REVIEW

OF THE

WEBSTER CASE.

BY

A MEMBER OF THE NEW YORK BAR.

"In civil cases, it is sufficient if the evidence on the whole agrees with and supports the hypothesis which it is adduced to prove; *but in criminal cases, it must exclude every other hypothesis butth at of the guilt of the party.*"—1 GREENLEAF ON EVIDENCE, SEC. 13, ADDITIONAL.

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The calm, unprejudiced observer cannot have failed to observe the alacrity with which, upon the commission of any supposed crime, popular curiosity commences the hunt for the guilty offender: especially if the crime be the taking of human life, does the popular feeling pant for the murderer. Blood has been shed, and some one must expiate the offence. We are almost obliged to believe the horror less that murder has been committed, than that the guilty perpetrator is not ferreted out to be held up as the universal topic of conversation and speculation.

If a certain arrangement of circumstances designate an individual as the probable culprit, how keen is often the satisfaction expressed. Speculation is received as evidence; and the desire to succeed suspense with discovery frowns down all juster feelings of humanity. Repeatedly has it seemed in our community that the rules of law provided for the proof of *innocence* instead of proof of guilt. The accused culprit who cannot immediately and unreservedly explain every circumstance of alleged evidence has in popular estimation become a convicted criminal; and the forms of law which necessarily succeed are chided for delay or impatiently surveyed. Public prosecutors imbibe the feeling abroad; and in numerous instances act as if they were conducting a matter of self-interest, rather than assisting in the righteous and calm determination of justice.

Each and all of these "*facts of the day*" have been strikingly illustrated in Boston, from the hour of Professor Webster's crimination until the hour of his sentence. From the time that the officious alacrity of the college janitor furnished the legatees of Dr. Parkman and the horror-seeking citizens of his neighborhood, with his piece-meal remains, it was painfully evident, from the prejudice abroad, that unless miraculous agency was given to the unfortunate

accused, his memory, which was dearer than life, was forever blackened. The irreproachable life of fifty years fell in a moment before the suspicion of a flippant servant. From the polished brutality of the police officers who gave evidence that they had studied the tactics of Newgate to considerable purpose; from the avidity with which the purse-holders of the deceased entered into the charge; from the cold-blooded shoulder-shrugs with which the majority of his fellow-professors received intelligence of Dr. Webster's arrest, it would fairly seem that the stake of half a million of property and the vacancy of a college chair, were the most powerful incentives in the hunt of defamation and expiation. And thus it became the common cant of conversation, and in a few instances, the remark of educated men, "It is to be hoped Dr. Webster will be enabled *to show his innocence*, (*!*) but we fear he cannot."

Omitting any review of the curious secret inquest of the Coroner, because of Boston origin, and little likely to be elsewhere imitated; we come at once to the survey of the great legal melo-drama, and of the matters which transpired in its action.

The Bostonians have congratulated themselves, with their usual self-complacency, upon the decorum which marked the progress of the trial. The congratulations were not undeserved; for the gravity and pomp of the whole proceedings received comment from all the land, widely as the telegraph enchained its attention. And in after years, the family of the unfortunate prisoner may truly say of the actors at the court:

> "They broke his heart
> As kindly as the fisher hooks the worm,
> Pitying him the while."

With all deference, however, to the courtesy and decorum of the occasion, one cannot help thinking that a little wholesome severity and pointedness of cross-examination from the prisoner's counsel toward some of the witnesses, would have been pardoned even in Boston, and perhaps accomplished significant good for their client. What habitué of the New York courts, who reads the cross-examination of Littlefield, does not regret that a Whiting, a Graham, or a Brady could not have pressed with iron severity the exposed points in the direct testimony, which seem to have overcome Messrs. Sohier and Merrick with the lightness of a summer cloud, and exciting no special wonder.

The whole trial wears an unmistakable Boston stamp. The Parisian widow, who has descended to a sarcasm-loving posterity for her shrewdnes in advertising upon her husband's tombstone her contin-

uance of his business at the old stand, is outdone by the Boston witnesses. And whether we think of the Dentist, who, with so much pathetic pertinacity, swore to the teeth he had manufactured three years before; or a brother Dentist, who was careful to make himself known as the original manufacturer of mineral teeth; or the Twine Dealer, who descanted upon hemp with appropriate gusto of prolixity; or the Professor of Chirography, who picked out letters and figures, and swore to their identification of handwriting in the same breath with which he puffed himself, we are struck with the sang froid of Yankee eye-interest which characterized this wholesale destruction of character and life.

Attention cannot fail to be drawn to the *celerity* with which the remains discovered one evening at Professor Webster's apartments were denominated "Dr. Parkman's," and the now convicted man denounced as his murderer. The doctors in attendance at once pronounced them parts of one whole. The stains upon the walls of the stairs and upon certain wearing apparel were immediately pronounced blood. Small regard seems to have been paid to the fact that the discoverers stood within the walls of a medical college, a few feet from a dissecting room, and where of all places in the world fragments of the human frame could be concealed by wicked machinators to the best advantage, and within a chemical laboratory where stains of all kinds were as common as morning dew-drops in a meadow.

As we have seen that Boston is yet a respecter of forms and ceremonies of legal investigation, so do we see from the evidence that her police continue respecters of the ancient customs in criminal law; for not content with taking an unsuspecting man from his family by most false pretence of assertion, the officers of justice, after first trying what effect the sight of a dungeon and the cool charge of murder would have upon the nerves of a constitutionally timid man, conveyed him to his scientific haunts to gaze upon roasted remains; as if, in obedience to ancient legal superstition, the blood would flow at sight of him and so indubitably attest his guilt.

Whether after patient investigation the discovered remains were those of Dr. Parkman, is to be answered solely by the testimony of Dr. Keep. And not for worlds would we be in his place. We say solely by his testimony, because although other peculiarities of resemblance were in evidence, yet on scrutiny the grounds for these resemblances, and the certainty of their existence, are exceedingly slight. The agent of the deceased "did not like to say positively

that the remains found at the college were those of Dr. Parkman;" his brother-in-law merely recognized by the hair on the discovered breast (discolored and eaten as it was by acid) and by one of the legs (having seen it *once* when the deceased had playfully rolled up his trousers to show his hardihood in wearing no drawers.) No vestige of clothing, or spots of blood were anywhere found on the premises. Twenty or thirty pounds of blood (assuming the murder to have been there committed) had been absorbed somewhere, and made way with. No personal property, nor its remnants, of the deceased came to light. That the remains were brought in naked and already dead, and disposed of as these were found, was a hypothesis perfectly reconcileable with these last stated facts, and yet it does not seem to be suggested to the minds of any of the discoverers. Was the janitor, who skylarked every evening, so faithful a watcher; was Boston so virtuous a city that burglars and false keys were unknown in her precincts; was Parkman so poor in pocket funds that temptation to robbery and murder was out of the case; was there no other poor debtor than Dr. Webster whom, in a life of grasping "his due," he had hunted to desperation; was the quarrel between Parkman and Webster unknown to any one; did no human eye behold an eccentric rich man running with money in his hands?

