes then of these letters of light?—the word has been misinterpreted. What! on a mere probability or possibility, is a man to be convicted of such a crime? But it is said the boots fitted the track. Demerrit measured the tracks at the request of John O'Brien; he measured the soles; they corresponded in length, but differed an eighth of an inch in width. It is said an inch in a man's nose makes considerable difference I should think the eighth of an inch difference in a track, where the life or death of a man depended upon the exactness of the correspondence, was no unimportant difference. Demerrit, the principal witness, and the most exact, tells you there was a difference of an eighth of an inch. This is the result of actual, exact measurement. When this is made, there is no scope for imagination.

Now, by no principles of reason or common sense, can it be shown that the tracks of that boot would be of the same exact length, but of an eighth of an inch additional width; that they would remain stationary in length, but increase in width. Would you then I ask, supposing these tracks to be continuous above and below Hawkins' Hole, would you consent to hang John Gordon on such evidence—when John Gordon's boot does not fit the track within an eighth of an inch, by careful measurement? Gentlemen, you would not. Then here are two satis-

factory answers to the assertion they make, that these are John Gordon's tracks. Why, gentlemen, if John Gordon's boots were the only pair of sale boots made of that size, and upon the same last, and exactly fitted to the track, a stronger presumption would arise; but thousands of the same size, shape and appearance, were sent into the market at the same time with these. I think, gentlemen, these tracks begin to be beaten out, and fade away already before a searching examination. But I wish you to examine the boots themselves, in order that the last vestige of the impression upon your minds that these tracks were made by these boots, may be removed, and the last traces of those "letters of light" wiped away. The argument is, that the tracks above Hawkins' Hole were made by the same person as the tracks below it, and that John Gordon made them both, because his boots fit them. On Monday morning the tracks in the meadow were first found. They seemed to terminate at the pond; no further traces being found until they got on to the other side of the pond. Now, gentlemen, look at those boots—(Gen. Carpenter here passed the boots to the jury) look at the heels of them, circled by a row of iron nails, protruding almost an eighth of an inch out of the heel, and tell me if a man crossing that ice with those boots, would not have left the traces of those nails behind him; would they not have made impressions or scratches on the ice which would have been easily distinguishable? Yet the witnesses searched with great care, and could find no traces until they got over on the other side of the pond. These boots must have made tracks all along that ice, with these iron nails. What then becomes of these letters of light? Do you not begin to have a reasonable doubt if John Gordon made those tracks? if so, you have nothing to connect him with this transaction. That is not all John O'Brien says he and DeMerrit both agreed that the boots that made those tracks had been tapped. Have these boots been tapped? You know there will be, where the upper leather laps on, a mark or opening between the ends of the leather. There would be a crack or opening, which would leave an impression, especially after the boots were wet. It is positively sworn to that DeMerrit came to the conclusion when he was examining these tracks, that they were made by a tapped boot; could these boots have made any such impression?

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

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

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

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

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

It is clearly and distinctly proved to you, beyond all reasonable doubt, that the tracks above and below Hawkins' Hole, were made by the same person? I contend not. I have already shown you a variety of suppositions, consistent with the fact of their being different tracks. I have

shown you that a man might have come across there gunning, started game in that swamp, and passed out by N. Gordon's house, into the main road; that this might have been done Sunday morning,—Sunday afternoon, before the murder, when it is proved that men were out gunning—Monday morning, or Monday afternoon, by one of the crowd of people who were out there looking round. The whole case hangs upon this circumstance. It must be weighed by itself; you cannot strengthen it by adding other circumstances to it. Each yarn in your rope must hold, or it must be thrown aside.

Another rule is, that the fact and circumstances from which the conclusion is to be drawn, must be such as to a moral certainty to exclude every other hypothesis. What is the hypothesis here? It is that John Gordon, with these boots here produced, did make these tracks; or in other words, the hypothesis is, that the same boots which made the tracks north of Hawkins' Hole, must have made those south of it. Is this proved so as to exclude any other reasonable hypothesis? The mere statement of it is sufficient answer. Have I not, while I have been standing here, made an hypothesis which agrees exactly with all the facts, and which one of the witnesses, Demerrit himself, admitted might have been true. Then the facts sworn to do not exclude every other hypothesis. Another hypothesis fits them exactly; there is nothing that contradicts it, there is no inconsistency in it. Well, if I have shown you any other reasonable hypothesis connected with the fact, then the argument is gone. They are not proved to a certainty to be John Gordon's tracks. I do not require that certainty which is sometimes extravagantly demanded—a certainty amounting to a perfect demonstration. I only ask for a certainty such as shall exclude every other reasonable and consistent hypothesis, and that certainty you are bound to exact.

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

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

(Court here adjourned.)

TUESDAY MORNING.

I had hoped yesterday afternoon, to have closed my remarks upon this case; but having fallen into the devious pathway of the tracks across the

snow in the meadow, I may have followed them too long; if so, my apology is found in the importance attached to those tracks by the government.

I come now to the next important circumstance in the case—the gun. The argument based upon the gun is this—that the gun found by the side of the cedar tree in the swamp, and here produced, is the gun with which the murder was committed; that the gun so found is the property of Nicholas S. Gordon; that it is to be presumed to have been in his house at the time of the murder; that John Gordon, his brother, temporarily resided in the house of Nicholas Gordon, and might have got possession of the gun; therefore John Gordon committed the murder. I have stated the argument fairly and broadly It is neither more nor less than I have stated it to be, and the very statement shows the inconclusiveness of the reasoning. The inference is, that because it is the instrument with which the murder is committed, and because Nicholas Gordon owned it, therefore John Gordon committed the murder. If such is not the argument, I should like to be corrected by the government, for it is right that we should know the grounds on which they intend to seek a conviction of this man. Passing by the non sequitur in this reasoning, let us examine the circumstances which have been proved respecting this gun, and see to what weight they are entitled, according to the rules of evidence already established.

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

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

John Gordon of ever having had this gun in his possession. Let us look at the evidence a little more in detail.

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

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

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

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

But it is said there is an entry upon the books of T. Almy, by which this gun is traced into the possession of N. S. Gordon. No entry on a man's books is worth anything, even for a quart of molasses, unless the delivery can be proved. You must have not only proof of sale, but proof of delivery. Here is a total absence of all proof of delivery. Again,

the charge on the books of T. Almy is not made to N. S. Gordon, but to N. Gorton. This is attempted to be explained by showing that other charges against N. S. Gordon are made in the same way. But you will find that at and about the time this charge was made, and for a considerable time before, the name is uniformly spelt Gordon, on Almy's books What right have the Government then to infer that N. Gorton, who procured a gun of Almy, in October, 1843, was Nicholas S. Gordon? The variation in the entry proves that it was another man, if it proves anything. I say fearlessly, that upon this evidence Tillinghast Almy could not have recovered $1 50 in a Justice Court, if he had sued Nicholas S. Gordon for the price of the gun. Suppose he sues. The case is called. Mr. Almy produces his book, containing this charge against "N. Gorton," made by his clerk. The clerk, Mr. Sabin, is called to coroborate the charge, and fix it upon Nicholas S. Gordon. Mr. Sabin swears he made the charge, but does not know the person to whom the sale was made, has no recollection of the gun, and does not know that he ever delivered it to any one. Mr. Almy calls his other clerk, William H. Green, who swears that although he has been in Mr. Almy's employment several years, and during that time has been constantly at the store, and has known N. S. Gordon well, yet he knows nothing of this transaction. Mr Almy himself appears on the stand, and swears that he has no recollection of the transaction. Thus far nothing is proved. Francis is then called, and knows not who had the gun, after he left it at Almy's for sale. Mr. Briggs and Susan Field (it is not pretended that poor Ben Kit knows anything about the gun) are also called; but neither of them will say more than they have seen N. S. Gordon have a gun resembling this. No one can be found to swear that the gun in question was ever delivered to, or in the possession of N. S. Gordon. Is it not manifest that Mr. Almy has not established even a single point necessary for recovering the sum of one dollar and fifty cents? Yet upon such evidence; you are called upon, gentlemen, to conclude that N. S. Gordon did purchase and possess this gun, not for the purpose of enabling the vender to recover its paltry price, but for the purpose of sending two of your fellow men prematurely into eternity by an infamous death.

