



REV. EPHRAIM K. AVERY,

Taken from a first-rate Painting, by an eminent Artist, and may
be depended on as

AN ACCURATE LIKENESS.

Avery, Ephraim K
defendant,
THE

d. 1869,

TRIAL AT LARGE,

OF THE

REV. EPHRAIM K. AVERY,

FOR THE

Willful Murder

OF

SARAH MARIA CORNELL,

AT TIVERTON,

IN THE COUNTY OF NEWPORT, R. I.

On the Evening of 20th Decem. 1832.

NEW YORK:

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1833.]

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TRIAL AT LARGE
OF THE
REV. EPHRAIM K. AVERY.

SUPREME JUDICIAL COURT

Of the State of Rhode Island and Providence Plantations,
Sitting at Newport.

BEFORE CHIEF JUSTICE SAMUEL EDDY AND JUDGES CHARLES
BRAYTON AND JOB DURFEE.

Counsel for the State—Albert C. Greene, Esq., Attorney-General; the Hon. Dutee J. Pearce, of Newport; and Wm. H. Staples, Esq. of Providence.
For the Prisoner—The Hon. Jeremiah Mason, of Boston; Richard R. Randolph, Henry Y. Cranstoun, and J. Turner, Esqrs. of Newport; and — Blake, Esq. of Bristol.

TUESDAY MORNING, MAY 7th, 1833.

The Court met this morning at the hour of nine.

On the motion of the Attorney General the prisoner was brought into Court, and took his seat at the Counsel table. He was dressed in a dark frock coat, with a surtout, black vest and pantaloons. He wore a pair of green spectacles.

Clerk.—Ephraim K. Avery, hold up your hand. The Indictment, containing three counts, was here read. The first charged the prisoner with choking and strangling Sarah Maria Cornell, at Tiverton, in the county of Newport. The second count was substantially the same as the first, adding

that the said Sarah Maria Cornell was bound to a stake. The third count charged that various bruises or wounds were inflicted by the prisoner on the said female, whereof she instantly died.

Whilst listening to the details of crime set forth in this fearful document, the prisoner kept his gaze steadfastly fixed on the Clerk. He betrayed not the slightest symptom of embarrassment or discomposure; unless indeed the evidences of some internal convulsion or disturbance could be gathered from the rapid movement of the lip, as if in the process of chewing. He stood in an erect and unshaken attitude, with the right hand lodged in the breast of his surtout, and the left extended and resting lightly on the back of a chair.

Clerk.—How say you? prisoner. Are you guilty, or not guilty?

Prisoner.—Firmly and emphatically,—Not guilty, sir.

Clerk.—How will you be tried?

Prisoner.—*By God and my country.*

Clerk.—God send you a good deliverance.

The prisoner was then directed in the usual form to make his challenges, as the Jurors should come to be sworn.

The difficulties experienced in the formation of a Jury, were almost unprecedented in the juridical annals of Rhode Island. The questions which the Attorney-General proposed to submit to each Juror on his *voire dire*, touching his competency to serve, were three: 1st. Whether he was related to the prisoner, or the deceased? Secondly, whether he had conscientious scruples in finding a man guilty of a crime which the law punishes with death? and, thirdly, whether he had formed or expressed any opinion as to the guilt or innocence of the prisoner? The second Juror sworn having stated that he had not expressed any opinion, but that there was a bias on his mind, gathered from certain publications which he had read, Mr. Mason then enquired, “Is that bias *against* the prisoner.” This led to a warm and able discussion between the Attorney-General and the prisoner’s counsel,—the former contending that the admission of such an interrogatory was altogether at variance with the established practice of the State—and the latter contending that unless it was known on which side the bias lay, there would be no criterion by which to determine when the prisoner’s right of challenge should be exercised. In support of this position, the cases of Knapp and Burr were cited.

The Court said that according to the practice of the State, a Juror who had formed *any* opinion, was not qualified for the performance of the solemn office delegated to him in that capacity, but shewed an inclination to admit the principle recognized by the authorities adduced. Several jurors were thereupon interrogated.

The Attorney-General then claimed his right to press the matter further, by enquiring "whether the bias of the Juror was such as to prevent his rendering an impartial verdict."

Benjamin Hunt, the eleventh Juror on *voire dire*, in reply to this question, said that the bias on his mind would not affect his verdict.

Mr. Mason challenged him "for cause." "It was out of all the rules of humanity that such a man could return an impartial verdict. The Juror himself was not the person to know whether he could or could not. He might indeed think himself able to rise superior to his prejudice; it was the common fallacy of the heart. The learned counsel would much rather have a Juror who expressed a *hope* that he *might* rise above the influences of his prejudice, than one who declared a confidence in his ability to do so."

The Court thereupon ruled that where a Juror had either formed or expressed an opinion, he should at once be challenged for cause.

The formation of the jury engaged the attention of the Court the whole of this day and during the latter part of

WEDNESDAY, MAY 8th.

This evening the full compliment was secured, after the almost entire exhaustion of two entire panels at large, in addition to a regular panel of drawn jurors, amounting to an aggregate of one hundred and eight. The method pursued by the prisoner's counsel in the selection of jurors was one by which all ordinary systems of human calculations might well be perplexed. One individual was accepted who swore that he had rather a bias *against* the prisoner; whilst others who professed to have heard and read little on the subject or to have formed no opinion at all, were promptly greeted with the peremptory challenge. Nothing could furnish deeper evidence of the direction in which the current of popular feeling was setting, nor of the impetuosity by which its onward course was marked, than the unfavourable light in which the prison-

er's case was viewed by a great majority of the persons summoned, and the existence of which unpropitious judgment was several times expressed in terms of a rudely unequivocal character. Some few indeed there were, who declared their feelings to be perfectly neutral; but only one solitary being was found to say that the opinion he had formed was "rather favourable."

The following is a list of the Jury:

Eleazar Trevett, Foreman.	James Easton,
Joseph Martin,	William Reed,
Charles Lawton,	Gideon Peckham,
George Tilley,	Milton Hall,
Horatio Taylor,	Edwin Wilbor,
Noah Barker,	John Sherman.

The evening being rather advanced, the court was adjourned until nine o'clock on

THURSDAY MORNING, MAY 9th.

It was generally understood that the case for the prosecution would have been opened by Mr. Staples. Circumstances having occurred to render that office unpleasant to him, the opening was undertaken, on brief notice, by

Mr. Pearce.—May it please the court: Gentlemen of the Jury: The Indictment which has just been read, states the crime with which the prisoner at the bar is charged, and the manner, place, and time of commission. To these I would briefly call your attention. The offence is alleged to have been committed on the 20th of December last, at Tiverton, in this county. [The Honorable Gentleman here entered into a summary of the indictment, on its individual counts, and proceeded to say.] If we prove the charges contained in either of these counts, or if we prove the commission of an offence analagous to those set forth, it is all that can be required. As to the nature of the offence, and to show what it is, I would call your attention, first, to the law of our own state, and secondly to the definition of the crime as laid down by the most approved writers, and as now sanctioned by the authorities of this state. The crime of murder by the statute of Rhode Island [p. 339] is punished with death. It is now necessary for us to enquire what is murder, and what consti-

tutes that offence. There are four things requisite. [Blackstone's Com. v. 4, p. 95.] First, it must be committed by a person of sound mind and discretion. Secondly, when a person of such sound discretion kills another, the killing must be unlawful, that is to say, without warrant or sanction. Thirdly, the person killed must be a reasonable being, and under the King's peace, or the peace of the State; and fourthly, the killing must be committed from malice aforethought. This last is the grand criterion by which murder is distinguished from other killing. In many cases, where malice is not expressed, the law steps in and implies its existence. I apprehend that there will be no controversy arising between the Counsel on any question of this kind. In ordinary cases, the question generally is, whether the offence committed amounts to murder or manslaughter, whether it was voluntary, involuntary, excusable or otherwise. If it should turn out that the prisoner by a wilful act killed the deceased, it can not then be pretended that such would be one of those cases where a man under the influence of sudden passion or strong excitement, or in the absence of his rational powers, did that which it was not his intention to have done. If guilt attaches to the prisoner at all, it is guilt in its most odious features; it is guilt, the offspring of arrangements preconceived, deeply reflected on, and secretly and surely matured.

I shall now give you an outline of the prominent facts of this case, without detailing minutely the evidence which we purpose to lay before you, and which if we do lay before you will be sufficient, we think, to fix upon your minds a satisfactory conviction of the prisoner's guilt.

The deceased, Sarah M. Cornell, was found dead on the morning of Friday, the 21st of December about the hour of nine. When discovered, she was hanging at a stake between five and six feet high, near a stack of hay on the premises of Mr. John Durfee, distant three quarters of a mile from the compact part of the village of Fall River. At five o'clock the previous evening, she had left her home in health and spirits. At the time she was found, there were various circumstances connected with the cord and its adjustment on the neck, which subsequently led to the supposition that the act was not the act of the deceased; that it could not have been committed without some aid or assistance; that from the very position of the cord and the manner in which it

was fastened, she could not have adjusted it herself—that her death must have been produced by suffocation and strangling—and that some person must have carried her to the stake and must there have bound her. We shall show that, when found, her cloak was fast to her person,—that her hands were inside her cloak—that one arm was hanging loose by her side, and the other bent up against her breast—and that there were bruises about the body which must have been made by bands other than her own. We shall show from the condition and situation of her hair that violence must have been used by another—and by the situation of her comb that she must have struggled with some one else. If we prove these facts, I think we shall satisfy you that her death was the result of violence and that it could not have been produced by her own act.

Expecting to establish this point, and looking to it as a starting-place, the material question is, by whom was the act committed? If, having established the point alluded to, we can show a previous intimacy of long standing between the deceased and the prisoner, and such an one as to induce the prisoner to commit this act or some act similar to it, then without further investigation we furnish a probable cause to show that the prisoner is the man. But we do not stop here. I am warranted in saying that the present is as strong a case of circumstantial evidence and presumptive proof, as was ever submitted to the consideration of a Jury. If we can show that the prisoner, with this previous inducement, can be so traced as to lead to the belief that he might have done this act, then we have additional reason for saying that there was probable cause to shew that he did it. If it turns out (and so it will turn out) that on the 20th of Decembor last, a cold and wintry day, so cold that the body of deceased when fonnd was frozen, the prisoner without reason or excuse, and without imparting his intention to his neighbours or his family, left home and was absent a whole night, and that the reasons that he assigned for his absence were not the real causes, but such as were inconsistent with the nature of things, and in themselves palpably absurd,—if we trace him from Bristol at two o'clock on the 20th of December, down to the place where John McCurry lives, thence to Howland's Ferry or the Stone Bridge,—thence past Lawton's house—thence 40 or 50 rods above on the road to Fall Ri-

ver—thence over a wall and out of the main road to the village so called,—thence to a secluded place near the Stack yard,—if we can trace him back again and land him at Jeremiah Gifford's house about the hour of ten the same evening,—and if, in addition to this, we can give evidence of violence arising from the screams which were heard, we submit a very strong case to shew that her death was produced by violence, and that such violence, was committed by the prisoner. If, moreover, we prove, by a correspondence between the deceased and the prisoner, that the time and place where they met had been previously arranged, and if we there leave them together,—we place before you such a strong tissue of circumstances, as, in our opinion, will bring you to the conclusion that the prisoner must have been the author of the deed.

I am well aware that it is said that no positive proof can be brought in support of the charge. Gentlemen, some cases of murder which are most strongly established, are those where no positive proof can be procured. It is not to be presumed that an individual about to commit murder would impart the fearful resolution to his neighbours. It is locked in his own heart. Yet if any doubts do exist, the prisoner is fairly and properly entitled to the benefit of them. However well and strongly convicted a man may be, there is scarcely a case where a possibility of innocence does not exist, and where a verdict returned may not be erroneous. The case which we present precludes the possibility of conspiracy, design, or perjury, because a case dependent on circumstantial evidence must be made out link by link. It is a case as strong as if it were made out by two persons directly swearing. I regret to state, both for the sake of the court and jury, that we have some fifty or sixty witnesses to bring before you. [The learned counsel here read some passages from Starkie, vol. 1, p. 477-8 and 9, on the nature of circumstantial evidence; and continued] I have cited thus much to show that I am warranted in the remarks I have made in relation to this species of testimony.