In that charity of feeling which we contended for at the outset toward suspected persons, we have no charges to bring against Littlefield. But we propose to glance over his evidence for the sake of the hypothesis, that were he on trial how would circumstances fit him.

Early in the week of disappearance he becomes cognizant of a quarrel existing between Dr. Parkman and Professor Webster. He notices particularly the excited manner of the former. He remembers some scientific allusions to the vault beneath the laboratory, made by Dr. Webster, which can, in an emergency, be used with crushing power. On the afternoon of the disappearance (although of course he has not then heard of it), he is noting something suspicious about the Professor's movements. His laboratory is locked, although that is a usual thing, and but a week before Littlefield had denied the Professor to the painter of diagrams, because he was locked in and busy. He notices that Dr. Webster remains late, although on the night of the interview when Dr. Parkman was so excited, the Professor was equally late. On the morning after the disappearance, he encounters Webster in the entry, and they together unlock and enter the apartments. Nothing unusual is then seen. He parts with him, but hears some one in the laboratory long

afterwards, and yet the Professor is in Cambridge that day at one o'clock, and remains at home all the afternoon and evening. Upon the second day after the disappearance (being Sunday), he hears for the first time from Professor Webster, that himself and his creditor had had a meeting, and the same night charges the Professor with the murder to his wife; charges him with murder when nothing has transpired to warrant the idea that any one has murdered Dr. Parkman, and when all the friends of the latter are fearful he has wandered away in an aberration of mind, as he had done before. When a day or two afterwards the officers came to search the building, Littlefield is their cicerone, and proceeds at once to conduct them to Professor Webster's room to commence the search. The officers propose a search of the dissecting vault by lowering a light into it. "*I told them* (quoting here his own testimony) *there was nothing in there but what I put in there myself; that no one but myself had access there, and that it was locked and the keys in my possession; they wanted to lower a light down in the vault, but I told them it would not burn in the vault, etc.*"

Why may not the remains of the deceased Dr. Parkman have been then in that vault? Why not as well as in the privy? Why may not the objection of the janitor to the searching of the dissecting vault be as pregnant with meaning against him as it is contended the alleged diversion of attention from his private room by Dr. Webster, is against the latter?

Littlefield knows how to get into the Professor's laboratories by other means than through the doors, because after feeling unusual heat through the walls adjoining the Professor's furnace, he enters by means of windows, both the upper and lower laboratories, and there contents himself with a very superficial reconnoitre, considering he had been for some days impressed with the idea that Dr. Webster is the murderer. He glances at the furnace, and looks into a hogshead, "thinking Dr. Parkman may be in it," and then leaves. But here is the fact established that he has means of access to the laboratories at any and all times, without interference with bolt or lock.

Upon the afternoon of Thanksgiving-day he commences to break into the laboratory vault. He commences at three o'clock, but leaves off work at four o'clock. For what? to dress for a ball. For three days and three nights has he carried about him the suspicion that Professor Webster is the murderer. He has, with this suspicion, listened at key-holes, peered through crevices, entered the laboratories, looked into hogsheads, and investigated every place

except this vault. How extraordinary, that after working an hour at the wall, he should forget for awhile such dreadful suspicions, and leave investigation for merriment! He has, then, notwithstanding his complaint of the tools he worked with, broken through two courses of brick. Two courses of brick!—how much thicker are walls usually made? Should he not have known that a few more strokes of his hammer and the vault was entered? He proves the fact so to be—for upon his next exertion he demolishes the wall *in a few minutes.*

The morning after the ball—after his hour's labor—he is in bed until nine o'clock. In the afternoon he returns to the wall. Officer Kingsley interrupts him as he is recommencing, and requests to be let into Dr. Webster's room. Littlefield forgets the windows, and his surreptitious entrance a day or two before, and replies, You cannot, the doors are locked. At the same time he sees Officer Trenholme; tells him what he is doing; *he does not ask him to accompany him as a witness to his labors*, as one would naturally suppose him, under the circumstances, to ask; but says to the officer, Go away, and come back in twenty minutes. The officer returns at the end of the time, but Littlefield has already broken through the walls, detected the remains, remarked in the tearful agitation of his frame (as described by his wife) that they were under the Professor's privy-hole, and hurried away to Dr. Bigelow's in a state of increased agitation, *but nevertheless collected enough to lock the cellar-door after him*, for when Officer Trenholme desires to go down, the wife lets him in with a *duplicate key.* By-and-bye he returns, the City Marshal and other officers are there; while in the vault, steps are heard in the laboratory above; *Littlefield exclaims, Webster is there now!* Was he there? Had he not seen the Professor leave the premises? He was not there. *It was his wife and children*, as he subsequently discovered.

What a moment to give the *coup de grace* to a conspiracy! The husband has been *alone* down stairs, and *alone* (though witnesses were at hand) had discovered one portion of remains; the wife up stairs, where other portions were in a few moments developed with a knife most carefully placed, and directly by a cut in the flesh.

Littlefield bustles around the laboratory, and with marvellous celerity, hatchets, knives, towels from the vault marked "W," bunches of keys, bones in the furnace, trowsers and slippers stained, are produced, and exhibited with the remains in the presence of a gaping little crowd to the prisoner. What wonder that he became temporarily delirious at the exhibition of all these ac-

cessories of crime, as the thought instantaneously flashed on his logical mind,—what fearful evidences !

It was urged by the prosecution that the remains were found in Dr. Webster's custody ; but was not Littlefield keeper of the premises ? It was urged that Dr. Webster had had a week to consummate his bloody work ; but who was the most in the building and haunting the laboratory passages with singular fascination ? It was urged that Dr. Webster was constantly making pointed enquiries as to the disappearance ; was not Littlefield doing the same thing ; was not the latter fretted and irritated from his own account by the questions hourly put him on the subject ; was he not found an hour or two after his Sunday interview with Dr. Webster, talking of the disappearance to the toll man and some bystanders at the bridge office, and carefully repeating the admission Prof. Webster had made as to the interview ? It was urged that Dr. Webster went into hysterics *one evening ;* was not Littlefield in a round of suspicious excitement, curiously associated with merry-makings, *for a whole week ?* It was urged that Webster, on his trial, was anxious and troubled in physiognomy ; was that worse than the flippant oratorical manner of Littlefield, who was on the stand swearing away the life of a seven-year employer, solicitous to inform the jury that Webster had never given him a cent-worth gratuity, (although it was well known that Webster's generosity was prejudicial to his interest,) and endeavoring to be humorous ?

Remember in all these statements we are pursuing an hypothesis, which we have a right to do in pursuance of the rule of law, which was *acknowledged* by the Judge and the Attorney-General, but strangely *disregarded*, that the matters of circumstantial evidence must approach direct testimony and lead to no other *rational* hypothesis than the guilt of the accused.

Much stress has been laid upon the conduct of Dr. Webster. We consider that his conduct offers, from first to last, striking evidence in his favor.