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

Is it then proved that this was Nicholas Gordon's gun? If so, I come to another question. Did John Gordon ever have possession of that gun? It is the duty of the government, relying as they do upon this circumstance; relying upon it to convince you of the guilt, not of Nicholas, but of John Gordon; it is I say, the duty of the government to prove to you in the first place beyond all doubt, that this gun was owned by N. S. Gordon; and having proved that, it goes for nothing, unless they can prove that gun in the possession of John Gordon. The government will say to you in the close—We have proved this is Nicholas Gordon's gun; now account for it. Produce Nicholas S. Gordon's gun, or let him tell where it is. Gentlemen, John and William Gordon are here on trial.

If Nicholas S. Gordon had a gun which is missing, let him be brought on to the stand, and testify concerning it. The government can bring him; he is a competent witness for the State. We cannot bring him here; he is not within our reach; he is under the lock and key of the government. Why is he not brought here? Let him be produced and tell how he parted with his gun. William and John Gordon have no control over Nicholas Gordon, and no knowledge of his disposition of his property. They cannot account for his acts; they are not to be called upon to do so. Neither can we be allowed to prove Nicholas Gordon's statement about this gun. If then we can neither produce Nicholas Gordon, for he is out of our power, nor be allowed to prove his statements about this gun, how can we account for it? What have we omitted to prove, that it was within our power to prove in regard to this gun? Nicholas Gordon kept his own store. He would not let his own mother and sister go in there. He was so careful of his property as to lock up the door, even after he was hand-cuffed. What have these men—these poor men confined in a dungeon--to do with accounting for Nicholas Gordon's gun? How can they prove where it was? Will you convict them of murder because they cannot account for another man's gun?

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

In the first place, it is not probable, if Nicholas S. Gordon had a quarrel with Amasa Sprague, that he would have employed his own brothers to murder him in open daylight. But suppose this was his gun? Suppose that on Saturday night, a company was in his shop, and among the rest one who knew Nicholas S Gordon had had a difficulty with Amasa Sprague and had threatened him? and suppose in this crowd and bustle on Saturday night, during the Christmas holidays, one man who had a deadly animosity towards Amasa Sprague, should have contrived to get possession of that gun and carry it off? Suppose the man who took it was the murderer, and after having committed the murder, secreted himself in the vicinity, and afterwards carried the pieces where they were found, ran across the meadow by night to the driftway, then to Nicholas Gordon's door, and passed off on the road. Could not this have been done by another, as well as by John Gordon? If so, what proof is there that John Gordon did it? The answer is, that it is more probable that John Gordon took the gun, than another man. We are not upon probabilities to convict men of the crime of murder. Then the hypothesis which I have mentioned, fits the facts in the case.

Again, suppose Nicholas Gordon lent his gun to some one; we do not know what he did with it. Let him account for it himself; and the person to whom he lent it, used it in the murder of Mr. Sprague, and when he found the deed was done, determined to fasten it upon the Gordons; would he not have pursued the very same course, which the government contend that John Gordon pursued? You see, therefore the necessity of putting Nicholas Gordon on the stand, to clear up this matter; but the government have not chosen to do this. And now because John and William cannot account for Nicholas S. Gordon's gun, they ask you to infer that they are guilty of murder! If Nicholas had designed to kill Amasa Sprague, would he not have been far more likely to have employed a third person, rather than his own brother? Is not the presumption in favor of that supposition? If so, and this were Nicholas Gordon's gun, it would account for the murder, and yet these men would be perfectly innocent.

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

I come now to the coat. A coat was found in the swamp, not deposited where the gun was, but in a different place, and attempted to be more effectually concealed. The gun was standing up by the side of a cedar, where it could not fail to have been discovered on the slightest search; the coat was more carefully hidden under the bushes. The coat had blood upon the breast, which probably came from the gun when it was carried along. The reason why it was not deposited in the same place as the gun, I will give you when I come to present to you our hypothesis of the manner in which the murder was committed. The coat, when first found, one man declared to be one man's coat, and another, another man's; but suspicion being fastened upon the Gordons, every man of course thinks he sees it to be Nicholas Gordon's coat. If another man had been suspected, it would have been seen to have been his coat. So powerful is suspicion, that men could not touch anything in any way connected with the murder, but they immediately fancied it to be Nicholas Gordon's.

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

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

got here, we hoped we had rebutted the presumption that this was Nicholas Gordon's coat. But a relief came to us providentially. Mr. Beverly had been uneasy in his mind, not because he had done wrong, but because he had thought more about the coat. He requests to be called again. We thought, as the Government undoubtedly did, that he was going to strengthen his previous testimony; but when he comes upon the stand, he retracts the whole of his previous testimony; and why, gentlemen? because Nicholas Gordon's coat is now shown to him, and he at once perceives that this is the coat he had seen on Nicholas, and not the one found in the swamp; thus showing you how easy it is for the most honest and observing man to make mistakes in matters of mere resemblance. This testimony is a key to all which has been put in in regard to the coat by the government. This is the old coat which he used sometimes to wear round, throw upon the wagon seat to sit upon, and draw on on rainy days; and there is just resemblance enough between the two, for the one to be mistaken for the other.

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

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

Now, gentlemen, there is a difference between positive and negative testimony. I am in a room and hear the clock strike and count the hours, and swear to it; you were in the room with several others, and all of you swear you did not hear it. This does not invalidate the force of my testimony. A man meeting another of whom he has little knowledge, and cares less, will take but little notice of his appearance; hut if the man be my servant, or my brother, or a member of my family, I shall be very likely to notice his appearance. Two witnesses have sworn that

they did not see any bruise on John's face on the Sunday morning, or on the Friday morning before the murder. Benoni Waterman passed him on the road, and may have seen but one side of his face; and if he had not, it would not be strange if he should not, in merely passing a man on the road, notice such a fact. Abner Sprague did not observe the bruise, or if he did, he has forgotten it. But a number of other witnesses at different times, from Christmas to Tuesday morning, after the murder, did see and observe this bruise. Michael O'Brien, in reply to the Government examination—and as to this point he is their witness, for he did not question him concerning it—saw the bruise on Sunday morning. He was an acquaintance and countryman, and would be likely to have observed such an appearance. You find John drunk on the highway, on Christmas day, with his heels in the air; would he not have been very likely to have got a bruise in falling? Such has been his statement from the beginning. Margaret Congdon saw this bruise on Christmas day, so did Mrs. Gordon; and here, then, are several witnesses, who swear positively that John had a bruise on his face; and because two or three persons tell you they did not see it, you are to be called upon to presume, in the face of this positive testimony, that John Gordon did not have that bruise on Sunday, and therefore that he got it in the murder of Amasa Sprague.

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

But on a little cool examination, the stains turn out to be madder stains. It appears that the vest is one which John was in the habit of wearing when he assisted in preparing the madder dyes; and it is well known that madder is a fast color, and cannot be got out. Thus, gentlemen, vanish away one by one, these bugbear circumstances by which it has been attempted to fasten the crime upon John Gordon. There was no blood found upon his clothing, no marks of violence upon his person.

Powder was found in one of the vest pockets in the house belonging to Nicholas. Well there is nothing extraordinary in this. He was in the habit of gunning; he kept powder in his store, and when he went, probably rolled some in a paper, and put it in his vest pocket. Why, if you undertake to convict a man of murder, because he has powder in his vest pocket, you will have to convict half the neighborhood. The correspondence of the powder is of no importance. Nicholas Gordon might have supplied half the village with powder. For aught that appears, he was the only person that kept it; and if not, other persons had powder precisely like it. The powder used in gunning, would be very likly to be similar.