Gentlemen, I am sure I need not make any comment on the importance of this trial to the prisoner, as well as to the government and the State in which we live. Perhaps it may be necessary to add, that it is a case of uncommon excitement; one which has created a higher degree of feeling than

any which has been investigated since the settlement of the country. Indeed a case of greater or more intense interest has never been submitted to the impartial judgment of twelve men. It is not requisite for me to call your attention particularly to the causes of this all-pervading excitement. The prisoner was heretofore a Preacher of the Gospel, of high standing, belonging to a denomination most numerous and respectable, which within the boundaries of this republic has its ten thousand licensed preachers, its three [six] hundred thousand church members, and three millions of persons in its congregation, and which, in its growing greatness, has kept pace with the progress of the country itself. No wonder then, that the friends of the denomination have had their feelings excited to know whether this their minister was guilty or not. There may be another cause for such excitement: it may arise in a measure from the efforts of anti-religionists to bring down immediate punishment on the individual thus accused. It may be of a sectarian cast, arising from jealousy on the part of other institutions, growing out of the extent and zeal, and increasing number of the Methodist church. And yet a further cause may perhaps be found in the consideration who the deceased was. She was a factory girl; one of the number of seven thousand employed in this State, and without whose labours the operations of our mills could not be carried on. These individuals now look up to us to protect their rights, and to convince them by the course we now adopt, that the protecting ægis of the law is cast around them, equally as around others. From whatever quarter this great excitement may come, or to whatever source it may owe its origin or existence, I call upon you not to be influenced by it one way or another. You are to have no bias. You are placed there as fair, unbiassed, and impartial jurors. If you are otherwise, your situation is as awful as that of the prisoner on whose cause, for life or death, you are about to pass, for you are perjured. You must stand aloof from all that can affect or prejudice your judgment; you must hear as though you had never heard, and the verdict which you render, must be rendered alone according to the testimony and the law.

1. Joseph Durfee, sworn—I reside at Tiverton, about half a mile from the bridge at Fall River, on the line of the State of Rhode Island and Massachusetts. On the morning of the

21st of last December, about nine o'clock, I was passing with my team through a lot about sixty rods from the house in which I live, and on arriving within a short distance of the stack yard, I discovered the body of a female hanging at a stake. I immediately went up to her; her hair was over her face, and I parted it away to see if there were any signs of life. Her outside dress was a cloak, which was hooked together nearly the whole length. Only one hook was unhooked, and *that* a little below the chest. She had a calash on her head, the strings were untied. Her shoes were off—her feet were as close together as if they had been tied—her toes on the ground—and her knees bent forward within six or eight inches of the ground. Her clothes, which were smooth under her knees, were thrown back underneath as far as they could reach. The calash on the right side was also back so that the cheek came against the stake. The distance between the place where the line was fastened round the stake and the top of the same, was about six inches; and from the place where the cord passed around the stake to the neck of the deceased was something short of six inches, I called out for assistance, and three persons then within hearing came to me. We got into the stack yard, and noticed how she hung. I attempted to take her from the stake by raising her up—but, as I could not well do it, a knife was handed to me, and I cut her down. The cord was on the right side, and passed up either very near the ear, or over it. I cut the knot about half an inch from where it drew together on the stake, being something more than four inches distant from the knot on the neck. I saw her shoes lying about 18 inches from her, and her handkerchief about the same distance. Her gloves were on her hands; I never discovered whether she had a bag or not. I then went for the coroner, and brought him back with me; and a jury was called. The body was carried to my house in a horse waggon, being first laid in a blanket, and a quantity of hay being placed under the head and shoulders. The road is smooth. When we took her from the stack, she lay partly on her left side, and she was placed in the same position in the waggon. Having ascertained who the deceased was, and the place at which she boarded, I proceeded to the house of Miss Hathaway, who delivered to me a trunk and bandbox, which I carried home with me. The key of the trunk was found in the pocket of the deceased. I opened

the trunk, and found four letters—two written on white paper, one on yellow, and one on pink. Three out of the four were directed to S. M. Cornell, and the other to the Rev. J. M. Bidwell, Fall River. [The letters were produced and identified.] These were all I found in the trunk. In the bandbox I saw clothing. At the bottom of it there was a piece of pencil and a small piece of paper, not more than 4 inches square. I did not then open it. I have since seen a piece of paper which I should say was the same. The next time I saw the piece of paper was on the Saturday of the same week. It was shown to me by my sister, Rosanna Borden, to whom I had previously given the key of the trunk, directing her to search if she could find any thing by which to ascertain the native place of the deceased. The knot by which the cord was fastened, is what I call a slip knot, taken in a bite. The cord was hemp, and had four ends—it was quite small, considerably less than a goose quill, and so tight that it was very deeply buried in the flesh,—more than the thickness of the cord into the neck. After the inquest, I buried the body in my father's family burying ground, on his farm. Prayer was made by Mr. Fowler. This was about one o'clock the day after she was found. On the Monday following, in consequence of the papers which were found, the body was taken up by order of the coroner, and carried to the barn near the burying ground. Doctors Wilbor and Hooper went in and examined it,—the jury was again summoned; two of the old jurors were taken off, and two others put in their places. The only reason I heard assigned for this change was, that they were not freeholders. The body was buried again the same day. On the evening of the 25th of January it was again disinterred at the request of Charles Durfee, and re-examined by Doctors Wilber and Hooper. The following morning it was finally buried.

Attorney-General.—On the evening of the 20th December did you see any person near your premises?

Witness.—On that evening, a little before sunset, whilst driving my cows across the road, I saw a man about twenty rods from the stack-yard, where the body was found, standing still, and facing westward. I was distant from him about 80 rods. My attention was drawn to that quarter by the explosion of a rock, in a direction about north from the man. From the place where he stood he could see the whole village of

Fall River; it can be seen also from the stack. The man was tall; had on a dark-coloured surtout and a black hat, with a larger brim and higher crown than common. I could not see the features of his face, and did not see him move.

Cross-Examined:—Mr. Bidwell, the minister at Fall River, was the first that recognised the deceased as Sarah Maria Cornell. I did not unhook the cloak. One of the hooks got unhooked, I think as I took her down. I am positive it was not unhooked before I took her down. In passing with the body in the wagon to the house, we crossed over a brook but not over any ploughed ground. I never knew who took the cord off the stake,—it was not there the day after the body was found. I heard from Doctor Wilbor something about the deceased having some letters, before I went to the trunk. I know the identity of the slip of paper by its size and dirty appearance. I delivered it to the coroner. [This witness was cross-examined at length as to the proceedings of the Coroner's Jury. Nothing material was elicited.]

2. William Durfee—I was taken up as a juror on the body of the deceased. I looked for the cord on the neck, but could not at first discover it. The neck was not broken, there was a deep indentation. On turning her head, we discovered a knot very nearly under the right ear. The cord passed twice round the neck. The knot is called by farmers two hitches; sailors call it a clove hitch. Job Cook and I picked the ends out, gradually carried it round the neck, and took it off. We could not have cut it off without cutting the flesh. The rope was fixed exactly round the neck; there was no difference under the ears. The strings of the calash were fast under the cord. The cord was of marlin or housin. [A small string was here produced.] That is about the size, though more open at the ends. I think it is about as long as when I cut it off. The difference between a clove-hitch and the ordinary knot is this; two half hitches must be drawn by two hands. A clove hitch must be drawn horizontally, or it will never tighten where the knot is.

Cross-Examined. —The string was cut off about half an inch from the neck,—Something was said about the knot on the stake. I went for it, but it was removed.

3 Seth Darling—I live at Fall River. (This witness corroborated the testimony of John Durfee in all the particulars as to the position of the body when found; and testified fur-

ther that)—The stake was about five feet high. The string was cut off about four inches from the stake. The grass around the place did not appear trampled on more than about the other corners; there was no appearance of a struggle. I took the knot to be what is called a double hitch: The indentation on the neck was about a quarter and an eighth of an inch deep, and it was the same depth all around the neck. I act as assistant Post-Master at Fall River. On Monday the 19th of November last I made up the mail to Bristol. — It was directed to the Rev. Mr. Avery of that place; the wafer appeared to be wet. I heard two letters drop into the Box. A letter was produced with the Post-mark Fall River Nov 19th (and figure 10,) and the witness identified it as the one marked by him, and addressed to Mr. Rawson.

Cross-Examined.—[This witness was one of the committee of Vigilance appointed for the purpose of bringing to light the mysterious circumstances connected with Miss Cornell's death, and underwent a cross-examination as to the organization and purposes of that Committee. He then testified,] I first mentioned the circumstance of the two letters, in Fall River. I Remember the day of this transaction, because the Post Master was sick, and from other circumstances. It is powerfully impressed on my mind that one of these letters alluded to was addressed to Mr. Avery.

4. Lemuel W. Briggs.—I am Postmaster of Bristol. I received a letter from Fall River the 19th of November—the postage was 6 cents. I know that I received it from the record kept in my own hand writing, and made the same day [Record produced.] I find a postage charged to Mr. Avery Nov. 12th. [This testimony was objected to, on the ground that the record ought to be referred to only to refresh the memory. The Attorney-General submitted that the objection was premature, and the Court directed the examination to proceed] and another on the 19th, postage six cents each. At the close of the quarter a bill was presented to Mr. Avery, and it was paid. On the 12th there was one mail from Fall River, and a package containing one letter, postage 6 cents. I keep a regular account of the mails received every day—and make it up the same day. I have no recollection myself of delivering a letter to the prisoner, either on the 12th or 19th of November. At that time he had a private box in the post office. I do not know whether it was in November or

December that I saw a pink letter for E. K. Avery, but I did receive such a letter. It was brought to my mind by my assistant, after the Bristol examination. I have no recollection of seeing a letter addressed to Betsy Hill in the post office, nor do I know such a person; I never heard of her till after the Bristol examination. The charges made in my book were made the day they accrued. I know this from my general practice, and I have no recollection of having deviated from it on the 12th or 19th of November. [Objected to.]

By the Court.—This is the usual course of business. The accounts are made up at the time in my hand writing. I believe they are correct. I make up the original way-bills every quarter, and send them to Washington.

Continued.—If I had been absent from home, when I returned I should make up my book from the way-bills. Three days in the week, Monday, Wednesday, and Friday, the mail from Fall River arrives the same day that it leaves Bristol. The charges of the 12th Nov. was made by myself, the other by my son. The way-bills on the 19th and 12th of November have been sent to Washington.

Cross-Examination.—My memory is not charged with anything about the letters to E. K. Avery—but I believe they came, from the record which I made of them. The bill to Mr. Avery was presented by my son, and the money brought back. Sometimes there are charges in my bills for medicines which I ‘vend,’ but in such cases I always make a note opposite to the charge. It was so in this instance. No inference can be drawn that the letter came from Fall River, from the postage being six cents. I have no knowledge that the letters were delivered to Mr. Avery, sometimes others take his letters. A six cent letter came to Mr. Avery on the 29th of November.

5. Elihu Hicks. I am coroner at Tiverton. I saw the body lying on the ground. [Appearances described as in other testimony.] One of the lips was much swollen, and very red. The indentation on the neck was so deep that the cord was almost covered. Some papers were delivered to me by John Durfee, which had been found in the trunk of the deceased, and which remained in my custody till the examination before the magistrates at the court of Bristol.

Cross-Examined at length.—The first verdict was suicide.

6. Dr. Foster Hooper.—I am a medical practitioner

at Fall River, where I have resided for the last five years. I examined the body of the deceased after it was disinterred on the Monday following her death. I did not see it before the first interment. The neck was deeply indented; the indentation was three-eighths to half an inch in depth, and nearly horizontal. The color was a reddish black. The neck was not broken. The rope passed over the thyroid cartilage and the spinous process of the second vertebra of the neck; the cuticle lay in fine plates as though the skin were drawn fast. On the right cheek and temple there were irregular indentations, perfectly colourless; they presented the appearance of having been pressed against a hard substance after respiration was stopped. The lungs were engorged with black venous blood. On the knees were several scratches and bruises that drew blood: the knees were dirty and stained green, apparently with the juice of green grass. There were a few scratches on the left leg, below the knee, and two places where the skin was knocked off nearly the size of a four-penny piece. The abdomen on the right side was discoloured, and somewhat of a livid hue; but from the diffused lividity, it presented the appearance of putrefaction, rather than the discoloration arising from bruises. On the left side, above the hip, there was a considerable contusion. I examined the uterus, in which a foetus was found—a female. When first seen it appeared to me to be about half grown. The countenance of the deceased did not appear much distorted. The eyes were closed, and the tongue between the teeth. The face was paler than it generally is in persons hanged. This was the first examination. I did not then examine the lower parts of the abdomen, on account of objections made by the jurors. I assisted at a second examination on the 26th of January. The face was covered with a white mold: I supposed it to be frost-bitten. After making an incision through that, the body seemed to be in a good state of preservation. On removing the diaper, we found that the discoloration extended lower down than we at first observed. On dissection we found in the muscles of the abdomen low down, bruises and extravasated blood: on each side of the spine, and in the superficial muscles of the back, there were also bruises. The mouth of the uterus was open. We used the test of washing, to ascertain whether these peculiarities were the effect of force from a hard substance. We

found that the parts which bore their natural appearance would wash white, and that the dark parts would not. We measured the foetus as accurately as possible ;—it was eight inches long, and five ounces in weight.

