

REPORT
OF THE
T R I A L
OF
DOMINIC DALEY AND JAMES HALLIGAN,
FOR
The Murder
OF
M A R C U S L Y O N,
BEFORE
THE SUPREME JUDICIAL COURT,

BEGUN AND HOLDEN AT NORTHAMPTON, WITHIN AND FOR THE COUNTY OF HAMPSHIRE, IN THE COMMONWEALTH OF MASSACHUSETTS, ON THE FOURTH TUESDAY OF APRIL 1807.

BY A MEMBER OF THE BAR.

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Proceedings

ON

THE TRIAL

OF

DOMINIC DALEY AND JAMES HALLIGAN.

AT a court holden at Northampton, within and for the county of Hampshire, on the fourth Tuesday of April, in the year of our LORD one thousand eight hundred and six, before the HON. THEODORE SEDGWICK, and SAMUEL SEWALL, ESQUIRES*, came on to be tried *Dominic Daley* and *James Halligan*, for the murder of Marcus Lyon. On motion by the HON. JAMES SULLIVAN, ESQ. Attorney General of the Commonwealth, they were arraigned on an indictment charging them with having, on the ninth of November, in the year of our Lord one thousand eight hundred and five, at Wilbraham in the county of Hampshire, killed one Marcus Lyon, in the peace of God and of this Commonwealth then and there being :

The first count stated that Daley, with a pistol, gave him the blow of which he instantly died and that Halligan was present, aiding, abetting and encouraging.

The second, that Daley gave the blow as aforesaid and immersed the body, in Chicapee river, so that Ly-

* By a resolve of the General Court, at their last January session, any two of the Honorable Justices of the Supreme Judicial Court, were authorised to try capital offences.

on died, as well by reason of the *immersion* as the blow, and that Halligan was present as before.

And the third, stated that both Daley and Halligan, with each a pistol in his right hand, gave the mortal bruises and wounds of which Lyon instantly died.

To this indictment the prisoners severally pleaded—
NOT GUILTY.

By JOSEPH LYMAN, ESQUIRE, Clerk of the court,

Q. Dominic Daley, how will you be tried?

A. By God and my country.

God send you a good deliverance!

Q. James Halligan, how will you be tried?

A. By God and my country.

God send you a good deliverance!

The prisoners were then asked by the court if they wished to have counsel assigned them, and agreeably to their request THOMAS GOLD and EDWARD UPHAM, ESQUIRES were appointed for Daley; and JABEZ UPHAM and FRANCIS BLAKE, ESQUIRES, for Halligan.

They were informed that each had a right to challenge, peremptorily, twenty jurors and were asked by the court if they would join or sever in their challenges?

A. By the prisoners. We will join.

Q. Are you ready for your trial?

A. We are not—but shall be ready on the morrow.

The court assigned Thursday and ordered the prisoners to be ready at nine o'clock in the morning. Accordingly they were arraigned on that day, and, after having challenged twenty Jurors, the following were sworn:

Justus Dwight, *foreman*; Elijah Arms; John Bannister; Elijah Hubbard; Jabez Nichols; Samuel Patridge, 3d; Thomas Lyman; Roland Blackmar; Elijah Allen; Asa Spalding; John Newton; and Jonathan Peterson.

The prisoners being ordered to hold up their right hands, the clerk read the indictment to the jury and directed them, Good men and true, to stand together and hearken to their evidence.

The Hon. JOHN HOOKER, Esq. by the request of the Attorney General and the assignment of the Court, proceeded to open the cause on the part of the Government.

*May it please your Honors,
And Gentlemen of the Jury,*

It is unnecessary for me to make many observations to you, in opening this cause either on the importance of it to the prisoners, or to the government. The fondness with which we all cleave to existence will on the one hand render you slow to condemn, at the same time it should, on the other, make you determined to protect.

Your situation, gentlemen, is one of the most solemn to which men are ever called; the destinies of two of your fellow creatures are depending on your verdict, and, though you are selected and sworn to pass between the accused and the commonwealth on a question of life or death, yet, you have this consolation, that you are sworn to try the issue according to the evidence, and, if you follow the dictates of your own understanding as influenced by the testimony, you will discharge your duty to yourselves and to your country, however afflictive the event may be to others.

There are three counts in the indictment, varying from each other to meet the evidence that may be adduced on this trial.

The first charges, *that Daley gave the blows with the pistol and that Halligan encouraged him, was present aiding and abetting.*

The second, *that Daley gave the blows and also, that he threw the body into the river, and that Halligan aided and encouraged him.*

And the third charges, *that both the prisoners gave*

the blows and inflicted the mortal wound of which Lyon instantly died. Hence, Gentlemen of the Jury, if you shall find to your full satisfaction, that the deceased came to his death, in either of the ways I have specified, you will be authorized to find a verdict of conviction upon this indictment.

Marcus Lyon, at the time he was murdered, was returning from Cazenovia to his friends in Connecticut. On the ninth of November he was seen travelling on the turnpike road that runs from Springfield to Boston, and on the tenth in the evening he was found dead at Wilbraham.

The circumstances which led to this discovery may afford some light on the subject, and enable you to form more clear conceptions of the evidence to be introduced. On Saturday which was the ninth of November, John Bliss, who lives in that neighbourhood, was informed that a horse was in his pasture saddled and bridled. He sent his boy to bring him up, and, imagining he was some stranger's, tied him by the side of the road. No person having called for him, the next day the inhabitants were very anxious and suspected that the owner had been killed. There was a portmanteau on the horse and a valisse. They examined the one and found in it some articles of clothing, and in the other they found a packet of letters, superscribed to people living in Woodstock and the vicinity, and intrusted to Marcus Lyon for conveyance. On Sunday, about noon search was made along the river but nothing was discovered. They examined until it was dark and returned home. Hearing that the guard and ramrod of a pistol had been found that morning, a few rods west of the bridge that crosses a small brook emptying into Chicapee river, between eight and nine o'clock in the evening they took lanterns and torches and again went in pursuit of the body. Five or six rods from the place where the guard and ramrod were left near the margin of the river *a pistol* was found, and six or eight feet distant the body was discovered by the

appearance of some garments rising to the surface of the water. The head lay towards the shore covered with a stone—the skull was broken on the back part and the forehead had the marks of violent blows. There was a contusion on one side, near the third rib, which appeared to have been produced by a bullet—it entered the flesh but did not lodge in the body. The whole complexion was such that Lyon could not have destroyed himself—his greatcoat and mittens were on and the impression remained where he had been drawn from the road to the river.

The turnpike, there runs round by the river in which the body was concealed and is formed on the side of a hill, whereas the old road runs up and across it. There are no houses in view although there are some in the vicinity. The place is shaded by thick woods and exhibits a very gloomy aspect, well suited to the perpetration of such a deed of darkness. There the murder was probably committed and the evidence that the prisoners at the bar are guilty of the crime I will briefly state to you.

It will be proved by those who knew him and who saw the body after he was dead, that Marcus Lyon was the person killed and that the horse found in the pasture of Mr. Bliss was his horse;—that Lyon was at that place with that horse on Saturday, the ninth of November not far from one o'clock in the afternoon;—that the prisoners were there about the same time travelling from Boston to New-York; that they were seen by Laertes Fuller, the one leading and the other driving the same horse which Lyon rode;—that they were five days, from Tuesday to Saturday, in coming to Wilbraham a distance of eighty miles, and but a little more than two, in going thence to *Cross-cobb landing* a distance of an hundred and thirty;—that for several miles before they arrived where the tragedy was acted, their pace was moderate and that, immediately after, it was so rapid that the sweat rolled from their faces in profusion, although men at work were obliged to wear their mittens to keep warm;—that they had pistols and holsters for

them, made in their great coats;—that these I now shew to you, (one of which was found on Sunday the 10th of November, as I have already stated, and the other on the Wednesday following,)—are the pistols which one or both of them purchased of a Mr. Syms at Boston and under circumstances which were deemed suspicious;—and that some of the money which the deceased brought from Cazenovia was found in the possession of Halligan at the time he was arrested by the officer.

These gentlemen are the facts which we expect to prove. If they produce in your minds a full conviction of the prisoners guilt you will pronounce them guilty, if not, you will be happy in returning a verdict of acquittal.

JOHN BLISS, *being sworn, stated, that*

On Saturday the ninth of November last, standing in my door, Jeremy Bliss informed me that a horse was in my pasture with a saddle and bridle on—I sent a boy to bring him up—he appeared to be a strange horse—I supposed a physicians', from a small pair of saddlebags that were on him.—I opened them and found some clothing and some bread and cheese—I then tied him by the road that people might see him as they passed and told several persons the circumstances—no body called for him—I put him out and Sunday morning went to my pasture and found him there—at nine or ten o'clock I grew more and more uneasy—My brother came in who lived up at the tavern and said—

By the prisoners Counsel.

You must not tell what your brother said.

By the Attorney General.

Q. Did you open the saddle-bags?

A. I did.

Q. Did you find any letters?

A. I did in the valisse.

Q. Did you read them?

A. Not at that time.

Q. Where were they dated?

A. At Cazenovia.

Q. What was the date?

A. The fourth of November.

Q. What was written on the outside?

A. "By Marcus Lyon."

Q. How far is it to Cazenovia?

A. About 230 miles.

- Q. How far is it from Albany ?
 A. A hundred.
 Q. Did ever any body claim the horse ?
 A. Never.
 Q. What became of him ?
 A. I delivered him to Jeremy Bliss.
 Q. To whom did you deliver the saddlebags ?
 A. To the jury of inquest and the letters too.
 Q. How long was the horse in your custody ?
 A. From Saturday to Sunday evening.
 Q. Was the saddle partly turned when he was found ?
 A. It was.
 Q. By rolling ?
 A. I cannot say.

Moses K. Bartlet sworn.