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

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

Why did Miss Kingston go to her brother's house, and inform them of the murder? She was in the employment of Mr. Sprague; she was his family servant. Her brothers were also in his employment. She knew their services would be wanted; she knew they would wish to offer them

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

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

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

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

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

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

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

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

Dr. Cleaveland, you will recollect, in his first statement of the conversation with William, omitted one important portion, which he afterwards on being called a second time supplied. Now Mr. Cleaveland had also a conversation with John. I am sorry that he did. I am sorry that the keeper of the prison should ever enter into any conversation with the prisoners relative to their case, although in this case it works in our favor, because the accused is not then in a state of freedom, and all such

examinations are deceptive and dangerous. The prisoner may be mistaken or mis-remembered, and important portions of his story omitted.,

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

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

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

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

Mr. CARPENTER—Well, gentlemen, this old lady comes into court and takes the oath of God upon her to tell the truth, the whole truth and nothing but the truth. Do you believe she has perjured herself She swears with perfect candor and openness. She tells you that the shirt belongs to Nicholas; although she sees the so called bloody spot upon it. She makes mistakes about the pantaloons—she comes with no prepared and invented tale. We say she is to be believed, notwithstanding the attempt to discredit her, and if you believe her story, you cannot convict John Gordon of this crime.

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

MR. ATWELL'S ARGUMENT.

TUESDAY AFTERNOON.

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

IF THE COURT PLEASE—

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

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

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

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

I feel therefore as you feel, that the perpetrators of this deed should have the punishment dealt out to them to the full measure of their guilt

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

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

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

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

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

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

to fit your facts to that theory. It is this danger that I would warn you against. Look at these men as you would look at me or any other unsuspected individual, and then form your opinion of their guilt or innocence.

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

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

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

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

2. You cannot aid the proof offered, in support of one fact, from which an inference is to be drawn—by proving another fact from which

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

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

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

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

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

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

The sole question before you is the conviction of John Gordon. John Gordon was at his mother's house. If she swears falsely, he might have had opportunity to commit the murder, if her testimony is true he could not have committed it. She swears that John came home about 2 o'clock, staid until near 4 o'clock, and then went out stating that he was going to the Kingstons. A few minutes after sunset he was at the Kingstons three quarters of a mile from his own house, and a mile and half from the place of the murder. If Mrs. Gordon therefore is to be believed, John Gordon could not have committted the mur-

der. You must say that that old woman, with one foot already in the grave, and whose hairs are whitening for the winter of death, must have deliberately perjured herself, or John Gordon is innocent of this crime. Suppose that by sharp running he could get over to the place of the murder, and back to the Kingstons, what is the probability of his having done so? This was not a sudden murder, committed at a moment when the heart leaps up and the tiger passions of our nature seize upon their victim, in a moment of excitement. It was a contemplated, planned and deliberate murder. How should John Gordon know that Amasa Sprague would be there just as soon as he got there?

He was not directed to the murder by any sight of Amasa Sprague; the only spot where he could have seen him, would have been when he got up on the plain, and then he would have been behind him. If then John Gordon was in his mother's house until 4 o'clock, (and I am considering the case now with reference to his mother's testimony, which is the only positive evidence in the case,) how could he have known that Amasa Sprague would be there?

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

I have shown you if that evidence is to be believed, by no possible mode, can John Gordon be connected with this murder. We have done all we can, we have brought all the evidence which it was in our power to bring; we have brought it for good or ill, for hap or harm. We did not desire to bring Mrs. Gordon here; we had it under consultation whether we should produce her; but if we had not, the argument of the Attorney General would have been, "why do they not produce Mrs. Gordon? if John was at home on that day, she must know all about it, she could tell the story." We therefore felt that she must come here. You have seen her upon the stand and must judge of her credibility. Tell me about her contradictions!—the contradictions of a woman dragged from a dungeon, accused of a horrid crime, her whole famiy involved in the charge, a stranger in your land, ignorant of your laws,

why a person under such circumstances could not give testimony with accuracy and correctness; could not tell her story with the same calmness and composure, as she could here in a court of justice, after her agitation and excitement have subsided. and memory has had opportunity to refresh its recollections.

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

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

been made by John Gordon, if made at all by him—on the Friday before the murder. That is the very direction in which he would have been most likely to have gone. The only other fact left, is that these tracks corresponded with the size of the boots. It seems to have been taken for granted in this case, that this is true; that the boots and tracks did correspond. But for what reason I know not. The tracks through the bog meadow were of a man on a run, or jump; they were very long strides. Now if a man is running or jumping on the snow, will not the tracks which he makes be longer than his boots? Of course they will, and if he is running with great speed and violence, they will often be several inches longer than his foot. Every one of you must know this. It is too plain to require argument. Therefore either these tracks were made deliberately by a man in an ordinary and usual walk, or else they were not made by John Gordon; and if made by a man on an ordinary walk, they were not made by him, because the steps were too far apart for so short a man as he is. If the tracks, therefore, are of the size of the foot, if they are not longer than the boot which made them, they must have been made by a man on a walk, and then John Gordon could not have made them; and if they are longer than the boot which made them, then John Gordon did not make them, for they are of precisely the same length as his.

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

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

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

Mr. ATWELL. I say, sir—and the remarks of the gentleman do not correct me of any error in this matter; I reiterate—the Government gave

no notice of these important facts to us, until last Saturday, when we instantly summoned these witnesses. They knew of the existence of this testimony; they gave no information to us in relation to it, until it was forced out of them.

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

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

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

There is another circumstance—the gun. I am not going into another examination of the testimony on this point. I will make but one remark; that with the exception of the loose testimony about the ramrod, there is not a particle of evidence in the case which connects the gun here produced with Nicholas S Gordon. But suppose it had been fully identified as the property of Nicholas S Gordon, how does that prove that John Gordon committed this murder independent of other facts? Why, gentlemen, I was once in my life in some little peril, and during that time there were in my house two muskets, both loaded, belonging to my servant. If a man should have been found dead, and one of those muskets by his side, I should have thought myself dealt hardly with, if a jury of my country should have found me guilty of murder, because a weapon was found near the body belonging to my servant, and which had been in my house, and the servant could prove an alibi. If such inferences are to be drawn by juries--if such is to be deemed the law of the land—better were a state of entire self-protection—better were it to throw off the Ægis of the law, and depend on the right arm and the good sword. No man would be safe. There would be more murders committed in the Court House than on the Highway.

(The Court here adjourned.)

WEDNESDAY MORNING.

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

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

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

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

Whoever committed that murder used that gun If John Gordon did not use it, he is not the murderer. But it does not follow, if Nicholas S. Gordon did own the gun, that John Gordon is the murderer.

Suppose you are all satisfied that this gun is the one sold by Almy to Nicholas Gordon, and that John Gordon lived in Nicholas' house, and was in Cranston, and might have had access to the gun? The next question is, what is the legitimate legal inference, which can be drawn from these facts? The presumption— the facts are supposed to be all established. Now comes the inference, and here applies the other rule which I averted to, that the inference which is drawn must be a legal and legitimate inference from the facts, *and must exclude every other inference* which could be reasonably drawn from those facts. Now it is clearly proved that the gun which Nicholas Gordon owned, was kept openly.

It stood in the shop; the shop was open on Saturday evening; many other persons were in there, and might have had access to the gun ; they might have borrowed it. Is it therefore a necessary inference, that because John Gordon might have had possession of this gun, therefore he did have possession of it, and that when many others might also have had it? You must come to this conclusion before you can convict. Suspicion is nothing ; opinion is nothing; you must be governed by legal and undoubted evidence.