He is at home on the fatal Friday, by his domestic board, calm and easy. He mingles in the social amenities of life, (pleasanter than which exist in few places out of Cambridge,) with his usual hilarity. He retires to his couch—breakfasts with his family—is absent a few hours before his dinner—returns at one o'clock to dinner —remains at home the entire afternoon—reads from a book to his family in the evening—attends the college chapel in the morning—remarks to his household that he must go to Boston and visit Dr. Parkman's family, because he has observed enquiries after the *un-*

known gentleman whom the absent man must have met—with anxiety by no means remarkable, under the circumstances he has his dinner earlier than usual, that he may fulfill his visit—Dr. Francis Parkman is visited—with this interview the Reverend gentleman is dissatisfied, because Dr. Webster's conduct exhibits no sympathy. What sympathy is expected from a hunted down, vilified debtor, toward a relentless creditor, whose taunting remarks were still fresh in his remembrance? Besides, the man, as yet, was only missing, and his eccentricities were widely known, and readily suggested his absence. Was not this want of sympathy proof of innocence? would not guilt have been prompt to *enact* the sympathy? Webster returns to tea, and spends the evening in his usual manner—he is very cheerful and social all the entire week, playing whist with his neighbors, working in his garden, and on Thanksgiving eve attending a large party.

Could he have been the guilty murderer it is charged he was on the Friday previous, and have exhibited no moodiness, dejection, or concern? Was he not surrounded by anxious, loving eyes who would detect an unquiet thought almost before it was shadowed on his face? What sort of self-possession is that of the murderer? Is it not variable? Is not his exhilaration artificial? Is his taste for domesticity as natural as ever?

A week has passed away, and one evening the officers from Boston stop at his house. They do not come by omnibus, but by carriage. There is not one of them, but three. He is told that he is demanded to assist in another search. Not a blanch in his face, or a falter in his tone as he assents. He draws on his boots with deliberation. He remembers his keys. He is told they have keys,—still no blanch or falter. He enters the carriage. He talks of various subjects. He remarks that the carriage is driving wrongly. The officers lie to him. They stop at a strange place—still no trepidation; but turning round, he demands the meaning of all this. Like a ball from a musket comes a charge for murder, with the information that he is in prison!

Murderers almost always have studied a part. Professor Webster, were he guiity, had had a week for this study. The guilty man has prepared himself for a shock. Talk of the calmness of innocence! Go with us to the annals of crime, and there ask which is the most self-possessed, guilt or innocence?

The conduct of the Professor at his laboratory may be answered by the same line of observation. But amid all his agitation there was one thing which does not savor of guilt. When the privy door is

opened, when the furnace is inspected, (both of which turned out to be guilty repositories,) the Professor made no objection ; when the private room, where nothing of importance was found, was approached and broken into, he requested the officers to be careful or they would break the bottles and do great mischief ; he objected, also, to the breaking of the drawers, because nothing would there be found except demijohns. The man of guilt in such an emergency would have thought little of his property, and have been indeed rejoiced that attention was diverted to insignificant things.

It may be said these are trivial things : but straws show how the wind blows ; and matters like these, even if they be trivial, are none more so than the teeth which, in all probability, will cost Dr. Webster his life.

It is urged that Dr. Webster refused a preliminary investigation. Dr. Webster had had time to rally his thoughts ; his was an educated mind ; he well knew what preliminary examinations were in times of excitement, when the very air was tainted with prejudice ; he saw what an array of circumstances were linked against him ; his life was not only threatened, but his character ; if there had been machination in the case, it was the work of ingenuity, and time and deliberation were requisite for its overthrow. Approach any man who has been charged with crime and gone through the ordeal of a preliminary examination, without having immediate and irrefragable proofs of innocence, and ask him if he would advise preliminary examinations ? What are preliminary examinations under ordinary circumstances ? Trials where there are a thousand judges and hundreds of thousands of jurymen whose voices become terribly powerful when the *one* judge and the *twelve* jurymen are summoned for his hearing.

In cases of murder-charge there are usually four trials : 1st. Before the committing magistrate. 2nd. Before the coroner. 3rd. Before the grand jury. 4th. On the final arraignment. Philanthropic laymen may talk as loudly as they please of the might of innocence and the power of truth at investigation, but your Old Bailey practitioner and your Tombs lawyer, will tell you that "investigations on the spot," (as they are called) are like players at blind-man's-buff, who use handkerchiefs of gauze and catch without the trouble of groping or hunting.

What does the law imply when it says, that circumstantial evidence should be such as to produce nearly the same degree of certainty as that which arises from direct testimony, and to exclude a rational probability of innocence ? Why, that each and all of the

circumstances may exist, singly and together, and yet the prisoner be innocent. In the evidence offered at Boston they *may* thus exist.

Dr. Parkman was never seen to enter Webster's room. The bones in the furnace, the remains in the laboratory may exist, and yet Dr. Parkman be living somewhere, or lying at the bottom of some road-side ditch. So long as there is a possibility of such a thing, how dreadful appears the verdict! The knife—the twine—the towels—the hooks—the box—the tan—the intricacy of accounts—the anonymous letters may all exist, and yet no guilty connection between them and Dr. Webster subsist in reality. There was blood on the knife, but the express man saw Webster using it when he had just cut his hand. A guilty man would not have concealed knife and remains *together*. An idiot would scarcely have failed to perceive their connection. Fragments of bone could be pocketed and thrown away. If Dr. Webster, being guilty, could act with the self-possession he exhibited at home, would he not have used the same at his laboratory? The twine may have been purchased innocently and used by others. The towels swathed on the limbs, looked more like conspiracy than guilty concealment, because the limbs were but common to the human species; when connected with marked towels they approached identification. The hooks were found wrapped up in newspaper, the same as when purchased. The box was in no wise related to the remains. If Professor Webster had purchased a hair trunk it would have been the same—perhaps a stronger circumstance, for it would have been said, hitherto he sent things to Fayal in air-tight boxes, but here is some new contrivance less suspicious than a box. The bag of tan had, to all appearances, been untouched. The grape vines were not clutched with avidity, but remained scattered about the passage-way through evident unconcern. Dr. Webster was no book-keeper, but proverbial for his slovenliness in pecuniary transactions. There are hundreds of men wedded to books, and affairs of life not appertaining to this bank-note world, who cannot one week remember the transactions in money matters of the last week; who have less management of the purse than a child. The Professor had, at all times in his life, occasion to save up money; for day by day his creditors pressed him up, and any bank account lying to his credit was sure to be trusteed. The anonymous letters, if written by Webster, were little likely to be mailed at his place of residence.

And so we might continue—not for the purpose of proving Dr. Webster innocent. That, under the net of circumstances woven about him, would be a dangerous task. But to *show* that other series

of rational hypothesis, and another hypothesis as a whole than his guilt, were deducible from the evidence.

Apart from all these things, are to be considered the circumstances attending the so-called alibi, which strengthened the hypothesis of conspiracy, or forbid belief in the government theory that Dr. Parkman entered the college at half past one, and never left it alive.