Doctor Wilbor.—I saw the body on Friday after death, and at that time I saw no bruises. I did not then see the lady stript of the habilaments. If the indentation on the neck made any impression on my mind at this time as to the deceased having been hanged by another person, it was of so slight a character as to pass away. The only thing that led me to suspect violence, was the tightness of the string, in conjunction with the circumstance of the cloak being hooked down and the gloves being on the hands. These caused a doubt in my mind, which I could not dispose of. The space of the cloak open, I'll venture to say, was about a foot. I did mention to my family that I thought it possible for her, by raising the cloak, to get her hands to her neck. I think I heard nothing said in the chamber that day as to the peculiarity of the clove-hitch: if it had been a common slip-knot, I think the string would have been loose where the standing part ran through the noose, and that the part next the ear would not have touched the skin. The deceased, I think, was about the middle size; her hair was cut off short round the neck. If it had been a slip noose, she could not have drawn the knot so tight herself; her strength would have ceased to exist before she could have done so: she would have ceased to breathe. Nor could she have done it by any sudden effort; it must have been continued. The constant application of weight might possibly make it give a little more than otherwise, but not materially: and in that case the tightening would have been principally on the opposite side of the neck, on the standing part of the string. From the circumstance of the cord being as near the tip of one ear as the other, and passed directly round, and from all the other circumstances of the case, I am decidedly of opinion that death was caused by strangulation. The appearances would be exactly the same if she were strangled and then hung up. (The witness then underwent a long cross-examination as to the coroner's inquest, and the correctness of the testimony which he had there given, as compared with a statement subsequently published as his. A newspaper was handed to him, and he stated that it was mainly correct; that he had borrowed his deposition from the coroner, and had published it, with additional facts and explanations, in the fore part of March. He then replied to the question.)

At your last examination, was there any thing on examining the uterus, from which you would swear in a case of life and death, that a hard instrument had been introduced for the purpose of procuring abortion?

Ans.—I should not like to swear to it: there is a difference in feeling certain of a thing, and being able to swear to it. According to my knowledge and opinion, the discoloration which was found, could not be produced in any other way. The opening of the uterus might arise from relaxation of the muscular fibres;—that is, if it were found to be of the natural colour.

Direct Examination Resumed.—What difference is there, according to that newspaper, between your examination and your subsequent publication?

(The Attorney General here offered to the witness the publication before produced. This was very warmly objected to by Mr. Randolph, on the ground that it had been put into the hands of the witness only to ascertain a particular fact, and to show that the publication came out almost at the very period when the court was to sit in March: that the witness was a prejudiced man, and that the statement was published in order to its being read at that especial period. Mr. Pearce and the Attorney-General replied at considerable length. On the very explicit understanding given by Mr. Mason, that the paper was not brought up to show any contradiction on the part of the witness, but merely that he had published his own deposition voluntarily, at a time when the trial was about to proceed—the counsel for the prosecution waived the objection. Mr. Mason, in concluding this long and somewhat excited argument, remarked on the baneful influence which the press exercised over the public mind in cases of this important character, by the publication of ex-parte statements and premature details of evidence. “Modern newspapers,” the gentleman benevolently added, “are of all things, the last source of truth.”

Witness.—The first part of the article published, was a copy of my deposition before the coroner, signed by myself;—then followed some observations explanatory of part of my testimony, which otherwise was obscure. At the time it was given to the editor at Providence, Mr. Avery was absent, and was not expected to return to this section of the country. It appeared, contrary to my expectations, and I regretted to see it as much as any one could.

To a further question of the Attorney General, witness replied—The circumference of the neck, in the indentation, was about ten inches and a half. The circumference below, where the neck is ordinarily smaller, was eleven inches and a half.

William Allen, of Tiverton, corroborated the testimony of John Durfee as to the position and appearance of the body when found. Two or three of the hooks of the cloak might be open—but did not examine closely.

Cross examined.—John Durfee cut four strans—the head of the deceased was bent forward.

Benjamin Manchester.—I saw the body of the deceased lying in the stack yard. I saw the cord round the stake, it had four strans. I examined the knot and found it was two half-hitches. I remarked that she was more of a sailor than a weaver. The cord was drawn very snug up to the stake. From thence I went to my labour, and a little west or north from the place where the body lay, say 18 or 20 rods, I found a piece of a comb.

(Comb produced and identified.)

I work on the land belonging to Andrew Robinson, about 50 rods north and a little west of the stack-yard. About sundown on the 20th December last, after our labour was over, Abner Davis and I started for the west end of the meadow towards the shore, leaving a heavy charge of powder in a rock on which we had been working, with the train lighted. When we had arrived near the end of the meadow, we discovered a man walking, with the skirts of his coat in his hands. He was going in a direction where he was liable to be in danger. We sang out to him—and just as he halted, the powder took fire. The man canted his head a little, till the stones had done falling; if he had continued on his way, the stones would have fallen pretty near him. He was dressed in a dark brown surtout, buttoned snug around him, and had a large hat, with a wide brim. He was of a size taller than the common height. I could not distinguish his features. When the rock had blown up, he went off. His course, at first, appeared nearly square across the meadow; he then hauled up a little more easterly for the south-west part of the village of Fall River. Since then, I have seen Ephraim K. Avery. From what I saw, the dress and height of the man on the lot resembled in every particular those of Mr. Avery. About a hundred yards from the stack-yard, there was a cart standing. It contained the bags in which some of our working implements were stowed; the bags are sowed with such stuff as that round the stake.

Cross-examined.—The ground from the stack to the place where I found the comb, is rough and uneven, rather descending. I compared the strings in the bag with the cord found on the neck of the deceased, a little piece of which had been cut off by William Durfee. I could discover no difference in the size, colour, or materials of the two.

10. Penelope Burton, [an elderly lady.]—I assisted in laying out the body of the deceased. Down her back there were some very bad bruises, and there were prints of some one's fingers just above the hips. The marks fitted to my fingers; the marks of the thumb on the lower part of the abdomen, and of the fingers opposite on the loins, just behind, were on

both sides ; but those on the right side were the plainest. They were very bad marks, and there was a little blood upon her under garment. One of her knees was very green, the other not so much so ; and the stain of the grass would scarcely wash out.

Cross examined—The knees were so bent that we used warm water to get them down. [Mr. Randolph here purposing to push his inquiries further than was consistent with the lady's ideas of propriety, her cross-examination was brought to an abrupt close by the following observation which she addressed to him. "I never heard no such questions asked by no person."

11. Ruth Burden, corroborated the testimony of the last witness, and deposed—There were marks lower down, very dark. There was blood on the under garment.

12. Dorcas Ford also corroborated the testimony of Penelope Burton, and deposed—There were two other marks just above the shoulder blades, of a yellowish brown colour, and others on the loins, which indicated greater violence.—There was froth tinged with blood which had proceeded from the mouth and nose.

Cross-examined—I did not say at the Bristol examination that there were marks of violent intercourse. I said "she had been dreadfully abused." I did not say there had been an attempt at abortion—but you may judge for yourselves.

13. Susanna Burden corroborated the testimony of the two last witnesses, and deposed—I have seen this paper [slip produced] before ; it was taken from Maria Cornell's bandbox by John Durfee's wife, and carried by me down to the Rev. Mr. Fowler's, our pastor ; I know it by the marks on it.

14. Thomas Hart identified the pieces of a comb, as those found a short distance from the stake.

15. Abner Davis—was with Benjamin Manchester, No. 9, in the lot where they had been blasting rocks ; he deposed—I saw a man sitting upon a wall about twenty rods distant from us, with his face turned towards the north east ; when he saw us he jumped off and walked northwards. As he was going directly towards the rock which we had been charging, I sung out to him. The rock exploded at that moment, and he held his course towards the east. This was a few minutes before sunset, and the light was pretty good. He had on a surtout coat, rather tight, of a brownish dark colour, and

a hat with a broad brim, and rather tapering at the crown. I had not a full view of his face, but I noticed his person particularly. I saw a man at the Bristol examination exactly like him, and told Thomas Hart that that was the man I had seen on the evening of the 20th December, near the place where the girl was found hanging. I was not told that man was Ephraim K. Avery until after I had recognised him walking with others through the street; his whole appearance, height, hat, and clothing, corresponded with the person I saw on the occasion alluded to. The cord round the girl's neck was like that on the bags we used to sit on when drilling holes in the rock, and a few days after she was found, we discovered that one of the bags had been unlaced, and the string taken. I believe the prisoner to be the same person that I saw in the lot. The admission of this opinion as testimony was objected to by Mr. Mason, because it was not grounded on a recognition of the countenance of the man, but merely on that of his stature and clothing.

Cross-examined—I did not notice whether the man had spectacles on, nor whether he carried a cane or bundle; but if he had, I think I should have observed them. When I saw him in the lot, he was about thirty rods from the stack. I did not say in the court at Bristol that he was Mr. Avery, because I was not asked. I knew that I had sworn to tell the *whole* truth; if it had been you [to Mr. Randolph] or John Durfee, I should not have said so without being asked. The bags were put in a cart, distant about a hundred yards from the stack, and judging from the way he was walking when I saw him, he would pass within six or seven rods of the cart. But the bags were not there then; we picked them up afterwards, and put them there.

16, Richard Durfee, the father of John Durfee, [No 1,] corroborated the testimony of his son as to the appearance and position of the body, &c.

17. William Hamilton. In the evening of the 20th of last December, about half past seven on my way home near Taunton to Fall River, I called at the store of Benjamin Hambley to get something to drink. When I rose to go away, some of them looked at their watches and told me it lacked seventeen minutes of 9 o'clock. As I was crossing the hollow near John Durfee's house I heard screams, and then stifled groans, as if from a female. I thought some one

was beating a woman. The sounds seemed to come from the back part of the orchard or in a direction through it. I started to get to the rising of the hill to ascertain what it was but I heard nothing more.

Cross-Examined. —I heard the groans occasionally for 3 or four minutes. They came from the direction of the stack yard, or near there.

18. Benjamin Hambley. —I remember that William Hamilton called at my store on the evening of the 20th December and that I looked at my watch just as he went away. It wanted twenty minutes of 9 o'clock.

Cross-examined. —There was a difference of about fifteen minutes between my time and that of Fall River, as regulated by the Factory bells. I know this, because Mr. Gooding the watchmaker, keeps his regulator ten minutes in advance of the factory time.

19. Eleanor Owen. — I live at Tiverton, near Fall River. On the evening of the 20th of December, whilst sitting at home, I heard the screams of a woman's voice. The factory bell was ringing, and we had cords of wood splitting up at the time. I told the boy to open the door that I might hear more distinctly, but I did not hear screams again. It was half past seven by the bell.

Cross-examined. —My house is a quarter of a mile from John Durfee's stack yard. The wind was high, and coming from that quarter. The next day, when the body had been found, I mentioned having heard the screams. She underwent a long cross examination, arising from the difference of time at which the screams were said to have been heard by her, and the time at which the witness, William Hamilton, (No. 17,) deposed to having heard similar sounds. No further or material fact was arrived at.

SATURDAY, May the 11th.

20. Ruth Cook, assisted in laying out the body, and corroborated the testimony of the other female witnesses as to the marks which were found.

21. William Pearce, junior —I reside at Bristol Ferry, & am one of the ferrymen. About two o'clock in the afternoon of the 20th of last December, I carried Ephraim K. Avery across the ferry to Portsmouth. He was dressed in a surtout or box coat, of a color rather brownish, and I think he had a

dark colored hat. I do not think he had spectacles on nor that he had any cane or bundle in his hand. He crossed in the sail boat. I had not crossed that day with the horse boat the wind had been blowing so fresh. At the time he crossed the wind was in the west. I think I crossed with him at the four days meeting. At that time, I think he wore a cloak.— I think I crossed with him once between the four days meeting and the 20th of December. These other times I think he wore spectacles, but I am not certain. I think I saw the boat coming over when he returned, but I could not distinguish who he was.

Cross examined.—He asked me where the coal mine was; I never saw the prisoner at the Ferry without a cloak, excepting this once.

22. Jeremiah Gifford. I keep the Bristol Ferry. I did not know Mr. Avery at the time he crossed the ferry between two and half-past two on the 20th of December. I know him now, and saw him on that day when landed on the wharf at Portsmouth. I did not see the course he took. He came into my house about a quarter before ten of the same night. I had been abed and asleep. I heard a noise, and got up. I went to the back door and found Mr. Avery in the sink room. I observed "it is late," and he replied, "scarcely so late as you imagine." I said, "we'll look at the clock," and we did so; it was a quarter before ten. He wanted me to cross, and said that brother Warren had informed him that he could pass at any hour. I said the weather was "so tedious" that I thought I should not go over. He said that he had been up the island on some business; and that had he known he could not have got over, he would have gone to brother Cook's and staid all night. He said his family were not well, and would expect him back. I replied that there were physicians in Bristol if needed; and I then proposed his going to bed. He then proceeded to bed. I did not perceive any thing peculiar in his appearance, nor did I hear any complaints as to his being tired or lame. The next morning my son William carried him over. He had on a brownish coloured surtout, rather longer than a box coat, and a hat rather of a large size; the brim was rather wider and the color black. To my recollection he had no spectacles on at any time that I saw him, that night. Robert Hicks lives in the small house next above me, widow Ayre next to that.