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

There has been one circumstance thrown into this case to strengthen, if possible, the inference which is sought to be drawn from the gun. A motive has been attempted to be set up in order to infer that it would be more probable that John Gordon took the gun than anybody else ; and what is it? Why, that Nicholas S. Gordon was at feud with Amasa Sprague, the deceased, and uttered threats against him. They were uttered by one brother who had been in this country some years, in the presence of another who had just come over from Ireland, who was a stranger, ignorant of our laws and customs, and it is attempted to charge John Gordon with the murder, by asking you to presume that John Gordon imbibed the feelings of revenge felt by his brother Nicholas, took up his brother's quarrel, and committed this great crime. Now permit me to say to you, gentlemen, that this evidence ought not even to make a lodgment in your minds. Because, if I am to be convicted of a murder, because my brother or my wife or my friend had a feud with the deceased—then the more friends a man has, the more family and kindred to cheer him in his pathway of life, the worse is he off ; the more dangerous is his situation. If a jury can be called upon, in a case where a man has no motive of his own, to presume that he is affected by the evil desires and fell passions of a brother, because he has been an affectionate brother to him, and performed all the kind offices of paternal love, so that he shall be convicted of the horrid crime of murder, upon the strength of such a motive—it would be dangerous to have friends or relatives ; it would be dangerous to mingle with them, and exchange the kind offices of affection. I would not ask a man to love me. I would not seek for friends, I would cut myself loose from family and kindred ; for, if any one of that circle should utter a threat or menace in my presence, I might be convicted of murder in consequence. This is one of the "trifles light as air," which have been thrown into this case to influence your minds against the accused.

I have nearly finished the consideration of this case. William is proved to be innocent, unless you are to presume our witnesses all perjured. If you are to take this fact for granted, without proof,

then you may convict him. I have shown you that it was to be expected that these witnesses should be Irishmen and Catholics. And although it is the fashion in these days to decry the countrymen of Grattan and Burke and Curran and Wellington, and all the great men who have adorned modern English History—yet though we have produced Irishmen, we have not produced either a fool or a ——, (I had liked to have used a naughty word—a *young lady*, the inmate of Miss Susan Parr's.

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

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

ARGUMENT OF JOSEPH M. BLAKE, ATTORNEY GENERAL.

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

The counsel who have addressed you in behalf of the prisoners, have very properly spoken of the importance ofthis trial. It is important to

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

The Government do not ask you to depart from any of the rules of law or evidence in the trial of the prisoners at the bar. They ask you only to hear the evidence as sensible men, as I know you to be, and to form your judgment upon it in the same manner as you would do upon any of the great and important affairs of life. The Government have not, I think, from the beginning to the end of this trial, manifested a desire unwarrantably to press the case against the prisoners There is not one single circumstance which has come to my knowledge, that has any bearing in favor of the prisoners, which has not been communicated to their counsel. Evidence which some thought might have a bearing on the case, but which I did not deem material, and which was not therefore put in, has been communicated to the counsel for the prisoners, that they might use it, if in their discretion they should deem it best. The summons of the State has been granted to them, to compel the attendance of their witnesses, at the expense of the State, although it is not usual for the State to grant its summons in cases where the parties, as in this case, employ their own counsel. The Court felt some reluctance to depart from a salutary rule, and I joined with the prisoner's counsel in requesting them to do so. And when it was understood that a witness for the prisoners neglected to obey the summons of the Court, it was upon my suggestion that he was brought in by writ of attachment. It was said by the counsel, who closed for the prisoners, that the witness, Stratton, was endeavored to be withheld by the Government. This statement is wholly unfounded. I had never heard of the name of that witness, until I communicated it to one of the prisoners' counsel. If his testimony is important for them, they are indebted to the Government for it. Gentlemen, nothing has been kept back. No person who has assisted in this prosecution, has any desire for the conviction of these prisoners, unless clearly proved to be guilty. And if there are any circumstances which go to show their innocence, we rejoice at it It has been said that the case has been unfavorably affected by the excitement and prejudice created in the public mind by newspaper statements. I have seen but few statements about it, and it is remarkable how little has been generally known of the facts. This is strikingly illustrated by the small number or jurors, but three or four, I think on the whole panel, who had formed an opinion upon it. The Government has from the first, studiously endeavored to keep the public mind in ignorance of the facts, for the very purpose of securing a fair and impartial trial. It is true that there has been excitement. It is true that the public mind has been shocked. Well may it have been! A man well known throughout the State, of extraordinary activity and enterprise, of an enlarged capacity for usefulness, and conducting more extensive business operations than were conducted by any other man in the State—in the broad light of day, almost within hearing of his own wife and children, and of hun-

dreds of those with whom he was in daily business intercourse, and who at any hazard for themselves, would have rushed with the speed of the wind to his rescue, has been assaulted by a band or assassins and most foully murdered. Such an event would have created excitement in the worst of countries, in the worst of times. But here in New England, there never was a murder so bold and atrocious. God grant the time may never come when information of the perpetration of such a crime shall be received by the public with apathy and indifference! But the excitement has not operated against these prisoners; much that has been said has had a tendency to draw off suspicion from them; stories have been circulated for that purpose, or for some worse motive, but which have had that effect, and which all who have attended to the evidence, have seen to be entirely without foundation, and the sheerest fabrications. It is true that the friends of the deceased are interested in this trial; but they have no thirst for the blood of the prisoners. Their duty to the deceased did not, as the counsel who opened for the prisoners seemed to think, cease when his body was interred in the ground. They owe something to his memory, something to themselves—to you—to the community. Who should manifest an interest in the trial, if not those most interested in the deceased? Each member of the family must feel that he has an interest in the detection of the murderers. This murder must startle the mind with a sense of personal insecurity unknown before. The feeling must be strongest with those who think most of the crime; and they who think most of it, must be those who were most intimately associated with the deceased. Does not the distinguished brother of the deceased, between whom and the deceased there was exhibited a remarkable and beautiful instance of fraternal affection, and generous enduring confidence—into whose soul the iron of affliction has been driven deep by this terrible event, but who sustains himself under it with such exemplary firmness, must he not feel less secure--must not every man in this community, who knows that he has a malignant and unprincipled enemy, or that there is any such person who would be profited by his death—feel his life less secure, if the perpetrators of this bloody deed can escape with impunity.

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

Most of the testimony against the accused is circumstantial, and on that account requires the closest attention. You should be tender of human life; but to be tender of human life, you are not required to brace up the mind against impressions which the facts would naturally make. You should not condemn the prisoners, unless you have such testimony, as taken all together, convinces you, beyond a reasonable doubt, that they are guilty of the crime laid to their charge. If you have such tes-

timony, you are bound to convict. They may propound to you technical rules, and tell you *this* piece of evidence is not sufficient, and *that* is not sufficient, when weighed in the balance of these rules. But I know no other rule than this—You are to require such evidence as would clearly satisfy your minds, out of the jury-box, in the important affairs of life. No other rule of evidence can be given you ; there is no other which it would be safe for you to follow. I have known cases where jurors and magistrates, after they had been acquitted, have said, they believed the accused to be guilty, yet the difficulty was to *prove it ;* and still they formed the opinion of his guilt, upon the very facts and circumstances, which were legally before them when they acquitted. Jurors are not to be influenced by anything not legally before them ; but it would be perfectly absurd for you to say, upon the evidence which the court has permitted to pass, that you believe the prisoners to be guilty, but that they are not *proved* to be guilty. Evidence is that which convinces the mind, and if from the evidence which the court have admitted, you believe the prisoners guilty, it will be your duty to say so by your verdict. The counsel for the prisoners have said that it is better that an hundred guilty persons should escape, than one innocent man should suffer. The meaning of this is, not that it is better that one hundred guilty persons, against whom there is sufficient evidence should escape, than that one innocent man should suffer ; but that no one should be convicted upon insufficient proof. Many guilty persons escape the punishment due to their crimes from an idea of juries, that, though the evidence of guilt is enough to convince the mind, yet, on account of some supposed technical rules of law, it is not enough to found a verdict of guilty upon. The lives of more innocent men have been lost in consequence of improper acquittal, than of improper convictions. Men bent on mischief consider the chances of escaping punishment. They hope to cover up their tracks entirely, so as to escape all suspicion. If suspected and tried, they calculate the chances of acquittal through the meshes of the law, by the ingenuity of counsel, or in consequence of the false sympathy of juries. You should take care, gentlemen, that you do not hold out *inducement to crime*, by requiring more evidence than can be furnished in one case in a hundred.