On Sunday evening I went down to John Bliss' with several others—I had seen the horse tied by the road and had heard much talk on the subject—While we were there Pliny Bliss came in with a ramrod and guard and told where they were found—Suspecting that some person had been murdered five or six of us went there to look for the body with lanterns and torches—I went between the turnpike and the river—Pliny Bliss a little back of me picked up a pistol—We then supposed the body must be near—I observed a stone in the edge of the water and immediately saw the great coat which lay partly out and with it we found the body—The head was towards the shore with a large stone upon it—the face downward—and covered with water 6 or 8 inches deep—We then took the body and carried it to Mr. Calkins.

- Q. How large was the stone ?
 A. It weighed 65 pounds.
 Q. Did you find Lyon's hat ?
 A. We found an oil cloth hat about 8 rods from the bridge.
 Q. Saw you the wounds upon the body ?
 A. I did.
 Q. Where were they ?
 A. On his head and over his right eye.
 Q. Were his mittens on ?
 A. They were.
 Q. How far is this place from the turnpike ?
 A. Five or six rods—the body was drawn a little down the stream.
 Q. Were there any marks ?
 A. There were.
 Q. What marks ?
 A. There was underbrush between the road and the river and the small alders were bent and turned partly round.

Cross examined by the Prisoners' Counsel.

- Q. Did the same man find both the pistols ?

A. He did not—Pliny Bliss found the first.

Q. Did you see him find it?

A. I did not—he stood behind me and observed that he had found it—I then looked back and saw it.

Q. Who found the other?

Enos A. [Amos] Rider.

Q. Are these the men who found the ramrod and guard?

A. They are not.

Q. Who directed you to this place?

A. Nobody.

Samuel F. Merrick, physician, sworn.

On Monday morning, the 11th November, I was called upon by the Jury of Inquest and went to Mr. Calkins' where they sat—and where the body was—Over the right eye was a hole to the skull but the bone was not fractured—On the left part of the head was another wound very similar but the bone was not injured—On the back part of the head rather to the right side, the skull was broken—I applied a common probe and it went in the whole length of it without any obstruction.

Q. Did it enter the brain?

A. Without doubt.

It was mentioned that a pistol had been found, but those wounds were not produced by a bullet—On his right side, against the third rib from the bottom, when we took off his clothes, I observed a bullet hole and one of the Jury picked up the ball.

Q. Did you see him pick it up?

A. I did not.

They wished to have the body opened to see if it entered—We opened it, but it did not penetrate beyond the rib—it struck directly against it.

Q. Did the bullet suit the pistol?

A. It did not—it was too small.

By the Court.

Q. Would the wounds have been mortal?

A. Immediately.

Robert Staunton, sworn.

Q. Was you at the Coroners Inquest?

A. I was.

Q. Did you know the body of the deceased?

A. I did—I was the guardian—I heard that a man had been killed whose name was Lyon, and went in great haste to see and was admitted into the room where the jury were sitting.

Q. Where do you live?

A. In Munson.

Q. How old was Lyon?

A. Near twenty three years.

Q. Where did he live ?

A. In Woodstock, Connecticut—I lived by him until he was twenty, and then moved where I now live.

Q. When did he go to Cazenovia ?

A. A year since last March.

Q. What was his occupation ?

A. He was a farmer.

Q. Was he robust.

A. Very.

Q. Did you certainly know him ?

A. I did.

Q. Had he a horse when he went away ?

A. He had.

Q. Was that his horse that was found in Springfield? [By 1170 bww]

A. I did not see him.

Q. Had Lyon saddlebags ?

A. He had.

Q. Were those his found in Springfield? [Witness bww]

A. They were.

Q. Where did you see them ?

A. In the hands of one Gordon.

Marvel Underwood, sworn.

Q. Was you acquainted with Lyon ?

A. I was.

Q. When saw you him last ?

A. The 4th of November, on Monday morning, at Cazenovia.

Q. Where was he going ?

A. To Woodstock.

Q. Did he ride ?

A. He did—he rode a light bay mare.

Q. Brought from Woodstock ?

A. She was—but I kept her during the summer.

Q. Where have you seen her since ?

A. At Woodstock with his brother.

Q. Had he saddlebags when he left your house ?

A. He had.

Q. Were those found at Springfield his? [Witness bww]

A. They were?

By Prisoners Counsel.

Q. What is the distance from Cazenovia to Woodstock ?

A. It is one hundred and twenty miles to Albany—I don't know how far to Woodstock.

Jesse Farnum, sworn.

On Sunday the 10th November in the forenoon I was walking on the turnpike, going to Mr. Calkins, a few rods west of the bridge, I found the guard of a pistol newly broken—I washed off

the mud and carried it along in my pocket—Returning, about three feet distant, I found a ramrod and carried both of them home.

Q. Are these (shewing them to him) the guard and ramrod you found?

A. They are.

Q. You delivered them to the Sheriff?

A. I did.

Q. Had you then heard of any murder?

A. I had not—supposed they had been lost by somebody.

Q. Where was your home?

A. At Gideon King's, a mile distant.

Q. How came you to go to Calkins'?

A. I went to see them.

Q. Had you any suspicions of a murder?

A. I had not—A little after sunset Mrs. King said she had heard that, a horse had been found at Bliss' and did not know but somebody had been killed—I went down to Mr. Calkins and left the guard and ramrod in my coat pocket at home and saw them next morning in the hands of Pliny Bliss.

Q. What time did you find the guard?

A. Not far from twelve o'clock.

Q. Where did it lie?

A. About three feet out of the road.

Q. Was it plainly to be seen?

A. It was.

Q. Did it rain Sunday morning?

A. Very hard.

Q. Was the mud in which the guard lay occasioned by the rain?

A. It was.

Pliny Bliss, sworn.

On the 10th of November I was at my brother's, John Bliss'—He told me about the horse—shewed me the saddle and saddle-bags—they were very handsome—almost new—We opened the valisse and found some letters superscribed and directed as my brother has stated.

Q. What was the direction?

A. "Favoured by the politeness of Marcus Lyon."

I went home and told the circumstances to some of my neighbours—We concluded to go down to the river and examine, and, when we arrived there, we found several who had been making search—Mr. Fuller among the rest—We went along by the stream but could discover nothing—It grew dark and we continued to look until seven o'clock, when we gave up—As I was going to bed some of our family told me what had been found—I then went and obtained the guard and ramrod and carried them to my brothers, where there was a number conversing on the subject, and told

them whereabouts in the road they were picked up—We procured lanterns and torches and went again in search of the body—Near the place where they were found, Mr. Bartlett went down to the river before me, with a lantern, and I followed with a torch—Very near the river, between him and me, I found a pistol between high and low water mark with some hair sticking to it—It was on the sand five or six feet, perhaps, from the water—Mr. Bartlett and I then saw the body—I don't know which saw it first—It lay as Mr. Bartlett has described—and had on mittens and a great coat—We then called fourteen or fifteen other neighbours and carried it to Mr. Calkins'.

Q. What did you do with the pistol?

A. Gave it to the Sheriff.

Q. Should you know it?

A. I should.

Q. Is this it? (shewing him one)

A. It is.

Q. Where was the hair?

A. In the head of the screw pin that holds on the lock.

Q. How far was the pistol from the path of the highway?

A. Four or five rods.

Q. Was the stock so broken when you found it?

A. It was.

Q. Had the body been drawn along?

A. It had, I think.

Q. What was the appearance?

A. As if you had drawn a log through a thicket of bushes—the mud was impressed and the low alders were bent towards the river.

Q. What was the weather on Saturday?

A. Cloudy—Sunday morning it rained.

Q. Saw you the tracks of men?

A. I do not recollect particularly.

M. K. Bartlett, called.

Q. Did you observe any tracks along where the body was drawn?

A. I did.

Q. Of how many?

A. I don't know.

By Prisoners Counsel.

Q. Were they one side or both sides.

A. In the place where the body was drawn.

Q. Was the ground very soft?

A. It was—and in some places the rain had effaced the foot-steps entirely.

Q. Did you observe any mud on the hat?

A. I did not.

Enos Rider, sworn.

Q. Did you find a pistol near this place?

A. I did on Wednesday the 13th of November.

Q. Is this the one?

A. It is.

Q. What did you do with it?

A. Carried it to Springfield—then gave it to the Sheriff.

Q. Where did you find it?

A. Between the road and the river where Lyon was killed.

Q. Did you observe any thing further?

A. Nothing except the track where the body had been drawn along.

Q. Had the pistol been shot?

A. It had—the inside was black—the pan open and the cock forward.

Q. Are there any cavalry about there?

A. There are.

John Bliss, called by Prisoners Counsel.

Q. How far from your house is the pasture where the horse was discovered?

A. Forty or fifty rods.

Q. How far was the horse from the place where Lyon was found?

A. One hundred and twenty rods in the road—eighty in a direct course.

Q. Could they have seen your house from the bars at which the horse was put into the pasture?

A. They could.

Q. How far are the bars from your house?

A. Eighty rods, and twenty-five from the place where the body was.

Jabez Upham, Esq.

We can prove, may it please your Honors, that within three or four miles from this place, a robbery has been committed; that trunks have been cut from the stages as they were passing; that the drivers always feel apprehensive of danger when they are near and see that their arms are in order for defence before they attempt to pass this tract of road and, with submission to the Court, we beg leave to introduce this testimony.

By the Court.

Such evidence cannot be admitted, for unless *this murder* be proved upon the prisoners they will be acquitted.

Francis Blake, Esq.

But, may it please your Honors, May we not introduce presumptive testimony to counteract presumptive testimony? Such is the government's and such is that we offer.

By the Court.

The testimony you offer has no relation to the present case. You leave that under consideration for another that is foreign, and if it be proper for you to go into this evidence, it will be proper for the Government to go into evidence to prove that the prisoners have been guilty of crimes heretofore. This could not be allowed.

John Powers, sworn.