Cross-examined.—We looked at the clock, after all that I have related took place. I went to bed, I suppose, about half past eight or nearly nine. The time that passed from the first noise heard till we looked at the clock, could not have exceed-

ed three minutes. I do not recollect having stated at Bristol that he had spectacles on. The coat was nearly the same as he wears now.

23. William Anthony.—I live at Portsmouth. On the afternoon of the 20th Dec. I saw a person passing my house, between the house and the pond. I cannot describe his dress. He had dark clothes and a dark hat. I think he was more than the common height.—He was over the wall, and about fifty rods from where I stood. When I first saw him, he was something north of east of the house. I did not notice him again till he was at the south end of the corner; he then appeared to be steering east. This was the last I saw of him. It was after dinner, I had foddered my cattle, returned home, and was cutting wood. At first I thought he had a gun, but I found he had not.

24. William Carr—I reside at Portsmouth. I was at Fall River the day the deceased is said to have been killed. I started on my return home about 1 o'clock, P. M. After I got over the stone bridge, I kept the main road. I met a person between the stone bridge and my house, on foot. He had dark coloured clothes, and a black broad-brimmed hat; I do not know whether he wore a surtout. He was a tall man and was walking fast. I did not see his features. My brother Charles was with me. Heard of the girl's death, may be three days after it happened, and I then recollected having met the man. I think I met him between the hours of two and three.

25. Charles Carr corroborated his brother's testimony.

26. William Cranstoun.—I am keeper of the toll bridge at Howland's Ferry, or Stone Bridge. I heard of the girl's death soon after it occurred. On the evening of the 20th of December one person crossed the bridge whom I did not know. He came up to me and said, it is a cold blustering day. Invited him into the house, but he declined, and said he was going to Fall River. Paid me, and walked on. It was not far from three o'clock. He was dressed in dark coloured clothes, with a surtout. There is a way by which a passenger can get round the gate. He may step right down on to the beach on one side, and come up at the other. On the following morning I saw the tracks of a man having passed from the Tiverton to the Portsmouth side. The track was made that night, because the marks were fresh, and the tide comes just high enough to cover them. I could recognize the man who crossed the bridge. Saw the same man very

quickly after I first got into the court-house at Bristol. He was not pointed out to me. Have seen that man here since then. I did not know Mr. Avery, he had never passed before to my knowledge.

27. Robert P. Lee.—Went from Fall River to Newport on the 20th December, and met a man of short stature whose name he understood to be Peleg Amy!

28. Isaac Burdick deposed that, five years ago, he had walked from Fall River to the Stone Bridge in the summer season in the space of one hour and ten minutes.

29. George Lawton—I keep the bridge tavern at the east side of the stone bridge at Tiverton. On the afternoon of the 20th December, I noticed a person crossing the bridge on foot walking very fast. He had on dark clothes, a surtout coat, and hat with rather a broad brim. I never knew Mr. Avery before that time. I was at the Bristol examination. Some one said 'there goes Avery.' I saw three men walking abreast, and I then thought that the middle one resembled the person who crossed the bridge. After that, I saw him in court.

Cross-examined—I do not swear that he is the man; only that he resembles him.

30. Annis Norton—Resides with her father at Tiverton, just to the northward of the stone bridge. On the afternoon of the 20th December, past three, I saw a gentleman coming from the bridge and walking very fast. As he drew near I observed his dress, and supposed from it that he was a Methodist Minister of the Island or Bristol. He was tall; it was just at dusk, and he was walking from me, I saw his countenance. I have since seen Mr. Avery at Bristol; his height, hair, and complexion, were the same.

Cross-examined—I first mentioned that he looked like a Methodist Minister when Col. Harnden came after me. I never mentioned it before. It occurred to my mind it was Mr. Avery, but I was not positive of it. I believe he had no whiskers. Since the examination he has looked very different to me. I do not say it is Mr. Avery that passed our house.

31. Gardiner Coit.—I am barkeeper at Lawton's tavern, in Fall River. On the evening of the 20th of Decem. about a quarter before six o'clock, a person came to the door and wanted supper. I was in the bar room; he went into the sitting room the door of which is directly opposite to the bar room door. When supper was ready, he was shewn into

the dining room. He had on a brown or dark colored surtout coat, and a fur cap, or flat cap. He was tall. I did not particularly notice his features. I have not, to my knowledge, seen him since. Immediately after paying for supper, he went out. He appeared in a great hurry; I did not see any bundle, I do not recollect that any person was in the room with him. I should not think there was any difference in height between that man and Mr. Avery. I did not see any horse; nor did I receive any pay for one. I was at the Court of Examination at Bristol, though not summoned. Whilst there, I saw a person sitting at the table who resembled the man I speak of, it was the prisoner.

Cross-examined.—I believe Margaret B. Hambley attended the table. I suppose she saw the same man that I did; he appeared to be about thirty-five years of age. There was a pedlar in the tavern at the time, named Alden.

32. John Borden testified that he saw a person about half way between Fall River and the Stone Bridge, on the evening of the 20th Dec. about 20 minutes past nine. The man was travelling South. The man was a short distance ahead of the witness, and “was walking about an ordinary gait.”

33. William Gifford. I saw Mr. Avery on the morning of the twenty-first of December last, after he came down stairs. I believe he had spectacles, but no cane nor bundle. I said him, “Mr. Avery I did not know there was a meeting on the Island last evening. He replied, “I went to the Island on business of my own.”

34. Jane Gifford. I am the daughter of Jeremiah Gifford, the Keeper of the Bristol Ferry, and was at home on the 21st of December. On that morning I saw Mr. Avery. I said I did not know you were going to preach last night. He replied, I have not been preaching. I have been to brother Cook's on business. He said his family was sick. There is a John Cook, a member of the Methodist Church, who resides within two miles of our house; there is also a Wm. R. Cook, a member of the same church, near us.

Cross-examined. I heard my father say it was half past nine o'clock. Mr. Avery had a cane; I do not know of what size.

35. Mrs. Harriet Hathaway. I reside at Fall River, and know Sarah Maria Cornell. She boarded in my house. The last time I saw her was on the afternoon of the 20th Decem-

ber. She stated she was going to Joseph Durfee's, and that she should probably return immediately ; but that if she did not, she should be at home at nine o'clock. She got her supper and went out. I waited up till ten o'clock; I then went to bed, leaving the door unfastened. She worked at Mr. Anthony's mill, and had requested me at noon to have her supper ready by or before dark. The usual hour of leaving the mill is half past seven. She had been more cheerful through that day than she usually was. Before she went out, she changed her frock, and put on a better one than she usually wore. She wore a calash and cloak. She had boarded three weeks with me, and during that time no one visited her. She left a trunk and band box I delivered them to John Durfee. The key was in the pocket of her garment I did not see which way she went when she left the house. I know the comb which she usually wore in her hair. [Comb produced and identified ; there being two teeth out of the end.] I saw her have three letters ; a pink, a straw colored, and a white. [Letters produced.] These appear to be the same. She did not read them to me. She was not in the habit of being out in the evenings, except on the Sabbath and class meeting evenings. I never saw the trunk or band box open, nor ever saw her with a pocket book.

36. Lucy Hathaway.—I am the daughter of the last witness. I knew Sarah Maria Cornell. I worked in the same room with her. On the afternoon of the twentieth of December, she left the mill about half past five. She had apprised me of her intention to leave sooner than usual. She informed me of it the week before. On the day of the evening on which she went out, she had been more cheerful than she generally was. Five minutes before she went out, she came to my window to comb her hair. The comb was again produced and identified. The comb was not then broken. She was frequently very sad, she was particularly so the Tuesday evening before her death. I knew her one week before she came to board with my mother. She assigned no reason for changing her abode, except that she wished to be more retired. At that time I did not know her situation. I knew her to receive one letter written on white paper ; she received it on the afternoon of the Saturday next after coming to our house. She went that day to enquire for a letter at the Post Office, and when she returned she held it up in her hand and

shewed it to me. I saw the inside but did not read it; there were not more than two or three lines. The postage mark was one cent. [The white letter was produced and identified.] I saw two other letters, one a pink and the other a straw colored one. I afterwards saw the contents, but did not read them. —[The two letters, pink and straw colored, were produced and identified.] When they were shown to me, I observed that one was a lady's and the other a gentleman's hand. She replied——[The Defendants counsel objected to the answer, and the Court ruled it out]—cannot say how long this was before her death. I saw her break the seal of of the pink letter ; I saw her have a pocket book the afternoon before her death, it was a wallet.

Cross-examined—I saw the small string with which she was said to be hanged. In one room in the factory there is a string something similar, used for hanging harness.

Direct resumed—The string did not appear to be the same as that used in the factory. I never saw one so large used in hanging harness. I never saw the deceased take medicine, but I know, both from observation and her own communications, that she was out of health. She went so far in her communications to me as to say, that her ill health was that which applied to females only. She said she had not been well since she went to the Thompson Camp Meeting, and that something occurred to her there to cause her ill health, but she did not say what it was. She said “I will never go there any more,” and mentioned that she had seen some very disgusting things between a minister and a church member, and that minister too a married man. “And now,” said the witness, “you know as much about it as I do.”

The court then adjourned.

MONDAY, MAY 13th.

37. Harvey Harnden—I live at Fall River. I was present at the examination at Bristol, as one of the committee appointed to investigate the circumstances attendant on the death of Sarah Maria Cornell. On the Saturday evening of the first week of the examination, I called at Iram Smith's store, requesting him to let me have what was remaining of a ream of letter paper which had been in his store on the 8th December. I received this paper. At the time Smith handed me the paper, he had the half sheet I wanted in his hand.

[Half sheet produced, and identified by the pencil mark, 'half sheet,' written on it.] I produced it to the court at Bristol, and I there compared it with the other half sheet of paper. I found them agree perfectly. I examined the pieces with a microscope. The fibres of the paper pass from one part to the other; in the water mark there is a very strong resemblance with the paper at Smith's. I arrested Mr. Avery after he left R. Island, in the town of Rindge, New Hampshire, just above the Massachusetts line, at the house of a gentleman named Mayo. There were six persons with me; one of whom accompanied me into the house; the other five remained outside at different points. I went into the room in which the family live. There were two gentlemen and a lady sitting in the room. When I entered, I enquired for Captain Mayo; and on one of the gentlemen declaring himself to be the same, I asked if he knew a person of the name of Ephraim K. Avery. He denied any knowledge of him, and I then said I must search the house. At this moment Mrs. Mayo got up, went out into another room without a light, and closed the door after her. I very soon heard a person who came to the house with me, and whom I had told to be careful and see that no one left it, rap on the window with his fingers. I took the only light there was in the room, and passing through the same door by which Mrs. Mayo had gone out, I found myself in a small room back of a front room, with a door which opened into the same front room. I entered, and went through the front room into the front entry, and from thence up stairs. On arriving at the head of the stairs, I discovered the door opening into the chamber over the front room opposite to the one I have named, to be open. On looking in, I observed that there was a low fire on the hearth, and a light stand before it, with a candle in it, the wick of which was ignited as if it had that instant been blown out. I entered, but saw no person. I there saw a bed which had been tumbled, and found by placing my hand in it that some one had recently left it. I then went into a bed-room at the back of the chamber, and found no one there. I then returned into the front entry chamber; and there saw Mrs. Mayo standing in the other front chamber. I then went into that, while she passed me into the entry chamber. I searched that chamber, and then two smaller rooms at the back of it. After this I returned into the front entry chamber, and from

thence into the chamber in which I first made search, but did not find Mr. Avery. [The witness described the premises.] On arriving again in the front entry below, I discovered that the door into the front room was not entirely closed, though I distinctly recollected that when I passed up it was shut. I then placed my hand against the door, and found there was a gentle pressure on the other side, and in withdrawing my hand, the door would return gently to its former position. I opened the door with one hand, holding the candle in the other, and behind the door there stood Mr. Avery, who from his appearance, was considerably more agitated than any person I ever saw. He had on either a surtout or pea-jacket, and held in his left hand a cap, which I have no recollection of seeing afterwards. Since I had last seen him, which was two weeks, he had let his beard grow, except on the front part of his face ; [witness described,] which very materially altered his appearance. I presented my hand to him, and said ' Mr. Avery, how do you do?' He attempted to speak, but his utterance failed. I then took him by the hand, and said, " do endeavor to suppress this agitation, you need fear no personal violence, you shall be kindly treated ;" and requested him to step into the entry, where there was more air. He did so ; and then said I suppose you cannot legally take me from this place without a precept from the Governor of New-Hampshire. I replied that I supposed I had a warrant sufficient for the purpose, which I procured from a Justice. He then stated that his counsel had told him he could not be taken from no State without an application to its Governor. I told him by a reference to the laws of New-Hampshire I found it otherwise : that if he would go into the other room I would show him the precept ; and that if I should fail of convincing him that the arrest was completely legal, I would leave him and go without him. After some further conversation, the precept was read to him by Mr. Foster, the deputy from Fitz William. Mr Avery was satisfied of its legality, and said he would return with me to Bristol.