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

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

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

But the force of circumstantial evidence, when the evidence consists of a *variety* of circumstances, is illustrated by the actual proof in this case of the instrument of death. On Monday morning, Stephen Sprague noticed a few drops of blood and foot tracks near the fence, and a few steps from the string bridge; he followed the tracks a few rods, and as he was getting over the fence, he noticed a small piece or splinter, which appeared to have come from a gun or pistol; there were two or three black hairs and blood on it. It was found accidentally, and it had evidently been dropped by accident. It did not occur to Mr. Sprague to trace the tracks farther. The same day Mr. Beattie and others who had been following the bank of the river, noticed a track which they followed to the swamp. The point at which they discovered the track was four or five rods from the place where the splinter was found. It turned out afterwards that the tracks to the swamp corresponded precisely with those discovered by Mr. Sprague. During the search in the swamp, a gun was found broken into a number of pieces. The stock was bloody and there were hairs upon it. It had not been put there to mislead. If that effect had been intended, it would have been left near the body, or in the road. It was in the swamp, where people seldom went, and hid by the brush around the tree. The next day, Wednesday, still another person, Mr. Luther, was picking up the snow where the body was found, and under the place where the head lay, he found the guard of a gun, a lock and a screw; these, and the splinter, all fitted into the broken gun found in the swamp. The wounds were such as the breech, lock and guard of the gun would have made. Now here are a variety of circumstances, proved by different witnesses, all tending to the same point, and so irresistibly forcing the mind to the conclusion, that even the counsel for the prisoners, who contest every inch of contestable ground, are constrained to admit, that the gun found in the swamp was the instrument of death.

The counsel who closed the defence, lays it down as a sound rule of the law of evidence, that one doubtful fact cannot be proved by another doubtful fact. And it appears by the course of his argument, that he means by this rule, not only that no inference can be drawn from a fact insufficiently proved, but also that facts which separately and alone would prove nothing, can prove nothing when coupled together

He does not tell us in what decision, or in what book he finds this rule, nor do I care. There is no soundness in it, wherever it may be found. A single illustration will show you how little dependence can be placed on it, or any other such arbitrary rule.

Suppose I have three old coins stolen from my desk,one of which has been clipped, another has a hole in it, and a third has a cross upon it. They are old coins and rare. But there are others like them, and I could identify neither of them. A person was seen to go into the room where they were left, and it is known that but one person went in, and he was dressed with a black coat, a buff vest and blue pants. There is a man living in the vicinity who usually wore that kind of dress. This fact alone would prove nothing, for there are many men who wear similar clothes. A boy comes forward who says that he received from that man a coin similar to mine, and that it was clipped. But I cannot identify it, and the boy's character for veracity is questioned. Now here is doubt not only of the import of a fact, but of the existence of the fact itself. Another person swears that the same man passed to him a coin similar to mine, and that it was crossed. This alone would be insufficient evidence of guilt, because there are other coins like those I lost, and a cross on an old coin is not a very remarkable circumstance. But it goes to confirm the other doubtful facts. That man is arrested, and the third coin with a hole in its edge is found upon his person. Should we have any doubt of his guilt? Each of these circumstances alone, would be doubtful and inconclusive, but altogether they establish the facts to a reasonable certainty; and that is all that can be expected in this, or any other case.

The counsel for the prisoners say that whatsoever testimony they may have produced, they have not brought upon the stand Susan Field, nor a fool; and both of them have deemed it important to remind you that the Government have produced all kinds of witnesses; and to use their own language, from a minister to a fool, and down to Susan Field.

I have not supposed it, may it please your honors, an objection to a case, that it was made out by a great variety of testimony so long as that testimony is competent and unimpeached.

It is true, gentlemen, that this case is made out by a great variety of testimony, and by witnesses of a very dissimilar characters. Such is the fact; and what is the inference, but that there is no conspiracy or combination against the prisoners? The case is greatly strengthened and confirmed, from the fact that so many witnesses have testified, of both sexes and of different ages, of different ranks in life, of different habits and pursuits, from different places, testifying to different facts, but all tending to the same point, and all concentrating upon the prisoners at the bar.

Gentlemen, you are sitting there on a trial for murder It is agreed that a murder has been committed; and the closing counsel has seen fit to caution you not to commit another murder Take care, he says, that you do not sacrifice the lives of these men. Many judicial murders have been committed; take care that you do not add another to the list. Murder, gentlemen, is the willful killing of a human being, with malice aforethought, and according to the technical language of the indictment, being moved and seduced by the instigation of the devil. Does the learned counsel mean to say, that if a jury sitting in that box, under the oath of God, should give a verdict against a prisoner, who it should afterwards appear was innocent, they would be guilty, legally and morally, of murder? If not, then the caution was thrown out to influence your judgment through your fears; and he pays but a sorry compliment to your understandings, if he supposes it can have that effect. Both the counsel have expressed a great deal of confidence in their positions. One of

them says I ought to give up the prosecution against William, at once ; and the other conscientiously believes that the gun was never owned, or in the possession of Nicholas Gordon.

Now I have never known such lofty expressions of confidence have much influence with juries. They might do, where you had a jury willing to pin their faith upon the opinion of the counsel. But I have never known such cases. If I were to caution you, it would be that you take care not to mistake the assertions of the advocates for the testimony of the witnesses—take care that you do not take counsel from your fears; that you are not turned to the right nor to the left—that you stand steadfast to your duty, and return a verdict according to the honest convictions of your own minds, after an impartial consideration of the law and the evidence.

The counsel who opened the defence has deprecated the practice of making a theory and afterward fitting the facts to it; says you ought to investigate the facts, and see to what conclusion they will bring you! This advice is sensible and sound. Let us be guided by it. Let us go to the place of the murder without a theory, and trace out the facts cautiously and step by step Let us go with minds of unbiassed impartiality toward the accused, suspecting no one, but with an earnest desire and fixed determination to use all vigilance and spare no pains to bring to light and to punishment the perpetrators of the dreadful deed.

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

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

There are circumstances which may be observed on the ground, indicating that several were concerned in the death. There is a pistol near the foot of the bridge, which had been snapped but not discharged. He was shot as he was going up the hill, for there are spots of blood there, which were traced down to the bridge. At the place where the blood was first observed on the hill, there was the print of a hand, as though he fell partly down when he was shot. Whether he was shot by a man in front or behind him is uncertain. But little can be inferred from the places where the ball entered and passed out, because it would glance. A ball sometimes goes through the body in nearly a circular direction, passing out near where it entered. The wound was made with a musket ball. When wounded, he started to return, and had got on the bridge when he was probably knocked off by some one concealed there. His hat was at the side of the bridge, and there were marks of a struggle there, and from there to where the body was found. It cannot be doubted that he was attacked by more than one. He was a large, strong man, of very great muscular power, self possessed in danger, quick to conceive, and prompt, bold and determined to execute; and had he not been disabled of one arm, and his whole system paralyzed and weakened by the wound, he would have cleared himself of the whole band of assassins, and trampled them under his feet.

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

But before forming any theory, while the mind is yet in suspense, let

us look further, take up the evidence piece by piece, and see whither it will lead us. Who could have had *a motive*?—the motive of deadly hate and revenge, and who would be benefitted by the death—who knew of the walks and habits of the deceased, and who was possessed of that brutality and ignorance? Who could have had a motive? Not an *adequate motive*—for there can be no such thing as an adequate motive for the commission of murder. No motive is adequate. Whether the motive was *powerful enough*, depends exactly upon the character of the man. Because one motive operates on one man and another on another man. No virtuous man could find any motive strong enough to prompt to the commission of any crime. But it is perfectly idle to say that a certain motive was not a sufficient one to induce a commission of the offence, until we know what is the exact character of the person upon whom that motive is to operate. But if the gentleman means to say, that no murder is ever perpetrated without some powerful moving cause, some cause that might well excite deep and abiding resentment, the annals of the world, from the commencement of our race, show the incorrectness of the assertion. I believe no skeptic has ever yet denied the Scripture account of the first murder and fratracide on earth, on the ground that no sufficient motive has been revealed.