Q. Did you see the prisoners on Saturday the ninth of November?

A. I did, about twelve rods east of the bridge and seventy of the place where Lyon was killed.

Q. What time was this?

A. Not far from one o'clock in the afternoon—I met them on the turapike.

Q. Are you sure these are the men?

A. I am.

Q. What did they say to you?

A. Asked me how far it was to Wilbraham and how far to a tavern—I told them and they passed on.

Q. Saw you them the week after?

A. I saw them.

Q. Had you any doubt that they were the same men you met?

A. I had not.

Q. How knew you them?

A. By their countenance, especially Daley.

Q. Did you observe a handkerchief?

A. I did—they had some clothes tied up in it, and that handkerchief was taken from them when they were brought back to Springfield.

Q. How did you know the time of day, the weather being cloudy?

A. A few minutes after, I passed by John Bliss—he stood in his door and I asked him the time of day—he looked at his clock and told me.

Cross examined by prisoners Counsel.

Q. Did you observe them attentively?

A. I did.

Q. How near?

A. As I to you. (three or four feet distant).

Q. Did they wear their hats low?

A. Low as usual.

Q. What marks did you observe?

A. Those that the small-pox had made upon their faces—they were pitted.

Q. How were they dressed?

A. Daley had on the great coat he now wears—Halligan had none on—or, if he had, it was turned up—he wore a blue jacket.

Q. Did they walk fast?

A. Not very.

Q. How long would it have taken them to go to the place where Lyon was killed?

A. Five minutes.

Q. Did you hear the discharge of a pistol?

A. I did not. *I thence*
Thomas Stebbins sworn.

On the evening of the eighth of November coming from Boston, I put up at Dwight's in Weston, about seven or eight o'clock—The prisoners and two other men were there—They wore their great coats during the evening while I was there, and in about an hour after they went to bed I went, and slept in the same chamber with them—They arose at day break and enquired of me the way to Springfield. Nearly half an hour after they set out, I started and came on to Bates' in Palmer at eleven o'clock—I had passed by them somewhere and they came up.

Q. How far is it from Bates' to the place where the body was found?

A. Four miles and an half—I went on and stopped a moment at Russel's and saw them again in Springfield near the arsenal hill at three or four o'clock.

Q. Did they walk fast?

A. Fast as any body would have walked.

Q. How fast did you travel?

A. At the rate of four miles and an half an hour.

Q. Did you see Marcus Lyon?

A. I do not know—I saw a man coming with a fine horse at the *nine mile pond*, a mile from the place where Lyon was found, leading his horse down a hill.

Q. Was that the horse you saw at Springfield when the prisoners were examined?

A. It was—he had a very peculiar appearance.

Q. Did you observe his portmanteau?

A. I did not.

Q. In whose possession was the horse at Springfield?

A. Mr. Williams.

Q. Did you observe the man who led him?

A. I did.

Q. How far was it from the place where the men overtook you, to the place where you met the man leading the horse?

A. Nine miles.

Cross examined by Prisoners' Counsel.

Q. What did they say to you when they overtook you at Bates'?

A. That they had overtaken me and that I must have passed them while they were at breakfast.

Q. Had you a load in your waggon?

A. I had.

Q. How far is it from Bates' to where they passed you in Springfield?

A. About fifteen miles.

Q. What colour was the horse the man was leading?

A. A reddish colour.

Griffin Bailey, sworn.

On Saturday between twelve and one o'clock, I saw a man on the turnpike going to the eastward with whom I had some conversation—I saw him near the *nine mile pond*—He asked the way to *Narcrops*—rode a bright bay horse—had mittens on and a light coloured great coat.

Q. Saw you Mr. Stebbins?

A. I did—coming from the east—this man from the west.

Q. When you saw Lyon after his death, did you know him to be the man you met?

A. I took him to be the same.

Q. Had he the great coat on you have described?

A. The same, or, one similar.

Q. What time was this?

A. About noon. An hour after I saw two men pass by, having each a bundle—one carried his upon his shoulder, the other, in his hand—Daley is one of them—The other's face I could not see.

Q. Have you any doubt but Daley is one of them?

A. I have not.

Q. Did they walk fast?

A. Faster than usual.

Q. Were they abreast?

A. Daley was a little before the other.

By the Prisoners' Counsel.

Q. Had they hats on?

A. They had.

Q. And the same clothes that they now have?

A. If I mistake not they had the same.

Thomas Glover, sworn.

On the 9th of November, I was at work at a blacksmith's-shop opposite Sikes' or Calkins' and saw a man pass who had on a mixed coloured homemade great coat—about an hour after, I saw two men walking very fast to the westward—*They* had brown great coats on and one of them had a bundle and walked much faster than the other could conveniently—he now and then ran a few steps and hopped to keep up.

Q. Are these the men at the bar?

A. They appear to be.

Q. Was Lyon the man you saw?

A. He was.

Q. Was the horse you saw at Springfield, the same you saw him riding?

A. I think it was.

Q. What time did Lyon pass you ?

A. Twelve or one o'clock.

Q. How far from the place where you was at work is it to that where Lyon was killed ?

A. About half a mile.

Ebenezer Russell, Jun. sworn.

The same Saturday I was hewing timber by the road eight miles west of the place where Lyon was killed, and saw him pass to the east not far from half past twelve o'clock—He had on an oil cloth hat

Q. Was the hat found the same that he wore ?

A. It looked like the same.

Soon after I saw two men passing to the west—One had a bundle in a blue handkerchief—They walked very fast and though it was so cold that we wore our mittens they appeared very warm and wiped the sweat from their faces.

Q. How did you know the time of day ?

A. A man came up who had a watch and told us the time and they had but that moment passed.

Q. What time was it then ?

A. Twenty-five minutes after two.

Q. Had they the same great coats on they now wear ?

A. They had.

Oliver P. Morris, sworn.

On the 9th of November I saw two men passing at Springfield—They walked unusually fast and sweat profusely—When they were brought back I immediately recognized Daley as being one of them.

Hubbard Bliss, sworn.

On the same day I saw them in Springfield turning the corner by Mr. Dwight's store—indeed, I saw them at some distance as they were coming down the road—I observed that they traveled fast and sweat very much—appeared to take no notice of any thing and hardly turned their heads—I have no doubt but these are the men.

Bartlett called.

Q. Did you see the hat which was found ?

A. I did.

Q. Was it an oil cloth hat ?

A. It was.

Q. Was there a name in it ?

A. The manufacturer's was in it.

Q. Was Lyon's ?

A. It was not.

John Dewcy, sworn.

Coming from Munson, on the stage road by Capt. Shearer's one quarter of a mile east of Sikes' I met a man on horseback—I imagine it was about ten o'clock—Five miles west of Sikes' I saw two men coming rapidly after—they overtook me at Landlord Russell's—They had great coats but I don't know that these are the men.

Q. Did you ever see Lyon?

A. Never.

Q. Did you recollect to have seen the horse before, when you saw him at Springfield?

I did—he looks like the horse the man rode whom I met—but I am not certain.

Laertes Fuller, called.

To this witness the counsel for the prisoners objected, and alleged, as the foundation of their objection, that he was not fourteen years of age and therefore not competent.

The usual questions were asked him by the Court and the usual answers returned. But the Hon. Judge Sedgwick subjoined, that this mode of examining is always extremely unsatisfactory, and, that the qualifications of a child may be far more correctly ascertained, from his answers on the stand and manner of giving them, than from the method usually adopted.

The witness was sworn.

Q. Where do you live?

A. In Wilbraham.

Q. How far from the place where the murder was committed?

A. About ninety rods.

Q. Where was you the 9th of November?

A. At home.

Q. What was you doing?

A. Not much of any thing.

Q. How far from home did you go that day?

A. I went near the place where the body of Lyon was found.

By the Attorney General.

Go on and state what you saw.

About 1 o'clock I saw two men on the turnpike going west—They passed on and left my sight—In a few minutes I went upon the same road and saw them coming back, one leading and the other driving a horse—They turned up the old road—I followed them—When they were at the top of the hill one of them stopped and the other jumped on the horse and rode him off—I got over the wall and went to getting apples under a tree—This man (pointing to Daley) came up to the wall, leaned on it and looked at me—I ran home and left him there.

Q. How far were they from you when you first saw them?

- A. Ten or twelve rods.
- Q. How far from the place where Lyon was killed?
- A. Five or six rods.
- Q. Did they come towards you at the top of the hill?
- A. They did not.
- Q. Why did you run?
- A. Because I was cold.
- Q. Did you observe the horse?
- A. I did not mind much about him.
- Q. What colour was he?
- A. A reddish colour.
- Q. Did you see him afterwards?
- A. I saw him in John Bliss' pasture.
- Q. Are you sure you saw the same horse?
- A. I am.
- Q. Which was driving the horse?
- A. Daley.
- Q. How far distant was he from you when he looked over the wall?
- A. Five or six rods.
- Q. What clothes had he on?
- A. A brown great coat.
- Q. Had the horse a good saddle on?
- A. He had.
- Q. Had he a good portmanteau?
- A. It was almost new.
- Q. Did you see Halligan's face.
- A. I did not.
- Q. What time did you dine that day?
- A. About half after twelve o'clock.
- Q. How far was you from the place where the horse was found?
- A. Almost half a mile.
- Q. Had they any thing in their hands?
- A. The one who stopped at the wall had a bundle in a blue handkerchief.
- Q. Are you sure that that was Daley?
- A. I am.
- Q. When they were brought back to Springfield did you select him as the man among a number?
- A. I did.

Cross examined by Prisoners' Counsel.

- Q. How far distant did you say they were when you first saw them?
- A. Eight or ten rods.
- Q. When Daley stopped what did the other?
- A. Rode the horse off.
- Q. How far distant were they then?