Few in the city of Boston, who knew the deceased, could ever have mistaken his person. If his physical conformation when dead was so striking for recognition, as the government by their witnesses alleged, how much more striking was it when clothed with vitality, and accompanied with eccentricity of movement? There were six undoubted witnesses who swore to the recognition of Dr. Parkman after half past one o'clock, walking the streets of Boston. Mrs. Hatch had known him fourteen years, and saw him near two o'clock. She fixed the day (as indeed there could be little difficulty, for it succeeded Thanksgiving, the great holiday of New England,) from data in which her husband concurred. The Clerk of Deeds and Mortgages had known the missing man for five years, and by means of his official capacity possessed undoubted means of studying his peculiarities. He saw him a little after two o'clock. He also had his data of day and hour; for his memorandum book showed him the former, and he noticed the latter when he started from his office, and then saw it was two o'clock. He noticed that the Doctor's hands were behind him. Mr. Wentworth saw him at a later time, walking in similar attitude. Mr. Cleland had known him eleven years, and noticed him about the same hour; not *saw* him only, but *noticed* him walking with a laboring man, as he supposed. Mrs. Rhodes had known him twenty-five years, and saw him while with her daughter, and passed him on a narrow side-walk. The Doctor bowed to them, and was walking with a man. Her evidence, as to time, was very important, because it dovetailed with that of the apothecary who sold Webster his cologne; and the two together showed that Parkman and Webster were seen in the streets of Boston about the same time.

How was this testimony evaded by prosecution and jury? We shall see when examining more fully into their course.

But, to an unprejudiced mind, how striking is this evidence. Not to show that Webster was innocent, but to raise a doubt of his guilt. It was not the evidence of *one* witness, but of *half a dozen*; not the evidence of casual acquaintances, but of those who had known him for years as one of the notables of Boston; not the evidence only of those who glanced, but who *observed.*

It was said there was another man who resembled Dr. Parkman. What !—say this after spending ten days of debate upon the fact that he was so remarkable a man that his lifeless remains could not be mistaken ? Why may not the bystanders of the college have seen this *alter ego*, instead of the Simon Pure, as well as the witnesses in the streets ?

We come now to the course of the various counsels, of the judge, and of the jury.

The silence and timidity of cross-examination evinced by the counsel for the defence, at an early stage of the proceedings, betokened to the lawyer spectator that in all probability they had in reserve certain evidence which would completely break down the case of the prosecution ; but when the proceedings were closed, the conclusion was irresistible that this silence and timidity were akin to the course of an inexperienced attorney, rather than of the practiced barrister. Or, perhaps, when we number the years which the counsel have passed at the bar, each of them thought more of playing the polished gentleman than discharging the duty of the enthusiastic advocate ; and kept ever in mind that decorum and courtesy were more important than the acquittal of their client.

Their cross-examinations were almost solely upon the matters of the direct testimony. It cannot be said, as in some States it could be urged, that this was their rule of action. In Massachusetts, as in this State, have been adopted the length and breadth of the English rule which allows an introduced witness to be examined in cross by leading questions upon the whole case, and not limited to the matters upon which he has already been examined in chief. Had the honorable counsel in remembrance the rule of the United States Supreme Court *forbidding* this ; and had he forgotten the antagonistic rule of his own State, early laid down in a case where a namesake of his own client figured, that of Webster *vs.* Lee, in 5 Mass. Rep., at p. 334 ?

In perusing the evidence, the legal, and even the popular reader, asks at every page :—why was not *this* matter and *that* circumstance diligently pressed ?

Was delicacy so much at stake, and the nerves of court and jury so refined, that the relatives swearing to the hair and the legs could not be pressed more rigidly for their means of knowledge ? How often had the land agent and the brother-in-law seen the hair they swore to ? When Kingsley testified to asking for a pen, and to having Littlefield hand him the reed one which subsequently figured so

largely, why were not Littlefield's demeanor and language on the occasion more particularly inquired into? When Littlefield handed him the reed pen, how came he to say—"You can't write with it?" Where was Littlefield cross-examined on this point? Was the fact of the dissecting-room being found unbolted the morning after the disappearance, when it was bolted the night before, of so little importance that it would not bear a quarter hour's examination? Why was there not instituted a close investigation upon that matter of the sledge-hammer which so miraculously disappeared, and which depended for existence solely upon the veracity of Littlefield, when the fact was glaring, that if the hammer ever figured in the bloody tragedy it was more bulky than the knife which so singularly remained to be a witness? Why was not Littlefield's behavior about the dissecting vault diligently investigated; or his means of access to the laboratory through windows at one time as well as another; or the whole tenor of his mind almost minute by minute from Friday to Friday brought into confessional; or his neglect to sooner investigate the mystery of the privy; or whether the key was not hanging there when he was about; or why he desisted in his masonry demolition; or how he came to exactly hit upon the place for demolition most contiguous to the spot where the remains were found; or whether it was not easier to fit a key to the privy, unnail the seat and lower a lantern than to knock down the wall of a vault? Why was not his life raked over from beginning to end; his ways of life investigated that his credibility might be securely known? Were the counsel fearful of a libel suit; or of an assault and battery; or a loss of popularity?

When Dr. Francis Parkman testified on his direct examination that Dr. Webster in the Sunday interview "displayed much nervous excitement in his demeanor," but not more than is usual with him, why was not this whole matter of demeanor and sympathy rolled into strips and plates as a gold-beater would expand the precious ore? Were the counsel fearful from this quarter of a pulpit anathema?

Why were the police officers treated so tenderly? Why was not their motives in deceiving Dr. Webster at the start from Cambridge, and on the road to Boston, more fully investigated? Why was it not traced to a cause readily suggested, that of a desire to manufacture testimony? Why did they not explain the reason that he was not informed of his arrest at his house, and duly cautioned in his conduct? Was the Professor a desperate man, who would summon a crowd to release him; would he have escaped from *three* men?

Why was so much hearsay testimony, and so many conversations, and so many collateral questions allowed to creep into the evidence from the prosecution?

The defence very properly, however, resisted the introduction of the penmanship evidence. And yet there did they look into the question with proper lights? Here was a Professor of Chirography acquainted with ordinary handwriting *with a pen* called to prove *by comparison*, handwriting alleged to have been done *with a brush or a stick.* We say by comparison because the witness had never seen the prisoner write, and knew only his signature. He was an excellent witness to prove that the anonymous letters were in all probability not written with a pen; but beyond that, he had no more right to detect resemblances than the Judge. For this purpose alone he was undoubtedly introduced, but the manner of the cross-examination had the effect of making him a witness as to the authenticity of the anonymous letters charged upon Dr. Webster.

The physician who saw Dr. Parkman ascending the laboratory stairs, was allowed to depart from the stand without a word of cross-examination!