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

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

guile; and had those who supposed him to be their enemy, been in distress from sickness or poverty, or any other misfortune, they could nowhere have found more generous assistance, than of him whom they made the victim of their infernal hate.

We find then, gentlemen, in Nicholas S. Gordon, a motive for the commission of the crime. He had two brothers who had come over from Ireland last summer, at his invitation and at his expense. They probably came with the idea which is common to many of their countrymen, that the laws here, in this free country, are less severe, and may be more easily evaded, than the laws of their own country—that they would be less restrained in their indulgencies; and less liable to punishment here, than under the strict police of their own country. Nicholas was the head of the family—he had prospered in the world; and there is a kind of pride which the members of a family feel for one of them who is more talented and successful than the rest—a pleasure in fulfilling his wishes and advancing his plans. And if there be any people in which such a feeling is peculiarly strong, it is among Irishmen. The gentleman has spoken enthusiastically of Ireland and her great men. He has extolled in eloquent language the virtues of the Irish character. I yield my cordial assent to his tribute to Ireland. The Irish have strong propensities; strong attachments and resentments; qualities which, under a favorable development, tend to ennoble, but under an unfavorable one, to debase the mind. One of the strongest and most marked features of the Irish character, and to their honor be it said, is the strength of their national and fraternal feeling. The tie of kindred is to an Irishman almost an indissoluble bond. These brothers had recently come over. That they must have known of this difficulty between their favorite brother and the deceased, might almost have been presumed without proof. Amasa Sprague was the principal man of the village. They must have known him; they could hardly have lived in the village a month, and not have known him. And in the absence of all evidence, we could naturally be led to infer that this difficulty between him and Nicholas, which had so keenly aroused the angry passion of the latter, would have been talked over in the family But we are not left to inference. There is positive proof in the case of these facts. Now one of the counsel (Gen. Carpenter,) said that he should not touch Miss Susan Field. But yet he has deemed it necessary, in the course of his remarks, to comment quite often upon her testimony.

You are not compelled by any rule of law, to believe Miss Field. You can doubt her if yon think proper. But she is a *competent* witness, or the Court would not have suffered her testimony to pass to you. She is wholly unimpeached and uncontradicted. She is not a woman of notorious falsehood, whose word cannot be trusted; or rely upon it, gentlemen, there would have been twenty witnesses in that box to have proved it. The character and habits of a witness are most important where he testifies to but a single fact, for then there is but little opportunity of testing the truth of his statement by internal evidence.

It often happens that witnesses of good general character, testify very unfairly, though unintentionally, from sympathy or prejudice. To test the truth of testimony, it is important to inquire what the relations of the witness are to the accused, whether friendly or hostile—the manner in which he has testified—the reasonableness of the statements, their consistency with each other—and with the other facts proved by the other

witnesses. Apply all these tests to the testimony of Susan Field, and tell me how you can doubt of its entire correctness. You can judge for yourselves of her manner on the stand. She was subjected to a severe and searching cross-examination, without involving her in a single contradiction. She testified to a great number of circumstances, and it is remarkable how, as the different witnesses for the government and the defence testified, have been examined on points connected with testimony sworn to by her, facts have come out, one by one, confirming her testimony. And in no single instance, in any one particular, has her testimony been found incorrect. The only thing which the different counsel, with all their labor and skill have been able to discover to bring a doubt upon, is the fact, that just as she was leaving the stand, she confounded the names of two of the prisoners—a thing which you or I may do twenty times a day. The Sheriff tells you that William is so much altered in appearance, that he should hardly have known him. And you will recollect that the mistake was a mere mistake of names, for when I asked her which one tended the store, she designated the right one. This very mistake shows you that she has not come up here with an artfully prepared and fabricated story, for the purpose of affecting the lives of these prisoners. She described a great variety of clothing, with singular minuteness and accuracy, and described it before any of it was produced, just as she described it here; and those clothes which she did not know, she as promptly said she did not know, as she identified those which she did know.

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

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

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

saw John Gordon with a gun, within a few rods of the bridge, but two or three days before the murder.

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

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

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

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

the men had got down on their hands and knees and examined the ice, they might perhaps have discovered such scratches, unless in the course of the night the wind had blown the snow over them, and filled them up. Beattie traced the tracks over as far as the opening towards Hawkins' Hole, there he saw two, and concluding they could not be the same, made no further examination at that time, and came away.

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

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

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

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

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

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

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

I would have the gentlemen point out, among all these facts, one which leads the mind away from the house of Nicholas S. Gordon. But they say the coat is not proved to have been Nicholas S. Gordon's. Let us see. If you believe Susan Field, you must believe this was his coat. She described it before it was produced with more minuteness than I can describe it now. She says it was used by him as an old coat, and thrown in his lumber wagon for a seat. You will recollect that John had no outside coat of his own. She says she has seen John with that coat on. Now they bring certain persons, who never saw Nicholas with this coat, and

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

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

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

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

Harding Briggs says the gun which he saw Nicholas have last of all, was an old gun, full stocked, with percussion lock altered from a flint one, and of a smaller bore than he ever knew such a kind of a gun to have; in a word, it was just such a gun as this. If the testimony went no farther it would be at least a remarkable circumstance that the gun, the bloody gun, found by the side of the tracks leading up to the door of Nicholas Gordon's house, should resemble so clearly the gun owned by Nicholas S. Gordon, that no difference could be discovered between them.

Then you have the testimony of James Francis. He says he owned *this* gun and left it last fall with Tillinghast Almy for sale. He knows it

by a screw being gone, and you see that in the place where he says one was missing, a new one has been put, which dose not fit, and he knows it by the small bore, the percussion lock, the full stock and general appearance.

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

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

ing evidence against them. It stared them in the face. What did they say about it? What explanation did they give of the presence of that gun at the scene of death? I do not ask for them to *prove* where it was; I ask only for any explanation, of any statement which they have given concerning it from that day to this. What has occasioned this profound silence? It has been because they knew where that gun was on that dreadful day, and explanation would be impossible. I do say, gentlemen, that no man in his senses can doubt that this was the gun of Nicholas S. Gordon.

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

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

The officers entered the house on Monday night and made particular search for a gun. No gun was to be found; Mr. Potter went up stairs and found a pair of boots which John said were his; they were wet; he came away and left them there thinking them of no importance. The house was locked. Shaw went there the next day, the old lady refused at first to let him in, but he finally went in, he found no gun, but he found powder in the store in a canister, which exactly corresponds with the powder found in that box, in the coat, and in the pistol. He found a pair of boots under the bed,and clothes thrown under the bed;—a curious place for clothes; the boots were wet Shaw took the boots which John had admitted to be his, and applied them to the tracks which led up to the Gordon's house; they corresponded exactly with the track, the heel fitted exactly, the footprints were not so distinct, but wherever they were visible they corresponded. The heel fitted not only in size, but in shape and height Mr. Shaw, a cautious man, tells you that he had no sort of doubt in his own mind that the tracks were made by those boots; then DeMerritt and Waterman measured the tracks very carefully in all parts of the route; they measured them in the meadow, where the gun was found, where the coat was found, along to Hawkins' Hole and through the swamp south of it, to Nicholas Gordon's door, and they applied that measure to the boots; it corresponded in length precisely, in width it differed only an eight of an inch,

the bottom of the track was an eighth of an inch wider than the sole of the boot This is easily accounted for. They were thin boots and the upper leather would press over a little, just what you would expect. But these tracks were not only measured by a stick, and the measure applied to the boot, but the boots themselves were put into them and fitted them exactly.

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

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

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

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

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

WEDNESDAY AFTERNOON.

Mr. Blake continued his remarks as follows:

Gentlemen of the Jury:

I have said that in following out the tracks, we do not allege the murder to have been committed by John Gordon,—that is to be proved by all the circumstances in the case. But we say that the continuance of the tracks from the place of murder to the spot where were found the gun and the coat and to the door of the house where John Gordon then lived, and the correspondence of the boots of John Gordon found there, with the tracks, are most remarkable circumstances,—they form some of those extraordinary coincidences, with which on the supposition of the innocence of the prisoners, this case is so full.