A. Five or six rods.

Q. How came you there?

A. I went after some hogs.

Q. Why did you run after these men?

A. I was after the hogs and men too.

Q. Can you see the road from your house where the men were

A. I cannot.

Q. What were they about when you saw them the second time?

A. Leading the horse.

Q. How long was it from the time you first saw them to the time you saw them leading the horse?

A. Fifteen minutes.

Q. When did you fix the time in your mind?—At that moment?

A. Yes, Sir.

Q. Were they the same men you had seen before?

A. I don't know.

Q. How far is your father's house from the place where Lyon was killed?

A. Ninety rods.

Q. Had the two men, the first time you saw them, a bundle in their hands?

A. I don't know.

Q. Did you hear the discharge of a pistol?

A. I did not.

Q. Did you notice Halligan particularly?

A. I did not.

Q. Had Daley his hat on when he looked at you over the wall?

A. He had.

Doctor Merrick, called.

Q. What was the testimony of this boy before the jury of inquest?

A. Very similar to his testimony here—I believe, however, he did not state that he saw two men from his father's house, before he saw them with the horse.

George Bliss, Esq. sworn.

Q. Was you, Sir, at the examination of the prisoners before the Justices?

A. I was—and the testimony of this lad was the same that it has been here, except in the particular mentioned by Doctor Merrick—Of that he was not inquired.

Abraham Fuller, sworn.

Q. Did your son state to you this story, which he has told here, on the Sunday following?

A. He did—when the horse that had been found was spoken of, he told what he had seen the day before.

Q. How far from your house is it to the place of Lyon's death?

A. Ninety rods.

Edward E. Syms, sworn.

Q. Are these, pistols which you sold?

A. I believe they are.

Q. Why do you believe them to be the same?

A. Because they have the same mark on the barrel.

Q. When did you sell them and to whom?

A. Sometime in the month of October last, between the 20th and 30th, a man came into our store to purchase hold-fasts for timbers and asked the price of our pistols—The clerk told him seven dollars—he said he would give six and an half—my curiosity was a little excited, because it is very unusual for a person of his appearance to enquire about such an article, and I came from the other part of the store—As the barrels were dull and unfit for horsemen I told him he might take them.

Q. Where do you keep your store?

A. In Boston.

Q. Do you know the man to whom you sold them?

A. I do not.

Q. What was his dress?

A. He had on a dirty drab great-coat.

Charles Clark, sworn. (Clerk in the store of Mr. Syms.)

Q. Are these the pistols you sold?

A. They are like them—The maker's name on the cock and the figure on the barrel are the same as on those we sold.

Q. Do you know to whom you sold them?

A. I do not—but the man talked like an Irishman.

Q. What was his height?

A. About the same as that of the prisoners.

Q. Why are you able to recollect?

A. Because I noticed him particularly—It is uncommon for a labouring man to buy pistols—had he been a seaman I should have thought nothing of it.

Q. Is either of the prisoners the man who bought them?

A. I cannot say.

Dan Stebbins, sworn.

On Saturday the ninth of November, as I was passing with a waggon in the north part of Wilbraham near the turnpike gate, I met two men—My horses perplexed and detained me a little time—After I had passed the gate, I heard the report of a gun at the south west.

Q. How far was the gate from the place of Lyon's death?

A. I don't know.

Q. Did you observe the men?

A. I did not.

By Prisoners' Counsel.

Q. Was there not a squirrel-hunt on that day at Wilbraham?

A. There was.

Jeremy Bliss, sworn.

On the ninth of November I was at the blacksmith's shop of Thomas Glover in Wilbraham—While I was there I saw a man pass by to the westward with a flock of sheep—Soon after, I saw two men passing in the same direction—They walked very fast—Their faces I could not see.

Q. What time of day was this?

A. About one o'clock.

Some time in the afternoon, going by John Bliss', I saw an horse in his lot with a saddle on—I called and told him of it.

Q. Did you see him in Williams' stable at Springfield?

A. I did.

Q. Did you point him out among a number of horses to Ithamar Stebbins?

A. I don't recollect that he was there.

Q. Did you to any body?

A. I did—Sunday morning, after the body was found, I rode the horse to Springfield—Agreed to go in company with Mr. Bardwell in pursuit of the persons who had been seen passing the Saturday before—About two o'clock Monday morning, we started and by enquiry learned which way they had gone. We pursued as far as Cross-cob-landing in Greenwich, (Connecticut)—While they were there, waiting for a boat to carry them to New-York, we overtook them. Halligan was sitting in the stoop of a public house and Daley shaving himself—This was on Tuesday morning. We took and brought them back to Springfield.

Q. How far is it from the place where the body of Lyon was found to the turnpike-gate?

A. A little more than a quarter of a mile.

Josiah Bardwell, sworn.

On Monday morning after the murder at Wilbraham, about two o'clock, I went in pursuit of the prisoners. We heard of them at the lower ferry and in Suffield. At Hartford we were delayed two hours before we could obtain any information where they stopped or what course they had taken. We pursued them to New-Haven—here we were delayed nearly three hours before we could learn any thing further of them. About four o'clock we were informed that they had been seen on the road towards New-York. We went to Bridgport that night, and arrived at Norwalk by sunrise. We reached Cross-cob Landing between nine and ten o'clock, where we found the prisoners. Halligan was sitting as has been mentioned.—I asked him if there was a packet going to New-York. He answered, there is one going in about two hours—I asked him if he belonged to the packet—he said he was a passenger—I asked him if he belonged in these parts—He replied that he came from Boston. Daley was in the bar-room shaving himself—Halligan soon came and they both went into the kitchen. We immediately followed.

them and disclosed our business told them we had warrants for them. Daley asked for what—I answered for murder. We secured and searched them—found in their pockets 1 dollar and 50 cents in silver and twenty dollars in bank-bills—*There was one five dollar bill of Nantucket bank—a seven dollar bill of Saco bank—a three dollar bill of Newburyport bank—and a one dollar bill of Bristol bank*—They had some clothing tied up in a handkerchief—When we had returned to Norwalk we searched them again and discovered in the inside of their great-coats deep and narrow pockets made in the lining—At the top they were sufficiently large to receive your hand—and at the bottom very narrow—I asked them the use of these pockets—They said they were designed to carry their bottle in, which they had left some where on the way. I then enquired of them what day they left Boston. They answered on the Tuesday preceding about noon. They gave a regular account of their journey from Boston and the places where they were on each day, excepting on Saturday. They could neither of them recollect any thing about that day—through what towns they passed nor any place they stopped at. They could not remember when nor how they crossed the ferry at Springfield, which was the only ferry they crossed on their route.

Q. By Prisoners' counsel. How far is it from Wilbraham to Cross-cob-landing?

A. About one hundred and twenty miles.

Q. By the Court. Did you ask the prisoners, why they travelled so fast?

A. I did. I asked them how it happened that they were from Tuesday to Saturday afternoon coming from Boston to Wilbraham (between eighty and ninety miles) and that from Saturday to Tuesday morning they had travelled so much faster as to get to Cross-cob-landing? They did not assign any reason. Daley told me that he had money due to him in New-York and that he was going after it—Halligan said that he was going there to see a cousin.

Marvel Underwood.

Q. Did you see any money in the hands of Marcus Lyon before he left your house?

A. I did. The night before he left my house he shewed me his money. He had about twenty-four dollars. Fourteen dollars of it were in bills. He had a seven dollar bill of Saco Bank—a three dollar bill of Newport or Newburyport Bank—a two dollar bill of Rhode-Island-Bank, and two one dollar bills—one of them of the Farmer's Bank, the other of the Manhattan or Bristol.

Q. By the Court. Do you describe these bills from your own recollection?

A. I do.

Q. Have you seen the bills in the hands of the Sheriff?

A. I have not. I wrote a letter, as soon as I heard of the death of Marcus Lyon, in which I described the bills he had with him.

Q. How long had Lyon been with you before he set out this journey?

A. He came to my house about the first of April.

By the Hon. J. Hooker, Esq.

GENTLEMEN OF THE JURY,

WE have now introduced all the testimony we have on the part of the government. The examination has been so lengthy and so tedious that I shall not attempt to give you a summary of the evidence. I shall only make a few general remarks which may operate as guides to your judgment and resign the cause of the Commonwealth to the Attorney-General who will succeed me,

Wherever a depraved mind is evidenced by the conduct, you need not search for the inducement. Should a man, by design, discharge a gun at a multitude, to the destruction of an individual, though he had no malice towards him in particular, he would emphatically be guilty of murder. The secret springs of human action lie far deeper than the eye can penetrate, yet we are assured, that a pure stream can never send forth polluted waters and, when the actions of men are murderous and bloody, not by accident but from deliberation, the inference is infallible that they are the subjects of that *malice prepense* which is the prime constituent of murder. As the evidence now stands, if you are prepared to say that the prisoners killed the deceased, they are guilty of the crime with which they are charged, or, that either of them inflicted the blows, or immersed the body, by reason of which Lyon died and that the other was present aiding, abetting, or encouraging, they are both murderers in the view of the law and you are bound by your oath to pronounce them guilty.

The prisoners having no witnesses to introduce, FRANCIS BLAKE, Esq. opened and closed their defence as follows :

MAY IT PLEASE YOUR HONORS,

YOU are called upon, Gentlemen of the Jury, to discharge one of the most important and solemn duties, which can ever devolve upon a jury, in the regular administration of justice. You are required to decide between the government and two unfortunate fellow creatures whose lives are demanded as a sacrifice to the violated laws of God and your country—I read in your countenances the deep and distressing anxiety which is impressed on your minds, by your obedience to your oaths and to the authority of law. Most cheerfully do I believe you would recede from the performance of the awful task assigned you, in the solemnities of this day ;—but your country commands and you are bound to submit.