These matters in reprehension of the counsel for the defence would be perhaps of little moment, had they not been succeeded by additional and more fatal errors. In pursuing these we may find apology in the opening speech. Says the counsel, "The position of jury is more fortunate than that of the counsel. If *they* erred, nothing could save them from their own self-accusations, from their awful accountability to the family, *or from the judgment of a scrutinizing and exacting profession.*"

In the opening by the defence, the course of the counsel was arranged under the following heads:—First; the rules of law were to be presented. Second; the indictment would be examined. Third; the nature of the evidence of the prosecution would be examined and sifted. Fourth; its complete insufficiency to make out any criminal charge when regarded under the principles of law applicable to all such cases. Fifth; the heads of the evidence which it was expected to produce for the defence.

The matter introduced under the first and second heads should *never, never* have been touched upon by the defence.

From the moment we understood that the counsel were talking to the jury about manslaughter, we gave over Dr. Webster's charge of acquittal. So suicidal a policy was never known in a criminal case. Dr. Webster, if guilty of homicide, was guilty of murder. Where was the shadow of evidence in the case which could suggest man-

slaughter? Had the counsel forgotten that in all killing malice was presumed unless there was something tending to qualify the crime? Substantially there has never been a departure from the rule thus laid down in Blackstone, "for all homicide is presumed to be malicious until the contrary appeareth in evidence." There was no evidence in the case, save from the Professor's admission, that himself and Dr. Parkman ever came together. There was no circumstance to show the probability of a quarrel. Their client's statement had alway been, He went out after I paid him the money.

If in a charge for murder there are any circumstances of accident, necessity, or infirmity of which the prisoner would avail himself in excuse or extenuation, they ought to be proved by the prisoner in his defence, unless they arise out of the evidence produced against him. In the case at bar, the prisoner could prove no excusing or extenuating circumstances from which the manslaughter was to be inferred, for no one witnessed the interview. They did not arise out of the evidence for the same reason. Thus we say that in law as well as in views of expediency, the dwelling on manslaughter was an error.

The course of the counsel on the defence was very plain. He is innocent of the homicide, should have been their cry from first to last; and as well that his position in the community, his conduct with his family, and his veracity, all forbid the suspicion. That he was the victim of a conspiracy, and knowing no more of those piece-meal remains than any of the jury.

And yet here was a counsel debating the question of manslaughter, and the various shades of homicide! A stranger to the trial, taking up the speech, would naturally have inquired, what were the circumstances of the quarrel; what induced the heat of blood; what was the nature of the sudden provocation in evidence?

Says the counsel, speaking of the shades of malice, "The line is often a nice one, and, indeed, sometimes faded into shadow. But it was important to keep the line steadily in view, for death was on one side of it. *It was not to be lost sight of in any step of this trial!!!* The idea of sudden and great provocation *was to be constantly kept in view.*"

When such an issue was raised, we wonder the congregated bar did not insist upon an instant withdrawal of Mr. Sohier from the case. He was addressing men who were not possessed of the keenest logical minds. He was admitting to them, in debating this question of manslaughter, that there was a possibility of Dr. Web-

ster's committing the homicide. If he admitted the homicide, he almost as well admitted the inhuman barbarities committed after death.

Was he intimidated by popular feeling? Was he frightened by the evidence of the prosecution? Had he no confidence in his case?

In either of these contingencies, he was more unfit for his post than the most timid of his juniors. We venture to say, there were scores of law students from the neighboring law-school, who would never have committed these mistakes.

The counsel who at any time loses confidence in his case has no business to remain longer connected with it. But if he be a man of nerve, and if the feeling is irresistible at too late a stage to withdraw, let him affect the virtue, and act with the greater skill.

He next touches upon the adjoining neighboring ground of defect in the indictment; arguing technicalities which would have done honor to the practitioner of a justice's court, ambitious of smartness, but which was, under the grave circumstances before him, grossly inexpedient and erroneous. Apart from the mistake of his law on the subject, it was immaterial how the killing was accomplished; that was denied in toto by his client, and that should have been his only rule of action.

His objection was to the count in the indictment, that the prisoner inflicted the deadly wound by some unknown weapon. He called upon the prosecution to show how Dr. Parkman was killed by Dr. Webster. The youngest District Attorney, in any county of any State, fresh from the latest edition of Russell on Crimes, would have told him that which the Judges laid down in the charge, that the count was a good one.

But were it ever so bad, the counsel should never have alluded to it. Juries are ever suspicious of technicalities. They view them as subterfuges of guilt; and a resort to them is, in popular estimation, a half confession.

The junior counsel for defence, on these matters of manslaughter and defect of indictment, was culpable enough; but his senior was more reprehensible. In his closing speech, he states a lamentable paradox. "Dr. Webster denies that he did the murder. But, gentlemen, *his counsel cannot know what effect the evidence which the government has produced may have on your minds;* and if, therefore, you should arrive at the conclusion that he is guilty, then, gentlemen of the jury, you are to decide whether the homicide is murder or manslaughter."

Error accumulated error. With the alibi evidence in their hands, and that from the Webster family, the counsel for the prisoner should never have offered any other. They best knew whether this testimony was strong or weak. If it was strong, it was sufficient of itself; but the addition to it of the remaining testimony afforded presumption to prosecution and jury, that it was in reality weak.

Over twenty witnesses were brought to prove his previous good character, merely because the law allowed it. As if it was not in *popular knowledge* that the mildest dispositions had committed murder! As if murderers generally were brought up to the business!

The manner in which the prosecution had left the question of the teeth was comparatively unimportant. The original makers of them had sworn to their identity, and the absurdity of the evidence was prominent matter for comment in argument. The jury should have been impressed with the interest that Dr. Keep possessed in identifying his work; with the suspicious pathos which accompanied his evidence; with a common-sense view of the improbability that a set of artificial teeth could have been burned and yet identified.

But the teeth received importance from the defence. Dr. Keep's testimony was made of moment by the introduction of evidence to contradict it. And thus, not only was an absurdity stamped with probable authenticity, *but an opportunity afforded the prosecution of strengthening their testimony on the subject, by rebutting and corroborative testimony.* The defence should have known that when the consistency of any professional man in a matter affecting the pride of his art, is impugned, a host of friends can be found to support his statements.

And when the prisoner rose to his speech, why did not his legal custodians pull him to his chair, or by some ruse that should easily suggest itself to Yankee ingenuity prevent his address? What a moment for his counsel to spring forward with the exclamation, "My worthy friend, however innocent you deem yourself, *we* alone must declare that!" and who can doubt the effect which would follow such a course?

What are the charges we bring against the conductors of the defence? Culpable management of the weapons of cross-examination; glaring want of confidence in their case; suicidal raising of inexpedient, distracting and dangerous issues on the questions of manslaughter, and error of indictment; the dwelling upon inconsistent theories; the proving too much; the clothing absurdities with

importance ; and with error upon error of judgment and knowledge.