The tracks on the other side of the stream by Dyer's bridge and the ledge of rocks, were undoubtedly made by the same person who made those through the meadow. The counsel for the prisoners have dwelt upon the circumstance of this track with all their ingenuity, and have

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

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

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

John O'Brien—John O'Brien—I shall not forget him. He is brought here to do away, if possible, the force of the testimony relative to the tracks. He comes into court bringing a piece of shingle with him. The counsel for the prisoners say to him: "Mr. O'Brien, did you measure the track?" "Yes," "Have you got the measure?" "Yes, here it is"—and produces that piece of shingle. Mr. DeMerritt and Mr. Waterman are called and testify that John O'Brien measured no track, cut no stick, and had no measure in his possession, to their knowledge, or while in their presence. Mr. O'Brien is recalled and asked, "Did you make that measure?" "Yes" "When?" "Yesterday." He comes intocourt with a piece of stick which he had *measured the day befoe with his thumb,* and endeavors to palm it off upon you as the real measure of those tracks made at the time! And would they influence your minds in a capital trial by such evidence as this? He says he measured the tracks with DeMerritt and Waterman, and that he cut the stick which was applied to the track—that the measure was made by applying his thumbs to the track, and cutting a stick to fit; the length, of which he ascertained in the same way, by runing his thumb over it; and that he was able to make

the measure yesterday, which he brought into court, by recollecting how many thumbs long the track was. All this is very absurd, and Waterman and DeMerritt say that *DeMerritt* cut the stick, applied it to the track and cut it *by the track,* and that O'Brien did not measure at all in their presence I care not what may be his motive, whether good or bad, whether national feeling or any other feeling—he is not, and I regret to say it of any witness, he is not entitled to credit. He cannot be believed under oath, and his testimony must be entirely thrown out of the case.

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

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

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

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

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

But let us look farther into the house. It is a new house. Nicholas had been prosperous. It sits up there on the hill, commanding a view of Mr. Sprague's usual route to the Carpenter place. Let us thoroughly examine the house—this house, all fair without, which if it not like the white sepulchre, full of dead men's bones within, is yet full of the blackness of death. Here was the murder first suggested, here was the horrid plan matured, here were kept the instruments of death. In this house the murderers lived; from it they went forth to meet the destined victim, and back to it they have been traced when the work was done. Let us examine farther. There was blood found upon the sheets near the pillows. How came that there? Madder did not make that. Nicholas Gordon owned a pistol. The powder found in the pistol by the side of the body, and the powder found in the coat, and the powder found in the

vest under the bed in that house, exactly correspond. Is this accident? Is it another extraordinary coincidence, from which no inference can be drawn? There are balls also in the vest pocket, and one of these exactly fits the small and peculiar bore of the gun with which the murder was committed. In the coat which the murderer wore, was found a paper box of powder—a singular thing to keep powder in—and in the store of Nicholas S. Gordon, the constable who searched the house, found several similar paper boxes filled with powder.

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

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

Mr. Currey said it might easily be done.

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

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

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

The black cheek is another circumstance entitled to some consideration. Chaffee testifies that on the day after the murder when he arrested John he noticed a bad bruise on his cheek under his right eye; that it was quite large and looked as though he had quite a heavy blow, that he asked him how he came by that bruise and that after considerable hesitation he said he came into the city on Christmas day and fell down in the road going home. Now an attempt has been made to explain this bruise by the fall on Christmas day. Not a fall on the road from town, as John stated at that time, but a fall on the road from Benjamin Fenner's, where he went after the turkey. You see, gentlemen, that every circumstance in this case, of which it is possible for them to give an explanation, they are prompt to explain. King, who saw him in the road Christmas day, and saw him fall, says nothing about a bruise on his face. Indeed, according to King's testimony, the fall by which he bruised his eye, was upon his *back.* But Margaret Gordon saw it, and Mr. Waterman saw it, and Michael O'Brien saw it. Oh yes, of course, Michael saw it. He saw it on Sunday, exactly in the spot where it was wanted—Michael O'Brien, the intimate friend of the Gordons—who strips off his own coat to cover John, and never asked for it again—Michael O'Brien, the man who, when he first heard of the murder of one in whose employ he had been for years, can only recollect saying, "give me something to drink!"—Michael O'Brien, who said nothing about the murder in walking out of town that night all the way to Cranston—who never spoke of it, not a word—who went into Nicholas Gordon's house, and heard no word said about the atrocious deed, which was probably the sole topic of conversation in every other house in the village—Michael O'Brien, who after a few miles walk in a cold winter's night, was still so drunk that he has no recollection of anything which he said or heard—Michael O'Brien, who although so drunk as to lose his memory entirely, had yet such a delicate sense of propriety, such a very proper respect for his own character, that he passed by the murdered corpse of his employer and would not go in, lest the crowd of persons who were gathered there, should remark his appearance—this Michael O'Brien saw the bruise in the right place on Sunday.

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

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

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

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

The murder was committed a little after four o'clock, Sunday afternoon. John Gordon was arrested the next day, so soon after the event that he could have explained beyond the possibility of mistake, the whole history of the previous day. The circumstances fix upon him the very strongest suspicions, to say the least of it. Enough has been proved to put him upon explanation, and on failure of any explanation, to found a verdict of guilty upon. It will not do for him any longer to fold his arms and call for proof. You have a right to demand of him where he was at the time of the murder. John Gordon, where were you that afternoon, after your return from Providence, and before you went to the Kingstons? There are fearful circumstances against you. The bloody gun has been found in the swamp. It was kept in your house, and you were accustomed to use it. The coat has been found which Nicholas owned and you wore. They have found the powder and the ball. They have gone into your house, into your chamber, to your bed, and they have found the blood upon your pillow. The charge is upon your house —upon your family, upon YOU! John Gordon, where were you on that fatal hour? Free yourself from the damning evidence of your guilt. Be careful, take time, deliberate well. You have but one short hour to account for. If you were alone, in the road, or in the fields, it is unfortunate. But tell the whole truth, and though you have no proof, if your account be reasonable, and uncontradicted by other proof, it will have

weight. But if one grain of falsehood enter your statement, you are lost.

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

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

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

Attorney General. I represent it as I understand it.

Mr. Carpenter. I made no such statement.

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

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

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

Then you have the testimony of Gen. Knight, who saw her the very

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

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

I will now call your attention to William Gordon, and that only for a brief time. It is said an alibi has been proved. Now Spencer and Barker testify with great fairness in this matter. They are not swift witnesses, they are respectable and cautious witnesses; they left Barton's house about five minutes after twelve; they walked three miles at a quick rate, and met two men on the Johnston road coming this way. It is important to know at what hour. They will not fix the time, only that it was later than two o'clock. Now it could not have taken them more than three quarters of an hour to walk three miles, at a quick pace on a cold day in December. They met these two men, therefore, before one o'clock, coming toward the city, and just the other side of the path leading from the Johnston road to the String Bridge; the one was a tall, and the other a short man, and the short man had a gun. There was nothing at that time about them particularly calculated to excite their attention. When they got to the Gallows Bridge, on their return to Providence, the sun was just setting. It was then, therefore, about ten minutes after four. They came on along the road, and saw two men crossing from the field adjacent to the murder, and they thought they were the same two men they met before, but this time the tall man had the gun, and the short man was in his shirt sleeves, holding his head down, having no gun, and walking very fast; one of them observed his face particularly, the other only noticed his general appearance. They both swear that the short man, in the shirt sleeves, they believe to have been William

Gordon The next that is seen of William Gordon is on the Cranston road; he is running up the hill by Benoni Sprague's, just beyond Nicholas Gordon's house, and on the road to Providence. It is then ten or fifteen minutes after sundown, that is about half past four o'clock; giving him ample time to have crossed the river, come home, got a coat, and got where he was seen running.