Painful and distressing as is your situation, you will readily imagine that mine cannot be less critical and embarrassing than yours. For the first time in the progress of my life, I appear as an advocate for the life of a fellow creature. The fearful apprehensions resulting from the solemn and important trust committed to me by the prisoners and the Honorable court, are much increased by other circumstances connected with this interesting occasion. For the first time in the course of my professional employment I have the honor to address a jury of this county. It is the first time I have ever spoken in the presence of an audience so numerous and so deeply interested in the event of a trial. To complete my embarrassment I am affected, as you have already perceived, with an indisposition which almost denies me the power of utterance*. Oppressed with such accumulated anxiety, I had endeavoured at the commence-

* Mr. Blake was afflicted with a severe cold, which had very much affected his voice, if not his health. But having engaged for the prisoners he could not at such a moment, deny them his assistance.

ment of the trial to transfer the deep responsibility of the trust, to some one of the gentlemen connected with me in the defence of the prisoners, who was less incompetent to the arduous undertaking. But the previous arrangements between us had rendered this measure impracticable, and I am compelled to claim your indulgent attention to a feeble effort for the lives of two of our most wretched fellow creatures.

But amidst the perplexities I have already described and which are already so obvious I cannot forbear to suggest to you, gentlemen, that I have for myself, and my unfortunate clients, many fertile sources of consolation. Their destiny is committed to an upright, an intelligent and, I trust in God, an unprejudiced jury. I have also to rely on the assistance, of learned and ingenious counsel, who are connected with me in the defence, and whatever may be omitted in my imperfect and undigested summary of the case, I confidently hope and trust, will be amply supplied by the gentleman who will follow me. On the learned and respectable public prosecutor I have also to rely for a candid exposition of the law, and an impartial commentary on the evidence before you. From the benevolent character of the Attorney General, I am fully persuaded he engages with no less reluctance than you have felt on this occasion, in the discharge of the painful duty which has devolved upon him. I have no belief that he pursues the prosecution against the prisoners with a sanguinary disposition, or a vindictive temper of mind. As a man he delighteth not in the shedding of human blood, but as an officer of the government, he is bound to pursue, even unto death, every offender, the malignity of whose crime merits this most tremendous punishment, which the power of man can inflict. But above all, gentlemen, I am consoled with the recollection, that I am addressing you, in the presence and under the direction of a court, distinguished not less for their humanity than for their integrity and their learning. The humane provision of our law, which requires that in every trial for life, the

court shall be of counsel for the prisoners, will, on this occasion, I am sure, be adopted to its utmost extent, not less from their sympathetic feelings as men, than from a sense of duty as ministers of that justice which is always tempered with mercy. Under the protection of a court thus constituted by law, and thus endowed by nature, the prisoners can have nothing to apprehend from the imbecility of their counsel. Every principle of law, and every tittle of evidence, which can possibly operate in their favor will be clearly explained, and explicitly stated. They will rely then, more on the fidelity of the court, and discernment of the jury, than on the ability of their counsel, for the suggestion of such arguments as may entitle them to a verdict of acquittal.

With these preliminary remarks, which I trust you will not consider as an idle and formal apology, I proceed to consider the indictment submitted to your decision. By this indictment, the prisoners at the Bar, *Dominic Daley* and *James Halligan*, are charged in three separate counts with the murder of *Marcus Lyon*. In the first count it is alledged that both the prisoners made an assault on the body of *Lyon*; that *Daley gave the mortal blows, with a pistol*; and that *Halligan* was present aiding, abetting and assisting in the murder.— In the second count it is stated, that the assault was made and the blows were given in the manner described in the first count; that the body of *Lyon*, was immersed in the waters of *Chicapee* river; and that, by reason of the blows, *as well as the immersion*, the deceased came to his death. In the third count, it is declared that the assault was made by both the prisoners, and that *each of them with a pistol gave the mortal blows* of which the deceased instantly died.

I notice this distinction between the different counts in the indictment, rather for the sake of form, than because it is substantially necessary to the purpose of their defence. I readily assent to the principle advanced by the learned counsel for the government, that every person who is present, aiding, advising, or abet-

ting, in the commission of a murder is to be considered as a principal, is equally guilty, and is punishable in the same degree with him by whom the mortal blow is actually given. If, therefore, the facts charged in either of the counts are proved to your satisfaction, you are bound to render a verdict against both the prisoners. I also agree to another principle which has been stated; that if the act which occasioned the death of Lyon, be proved to have been done by the prisoners, the law will presume it to have been done "*of their malice aforethought,*" and that they are therefore guilty of murder.

It will now perhaps be expected that I should enter immediately upon a review of the evidence before you and direct your attention to the points upon which I rely in the defence. But, Gentlemen, before I proceed to the execution of this task, I have to entreat the indulgence of the Court, and your patient attention, to a few remarks, which I humbly hope I may be permitted to offer relative to the state of the public mind, and the popular opinion upon the interesting case which is this day submitted to your decision. I need not attempt to describe to you, the alarm, the apprehension, the indignation, the abhorrence, with which the community has been agitated since there was "*done this deed of dreadful note.*" You are convened from the body of this county,—some of you, perhaps, from the vicinity of the spot which was the scene of this tragedy; some of you, perhaps, have seen the mangled body of the deceased, and have felt the horror which such a spectacle could not fail to inspire. It would be idle therefore that I should attempt to represent to you the feelings of detestation and abhorrence which have been produced, by the almost unexampled atrocity of the murder, against the supposed murderers of *Marcus Lyon*. You are men of humanity and you have all of you therefore more or less participated of these feelings. But, Gentlemen, you are now called upon to decide as Jurors, you are sworn to "*make true deliverance according to your evidence,*" and you are solemnly pledged there-

fore to divest yourselves, as far as the imperfection of man will permit, of the passions and prejudices which are incident to your nature. The sorrow which you may have felt for his death, the sympathy you may have experienced for his friends and connections, so far as they might be interwoven with the trial of the suspected perpetrators of his murder, are this day to be buried in the grave with the deceased. In the investigation of every case, which may be committed to a jury, they are pledged by their oaths, to guard every avenue of the mind against the approach of prejudice. It has been justly denominated "the spider of the mind, which weaves its subtle and tenuous web over the human understanding, until the reason and the judgment are imperceptibly entangled in its toils."—If, in ordinary cases, a jury are bound to watch with incessant vigilance, against the silent workings of this secret enemy, with what scrutinizing anxiety ought you, Gentlemen, to examine your hearts, before you proceed to deliberate in a case where the lives of two of your fellow creatures are committed to your custody!—I mean not to be understood as capable of insinuating that any individual among you has in any degree prejudged the cause. That the prisoners have, however, been tried, convicted, and condemned, in almost every bar-room, and barber's-shop, and in every other place of public resort in the county, is a fact which will not be contested. That the sentence of the law has not been anticipated, and that they have not already suffered the penalty of death, may be ascribed rather to defect of power, than to lenity of disposition, in many of their accusers. My more immediate object, in warning you against the influence of this popular fury, is, that you may be induced carefully to discriminate between the idle rumours of evidence against the Prisoners, and the facts which have been this day proved before you. Ever since I have been engaged in this defence my "ears" have been "*stuffed with false reports,*" intended to weaken my confidence in

the cause of my clients. I had heard that a button of a peculiar stamp was to be produced on the trial, which had been found near the body of Lyon, and which on comparison was found exactly to correspond with those on the coat of one of the Prisoners. I had been told that a penknife, with three blades, had been taken from the pocket of Daley, which was seen in the possession of Lyon on the very day of his departure from Cazenovia. I had learned, also, that the pistols would not only be completely identified, but that it would be proved, beyond all possible doubt, they had been sold to Daley, a short time before the murder was committed. These "*damning proofs*" I was prepared to meet; and you will judge, therefore, with what feelings I entered upon the task assigned me. You will judge, also, how much these feelings have been assuaged, when I have found these proofs have existed only in the prolific imaginations of news-mongers, and the gaping credulity of their hearers.

As a further evidence of the prejudice which has prevailed against the Prisoners, I cannot forbear to notice the remarks which have been made on the expression of their faces. They had been described to me as monsters, without even the similitude of men. I had been prepared to see the mark of Cain in their countenance, and "Robbery and Murder" written in legible characters on their foreheads. They have passed in review, before you. They have been solemnly called to look upon you; and you have been individually called, with equal solemnity, to look upon them. I pretend to no uncommon skill in the science of physiognomy. I pretend not to read, with mathematical precision, the moral characters of men, in the physical lineaments of their faces. But, if by this fallible test, I were called upon to decide on the guilt or the innocence of the accused, it would require but little time to agree with my conscience in pronouncing a verdict of acquittal. Nor can I entertain a doubt that the impression produced on your minds by this interview

with the Prisoners has perfectly corresponded with my own. You now see them face to face. Apart from the distressing solicitude, the oppressive, the insupportable anxiety, which breaks through the mind, and beams upon their features, let me also ask you, Gentlemen, do you discern the slightest emotion which betrays a secret consciousness of guilt? Do you see the ferocious frown of the robber, or the dark and sullen gloom of the assassin? Do you startle as at the approach of plunder, or are you chilled as at the lowering aspect of death? Their youthful and unfurrowed visages assure you they are unhackneyed in the ways of vice. Let not, then, their countenances condemn them as monsters, but believe them to be men, and in so believing, you are bound to presume them innocent, until they are proved to be guilty.

There is yet another species of prejudice, against the influence of which it is my duty to warn you. I allude to the inveterate hostility against the people of that wretched country, from which the Prisoners have emigrated, for which the people of New-England are peculiarly distinguished. How far this hostility is the result of narrow and illiberal opinion, or how far it is justified by the character and conduct of those who have come among us, it is neither mine nor your province, at present to decide. It is sufficient for them,—it ought to be sufficient for you, that they have lived under the fostering protection of our government, and are now to be tried by the beneficent provision of our laws.—Whether they have brought with them all the vices, without any of the virtues of this generous but degraded people,—whether they are wandering fugitives from justice, or the exiled victims of oppression,—whether they have been transported for their crimes, or have been driven across the Atlantic by the storms of internal commotion, it is enough to ensure to them a fair and impartial trial, that they are to be tried by the laws and by a jury of Massachusetts. Do not therefore believe them guilty, because they are *Irishmen*, but view-

ing them as your *countrymen*, remember you are sworn to believe them innocent, until every reasonable doubt of their guilt is removed from your minds.