These are all so glaring that a proper regard to the maintenance of an elevated standard for ability in the great and glorious profession of the law overcomes all ordinary considerations of courtesy and sympathy. The counsel were in no wise surprised by testimony ; they were in no wise embarrassed by the animosity of opposing counsel ; and they possessed a case which challenged toward them the envy of every ambitious advocate outside the borders of Massachusetts. And yet even around their domicils where sympathy is universally against their client, are already heard the animadversions of calm, experienced observers.

But the learned Attorney-General is entitled to animadversion as well. In the course of the opposing counsels, most striking antipodes were seen. If the counsel for the defence erred upon the side of timidity and caution, the Attorney-General committed equal error in his eagerness for conviction, by pressing upon Court and Jury absurdities and shallow artifices. If the one counsel erred in their delicacy, their opponent went as far in attack. If the conductors of the defence were ignorant in many matters, the prosecuting officer was audacious in his assumption of precedent.

What will the barristers of Westminster Hall think of the highest law officer in that State which gave birth to Joseph Story, when told that after conceding abundantly the remarkable physique of the missing man, he attempted to say that another man was mistaken for him by six witnesses ? If they wonder at this, what will they say when told that he falsified the plainest scope of evidence by offering five or six witnesses to prove that an *unknown* person had been seen in the city on the afternoon of Dr. Parkman's disappearance, who bore so great a resemblance to Dr. Parkman that he had been approached by several persons who discovered on addressing him that it was another person ? What will they say when told that this same officer blew hot and cold in almost the same breath, arguing guilt at one time, from the agitation of the prisoner, and at another from the calm fortitude with which he behaved upon the trial ? What will they say when informed that, after for many days he had laid stress upon the time when Dr. Parkman must have been murdered, he finally declared the time to be immaterial ?

The attempt of the Attorney-General to destroy public confidence in the clock, (omitting all reference to its patriotism,) was utterly unworthy the dignity of the occasion. And the same may be said of his " biological" attack upon the Clerk of Deeds. The ground

assumed by him in the latter position is dangerous to the community where he lives ; for if belief in mesmerism destroys the credibility of a witness, let the people of Boston conceal their faith in the hundreds of fellow-"isms" that taint their atmosphere.

What shall we say of the charge by Chief Justice Shaw ? Is not the legal or the merely historical reader carried back by its perusal to the times when judges overawed counsel and jury, and dictated verdicts ? What is the amount of this charge but a direction to the jury to bring in a verdict of guilty in accordance with popular feeling and my own prejudice ? It differs only in the polish of rhetoric from the language of the Arkansas frontier judge who was accustomed to say, " D—n you, gentlemen, bring him in guilty, or fight me."

It is the well-known principle of common law jurisprudence, untrameled by statute, that the facts belong to the jury and the law to the judge. But nevertheless, the judge possesses alway an immense power to influence the facts to the jury. So glaring is this abuse that the Legislature of Louisiana, in their Code of Practice, have forbidden the judge to touch upon the facts except in so far as they are connected with the matters of law.

The late Justice Savage (in the case of the People *vs.* Vane, 12 Wendell, 82) has these considerations in view when he remarked that in criminal cases where juries are lead to erroneous conclusions from judicial comment on the evidence, there is no remedy for the prisoner except through the exercise of the pardoning power.

It is no new thing for judges in Massachusetts to meddle with the province of the jury, as they will say who cast their memories back to the times of that distinguished but often erring *Judge*, Mr. Story. But we venture to say, never did they display the apparent inhumanity (none the less reprehensible because coupled with courtesy of manner, polish of diction, and pathos of tone) which characterized the charge of Justice Shaw.

Are we speaking too vaguely ? Listen to such comment upon evidence as the following : " The government bring proof that Professor Webster could have had no money to pay either of the notes ; *and he has never pretended that he had* MONEY ENOUGH TO TAKE UP THE LARGER ONE OF THEM. One *significant fact* is, that the ninety dollars which was paid him by Mr. Pette on the day of disappearance was next day deposited in bank. He also told Mr. Pette that morning that he had settled with Dr. Parkman, although Dr. P. had not then called upon him. You must judge how far

these circumstances go to prove intention to obtain the notes as motive of the homicide; and if that was the motive, it is a very strong case of murder by express malice. * * * * * * * It became known on Saturday evening that Dr. Parkman, a man known to almost everybody, had disappeared. The whole community were put upon their recollections, and *would it be strange if a great many had seen him, and yet* HAVE BEEN MISTAKEN? This negative evidence, it is true, is not conclusive in itself, *but it goes to destroy the positive evidence,* for we can hardly conceive that if there had been no mistake upon identity and time in those who saw him, a great many others would not also have seen and not recollected it the next day!"

In all of these extracts he is pressing home one fact as being significant *against* the prisoner; paralleling one hypothesis with another against the prisoner; and pointing out impossibilities in the evidence of the defence. One would almost suppose he was acting under the inhuman maxim of Beccaria. *In atrocissimis leviores conjecturæ sufficiunt, et licet judici jura transgredi.* Strike off the heading of the charge, and prune down the references to "the court," and you possess a speech for the prosecution which, properly spiced with enthusiasm of manner, had done credit to the Attorney-General.

The eulogy of circumstantial evidence by Chief Justice Shaw, is as remarkable as his omission to dwell with becoming humanity upon the many doubts in favor of the prisoner, and of the weight those doubts possessed in the hands of the jury. There was none of that kindly reference to doubt which is alway expected, and to the honor of the English and American bench be it said, generally awarded. Were there no significant facts in favor of the prisoner? Were there no absurdities in the hypotheses of the government? Were there no impossibilities in the evidence of the prosecution?

May it be long before so *bloody* a charge as this was in effect be scattered throughout the land, and be wafted to foreign shores as a specimen of American justice.

After all these things, it is small wonder that the jury enacted the solemn farce which was gone through with in their room. They had retired *to deliberate: to weigh evidence: to discuss hypotheses: to determine*, with power seldom put into mortal hands, the duration of a life, and the happiness or ignominy of a family. Yet if the accounts of the most respectable journals in Boston are to be believed, and, indeed, a letter from one of the jury to similar purport, they

had no discussion, no logical deliberation, but remained silent for most of the time, communing with themselves. *They never regarded the alibi evidence in the least;* but voted away a life with the formality of hand-raising, and upon a matter of circumstantial testimony, where there was great room for doubt. It is said some of them cried. They would have done better to have acted like men; waited for prejudice to subside; divested themselves of all influence from cant or maudlin sentiment toward public security; and talked over the evidence like persons of mature judgments.

It is not a little remarkable to note what a blubbering set the Bostonian actors in this trial were. Littlefield wept when he found the remains; Dr. Keep wept when giving his testimony; "the jury were in tears for forty minutes;" "the foreman was affected when the verdict was given;" and Chief Justice Shaw dismissed the jury "in a voice wild with emotion."

It is an everlasting pity that the learned judge could not have enlisted his sympathies in favor of the prisoner at an earlier stage of the proceedings.