I then mentioned to him that the precept directed the Sheriff to carry him before some Justice in that county for examination. To this he demurred and wished the privilege of returning without that ceremony. I consented that it should be waived if he would sign a request to that effect, together with an agreement that he would hold the deputy harmless for disobeying the precept. He consented. (This witness

brought Mr. Avery to the line of Rhode Island, where he delivered him to the agent appointed to receive him by that State on Friday, January 25th.

38. William Lawless.—I live in Bristol. On the morning of the 21st of December, about fifteen minutes before sunrise, I saw Mr. Avery coming from towards the ferry and walking northwards. He had a roll in his hand, closed at each end, and about twelve to fifteen inches long. It was covered with a dark red coloured handkerchief. "I undertook to overtake him." I said it was very windy, and asked him where he was from. He said he was from the island; that he had been over on business, and had calculated to be at home last night, but could not, on account of the wind.

39. Zeruah Hambtey.—I live close to the old meeting house. On the evening of the 20th of December, about seven o'clock, I went down the lane and overtook a gentleman and a lady, arm in arm.—He was very tall, and she was short; she had on a cloak. It was close by our house. They travelled down the lane by the corner, and went down towards Mr. John Durfee's on the main road. I got close to them. I cannot say what sort of a coat the gentleman had on. He did not wear a cloak.

40. Amy Durfee corroborated that portion of the testimony of Lucy Hathaway (No. 37) which related to the arrangements of the deceased, immediately previous to her leaving the mill. She likewise identified the comb. She testified further to having seen a pink and a yellow letter in the hands of the deceased; but the directions she has not seen. She had also observed a white letter.

41. Nancy Gladding.—I live at Bristol, and am well acquainted with Mr. Avery. I invited Mr. and Mrs. Avery to spend an afternoon at my house the week of Sarah Cornell's death. I invited them for Thursday. Mr. Avery replied, "we will accept for Friday; we cannot so well come on Thursday. He did visit me on Friday afternoon with Mrs. Avery; he came between three and four, and remained, I think, till about six o'clock.

Cross-examined.—I am not certain he said Friday, but I think he did. He was about as cheerful and sociable as usual. He made a prayer before he left; his whole deportment at my house was such as became the christian and the gentleman.

42. Rebecca Dimond.—In the month of December last, I lived with my sister at Bristol in the upper part of the house occupied by Mr. Avery and his family. I know Betsy Hill; she came into the town with them, and remained until the early part of the fall. She was not there at the time of Maria Cornell's death. I do not know exactly how long she had been gone, but I do not recollect seeing her there after the Thompson Camp Meeting. Mr. Avery's usual outside gar-

ment was a surtout; he wears it now. He had also a black camlet cloak. I saw it before he went to New Hampshire, and after he returned. I have seen the cloak in his house since then. I was at the house on the morning of the twenty-first December when Mr. Avery returned home, but I did not hear him say any thing as to where he had been. I was also at Mrs. Gladding's party, I heard no allusion made to it there. I believe he did not take his cloak to Mrs. Gladding's.

Cross-examined.—Mr. Avery was in the habit of walking much in the week-days. He was in the habit of making prayer directly after breakfast; and he did so when he returned home on the morning of the 21st. There was nothing unusual in his manner. I think I can say that Mr. Avery lives in harmony with his family; that he is a humane father and husband.

43. Sylvester Luther.—I saw Mr. Avery one morning coming from the south part of the town of Bristol. I am not positive it was the twenty-first of December. I am not certain as to his dress. He had in his hand a red handkerchief: I just passed the morning ceremony with him. I am inclined to think it was after the girl's death.

44. Iram Smith.—I resided at Fall River in December last. On the eighth of that month, Mr. Bidwell, the Methodist Minister at Fall River, and Mr. Avery, were in my store, somewhere about ten o'clock in the morning. I think I recollect Mr. Avery's asking for paper, and I believe he got it. If he wrote at all, he wrote at the desk. I went to the next door and got a wafer from George Barry's wife. I think it was a common red wafer. (Half sheet produced). The paper bears the same mark as that in my store; it was delivered by me to Colonel Harnden. I was counting the quires in order to deliver them to Colonel Harnden, when I discovered the half sheet about the middle of them. I compared it with the letter on the half sheet, and it compared very well. There was something said about the time at which the stage passed; it passed my store, going West, while Mr. Avery was there.

Cross-examined.—When I purchased the half ream of paper, I found there was half a quire too much. The paper was kept at the back of the desk, and any body could have ready access to it. I am in the store almost all the time; I am out two or three times a day. Other people are in and out of it. I had a man with me about that time who attended the store. I do not recollect that the day I went for the wafer, was the day on which Mr. Avery was in my shop. I remember a man of the name of Symmonds writing a letter at the desk.

45. George Gifford.—I was hauling up the sail of my craft, on the 20th of December last, about three quarters of a mile from Bristol Ferry, when I saw a man step out of the ferry-boat and walk off in an easterly direction.

Cross-examined. I do not know whether the person was a man or a woman; the dress was that of a woman.

46. Walter D. Briggs corroborated the testimony of his father (No. 4) the Post Master of Bristol.

47. Jeremiah Howland. I know Mr. Avery, and I saw him come into Iram Smith's store on the 8th of December, with Mr. Bidwell. I heard him ask for paper, but I do not recollect whether he said what he wanted it for. He was waiting for the Bristol stage; I did not observe whether Mr. Bidwell, or he left the store first. When he went out, he turned to the left, which is the way to the Post Office and the Stage Office.

Cross-examined. I have seen several persons write behind the counter.

48. Stephen Bartlett. I drive a stage from Bristol to New Bedford, and I know Mr. Avery well. On the 8th of last December I carried him to Fall River. I set him down at Lawton's Hotel, and when I passed on, I saw him near the gate of the Post Office. He had previously been passenger with me five or six times. He called on me at Bristol, between 9 and 10 o'clock, on Sunday, the 23d of December, and requested me to enquire of Mr. Bidwell at Fall River, whether it would not be advisable to go to Lowell and obtain information respecting the bad character of the deceased. I was very intimate with Mr. Avery; we were frequently together, and I often visited at his house.

Cross-examined. I had no suspicion that he alluded to her murder, when he desired me to advise with Mr. Bidwell. He said the deceased was a girl of a loose, bad character, and that it was important that he should procure evidence to refute any charges which might be made against him. He said she had a revengeful feeling against him for expelling her from the Church at Lowell, and that she had set this trap for him. I told Doctor Wilbur that I had seen Mr. Avery at Bristol on the 20th December, but I do not exactly remember whether I did see him or not.

49. John Orswell. In the month of November last, I was engineer of the steam-boat, "King Philip," plying between Fall River and Providence. She ran to Providence on Mondays, Wednesdays and Fridays; and thence to Fall River on Tuesdays, Thursdays and Saturdays. (The pink letter was produced.) I have seen this letter before. I first saw it

in the hands of a gentleman in Providence, who has since proved to be Mr. Avery, the prisoner. After breakfast, between the hours of eight and nine, he came down the gangway-plank, and enquired if I would be so kind as to take a letter for him to Fall River. I told him he might put it in the letter box, but he did not wish to do so, for he wished it to be delivered as soon as the boat arrived. I said that I did not carry any letters myself, and that the hands were not permitted to carry any. He replied that I should be doing him a great favor, and I therefore took it and delivered it. The person who handed me the letter wore a cloak, and a black hat with a broad brim. After the girl's death, Mr. Cole asked me if I knew the person who delivered the letter to me: I replied that I did not know him by name, but that I should know him if I saw him again, and on Christmas day I went to Mr. Paul, the deputy sheriff in Bristol, and asked permission to see Mr. Avery. I went with Mr. Paul accordingly to Avery's house, and on entering the room I saw three or four gentlemen sitting there, and I expected to see Mr. Avery among them but did not. Mr. Paul, however, went for him, and the instant he entered the room I recognized him. Mr. Paul told him that I was the engineer who was supposed to have carried a letter from him to the deceased at Fall River. Mr. Avery shook hands with me, and enquired if I had carried such a letter for him. He then said it would be a great satisfaction to him and his friends to know whether I would swear in court, that he was the man or not. I replied that if it would give any satisfaction either to him or them, I would then state what probably I could swear, viz. that to the best of my recollection and judgment, he was the man. I have no doubt in my mind that he is the man.

Cross Examined.—I do not know that any person went with me and Mr. Paul to Mr. Avery's, except William Durfee, and he passed on without entering. To the best of my recollection he gave me the letter about nine o'clock, or a little past; we regularly started at ten o'clock. I remember hearing some one say that there was a four days' meeting holding at Providence. I was present at the Bristol examination, and stated that the steam had begun to rise, as I observed it had, after I received the letter. When we started at ten, we began to light the fire about eight; but I cannot say whether it had risen considerably or not. Before I saw the letter again, I said there would probably be marks of grease and smut upon it; for my hands were

dirty with fixing the works. (The marks are quite plain.) I supposed from his conversation and the delicacy of his hands, that he was a minister, and I told Tompkins so soon after we started. I never talked about Mr. Avery's resembling the man; and I never said that I was not sufficiently confident to swear that he was.

50. Elijah Cole. I reside at Fall River. In November last, I received a letter from John Orswell, directed to "Sarah Maria Cornell, to be left at Mrs. Cole's"—when my daughter came in, I told her to carry it to the deceased. Sarah Cornell boarded at my house for the period of eight weeks and four days; and no man ever visited her to my knowledge, during that time. I certainly mistrusted her situation. Her spirits and temperament were more irregular than those of my family.

51 ——— Cole. I am the daughter of the last witness. I recollect my father desiring me to give a letter to Sarah Maria Cornell, on the 29th of last November.

52. John J. Paine. I reside at Providence, and knew the deceased. I first became acquainted with her in the month of May last, when she was staying with her brother-in-law Mr. Grindell Rawson. In August last, I was at the Thompson Camp Meeting, and I took Maria Cornell with me in a chaise at the request of Mr. Rawson, she having been disappointed of the conveyance in which she expected to have gone with her sister and family. When we arrived on the camp ground, I took her trunk to the house of Mr. Elliot, distant about a quarter of a mile, at her request, and saw nothing more of her during the meeting. I did not see Mr. Avery there.

Cross Examined. Her conduct, whenever I saw her at home, was as correct and good as that of any woman.

53. Lucretia Rawson. I am the wife of Mr. Grindel Rawson, and the deceased was my sister. I know that Mr. Paine took her to the Thompson Camp Meeting, and that Benjamin F. Saunders, an apprentice to my husband, brought her home. I saw her at the meeting, and she walked round with me to the various tents. I sat with her at the common table. I did not know Mr. Avery at the time; and do not know that I saw him there. (The witness here evinced great mental agitation.) Maria intimated to me in September last what her situation might be, and informed me also of its cause. She dated her situation from the time of the Camp Meeting. I had regularly the means of knowing her condition as to that particular sickness which females suffer; and I know that she was as she ought to have been in this respect, precisely one week and one day previous to the meeting. She had always been quite regular before that time, but subsequently to it, the usual appearances were wanting, and I ascertained the cause. I never knew that she ever made an attempt to destroy herself, and I

have never seen any thing in the condition of her mind which would induce her to the commission of such an act.

54. Ruth Lawton, testified that she slept with Sarah Maria Cornell at Mr. Rawson's; and corroborated the testimony of the last witness as to the regularity of her health prior to the Thompson Camp Meeting.

TUESDAY, MAY 14th.

The Attorney General.—If it please the court, this is the proper time to read the letters. I now propose to read the pink-coloured letter to the jury.

Mr. Randolph objected to its being passed to the jury, on the ground that all writing admitted as testimony must go to the jury on some positive proof; and contended that the ordinary proof which applies in civil cases, could not apply here. (*Espinasse's Rep. the King v. Cater* : vol. 4, p. 142.)

Mr. Pearce.—It is to be regretted that the prisoner's counsel has not met us on the ground on which we intended to put the letter to the jury: It is not to prove the prisoner's hand-writing that we offer it, but only to show that such a letter was delivered by him to another person, and so traced into the possession of the deceased. Suppose it had been a bundle of clothes that had been given to Orswell to be delivered to Sarah Maria Cornell; does the gentleman pretend to say that we should not have been entitled to submit it to the consideration of the jury? If the prisoner is innocent, he can explain the matter to all mankind, and dispel every shade of mystery in which the transaction is involved.