I have thus reviewed the most prominent topics of discussion, upon which I have held it my duty to deliberate ere I should enter upon an examination of the evidence before you. In introducing this branch of the subject, it may be useful that I should state to you some maxims of law, by which you are to be governed in this trial. These maxims which result from modern as well as antient decisions, I will read from the books, not only because they are better expressed, than I could express them from memory, but because they will be received with more confidence, from the authority of a writer, than from the mouth of a speaker.

SIR MATTHEW HALE, the most learned among all the English commentators upon criminal law, has strongly expressed the caution with which presumptive evidence is to be received in criminal cases. "In *some* cases, says he, presumptive evidences *go far* to prove a person guilty, though there be no *express proof* that the fact was committed by him, but then it must be *very warily* pressed, for it is better five guilty persons should escape unpunished than one innocent person should die." This fundamental and elementary principle has been strengthened and confirmed by every recent decision. A modern writer of high authority, upon "the rules of evidence" in criminal cases, has quoted the opinion of a learned Judge upon this subject. "In all cases of circumstantial evidence, it is necessary that all the witnesses be persons of unimpeachable veracity, for it is possible the Prisoners may be innocent of the crime. In cases of circumstantial evidence there is great room for doubt, as to the guilt of the Prisoner, and it is a principle in law, that in every case of *doubt*, a jury should lean to the merciful side and acquit." "This principle establishes a great ground of distinction between civil and criminal law.

Every thing is a doubt in a civil case, where the jury weigh the testimony and having struck a fair balance, decide according to the weight of the evidence.—*This, however, is not the rule in criminal cases, for it is an established maxim, that the jury are not to weigh the evidence but in cases of doubt to acquit.*”* The same writer has added—“It may, also, at this day be considered a rule of law, that if a jury entertain a reasonable DOUBT upon the truth of the testimony of witnesses, given upon the issue they are sworn well and truly to try, they are bound in conscience to deliver the prisoner, from the charge found against him in the indictment, by giving a verdict of not guilty. Sir EDWARD COKE, *in favorem vitæ*, exhorts jurors, not to give their verdict against a prisoner without *plain, direct and manifest proof* of his guilt, which implies that where there is doubt the consequence should be acquittal of the party on trial.” The author has further remarked, that “by the humanity of the law, *doubt*, in the breast of a jury, is a certain assurance of acquittal to the prisoner—indeed doubt and acquittal may be considered as synonymous terms.” To the rule thus laid down, the learned Judges, who presided in the trial in which it was introduced, adverted in charging the jury. “However strongly you may suspect the prisoners, say they, yet it were better that ONE HUNDRED guilty persons should escape, than make a precedent by which *one* innocent man might be found guilty upon such testimony”—“if your minds be in a state of *oscillation*, you ought in that case to acquit the prisoner; because to justify a verdict of conviction to yourselves and your country, the evidence upon which you decide should be above exception, and not evidence upon which you entertain a doubt.”†

The principles thus established by the authorities I have quoted, have already been recognized to their utmost extent, by one of the learned Judges, who pre-

† Mac Nally on evidence, vol. 2. page 577—8.

* Mac’Nally on evidence, vol. 1. pages 2, 4, 5.

side in this trial. He has told you (I hope I do not state too strongly the opinion which has fallen from the Bench) that it is incumbent on the government, to satisfy you, not only that the murder has been committed, but that there is not even a *possibility* it should have been committed by any other person than the Prisoners, before you can be permitted to find a verdict against them.

I cannot enforce more strongly than in the passages, I have already quoted, and in the doctrine which has been advanced from the bench, the rules which I wish to have deeply and solemnly impressed on your minds, when you proceed to deliberate on the evidence I am now to consider. By way of illustration I shall be permitted hereafter to state a few cases which have occurred, which most strikingly evince the fallacy of presumptive evidence, and the danger of trusting to it, when the life of man depends upon the issue. I now proceed to a discussion of the evidence.

For the purpose of narrowing the circle of your deliberations; and compressing as much as possible the contested points in the case, I begin by stating certain facts, which are not in controversy between the government and the prisoners at the bar.

It is admitted—First, That *Marcus Lyon* was killed by human agency. Secondly, That he was killed “of malice aforethought,” and was therefore murdered. Thirdly, That the pistols which were found near the body and which have been produced in court, were the instruments of his death. Fourthly, That both the prisoners were on the road, between Western and Springfield, and passed near the place where the body was found, on the ninth of November last. These facts being conceded, your attention will be immediately directed to the remaining topics of discussion, from your decision upon which your verdict will be derived. It is contended by the prisoners—First, that *Marcus Lyon* was not murdered on the ninth of November. Secondly,

That, if he was murdered on that day, the murder was committed by some other person and not by the prisoners.

In considering the first point of enquiry it will be necessary to examine, whether the government have produced such evidence, as will leave no reasonable doubt upon your minds, or whether, in the language of *Sir Edward Coke*, they have furnished "*plain, direct and manifest proof*" that Lyon passed upon the road through Wilbraham, and was on the spot where the murder was committed, *on the ninth day of November*.

Marvel Underwood, who was perfectly well acquainted with the deceased, has testified that he left Cazenovia, in the state of New-York, (with an intention of going to Woodstock in the state of Connecticut) early on Monday the fourth of November. The distance from Cazenovia to the scene of the murder is about 230 miles. Sufficient time had elapsed, therefore, from the period of his departure from Cazenovia, to admit of his reaching Wilbraham, on the evening of the eighth of November. No witness is produced on the part of the government, having the least acquaintance with Lyon, who saw him on his journey after his leaving Cazenovia, until after his body was found, on the evening of the tenth of November, and his features were recognized the next day by Mr. Staunton, who had been his guardian, and had known him from his childhood. Let us examine then, by what evidence the government have endeavoured to satisfy you that Lyon was on the road, and in a situation to meet the prisoners, on the ninth of November. For it is agreed on all hands, that if the murder was committed by the prisoners, it was committed on that day.

Five witnesses have been adduced, for the purpose of satisfying your minds, upon this point in the case, and to identify the man and horse which were seen by them, about noon on the ninth of November. It is not my intention to examine their testimony separately; but to notice the variance between them, and to examine

with what degree of certainty their evidence, collectively considered, will establish the identity of the man.

Two of them Ithamar Stebbins and Jeremy Bliss, do not pretend to have noticed the countenance, or the figure of the man, but directed their attention to the mare on which he rode. These two witnesses disagree respecting the colour of the mare, the one describing it as a red, and the other a bay. They both however, express an equal degree of certainty that this mare was the same which they afterwards saw, and which was found on the afternoon of the same day, in the pasture of John Bliss.

Three other witnesses, (*viz. Griffin Bailey, Thomas Glover, and Ebenezer Russell,*) have attempted to fix the identity of the man, as well as of the mare. These witnesses however do not agree among themselves, either as to the colour of the mare, or the size of the man. One describes the mare as a light bay, another as brown. One describes the man as of middling stature another as above the common size. Neither of them pretends to have examined his countenance minutely, but one of them thinks he resembled the man whose mangled and mutilated features he saw, after the murder was committed.

Upon this evidence, vague and uncertain in its nature, in some degree, it must be admitted, contradictory in itself, you are required to say that you cannot for a moment, entertain a reasonable doubt, that Marcus Lyon was the person seen by the witnesses, and that he was therefore murdered, after the middle of the day on the ninth of November.

Let us examine how far this evidence is uncertain in its nature, how far it is contradictory in itself, how far it is irreconcilable with the testimony of another witness, and how far it is rendered improbable, by other considerations incidentally connected with the trial.

The uncertainty of evidence, intended to identify a man who is a perfect stranger from a mere cursory and transient notice, in meeting and passing, upon a public

highway, without any particular circumstance to fix the attention, is too obvious in itself to require a serious discussion.

A case which is stated to me, by the counsel concerned with me in the defence, as having not long since occurred in this county, and under the cognizance of this Honourable Court, will serve as a striking illustration of the fallaciousness of this species of evidence.

An action was commenced in this Court and, tried at -- term, by John Stone against Amasa Clap & *al.* who had been bails for Russell Kellogg. On the trial the defendant pleaded in bar, that the principal was dead, before the return day of the execution. The decision of the cause depended on the truth or falsehood of this plea. To prove that the principal was alive at the return of the execution, Mr. —, a man of unquestionable veracity and unblemished character, was called as a witness. He had been for many years intimately acquainted with the principal, and had no possible inducement to testify falsely. Upon the examination, he swore most positively and peremptorily, that he had seen the man on a certain day, in the town of Pittsfield, in the county of Berkshire. This evidence would have decided the cause had it not been directly controlled by the testimony of other witnesses. The depositions of three other witnesses, of equal credibility, were produced, who swore with equal certainty, and assurance, that nearly six months before the time mentioned by the first witness they had attended the funeral of the principal, in the City of Charleston, South-Carolina!!—Upon this palpable contradiction in the testimony of the witnesses, the jury were required to *weigh the evidence*, and as there was but one witness on one side and three on the other, it preponderated for the defendants, and the case was accordingly decided in their favor. To render this illustration the more impressive, it ought to be remarked, that Mr. —, the witness produced to identify Kellogg, was a portrait-painter, whose profession it was to con over the faces, and to analyse the features of men. But with the advantages of professional study, and the

certainly resulting from a long and intimate acquaintance, he was deceived in the countenance of the man whom he wished to identify, and who had unquestionably died in the city of Charleston, many months before he was thus seen alive in the town of Pittsfield.