Perhaps we have erred in animadversion upon the jury. Poor fellows, "Boston expected every man of them to do his duty," and convict the culprit at all hazards. They knew the feelings abroad when entering the box. They saw the timidity of the prisoner's counsel. They entered into the eagerness of the Attorney-General. They were told by the Judge, in almost so many words, that the prisoner was guilty. And thus they became weeping automatons in vindicating the reputation of Massachusetts for law and order, as their ancestors had done in former days, by burning witches and Quakers.

The political, historical, and scientific illustrations of this trial seem to have been peculiarly unfortunate in their treatment, from one source or another. In the telegraphic report before us, from the *Courier and Enquirer*, we have the fine blank verse of Lear—

> "Plate sin with gold,
> And the strong lance of justice hurtless breaks:
> Arm it in rags, a pigmy's straw doth pierce it"—

turned into a doggerel imitation of Pope—

> "Plate sin with gold, it breaks the strongest arm of law:
> Clothe it with rags, and you may pierce it with a straw."

The venerable Dr. Dodd was made to figure as executed for *murder*, in a strong appeal of Mr. Clifford, against the respectability of a Har-

vard Professor ; when any servant-girl patron of circulating libraries would have told him that Dr. Dodd was a *forger*.

And the presiding Judge saw in the analogy of *false teeth*, to the peculiar person of Dr. Parkman, the fine process of Cuivier's Comparative Anatomy. "Dr. Keep's evidence," says his Honor, "is of the same nature with that which is applied to fossil remains, by means of which a single bone is made to lead to the discovery of an entire animal of an extinct species." You may discover by the bones of an ox that it was once part of an ox, but will the bones help us to a discovery of how fat was the ox, and whether it was brindle or brown? You may discover by bones that they once belonged to humanity; but can you tell, in addition, that the man who owned them was black or white, fat or lean, a man of genius or an idiot?

In approaching the conclusion of this brief and hurriedly-prepared pamphlet, we add, lest its purport be mistaken, that as writer we have no bias one way or the other toward Professor Webster, and individually little in his favor. We have had in main view a solemn belief in which three-fourths of the American people outside Boston undoubtedly concur, that whether the convicted gentleman be guilty or innocent, HE OUGHT NOT TO HAVE BEEN FOUND GUILTY ON THE CASE PRESENTED!

A case entirely analogous can no where be found. It is sui generis. And we hope its records, in its present shape, may never stain the annals of criminal precedent, as an *authority* and *beacon-light*.

We do not quarrel with circumstantial evidence, nor impugn its legitimate force. *It is one of the sheet-anchors of jurisprudence;* yet when it grapples, let it find but one hypothesis to hold on by, and let that be the inevitable conclusion of the guilt of the prisoner on trial.

There is one very old case which may be acceptable to the unprofessional reader, and we subjoin it. A case very like Professor Webster's in its trial, where the prisoner made his appeal, and the Judge dictated to the jury. The circumstances were strong against him, and yet, as afterward appeared, *the murderer was foreman of the jury.* Let the people of Boston take heed lest a prominent actor in their tragedy be not some day discovered guilty, and so bring them into greater reproach, if indeed that be possible in the matter.

"In the reign of Queen Elizabeth, a person was arraigned before Sir James Dyer, Lord Chief Justice of the Court of Common Pleas, upon

an indictment for the murder of a man, who dwelt in the same parish with the prisoner. The first witness against him deposed, that on a certain day mentioned by the witness, in the morning, as he was going through a close, which he particularly described, as some distance from the path, he saw a person lying in a condition that denoted him to be either dead or drunk; that he went to the party, and found him actually dead, two wounds appearing on his breast, and his shirt and clothes much stained with blood; that the wounds appeared to the witness to have been given by the puncture of a fork or some such instrument, and looking about he discovered a fork lying near the corpse, which he took up, and observed it to be marked with the initial letters of the prisoner's name; the witness at the same time produced the fork in court, which the prisoner owned to be his, and waived asking the witness any questions.

"A second witness deposed, that on the morning of the day on which the deceased was killed, the witness had risen early, with an intention to go to a neighboring market town, which he named; that as he was standing in the entry of his own dwelling-house, the street door being open, he saw the prisoner come by, dressed in a suit of clothes, the color and fashion of which the witness described; that he (the witness) was prevented from going to market, and that afterward the first witness brought notice to the town, of the death and wounds of the deceased, and of the prisoner's fork being found near the corpse; that upon this report the prisoner was apprehended, and carried before a justice of the peace, whom he named and pointed at, he being then present in the court; that he (the witness) followed the prisoner to the justice's house, and attended his examination, during which he observed the exchange of raiment which the prisoner had made since the time when the witness had first seen him in the morning; that at the time of such examination the prisoner was dressed in the same clothes which he had on at the time of the trial, and that on the witness charging him with having changed his clothes, he gave several shuffling answers, and would have denied it; that upon the witness having mentioned this circumstance of the change of dress, the justice granted a warrant to search the prisoner's house for the clothes described by the witness as having been put off since the morning; that the witness attended and assisted at the search, and that after nice inquiry for two hours and upward, the very clothes which the witness had described, were discovered concealed in a straw bed. He then produced the bloody clothes in court, which the prisoner owned to be his clothes, and to have been thrust into the straw bed with an intention to conceal them, on account of their being bloody.

"The prisoner also waived asking the second witness any question.

"A third witness deposed to his having heard the prisoner deliver certain menaces against the deceased, from whence the prosecutor intended to infer a proof of *malice prepense*. In answer to which, the prisoner proposed certain questions to the court, leading to a discovery of the occasion of the menacing expressions deposed to, and from the witness' answer to those questions, it appeared that the deceased had first menaced the prisoner.

"The prisoner being called upon to make his defence, addressed the following narration to the court, as containing all he knew concerning the manner and circumstances of the death of the deceased, viz.:— 'That he rented a close in the same parish with the deceased, and that the deceased rented another close adjoining to it. That the only way to his own close was through that of the deceased, and that on the day the murder in the indictment was said to be committed, he rose early in the morning, in order to go to work in his close, with his fork in his hand, and passing through the deceased's ground, he observed a man at some distance from the path, lying down as if dead or drunk; that he thought himself bound to see what condition the person was in, and upon getting up to him he found him at the last extremity, with two wounds in his breast, from which a great deal of blood had issued; that in order to relieve him he raised him up, and with great difficulty set him in his lap; that he told the deceased he was greatly concerned at his unhappy fate, and the more so as there seemed to be too much reason to apprehend that he had been murdered; that he entreated the deceased to discover, if possible, the occasion of his misfortune, assuring him he would use his utmost endeavors to do justice to his sufferings; that the deceased seemed to be sensible of what he said, and in the midst of his agonies attempted, as he thought, to speak to him, but being seized with a rattling in his throat, after a hard struggle, he gave a dreadful groan, and vomiting a great deal of blood, some of which fell on his (the prisoner's) clothes, he expired in his arms; that the shock he felt on account of the accident was not to be expressed, and the rather, as it was well known that there had been a difference between the deceased and himself, on which account he might possibly be suspected of the murder; that he therefore thought it advisable to leave the deceased in the condition he was, and to take no farther notice of the matter; that, in the confusion he was in when he left the place, he took away the deceased's fork, and left his own in the room of it, by the side of the corpse; that being obliged to go to his work, he thought it best to shift his

clothes, and that they might not be seen, he confessed that he had hid them in the place where they were found; that it was true he had denied before the justice that he had changed his clothes, being conscious that this was an ugly circumstance that might be urged against him, and being unwilling to be brought into trouble if he could help it; and concluded his story with a solemn declaration that he had related nothing but the truth, without adding or diminishing one tittle, as he should answer it to God Almighty. Being then called on to produce his witnesses, the prisoner answered with a steady, composed countenance, and resolution of voice, "*He had no witness but God and his own conscience.*"