The Attorney General.—This is not a question as to hand-writing, nor as to how much the letter proves, if passed to the jury. I do not offer the letter to them as the letter of Ephraim K. Avery, but merely as a paper proved by Orswell once to have been in his possession, by him delivered to another person, and thence traced into the possession of the deceased, and so found in her possession at the period of her death; leaving the court to say to the jury that the case is only to be affected by its introduction according to the force of the evidence on their minds. We have a right to prove that the letter passed through the prisoner's hands. I submit that we have proved it, and that therefore it is competent testimony to go to the jury.

Mr. Mason.—The counsel for the Government were assuming what it was incumbent upon them to prove, namely, that the prisoner was privy to its contents. If Orswell himself was on trial, this letter would apply equally to him as to the prisoner; for he could prove by no mortal testimony, from whose hand he received it.

Attorney General.—That is an illustration that applies in every case where a letter is delivered by one man to another without the presence of a third person.

Chief Justice.—The court has given its best consideration to the subject, and is of opinion, that, inasmuch as the latter had been traced directly from the prisoner, and thence into the possession of the deceased it was material evidence, and that as such it ought to go to the jury, and on which they must draw their own inferences.

(The pink letter was here read, addressed on the outside “Miss Sarah M. Cornell, Fall River, Mass. To be left at Mr. Cole’s.” We give it as in the original:)

Providence, Nov. 1831.

Dear Sister—I received your letter in due season, and should have answered it before now but I thought I would wait till this opportunity, as I told you I am willing to help you and do for you, as circumstances are I should rather you would come to this place, viz. Bristol in the Stage of the 18th of Dec. and stop at the Hotel and stay till 6 in the evening and then go up directly across the main street to the brick building near the stone meeting house where I will meet you and talk with you—when you stop at the tavern either enquire for work or go out into the street in pretence of looking or something else and I may see you say nothing about me or my family should it storm on the 18th come the 20th if you cannot come and it will be more convenient to meet me at the methodist meeting house in summer-sett just over the ferry on either of the above ev’gs I will meet you there at the same time or if you cannot do either I will come to fall river on one of the above evenings back of the same meeting house where I once saw you at any hour you say on either of the above evenings when there will be the least passing I should think before the mills stop work this I will leave with you if I come I will come if it does not storm very hard, if it does the first I’ll come the second write me soon and tell me which—when you write direct your letters to Betsey Hills Bristol and not as you have to me remember this your last letter I am afraid was broken open.

were your calash and not your plain bonnet you can send your letter by mail.

S. M. C.

Yours, &c.

B. H.

Let me still enjoin the secret keep the letters in your bosom or burn them up.

The Attorney General then proposed to read the white letter of “Dec. the 8th” The Counsel on both sides were heard in argument for and against its admission, and the point was reserved.

The next witness called was—

55. John Boyd.—I reside at Portsmouth, and two or three days after the examination at Bristol, I had a conversation with Mr. Avery as to where he had been on the 20th of December. He stated to me that he crossed over the Ferry, went directly up the road, and got over the wall near the mill. “I steered off in a southwesterly direction I think, till I came to a brook or rivulet: near this brook I saw a man with a gun.” It is my impression that he said

he had a conversation with this man, but I am not certain. He made some observation as to the man's dress, and said that his hat was dented in the fore part. He then said, "I passed on and came out between two houses, near the coal mines. I passed on till I came to a gate painted white or whitewashed; I went through the gate, and passed on (I think he said) in a southerly direction, till I came to a lot where there were some sheep. Near by this lot, I saw a boy." Then he said, I passed on over another brook or rivulet to the westward of Freeborn's house. I then thought I would go to sister Wilcox's. I think, in a southeasterly direction. I passed a bridle path, and I think some old rivulets: and I came out near the Union Meeting-house." I do not recollect any observation he made till he was on the meeting-house hill, when he said he saw some sparks flying out of a building that he took to be Wm. J. Cook's shop. He did not designate the road he took.

Attorney-General—Did he state that he stopped at any house?

Answer—No.

Attorney General—Did he state that he conversed with any one on the road, except the boy and the man with the gun.

Answer—No.

[The Court here ruled that the white letter of Dec. 8th was admissible testimony. It is in the following terms.]

"Fall River, Dec. 8th.

I will be here on the 20th, if pleasant, at the place named, at 6 o'clock; if not pleasant, the next Monday eve. Say nothing——"

56. Abner Tallman deposed that he had left Newport on the 20th of December, a little after sunset, and had gone as far as Coggerhall's on the East Road. He saw no person between the main road and the Meeting House. He arrived home about eight o'clock.

57. Abby A. Earle—I reside at Portsmouth near the ferry. On the afternoon of the 20th of December, I saw the ferry-boat crossing about two o'clock in the afternoon. I was watching the ferry from twelve till nearly three, for a chance to send a billet across. During this time I saw neither Mr. Avery nor any one else pass our house. I was not absent from the room in which I sat, more than

five or ten minutes, and then I went out of doors to look, I went to Mr. Gifford's, and remarked to him that I had had no chance of sending.

56. Margaret B. Hambley. I lived at Lawton's Hotel in Fall River, on the 20th of December last. Three gentlemen took supper there that evening. One of them took supper alone, and I brought him a glass of Brandy from the Bar. He had on a surtout coat and cap. He was about as tall as the prisoner, and resembled him in every feature.

59. Bailey Burden. I lived at Fall River on the 20th of last December. I resided there during the camp meeting. On the twentieth of October, between the hours of nine and ten in the evening, on my return from Tiverton, I met a gentleman and a lady. He was tall and wore a cloak, and had on a black hat. I saw them come up Spring street, and turn round the corner. They walked together as far as I could see them.

60. Mary D. Burden. On Saturday evening the twentieth of October, I went to spend the evening at my husband's sister's and on returning with him about half past nine o'clock, I met a man and woman. She looked full in my face, and I recognized her. It was Sarah Maria Cornell. The man was tall and had on a broad-brimmed hat, and a dark cloak. I turned round to observe how far they were going together, for they were in earnest conversation. My husband bade me walk on.

Cross-Examined. I looked closely at her that I might ascertain who she was. She had black eyes, dark hair, and rather dark complexion. I have never seen her since, except when she lay dead, but I knew her to be the same.

Lucy Spink. I resided at Fall River on the 20th of October last. Mr. Avery preached there at the Camp Meeting on Saturday, in the house in which I lived. He afterwards came out of the door at which I was standing. There was rather a short young woman also standing near at the time. He stooped over her as if looking at her, and I think he spoke to her; for they walked together into the street. I do not know where they went. Mr. Avery was the first who went out of the house; and this made me notice him.

62. Grindell Rawson. I am a tailor, and have resided at

Woodstock a year and a half. My wife was a sister to Sarah Maria Cornell. The latter came to my house on a visit the first of last June, and some weeks afterwards she worked at the tailoring business. I saw her at the Thomson Camp Meeting, and I sent Benjamin F. Saunders, my apprentice, to bring her home. I saw her at various places—at the Muddy brook tent, and at the preacher's stand. Before she left us, she told myself and wife the situation in which feared she was, for she said she knew what had taken place. She stated to my wife and myself that Mr. Avery came up to her one day on the ground during the Camp meeting, and said to her, "Maria, I should like to see you and talk with you. I will meet you this evening, when the horn blows for preaching." She said that when they came to the house appointed for the meeting, Mr. Avery said, "There is no room for us to sit down, and we cannot have any conversation there—go on further;" and that he afterwards met her by going another way. She said that after they had got into the woods, he asked her to take off her glasses, which she did; and after going a little further, to sit down, which she did. She then said, that she asked him whether he had burned those letters; and that he replied, "No; but there is one condition on which I will burn them, and settle the difficulty;" that he then took hold of her hand, and placed his in her bosom. She said she tried to get from him, but could not; that he then had connexion with her, and that on his way back to the camp ground, he told her he would burn the letters he had in Bristol. This she said was on Thursday. I do not know what day of the month it was, but I think the meeting convened on the 29th of August. I had known her about 11 years. I believe she came from Thomson to Providence; she was a tailoress, and served her time at Norwich. I never paid my addresses to her, nor promised to marry her. I never thought of it; for I was engaged to her sister my present wife. We always called her "Maria," but her mother said her name was Sarah (or Sally) Maria. I never knew that she attempted to commit suicide, or that she had any disposition to do so.

Direct resumed.—I have heard her speak of Mr. Avery subsequently to the Camp-meeting; but not even then with decided reproach. She seemed to have a respect for him. — After she left Woodstock, I received a letter from her on the

subject of her conversation with us. This [letter produced] is the same. We also received another letter from her on the subject. She made her first statement seemingly with reluctance. I first heard of it from my wife, who told me that Maria had got into trouble. We afterwards all three conversed on the subject; and she immediately said that her connexion had been with Mr. Avery.

Benjamin F. Saunders—Brought Sarah M. Cornell home from the Thomson Camp Meeting: Knew that she had written letters previous to the Thomson Camp meeting; and that two of them were directed to Bristol.

63. Nancy Bidwell—is wife of the Rev. Mr. Bidwell, of Fall River. On the Saturday night of the Camp Meeting, Mr. Avery slept at our house; he came in about half-past 9, which is rather later than Ministers usually return. Before he returned I went to Mr. Green's, enquired if he had seen Mr. Avery: he said he had last seen him going up the street. When Mr. Avery came in, he stated that he had been to Mr. Warren's stables, and that this had kept him so late. Learned the time from him, for he looked at his watch, and said it was half-past nine.

64. Sarah M. Jones—Lived at Portsmouth on the 20th of December last. On that day, in the forenoon, saw a stranger pass our house, who looked like Mr. Avery. I conversed with him in Bristol at his house on the subject. Mr. Bullock was present, and said to me that Mr. Avery's life was worth thousand's of worlds, and depended on the testimony he could produce.

WEDNESDAY, May 15th.

65. Philip R. Bennet deposed that he walked from the stack-yard on John Durfee's farm to the Bristol Ferry on Monday last, in the space of an hour and a half, in company with Benjamin Manchester, and that he did it without fatigue. Some parts he walked, and over others he "trotted." A question had been raised as to the time in which the distance could be comfortably got over on foot, and the expedition of the witness and his associate traveller was planned to bring it to a decision. The dispute as to the time in which the distance I have spoken of could be passed, arose out of this trial. The proposition was, to go through on foot as quick as we could. A purse of about three dollars was made up for us.

66. George Duvall deposed that he knew Mrs Spink, of Fall River, and that he heard Mr. Avery "improve" at her house on the evening of Saturday, the 20th of October, the last of the four days' meeting.

Question—Did you ever become bound for Sarah M. Cornell, in a case of theft.

Answer—No.

Cross-examined. There was one letter from Fall River, and two, or one at least, from Taunton, directed on the outside to me.

By the Court. *I* say under oath that *I* believe the scrap to be her handwriting.

The Attorney General here proposed to read to the jury the letter, [being the straw colored one] which was addressed "S. M. Cornell," and bore the postmark "Warren;" and also the slip of paper, the hand writing of which had been deposed to by the last witness.

The point was argued ably and at length by the counsel on both sides.

The Court. We are of opinion that the letter does not come within the rule which induced us to admit the other letters. And it is therefore ruled out. The slip of paper, the handwriting being proved, is evidence as to the state of mind of the deceased, and as such is to be admitted. It will not, however, go to the jury as any evidence of the murder, nor of any act of the prisoner's, but merely to show that the deceased did not leave her home with the intention of committing suicide.

[The writing on the slip of paper was then read. *It* contained the following words.]

"If I am missing enquire of Rev. Mr. Avery, Bristol, he will know where I am gone.

S. M. CORNELL.

December 20th."

Mr. Mason. We then understand the Court to say, that these letters go to the jury only as repelling the suspicion of suicide, and not as bringing home any act to the prisoner.

The Court. The matter may be carried further than that, by the letter delivered by him to the Engineer, for he has there implicated himself with the transaction.

Attorney-General. I intend, in the sequel, to put that letter to the jury, as one proved to have been in the hands of Eph-

raim K. Avery, to have been delivered by him to another person, and thence to have been delivered to Sarah Maria Cornell; and thus to leave the natural inference that he knew the contents, unless that he proves that he did not know them.

The Court. I stated to the jury, when that letter was passed, that it would be for them to draw their inferences. It is *prima facie* evidence to implicate the prisoner, and as such the counsel for the Government may comment upon it.

Attorney-General. As to the other two letters, I claim the right to go into them beyond the question of suicide, as far as any thing is given in evidence to connect them with the prisoner.

The court. So far as there is evidence to show that the prisoner is connected with them, the Court are of opinion that the Attorney-General cannot be excluded from commenting on them.