If such is the danger of trusting to this most deceptive evidence, in cases affecting the property of individuals, with what infinite jealousy ought it to be received, in this most solemn of all earthly trials,—a trial for all that is dear on earth to two of your wretched fellow creatures.

Are you then prepared to say, upon the vague and uncertain testimony of men who were avowedly utter strangers to the deceased, and who had only a passing glimpse at a man of no uncommon appearance, travelling on horseback upon a public highway where perhaps hundreds were passing on the same day, and in the same direction,—will you say, upon your oaths that you cannot entertain a reasonable doubt, that the man who was passing from the west to the east in the town of Wilbraham, and near to the spot where the murder was committed, about the middle of the day on the ninth of November, was the same man who was found dead on the evening of the tenth, and that the mare on which he rode, and which has been so loosely described, by these witnesses, was the same which was afterwards found in the pasture of Mr. Bliss?

But we do not rely merely on the uncertainty of the evidence in itself; or on the disagreement among the witnesses as to the size of the man and the color of the mare. For the purpose of strengthening your doubts upon this subject, we ask you to compare their testimony, as to the stature of the man with that of Mr. Staunton, who had known Lyon from his childhood, until near the time of his death. He has told you that he was much above the ordinary size, that he was about six feet high, and of an uncommonly robust appearance. None of the witnesses have given this description of the man whom they saw pass on the ninth of November. One of them saw him walking, and leading his horse,

and he has told you he was a man of a middling stature. Is not this circumstance in itself sufficient to create a doubt as to the identity of the man, or are you prepared to say upon your oaths that you have "*plain direct and manifest proof*" that the man was Marcus Lyon, whom the witnesses have thus described?

I now solicit your attention to another argument upon this point, resulting from a deficiency in the evidence in support of the prosecution. From the extraordinary diligence and assiduity which have been displayed by the gentlemen who have represented the government in preparing and arranging the materials for this trial; from the uncommon method and symmetry which have appeared, in the course of this investigation in directing the evidence to the different points in the case in the regular orders of time, and connection, you can have no reason to believe that any proof has been omitted which it was within the power of the government to obtain. If therefore, a link is wanting to complete the chain of evidence, by which you are to be bound to a verdict of conviction, you will believe that this deficiency happens because the facts do not exist by which the defect could be supplied. If then, it is incumbent on the government to convince you that Marcus Lyon was murdered on the ninth of November, ought they not to trace him from the time of his departure from Cazenovia, and prove to you the place at which he lodged on the night antecedent to this day? There could have been no difficulty in doing this. It would be easy to retrace the road on which he travelled. The rumour of this deed had spread in every direction. The horse would have assisted in the research to ascertain the place at which he lodged. It could have been only half a day's journey from the scene of the murder. No attempt has been made to fix on this place; and from this extraordinary omission in the train of circumstances, by which you are to be conducted to a developement of the truth, are you not bound to believe that the attempt has been

made and that it has proved a stumbling-block, in the path of their enquiries?

If upon a review of this part of the evidence, the least degree of uncertainty is left upon your minds, whether the mare was Marcus Lyon's who was seen by the witnesses, on the ninth of November, instead of believing that the murder was committed by the prisoners, "in the broad glare of day," on a public turnpike road, where travellers were continually passing, and within a few rods of houses in every direction, will you not rather presume it was perpetrated on the evening or night preceding by some midnight assassin, who would "choose darkness rather than light," who would attempt to shroud himself not merely from the sight of man, but from the scrutiny of his maker,—who would exclaim in the language of the murderous Macbeth,

"Come black night,

"And pall thee in the dunnest smoke of hell;—

"Lest heaven peep through the blanket of the dark,

"And cry—hold! hold!!"

But it is time I should approach the strong hold of the government, and attempt to encounter the evidence upon which they mainly rely. I allude to the testimony of LAERTES FULLER.

It will be said that whatever doubt or uncertainty might have otherwise existed as to the identity of Lyon and his murderers, must be completely removed by the aid of this evidence. Viewing all the other circumstances in the case, whether separately or collectively taken, as altogether insufficient to fix the charge upon the prisoners, it is my intention now to consider the testimony of this witness independent and alone. I shall afterwards briefly examine how far it is supported by other facts which are adduced, in corroboration.

I shall contend—First, that from the age of this witness he is not entitled to full and unlimited credit.—Secondly, that his testimony is, in its nature, vague and uncertain—and thirdly that it is highly improbable and inconsistent *in itself*.

It was antiently the rule to reject witnesses as incompetent who had not arrived at the age of fourteen. The modern practice, however, has sanctioned a departure from this rule, and witnesses are now considered *competent* at any age, who can satisfy the Court, by a previous examination, that they have attained a reasonable discretion. That their testimony, however, is received with extreme caution, will appear by a passage which with the leave of the Hon. Court I will read from a high authority which I have already quoted.—“Instances have been given of very young witnesses sworn upon evidence in capital cases, viz.—one of nine years old—Yet such very young people, under twelve years old, I have not known examined upon oath, but *sometimes* the court for their information have heard their testimony without oath, which *possibly, being fortified with concurrent evidences may be of some weight.*”*

The reasons of this caution are too obvious to require elucidation. The facility with which their tender and pliable minds may yield to false impressions, their comparative incapacity to distinguish between right and wrong,—their ignorance of the solemnity of an oath, or the dreadful consequences, which may result from false testimony, the ease with which they may be tempted to depart from the truth;—these and many other considerations which will at once present themselves to your view, furnish the true ground of distinction between the testimony of a child, and one whose reason and judgment are matured by age.—Could you then reconcile it with your consciences, upon the naked and unsupported testimony of a lad of thirteen, if there were no other evidence in the case, to pronounce a verdict, which should send two of your fellow-creatures “*to their great account,*” “*with all their imperfections on their heads?—Unhouseh’d—un-anointed—unanneal’d?*”

But the objection against the testimony of Laertes Fuller, resulting from the immaturity of his judgment,

* Hale’s P. C. 2. 283—4.

is much increased by the subject to which it relates and the facts to which he has testified.

The remarks which I have already made upon the testimony of the other witnesses as to the identity of Lyon and the mare—and the case I have stated by way of illustration, apply with redoubled force to the testimony of the boy, inasmuch as this witness is alone and unsupported, whereas in the other case, there was a partial concurrence in the testimony of many. But let us examine whether the facts to which he has sworn do not in themselves furnish strong and powerful reasons to doubt the truth of the evidence?

I do not intend minutely to review his story, but to select such parts of it as are pertinent to the purpose of my argument.

His father's house, it seems is about ninety rods east of the spot where the body was found. On Saturday, the ninth of November, about one o'clock in the afternoon, he was employed, near the door, and saw two men on foot who had passed the house, and were travelling westward on the turnpike road. They soon turned round the brow of a hill which concealed them from his view. About *fifteen minutes after*, having occasion to drive some hogs along the road, in the same direction with that in which the travellers had passed, he met *the same men* (as he believes) *whom he had seen before*, returning from the course in which he had first seen them travelling, one of them leading a horse and the other behind, driving it with a stick. He was then about ten or twelve rods distant from the men. They turned from the turnpike, into the old road, which led to the top of the hill, and the hogs going in the same direction, he followed after them. On reaching the summit of the hill, one of the men jumped upon the horse, and rode it into a pasture. The boy, then got over a wall and amused himself with picking up apples under a tree. While he was thus employed, the man who had remained behind came to the wall, leaned up,

on it and looked steadily at him. He was then about six rods distant. After remaining five or six minutes in this situation, he became cold and ran away.

He has told you *positively* that the man whom he first saw in the act of driving the horse was *Daley* who now stands before you—that he was the same man who looked at him over the wall—that *he did not notice the countenance of the other although he was nearer to him when he first met them with the horse—that he felt no alarm at the appearance of the men—that he did not notice the horse, but thinks it was the same, which was afterwards found in the pasture—that he heard no report of a pistol—that the interval of time from his first seeing them, until he met them returning with the horse, was not more than fifteen minutes—that the occurrence produced no very particular impression on his mind, as he did not communicate it to his father, or any other person, until the next day.*

I have thus selected from the narrative of the lad, without intending to mutilate his story, such topics as I intend to discuss, in considering the very material part of the evidence before you.

In the first place, then, from the *positive* manner, in which he has testified as to the identity of *Daley* have you not some reasonable doubt of the truth of his testimony? Does it display that discretion and prudence which are necessary to entitle a witness to full and unlimited credit in a trial upon which the life of man must depend? Your own reason will persuade you, and I have proved to you by the case I have stated that this evidence is, in its nature fallacious. When a witness therefore testifies, on a subject like the present, without ever admitting it to be possible that he is deceived, will you not be inclined to doubt, if it be for no other reason, than because he will not doubt himself. But are there not other circumstances in the case which will serve to create a distrust of the truth of this story?—Can you satisfy your own minds, by any plausible conjecture, why it is that the countenance of *Daley* should

have made so deep and indelible an impression, while that of his companion should have left not a single trace behind? Is there such a marked and prominent difference between them, as to account for this phenomenon? Look at them both, and then decide, whether the features of the one are such as to be forever remembered, while those of the other will produce but a transitory impression, and are to be almost instantaneously forgotten.

It is to be recollected, also, that at the first meeting on the turnpike road the man who was taken to be Daley was at the greatest distance, that he was in the act of driving the horse, while the other was leading. It was at this time, the witness tells you, he noticed the countenance of Daley, and that the view of him, while under the apple-tree served only to strengthen the impression. The few moments of this interview, considering the employment of the boy, and the indifference with which he saw him, cannot be supposed to have afforded an opportunity for a critical analysis of his features. How, then, can you account for his swearing with so much decision to the countenance of Daley, while he appears not to have the slightest remembrance of the man whom he first saw, and who must have first attracted his notice.