"The judge then proceeded to deliver his charge, *in which he pathetically enlarged on the heinousness of the crime, and laid great stress on the force of the evidence, which, although circumstantial only, he declared he thought to be irresistible, and little inferior to the most positive proof:* that the prisoner had indeed cooked up a very plausible story, but if such, or the like allegations, were to be admitted, in a case of this kind, no murderer would ever be brought to justice, such bloody deeds being generally perpetrated in the dark, and with the greatest secrecy; that the present case was exempted, in his opinion, from all possibility of doubt, and that they ought not to hesitate one moment about finding the prisoner guilty.

"The foreman begged of his lordship, as this was a case of life and death, that the jury might be at liberty to withdraw, and upon this motion an officer was sworn to keep the jury.

"The trial came on the first in the morning, and the judge having sat till nine at night, expecting the return of the jury, at last sent an officer to inquire if they were agreed in their verdict, and to signify to them that his lordship would wait no longer for them. Some of them returned for answer that eleven of their body had been of the same mind from the first, but that it was their misfortune to have a foreman that proved to be a singular instance of the most inveterate obstinacy, who, having taken up a different opinion from them, was unalterably fixed in it. The messenger was no sooner returned, but the complaining members, alarmed at the thought of being kept under confinement all the night, and despairing of bringing their dissenting brother over to their own way of thinking, agreed to accede to his opinion, and having acquainted him with their resolution, they sent an officer to detain his worship a few minutes, and by their foreman brought in the prisoner not guilty. His lordship could not help expressing the greatest surprise and indignation at this unexpected verdict; and after giving the jury a severe admonition, he refused to

record their verdict, and sent them back again, with directions that they should be locked up all night without fire or candle. The whole blame was publicly laid on the foreman by the rest of the members, and they spent the night in loading him with reflections, and bewailing their unhappy fate in being associated with so hardened a wretch; but he remained quite inflexible, constantly declaring he would suffer death rather than change his opinion.

"As soon as his lordship came into the court the next morning, he sent again to the jury, on which all the eleven members joined in requesting their foreman to go into court, assuring him they would adhere to their former verdict, whatever was the consequence, and, on being reproached with their former inconstancy, they promised never to desert or recriminate upon their foreman any more. Upon these assurances, they proceeded into court, and again brought in the prisoner not guilty. The judge, unable to conceal his rage at a verdict which appeared to him in the most iniquitous light, reproached them with the severest censures, and dismissed them with this cutting reflection, *that the blood of the deceased lay at their door.*

"The prisoner, on his part, fell on his knees, and with uplifted eyes and hands, thanked God for his deliverance, and, addressing himself to the Judge, cried out, *You see, my lord, that God and a good conscience are the best of witnesses.*

"These circumstances made a deep impression on the mind of the Judge, and, as soon as he was retired from the court, he entered into discourse with the high sheriff upon what had passed, and particularly examined him as to his knowledge of this leader of the jury. The answer this gentleman gave his lordship was, that he had been acquainted with him many years; that he had an estate of his own of about £50 per annum, and that he rented a very considerable farm besides; that he never knew him charged with an ill action, and that he was universally esteemed in his neighborhood.

"For further information his lordship likewise sent for the minister of the parish, who gave the same favorable account of his parishioner, with this addition, that he was a constant churchman and a devout communicant.

"These accounts rather increased his lordship's perplexity, from which he could think of no expedient to deliver himself, but by having a conference in private with the only person who could give him satisfaction. This he desired the sheriff to procure, who readily offered his services, and without delay brought about the desired interview.

"Upon the juryman's being introduced to the judge, his lordship and he retired into a closet, where his lordship opened his reasons for

desiring that visit, making no scruple of acknowledging the uneasiness he was under, and conjuring his visitor frankly to discover his reasons for acquitting the prisoner. The juryman returned for an answer, that he had sufficient reasons to justify his conduct, and that he was neither afraid nor ashamed to reveal them, but that as he had hitherto locked them up in his own breast, and was under no compulsion to disclose them, he expected his lordship would engage upon his honor to keep what he was about to unfold as secret as he himself had done; which his lordship having promised to do, the juryman then proceeded to give his lordship the following account: That the deceased being titheman of the parish where he (the juryman) lived, he had, the morning of his decease, been in his (the juryman's) grounds amongst his corn, and had done him great injustice, by taking more than his due, and acting otherwise in a most arbitrary manner. That when he complained of this treatment, he had not only been abused with scurrilous language, but that the deceased had likewise struck at him several times with his fork, and had actually wounded him in two places, the scars of which wounds he then showed to his lordship; that the deceased seeming bent on mischief, and he (the juryman) having no weapon to defend himself, had no other way to preserve his own life but by closing with the deceased and wrenching the fork out of his hands, which having effected, the deceased attempted to recover the fork, and in the scuffle received the two wounds which had occasioned his death; that he was inexpressibly concerned at the accident, and especially when the prisoner was taken up on the suspicion of the murder; that the former assizes being but just over, he was unwilling to surrender himself and to confess the matter, because his farm and affairs would have been ruined by his lying in jail so long; that he was sure to have been acquitted on his trial, for that he had consulted the ablest lawyers upon the case, who had all agreed, that as the deceased had been the aggressor, he would only have been guilty of manslaughter at the most; that it was true he had suffered greatly in his own mind on the prisoner's account, but being well assured that imprisonment would be of less ill consequence to the prisoner than to himself, he had suffered the law to take its course; that in order to render the prisoner's confinement as easy to him as possible, he had given him every kind of assistance, and had wholly supported his family ever since; that in order to get him cleared of the charge laid against him, he could think of no other expedient than that of procuring himself to be summoned on the jury, and set at the head of them, which with great labor and expense he

had accomplished, having all along determined in his own breast rather to die himself than suffer any harm to be done to the prisoner.

"His lordship expressed great satisfaction at this account; and after thanking him for it, and making this further stipulation, that in case his lordship should survive him, he might then be at liberty to relate this story, that it might be delivered down to posterity, the conference broke up.

"This juryman lived fifteen years afterwards; C. J. Dyer inquired after him every year, and happening to survive him, delivered the above relation."—1 *Cowen & Hill's Notes to Phil. on Ev., page* 559, ***last edition.***