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

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

But he said William could not have been the man, for he was in Providence. You will mark, gentlemen, that the man first seen on the Johnston road was coming toward town; that he was seen not much after half past twelve o'clock, that he was walking quick, and that there is not a single witness in this case, except Michael O'Brien, who swears to seeing William between ten o'clock in the morning when mass commenced, and sometime between one and two o'clock, when he is seen at Bagot's. Michael Hollhan saw him at mass, but does not tell when or how long. There is full testimony, undoubted testimony, that William was in town between one and two, and until near three; all this can be shown; but there is not a particle of testimony that William was in the city after ten o'clock in the morning, until one and two o'clock in the afternoon. If he was in church the whole time, could it not have been proved by twenty witnesses? Is that the way to prove an alibi? The gentlemen may talk about it in a high strain of confidence, but an alibi is of all things that what requires the most exact and complete proof, and here is the space of from ten to half past one wholly unaccounted for, except by such testimony as that of Michael O'Brien. An alibi has not

been proved. The burden of proof in such cases is upon the prisoners, and it must be fully made out. I have been upon this matter long enough for the gentlemen to have examined their minutes of the testimony which fixes William Gordon in Providence between ten and half past one o'clock.

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

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

Gentlemen, in a planned and long meditated murder, as this was, you are to expect to find facts that will appear to favor the perpetrators; they have been arranged for the very purpose of turning away suspicion. Is this story of William Gordon's probable or consistent?

I admit that William was in Providence that afternoon. Michael Hollohan puts him on the road home, going towards the Hoyle Tavern, a littls before half past two. Martin Quick saw him after he left Mr. Hollohan. He left him in the road at about three. It is quite probable that he met some one on the road, after he parted with Martin Quick. He stated that he did, and inquiry is made among his friends. They are informed a man is wanting who walked out of town with William Gordon on the day of the murder. The man is suddenly found; he emerges into light, after all the testimony has been gone through with, just as the counsel are to address the jury upon it, and when there is no time for contradicting him by proof. He has been in New Jersey most of the time since the murder, and did not return till sometime last March. His appearance on the stand was very unfavorable. I will not say that you cannot beleive his testimony, that is for you to say. But his story is very extraordinary. He says he saw this man on the road, and mistook him for Nicholas, whom he knew; yet there is no resemblance between them in size, figure or face. When he was asked why he did not inform Nicholas or his friends of the fact of his meeting this man, he said he did not know Nicholas, although a moment before he had said

he did know him, and was in debt to him. He first said he saw William coming up here to the trial in a carriage, and but a few sentences afterwards, when the nature of the questions showed him that would not do—for if he had seen the man whom he had met on the road brought up to trial, it would not answer for him to say he had not communicated before, this important fact—he takes back his former statement, and tells you that he had never seen William before, from that day to this, and that it was Nicholas, and not William, that he saw in the carriage. He testified with the greatest deliberation, repeating every question I asked him, before answering, and yet he involved himself in contradictions. He was here when the indictment was read, saw these men, heard their names—and yet he did not open his mouth until last Saturday, when it was too late for us to contradict him. And what is yet more astonishing, he had had contentions with his brother about whether this tailor was, or was not on trial, and that brother has attended on the trial from day to day; and yet this man who was uncertain whether this tailor was or was not on trial—whose brother was positive he was—would not come forward or open his lips in a matter of life and death, so long as there was a particle of doubt on the subject in his honest heart. He would allow the man with whom he had walked, and whom he had said he could clear in a minute, to run the risk of losing his life on the gallows, rather than make a single inquiry; and that too with his brother at his side, positively asserting to him. that the man whom he walked with, was one of the men on trial. It is almost incredible. The reason he gives for thinking that William Gordon (the tailor) was discharged was, that Gen. Knight told him so, or gave him that impression. This is utterly false Mr. Knight says that he could not have told him so, for he had no reason to know or believe on Friday, that the tailor was discharged.

So much for Mr. Joseph Cole.

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

Gentlemen how are these circumstances to be explained? No explanation is attempted. They leave you in ignorance of the cause of this five miles walk and rapid return; of those two pair of wet pantaloons and two vests with powder in them, and yet they confidently ask for a verdict of acquital. What was William's own account of himself on that day, given within forty-eight hours after the murder? It wont do to say

that he was drunk, and excited. Mr. Potter tells you he was not drunk, and he brought him into town. The excitement he manifested was, as Mr. Wright has sworn, the same which he manifested here when he was arraigned; he told the same story to Potter, and in Mr. Bowen's office to Mr. Rivers and Mr. Hazard. He said in their presence that he was not in Cranston at all on the day of the murder. He repeated this over and over again after he had been told of its importance.

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

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

Gentlemen, you must take all these facts into serious and attentive consideration. This is a case of murder in which the whole community is interested. Take care of the lives of these men, take care also of the lives of such men among us as he who has been made the victim of the hellish brutality of this band of assassins.

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

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

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

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

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

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

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

PETITION FOR A NEW TRIAL.

PROVIDENCE, SC. SUPREME COURT,
March Term, A. D. 1844.

In the Case, the State of Rhode Island vs. John Gordon:

And now on the twenty-second day of the Term, the said John Gordon, against whom a verdict of Guilty has been rendered in the case aforesaid, before sentence passed upon him, moves the Honorable Court for a new trial; because,—

First. The Government, without having attempted to prove any conspiracy, or confederacy between him; the said John and Nicholas S. Gordon, his brother, was permitted to present to the Jury:

1. Evidence of expressions of hostility towards Amasa Sprague, uttered by the said Nicholas S. Gordon in the presence of said John but not responded to, or acquiesced in by him.

2. Evidence of the entertaining by the said Nicholas S. Gordon, of unfriendly feelings towards Amasa Sprague.

3. Evidence of a supposed cause of hostile feelings on the part of the said Nicholas S. Gordon towards Amasa Sprague, to wit.: the opposing by the said Amasa, of a petition of the said Nicholas S. Gordon to the Town Council of the town of Cranston for a license to retail wine and other strong liquors. And because,—

Secondly. A paper purporting to be minutes of the testimony of one Ellen Gordon, given before the examining magistrate, shortly after the arrest of the said John, was allowed to be read to the jury, to contradict and impair the testimony of the said Ellen as given for the said John on the stand on his trial; the witness producing and reading said paper, expressly declaring that he had no recollection whatever concerning the said supposed testimony, other than that he intended to report it accurately.

JOHN GORDON.

By his Attorneys,

SAMUEL Y. ATWELL,
THOMAS F. CARPENTER,
JOHN P. KNOWLES.

MARCH TERM, 1844.

Continued, and the afternoon of the first day of next Term assigned for a hearing thereon.

With the consent of the parties interested, this trial is reprinted after a lapse of forty years, in order to preserve the rulings and history of a remarkable case,—the last trial in Rhode Island wherein the life of the accused depended upon the result of the trial. Copies of the former edition were so seldom found and when found commanded such prices, that few persons who desired them could ever obtain them. Hence this reprint.

In reprinting, it was thought proper to present the proceedings which followed so that a full history of the cases and their results can be seen. In the case of John Gordon, a motion for a new trial was made. The hearing of this motion carried the case over to the October term of the Supreme Court, 1844. The motion was then heard and denied, and John Gordon was sentenced to be hanged on the 14th of February, 1845. He then petitioned the General Assembly for a reprieve and commutation of sentence. This petition was debated in the House of Representatives on the 13th January and denied by a vote of 36 to 27. The Governor was then appealed to, but he declined, on the evidence before him to interfere; and Johu Gordon was hanged in the prison yard, on the 14th February, 1845, at eleven o'olock in the morning. The case against Nicholas Gordon came on for a hearing at the October term, 1845. The jury failed to agree,—standing eight for conviction. Nicholas was again tried at the March term, 1845, when the jury again disagreed, and the case against Nicholas was discontinued.

ERRATA.

Page 152, bottom line, for *calmness* read *clearness.*

7, line 10th from bottom, insert word *nor* after gain.

8, 2d paragraph, *the* garment should read *his* garment.

8, 4th paragraph, omit *at* before the word *present.*

51, 17th line from top, for *point* read *paint.*

52, 16th line from top, omit word man.

24, 3d paragraph *into* sympathy should read *with* sympathy.