67. Rufus H Lesure.—I resided at Providence in November and December last, and during most of the time I was clerk in the Post Office. I know the Post Office books. (Produced). The entry of Monday, Nov. 12th, is in my hand-writing; that of the 19th of the same month is not mine; I was absent that day. It is Mr. Darling's, I recollect delivering a one cent postage letter to Sarah M. Cornell. (Yellow letter produced.) There is no mark by which I could distinguish it. The day I delivered the letter, when I was in the office, a gentleman passed along between the hours of nine and twelve, and dropped one in. At that time I knew the gentleman who was called Mr. Avery, and I recognised the person who dropped the letter in, as the man who went by that name. I should not like to state positively that the prisoner was the man. He resembles him in size; and looks like the same, though somewhat altered. Sarah M. Cornell frequently made anxious enquiries for letters at the office. I am positive that the person whom I saw pass the post office is the man called Mr. Avery; and I am positive that the person dropped something in.

Here the testimony for the prosecution closed.

THE DEFENCE.

Mr. Randolph: If it please the Court—Gentlemen of the Jury:

Never in the course of my life have I risen in a Court of Justice under feelings so deeply painful as those by which I am at this moment oppressed. It shall be my most studious endeavour to avoid any exhibition of those feelings; and if it be my misfortune that I cannot control myself so far as altogether to hide their existence, believe me when I say, it is not my object to influence your minds by any such indirect appeals. My intention is to address myself alone to your understandings; your feelings I would leave to their own operation. There is too much matter of higher importance requiring my attention to admit of any further allusion to myself. Yet suffer me, Gentlemen, before I enter on the heavy duty still before me, to say a few words to you on the subject of the situation in which you appear

Never were men placed in circumstances where they were more liable to do wrong, even with the most honest intention to do right. With the advice of our client, we have selected you from a great number of Jurors, believing that you, at least, would deal uprightly with us, that you would wipe out from your hearts every unfavourable impression which had fixed itself there, and that you would give to the prisoner, whose life is in your hands, such a fair and impartial trial as he himself has a right to claim, and as the just and impartial laws of his country pronounce him entitled to. So much has been written, and said, and published respecting this trial, that it is scarcely possible to find an individual whose feelings are entirely unenlisted, or whose mind is entirely unbiassed. To ask you to forget all that you have heard or read, would perhaps be asking more than human nature is capable of performing. I shall be fully satisfied if you honestly endeavour to do that which is right—to divest yourself of every prejudice which can influence your verdict—and to pronounce that verdict according to the solemn oaths that you have taken, to the law of the land, and to the facts as they shall come before you. The first point which we make in our defence is, that no fact has yet been testified to, which can show that the death of Sarah Maria Cornell was not occasioned by Suicide. Before I draw your attention to our own testimony, I would make a few remarks on that which has been produced by the Government. I do not intend to go minutely into it now; at the present time it would be impossible to detail all the facts connected with so vast a mass of testimony. [The learned Counsel, after submitting, and quoting authorities to show, that the first step to be established by the Government was that a murder had been committed, commented at considerable length on the evidence brought for that purpose, and of its entire inefficiency to answer it. As we propose to give the concluding arguments on both sides, we proceed to the Counsel's summary of testimony for the Defence.]

I shall now state briefly the facts which we purpose to prove in relation to the unfortunate girl whose death has given birth to this trial. Her guilt and her sorrows are now at an end, and whatever she may have been in life, she must now be an object of pity to all of us. She was once a member of the church of Ephraim K. Avery, at Lowell; whence, after having been tried and convicted on accusations of lying and fornication, she was expelled. We shall prove that, under the hope of forgiveness, she made confession of her conduct in relation to both these charges to Mr. Avery and others—and that her character being so well known, and her confession having been therefore refused, she avowed her intention of revenging herself on Mr. Avery. We will prove that at the very time of this expulsion from the Church, and when Mr. Avery was only doing his duty in bringing her to trial, she was afflicted in a great degree with the venereal disease, and that whilst in full communion as a member of the Church, and in constant attendance at prayer meetings, she was in the habit of passing at once from the house of prayer to the Doctor's shop to receive medical advice and appliances for this most loathsome disorder. We will show that on various occasions she threatened to commit suicide, and that she did actually attempt it—and that from her strange conduct and conversation, the appearance of her eyes, and some other circumstances, she was generally considered to be deranged. We will lay before you the history of this girl's lewdness and misconduct for fourteen years. We will satisfy you, that such was her character, and that Mr. Avery knew it to be such. When you are thus made acquainted with her real disposition—when it is proved to you that she was five times expelled from the Methodist Church, and that she was all the time contriving to be re-admitted by means of false certificates and her own forgeries—when you see all these things strongly before you—her character, her vin-

dictive feeling, her threats against, and personal enmity to Mr. Avery. I ask you, Gentlemen, whether you will not unhesitatingly say that, of all human beings, the deceased was most likely to close her career by such an act. There is a thought, and it has been expressed, that a creature of a character so depraved would not care about the disgrace of bearing a child. But if we satisfy you that she was at one time pious, and at another abandoned and vicious, and that no reliance could be placed on her temper or feelings even for an hour, you will at once perceive how weak and untenable such an argument must be.

We will next prove to you, gentlemen, by the testimony of experienced physicians, men on whose opinion the greatest dependence can be placed, that a foetus would not arrive at the length of eight inches until the period of five months, at least, had elapsed, and probably not then, especially in a woman of this lewd description. I think we shall satisfy you that the children of women of bad fame, of diseased women, and of those who indulge in promiscuous intercourse, are smaller than the children of other women; that the deceased at the period of her death must have been pregnant five months or more, and that the women at the Thompson Camp Meeting remarked her pregnancy then. If these facts come before you, you will, I doubt not, at once decide that Mr. Avery could not have been the father of this child. We shall then prove the utter impossibility of Mr. Avery having had connection with her on the evening deposed to by her brother-in-law. (No. 61.) We shall prove that he was at one of the tents at candle light, that he was in the congregation till the horn blew, that he slept with Mr. Crandall, and that he went down to Providence the following morning. We shall prove where he was almost during the whole Camp Meeting. We will satisfy you that for twelve years the prisoner has been a faithful Minister of the Gospel, and that he has no tendency to vices of this description. If I succeed in shewing his character to be such as I represent, surely in a case as awful as the present, it ought to be some protection to him. You will not so readily believe that such a man can be guilty of wickedness so complicated and dreadful. He stands before you charged with seduction, with using his holy office merely as a covering for actions the most corrupt, and lastly with the crime of murder. But, gentlemen, if I prove him to be such a man, and her such a woman as I have represented, the very existence of this vast contrast in their characters, added to the fact that he was aware of it, would be sufficient to make any reasonable man doubt the possibility of his having held any connection with such a wretch.

One letter has been introduced, said to have been delivered to the Engineer at Providence (No. 49) between the hours of 8 and 9 in the morning. We will produce the stage driver who carried Mr. Avery to Providence on the Monday of the four days' meeting, and who set him down at Mr. Jilson's. We will show that he remained there till sunrise, and then went to the sunrise meeting—that he was present during that meeting, and remained till it broke up after 8 o'clock—that he was back again at Jilson's about a quarter past 8, and remained there about half an hour. We will then prove that he was at Mr. Fuller's, where he remained till almost the hour of 9, that he was in the meeting house at 9, that during the whole of his sojourn at Providence he was in the presence of some most respectable men, and that he could not therefore have been the man who delivered the letter—and we will thus lay the foundation to shew that the prisoner could not have been the author of any of the letters which have been here produced—we will shew you that this very person has declared he could not positively say that the prisoner did deliver that letter to him—we will also shew you that Cranstoun, who has been called to testify that the prisoner passed the Howland's Ferry Bridge on the 20th of December, did not at Bristol declare that

he was the man, and that previous to the Bristol examination he told a person named Duvall he had twice seen Avery pass the bridge, and that it was not Avery who crossed on the day alluded to. What reliance, Gentlemen of the Jury, is to be placed on testimony of this description in a matter of life and death? (The learned Counsel here made some further allusions to individual testimony as given by Miss Hambley, No. 57, and Miss Norton, No. 30, and proceeded). I believe I shall be able to satisfy you that their testimony has been picked out, not, perhaps, for the express purpose of perjury, but because the good people of Fall River have taken into their heads a murder has been committed by a Minister of the Gospel, and that he ought to be promptly, and in any event, punished for the crime. Their object is to satisfy the community in which they live that they are weak enough to believe that community is desirous of seeing the prisoner hanged. Gentlemen of the Jury, suspicious circumstances and willing witnesses will hang any man. It is the mistaken zeal of a whole community which has resolved that a murder has been committed, and every member of which is now putting a shoulder to the wheel in order to fix it on this individual. In many of these transactions the finger of Dr. Hooper is clearly discernible. I do not believe he has testified falsely, but under a false judgment.

I shall now touch lightly on the evidence which we expect to produce as to the actual movements of Mr. Avery, at the time of this transaction. We agree that he crossed the Ferry, and say that he went to the coal mines,—that he passed by them, that near Freeborn's house he saw a man with a gun, and a boy—and that, after going some distance down the Island he came out into the main road near the Union Meeting House. Unfortunately for the prisoner, every effort to trace out the man and the boy have been unavailing. Be that as it may, the prisoner is not here to prove his innocence; it is for the Government to prove his guilt. We shall shew you that the testimony of Sarah M. Jones No. 64, as to the conversation with Mr. Avery, is not to be relied on, and that she has given different versions of it.

We will then shew you that Oliver Brownell saw a stranger lower down on the hill at the distance of three quarters of a mile, pass by the gate, and that the stranger's appearance resembled in every way that of Mr. Avery.

The Court adjourned.

THURSDAY, 16th May.

Mr. Randolph continued. There are two other subjects to which I would advert, without entering into the testimony which has been adduced, excepting so far as to make you understand its applicability. [The learned Counsel here commented on the testimony of William Hamilton No. 17, and Eleanor Owen No 19, pointing out the variation in the time at which screams were sworn to have been heard by these respective individuals, comparing the time stated by both with the testimony of other witnesses and drawing therefrom the conclusion that if these two persons had testified the truth, which there was no reason to doubt, the prisoner could not by any probability be implicated in the transaction. He proceeded.]

The next point against us is that Mr. Avery escaped, hid himself, and suffered his beard and whiskers to grow; and this concealment is to be brought in as an evidence of his guilt. I admit that flight in many cases, furnishes a presumption of guilt: but the justice of that presumption must depend on circumstances. On the Saturday after this supposed murder, Mr. Avery was informed that a suspicion of its perpetration rested upon him. He remained in Bristol in the discharge of his clerical duties on the Sabbath, and on Sunday evening John Durfee went over to Bristol and he was arrested. If he had intended to evade pursuit, if he had apprehended that there was danger of his conviction, if he had been sensible of guilt, then was his time

to fly. But he resorted to no such measures; he stood his ground; and after undergoing a long and patient examination was discharged. I will prove to you that threats were uttered against him—that personal violence was hourly anticipated—that he slept out of his house, in consequence of the advice of his friends; and he departed from Bristol, contrary to his own inclination, and in deference only to the advice of those friends, who were alarmed for his safety, till the Court should meet in March, when he might return and take his trial. If I satisfy you of these facts, if I prove to you that he fled on the solicitations of his friends, not from a sense of his own guilt, not from the sting of his own conscience, but from a persecuting spirit, from the ragings of the fever, and the violence of an excited mob, you will then be enabled to form a just conception of the measure of that importance which ought to attach itself to the course he has adopted.

I believe, Gentlemen I have now passed through the main points of our testimony, not, indeed minutely, though sufficiently so for the purposes of an opening. I will now read some authorities connected with the subject of the medical examination. [The Counsel here read a number of passages from Ryan Medical Jurisprudence, and Beck's do. to shew the difficulty of deciding between Suicide and Homicide in cases of suspension, and the extreme caution that should be used by Physicians in forming their judgments in all cases of this description. The gentleman illustrated his positions by the very critical and important case of John Stringer, as reported in Philips Ev. p. 104.]

The Attorney General also read some passages from Beck's Medical Jurisprudence on the appearance of wounds, rapidity of death, &c. and the Counsel for the defence called their first witness.

1. Doctor Nathaniel Miller.—I reside at Franklin, Mass. I have been a practitioner of medicine nearly 40 years. According to my opinion, women are not good judges of the causes from which such marks of violence as are stated to have been found on the deceased have arisen, although they may be perfectly competent to give a description of them. The change which takes place after death is great. It is common for persons of both sexes who die, whether by hanging or not, to exhibit dark appearances about the lower regions of the abdomen, which become discolored before any other parts. You cannot place much reliance on such an examination. It must be taken in conjunction with other circumstances. These parts are the first to decay, and after thirty-six days, they must be more or less decayed. There are cases, such as fracture of the skull, or when an instrument has been thrust through the body, in which one might rely on an opinion formed from such examination; but not so, as to softer parts of the body. If a severe blow had been struck on the abdomen during life, the injury would appear as much in the interior as on the exterior; and would shew itself as quickly. A cart-wheel passing over it, would leave but little mark on the exterior surface. A foetus, I should think, ordinarily speaking, would reach the length of eight inches at the period of five months or more; its length at three months would be from three to three and a half inches; at three months and twenty days, from about three and a half to four inches; not, I should think, exceeding four. A foetus at one month would be a mere speck; at two months it would not be larger than an ant; at four months its length would be from five to five and a half inches; seven to seven and a half inches would be the extent. In my opinion, a foetus of eight inches at the age of three months and twenty days would be against all common experience, and quite out of the ordinary course.

On an examination made 36 days after death, the fact of the uterus being open or its neck discolored, would give to my mind no satisfactory proof of

an attempt at abortion. I know little of the test of washing; but I should not differ much in this respect from Doct. Hooper. Gangrene will not wash out, a bruise will, after death. I should not put much confidence in it 36 days after death.

Cross-examined.—If a woman were passive and powerless, an attempt to produce abortion by violent means would be likely to exhaust her and interrupt the functions of life; it would produce the same effect as a violent blow. A person with a cord round the neck indented three eighths of an inch, could not fasten the cord to the stake.

2. Doctor Usher Parsons. I reside at Providence, and have lectured on Obstetrics in that city and Philadelphia. [Doct. Parsons here testified to the same effect as the previous witness, relative to the parts of the body where livid spots appear soonest after death.] The dark appearance of the neck of the womb would afford no evidence of violence, unless ruptured. Dr. Parsons here testified as to the length of foetuses at different ages. The testimony given by the previous witness will be sufficient on this head. That of Dr. P. was very similar. He stated that taking the average of twelve different authors which he had consulted, the length at three months and twenty days would be four inches and a half.

William Graves. I live in Lowell, Mass. and have practiced medicine over twenty-five years. I presume I was acquainted with Sarah M. Cornell. She called on me at Lowell on the 30th of August, 1830, for medical advice and called her name Maria S. Cornell. She was severely afflicted with lues venerea; a severe case, but not of very long standing. I cannot say that this was Sarah Maria Cornell. She called on me between 10 and 11, and said as a reason for calling so late, she had just come from the Methodist Meeting-house. She stated she had contracted the disorder from a young man. [A number of witnesses were here called, who swore positively to the deceased's general bad character, and that she had admitted to them that she had had the bad disorder, and been expelled the Church for fornication and lying, for which she had at different times threatened to be revenged on Mr. Avery and the whole of the Methodists, and that she had said she had entertained thoughts of drowning herself.]

Jonathan Cady said—He saw Mr. Avery several times at the Camp Meeting alone—saw him at Mr. Elliott's, on Tuesday, at sunrise—on Wednesday evening, at the same house, after sunset—Saw him at various times at the Minister's stand. In the course of Tuesday, Wednesday, and Thursday, cannot say how often.

Sophia Elliott, wife of John Elliott, testified, that Mr. Avery came to their house on Tuesday, and stopped with them during the Camp Meeting, held in Thompson—left their house early each day and returned in the evening, generally about 9 o'clock.—Did not know Maria Cornell.—No female called upon Mr. Avery. To her personal knowledge, females have, in some instances, the monthly sickness after pregnancy.

John W. Elliott testified to the facts as stated by last witness as respected Mr. Avery's arriving and remaining at his father's house during the Thompson Camp Meeting. Did not know Maria Cornell, and did not see Mr. Avery with any female he did not know.

Cloe Elliott knew a female 9 or 10 years ago, who had her sickness a number of times during pregnancy.

Elias Scott deposed, he was a clergyman, and saw Mr. Avery various times during the Thompson Camp Meeting, and mentioned to him at one time that there were bad characters on the ground. Mr. Avery replied, he supposed one of them was the Cornell girl, whom he had expelled the Church at Lowell. On Friday morning, Mr. Avery drove off in his chaise, he believes, alone. Believes he saw Mr. Avery on the Camp Ground after

the horn sounded on Thursday—did not know Miss Cornell, and did not see Mr. Avery with any female he did not know. Mr. Avery mentioned the lewdness and the crimes of the Cornell girl two years ago. Mr. Avery's character was good, as far as I have means of knowing.

Phineas Crandall was at the Thompson Camp Meeting, and saw Mr. Avery frequently in the course of Wednesday; slept with him on Thursday evening at Mr. John Elliott's—has been acquainted with him 18 years, and never heard any thing against his character—never knew Maria Cornell, and did not see Mr. Avery in conversation with any female he did not know.

Abraham D. Merrill was at the Thompson Camp Meeting—saw Mr. Avery one Wednesday morning, the 29th of August, and frequently in the course of the day. Saw him on Friday morning before he left the ground. Miss Cornell's character at Lynn I was satisfied was bad. I saw Miss Cornell there. She came to shake hands with me, was much affected, and said, "Brother Merrill, you will forgive me." I told her nothing but a well-ordered life would secure my confidence. She left me. Mr. Avery's temper is good. I may have said, in allusion to his preaching, he was of warm temperament.

Henry Mayo was at the Thompson Camp Meeting, and saw Mr. Avery during that time—saw him with Brother Crandelle. From sundown to the evening at 9 o'clock Avery could not have been out of sight many minutes; saw Miss Cornell there, and said she ought to be married to save her credit. She had the appearance of being pregnant. I should have noticed Mr. Avery's absence from the tent ten minutes, because we were together in the tent.

Betsy Mayo stated the same as last witness. She also spoke to Miss Cornell, and Mr. Avery by his looks reproved witness for having noticed her.

Patty Bacon saw Miss Cornell at the Thompson Camp Meeting, and noticed to Sister Waters that she was either married or ought to be; she had the appearance of being pregnant.

Polly Horton was at Thompson Camp Meeting; saw Miss Cornell use improper conduct towards a young man. Does not know Mr. Avery.

Abbey Hathaway said she knew Maria Cornell about 10 or 11 years ago, she came to the Lyman Mills, and called herself Maria Snow; she appeared distressed. I have since seen her at the Methodist Meeting at Providence, and her name was Maria Cornell. I do not know any criminal act of hers, but have seen her put her arms round a young man's neck, and act unbecomingly with him.

Josiah H. Ormbee, resides at Providence, and about 10 years ago, detected Miss Cornell stealing a piece of muslin.

Nathaniel Chadwick, drove the mail from Bristol to Providence, and carried Mr. Avery from Bristol, and left him at Mr. Jilsons in Providence, between 4 and 5 on Monday or Tuesday of the four day's meeting.

Pardon Jilson lives in Providence, opposite the meeting house. Avery staid at his house during the four day's meeting last November: he came on Monday evening just at night. This was 26th November. After tea he went to prayer meeting with me, we returned together, and he stayed at my house that night. He came down stairs a little after day light on Tuesday and said he was going to prayer meeting. I saw him turn the corner of Chesnut street. I went down the street and returned a little past 8. When I got home Mr. Avery was at my house; Avery remained I should think until a few minutes after half-past 8. He then left my house alone, observing he had an errand at brother Fuller's with brother Halloway, and that brother Ireson would attend prayers with us. I believe I did not again see Mr. Avery until evening at prayer meeting, he staid at my house that night and left I think next morning for Bristol. On reflection think it was Thursday he left my house.

Cross-examined—I first thought he left on Friday morning, but it was in the afternoon; I know it was 5 minutes past 8 when I passed the Universalist meeting house on Tuesday. I certainly think it was half-past 8 when Mr. Avery left my house on Tuesday morning.

Samuel Boyd saw Mr. Avery on the Tuesday of the four-day meeting at sunrise, in Chesnut-street. Next saw him about 9 o'clock in the fire room in the Methodist vestry; the meeting began about 9 o'clock. Saw Avery during that meeting in the altar. The prayer meeting broke up about half past 10, and immediately after there was preaching. Mr. Avery left about 20 minutes before 11 o'clock.

Jotham Horton, and other witnesses, corroborated the above testimony, as to Mr. Avery's attendance at the meeting.

William Pearce resides at Bristol, was at Mr. Avery's house, Dec. 25th, when Mr. Orswell was there. Heard Mr. Avery ask Mr. O. if he would swear that he was the man who handed him the letter on board the steam boat. Mr. O. said he would not like to swear that Mr. Avery, was the man, though very like him. Mr. Avery asked him what time of the day it was, and Mr. O. said between 9 and 10. Mr. O. said that he did not feel confident enough to swear that Avery was the man. I am sure that was the expression.

Elias Smith—Keeps the ferry from the steam factory wharf on the west of the river to Capt. John Gladding's wharf on the East side. I think there was no other ferry kept up above that place the latter part of last November. He did not pass the ferry on the 27th November.

William H. D'Wolf—On the 20th December last, about half past 12 or 1, the weather began to grow milder than in the fore part of the day, and the wind continued to decrease until nine or half-past nine in the evening. I noticed the fact because my brother was going to sea that day. The wind was light; about a four mile breeze, mild weather. I am extensively engaged in the whaling business. I keep all my letters on file. On the 19th November I received a letter charged 6 cents postage. I find a bill of goods dated the 14th November from Fall River, [bill produced.] From the appearance of the bill, I think it was enclosed in a letter. I have no recollection when or how I received the letter. I received letters from Providence on the 15th and 17th Nov. Letters from Providence are charged with 6 cents postage.

Susan Moore—On the morning of the 21st December I saw Mr. Avery pass my house early in the morning. He had a silk handkerchief in his hand; Mr. Lawless was with him. I should not suppose that any thing was rolled up in the handkerchief.

Nathaniel Bullock—resides at Bristol, and was present with Mrs. Jones at Avery's house, and stated that she said the stranger who passed her house on the 20th Dec. was in appearance very like Mr. Avery. In some respects her evidence in court was materially different to the opinions expressed at that time. He did not recollect having stated at Mr. Howland's that he had not advised Mr. Avery to go away. He did not recollect who was present when he advised Mr. Avery to leave Bristol.

Mary Davis—I Live in Bristol. I was at Mr. Avery's when Mrs. Jones came there. She was not up stairs. I heard nothing said about keeping a secret; I was present when she went away, Mr. Avery handed her to the chaise, and no conversation passed between them in the entry. I think Mrs. Jones said more than once that Mr. Avery looked like the man.

Clarissa Munroe—I reside in Bristol. I saw Mr. Avery pass my house near sun rise on the 21st of last December; he was alone, and I saw nothing in his hand.

David Davol resides at Portsmouth; on the evening of the 20th December, a few minutes after 8, crossed the bridge and went round the bank, and thus avoided the toll gate. His shop was within 3 rods of the road leading to Tiverton, and did not see Mr. Avery pass that afternoon.

After this witness, several others were examined, who thought Mr. Avery could not have passed that afternoon on the road to Tiverton, as they lived or passed that way on the 20th December.

Accumulative evidence was called on the part of Government, and witnesses who were personally acquainted with Mr. Avery testified to having seen him, or some one very like him, pass toward the Ferry house after 9 o'clock on the evening of the 20th December.

This closed the evidence, and this trial, which had occupied the attention of the Supreme Court during the last four weeks, was submitted to the Jury, on Saturday evening at half past seven o'clock. It was closed for the prisoner by the Hon. Jeremiah Mason, and for the State by the Hon. Albert C. Greene, Attorney General. Mr. Mason's defence of his client was able, ingenious, and learned; and the Attorney General's close, on the part of Government, equally so; and to our view, more conclusive and impressive.

It is due to the Attorney-General to state that his management of this important case, which has excited the public mind to a degree hitherto unexampled in the annals of this country, was characterized with the greatest fairness and liberality towards the prisoner; and fidelity, judgment, and eloquence towards the State. The prisoner was ably defended, and the government ably represented. At the conclusion of the argument, Chief Justice Eddy charged the Jury on the law of the case, without averting to the testimony at all. He declined going into the evidence, it being, as he said, the province of the Jury to judge the facts from their own recollection of the testimony of the witnesses, as they understood it. He remarked, that it too often happened, where judges in capital cases charged the jury on the facts, that the verdicts of the jury were mere echos of the opinion of the judge.

The jury, after being out sixteen hours, returned into court at 12 o'clock on Sunday, and pronounced a verdict of

NOT GUILTY.

Thus has this case been terminated; and we cannot but hope that the public will be satisfied with the result. Never was a case presented to a Jury requiring a longer or more laborious investigation; nor one more fairly and fully investigated. In charity to common humanity and justice to the Rev. E. K. Avery, the judgment of the community should harmonize with the verdict of the Jury in pronouncing him not guilty.

Mr. Avery was discharged by the Court, and we learn he returned to his family in the afternoon to Bristol.