But there are other circumstances in the testimony of LAERTES FULLER, which cannot fail to produce a doubt of the truth of his story. He has told you he did not notice the horse,—but is yet very certain that it was the same horse he afterwards saw, and which was found in Bliss' pasture. He heard no report of a pistol, although only at a distance of ninety rods, and a horse-man's pistol was undoubtedly discharged when the murder was committed. The occurrence, singular and uncommon as it was, produced no impression on his mind, for it was not mentioned until the next day, after the horse had been found, and enquiries had been made for the owner. But above all, Gentlemen, you will consider the time which must have been consumed

in the commission of this robbery and murder, if the testimony of this witness is taken to be true. By his account it was only fifteen minutes from the time he saw them quietly passing westward near the brow of the hill, until he met them returning with the spoils of plunder and of death!! In this fleeting interval, the murderers must have met the man--concerted their plan of attack--discharged a pistol--dismounted the rider--finished the desperate conflict with an antagonist remarkably robust and resolute--dispatched him with six or seven wounds in the head--rifled his pockets and his portmanteau--drawn the body from the road to the river, a distance of five or six rods--placed a stone upon his head weighing more than sixty pounds--returned again to the road--taken the horse and led him several rods on the road after having decided on the manner of concealing it from the public view!!

Is it in the nature of things; is it within the scope of human probability, is it credible, is it even possible that this complicated work of robbery and murder, could have been thus secretly and silently atcheived in the little time allowed for the foul purposes by the testimony of this witness? If in this part of the story you discern any thing improbable or incredible in itself, you are bound to discredit at once the whole of his testimony. You are not at liberty to separate the different branches of this evidence. Proof of a palpable contradiction or inconsistency will strike at the root of his credibility and the minutest ramification of his narrative will wither at the stroke.

To combat these suggestions it will be said, perhaps, it is absurd, it is monstrous to believe, that this tale has been fabricated, by this lad, for the purpose of destroying the lives of innocent men, thus wantonly and wickedly accused. To this argument it would be sufficient for the prisoners to reply that they are not bound to account for the perpetration of the murder. It is enough for the purpose of their defence, that reasonable doubts are excited whether it was perpetrated by them. If

they were permitted to speak of the many deeds of darkness which have been done in the vicinity of this spot, both before and since this dreadful occurrence, it would not be difficult to raise a plausible conjecture as to the time and the manner in which it happened. It would not perhaps be more monstrous to believe that it was committed under the cover of the preceding night by some lurking assassin acquainted with the scene and prowling for his prey ;—that the boy had been seduced to transfer the guilt from the real transgressors, to these unfortunate and suspected Irishmen ; than to imagine that men possessed of an ordinary degree of reason and discretion should leave the very purloins of robbery and plunder, in the vicinity of our metropolis,—should travel a distance of nearly a hundred miles, meeting many more favourable opportunities and exposed to many stronger temptations, and should at length fix upon the very blaze of day, on a turnpike road where travellers were continually passing, to attack a man, of robust and athletic appearance, whose dress and stile of travelling exhibited no attractive indications of wealth, and no alluring prospect of plunder.

In support of the testimony of this lad as to the identity of Daley, proof has been offered that after the apprehension of the prisoners, and during their examination at Springfield, he was conducted into a room, where they were indiscriminately placed amidst a large concourse of spectators ; that an injunction had been previously given that no person should look on them, and that after a general survey of the people in the room, Daley was pointed out by him as the person whom he had seen at the wall. This fact, however striking it may seem on the first glance, will on reflection, be found to amount to nothing. These men were, at this time, handcuffed, although it has been said their irons were concealed. Whether they were visible or not, it is in vain to pretend that at this moment the eyes of the gazing

multitude could have been diverted from the prisoners.

" All eyes were bent upon them,
And bleared sight was spectacted to see them."

The public anxiety had been unusually excited. By the talismanic touch of the boy the murder was to "*speak with most miraculous organs.*" At the interesting moment of his entrance, the eyes of the spectators must have been directed towards the prisoners; by an involuntary impulse, like the radii of a circle to a common center. This would serve as an infallible index, by which the boy would have been directed to a discovery of the man, and I cannot but believe, therefore, you will consider it as a satisfactory explanation of this part of his evidence.

Having thus attempted to convince you that the testimony of this witness is improbable, inconsistent and unsatisfactory in itself, that, alone it is altogether insufficient to fix the crime upon the prisoners, that it is of such a nature as at least to leave a reasonable doubt upon your minds, and is not that "*plain direct and manifest proof,*" which the law requires, it is my present purpose to examine how far it is strengthened and fortified by other facts which are proved in the trial.

I have endeavoured already to dispose of the evidence relative to the passing of Lyon on the ninth of November, to convince you that the witnesses may have been deceived in the man, and that he might have been murdered on the night preceding. I now ask your attention to the circumstances which have been offered in confirmation of the testimony of Fuller and the other witnesses to strengthen the presumption of guilt, and to fix the charge beyond the possibility of doubt.

An attempt has been made to identify the pistols, and to trace them into the hands of one of the prisoners. I submit to you, with how much success this effort has been attended. A witness from Boston, Mr. Syms, has told you that between the twentieth and thirtieth of October (he offers no reason for remembering the time)

he sold a pair of pistols in the store of Mr. Torrey between day-light and dark, to a man in the garb of a laborer, and with the accent of an Irishman. The pistols were marked with the name of the same manufacturer with those which are produced in court. He tells you there were many others of the same description in the store, at the same time. He pretends not to remember the countenance of either of the prisoners, but says he was suspicious they were intended for some improper use, because the purchaser was a laborer, and an Irishman! This is the substance of the testimony of Mr. Syms, and that of the lad, who was with him in the store at the time of this transaction. I mean to bestow but a few moments, in the consideration of this evidence, because it is really too trivial and unimportant in itself to require an elaborate discussion. I cannot however forbear to remark, how infinitely it falls short of the evidence which had been anticipated from this quarter, and which the tongue of rumor, had proclaimed, in every section of the country. Does it identify, with any tolerable precision, either the pistols or the man who purchased them? The pistols, as you will perceive, are such as are in common use with the cavalry in the country. There is nothing singular in their appearance or construction. But they are stamped with the name of a certain manufacturer, from whom Mr. Torrey had received many of the same description. Besides the importation of Mr. Torrey, is it not probable, that thousands with the same impression, have been imported from the same manufactory by the different merchants in New-England? Two witnesses are summoned from Boston to furnish this vague and unsatisfactory evidence, upon the strength of which, the lives of two men are to be put in jeopardy—and you are called upon to believe upon your oaths, that the pistols which are produced in court which were found in Wilbraham on the tenth of November, and which it is agreed were the instruments of the death of Marcus Lyon, are the

same which were sold by Mr. Syms in Boston, between the twentieth and thirtieth of October.

But the attempt to identify the purchaser of the pistols, is yet more ineffectual and abortive. They were sold to a man in a tattered threadbare coat, and with the brogue of an Irishman!! These circumstances were sufficient to excite suspicion in the mind of the witness. Although the description of the dress by no means corresponds with the present appearance of either of the prisoners, yet it is very possible, nay very probable, that both of them may have been in the garb of laborers. In the eyes of a Boston Bond Street lounge, a threadbare coat is always an object of suspicion. Yet altho' it should be satisfactorily proved to you that neither of the prisoners have ever appeared in public, arrayed so near to the extreme of exotic fashion, as the well dressed gentleman who has testified against them, I am doubtful whether this circumstance, would in itself be sufficient to excite even a suspicion in the homespun minds of a country jury. Certain I am, that upon the force of this evidence, you would not be prepared to pronounce a verdict against them on a charge for a most atrocious robbery and murder!

But the suspected man, forsooth, unfortunately spoke in the suspicious dialect of an Irishman! This part of the testimony of Mr. Syms, furnishes a striking commentary upon the remarks I have already made for the purpose of guarding your minds against the influence of this illiberal, this inhuman prejudice. The witness lives remote from the scene of this extraordinary excitement, he had not, therefore, caught so much of the spirit of enthusiasm, which pervades this section of the country, as to be ready to recognize the features of Daley, from a transitory glance. But his mind is infected, in common with others, with that national prejudice, which would lead him to prejudge the prisoners, because they are Irishmen. Pronounce then a verdict against them! Condemn them to the gibbet! Hold out an awful warning to the wretched fugitives from

that oppressed and persecuted nation ! Tell them that although they are driven into the ocean, by the tempest which sweeps over their land, which lays waste their dwellings, and deluges their fields with blood ;—though they float on its billows upon the broken fragments, of their liberty and independence ;—yet our inhospitable coast presents no Ararat upon which they can rest in safety ; that although we are not cannibals, and do not feast upon human flesh, yet with all our boasted philanthropy, which embraces every circle on the habitable globe, we have yet no mercy for a wandering and expatriated fugitive from Ireland. That the name of an Irishman is, among us, but another name, for a robber and an assassin ; that every man's hand is lifted against him ; that when a crime of unexampled atrocity is perpetrated among us, we look around for an Irishman ; that because he is an outlaw, with him the benevolent maxim of our law is reversed, and that the moment he is accused, he is presumed to be guilty, until his innocence appears !

But I will not permit my enthusiasm upon this subject to lead me astray from the path of your enquiries. I entreat you to pardon the digression, and to return with me again to the evidence before you.

As another corroborating fact upon which the government rely you have had evidence of the peculiar form and appearance of the pockets, which were found under their outside coats, and which it is said were adapted to the reception of pistols. The account which was given by the prisoners, on their examination, of the purpose for which these pockets were intended is plausible and probable in itself. Pockets of this description are in common use in the country. The thing in itself is of no importance. Of how much importance, it is deemed by the government, even in connection with the other facts in the case, you may fairly infer, from their neglect to produce them on the trial.—The coats were in their power. They have taken possession of other articles, such as the bank bills, a pen-

knife, and some wearing apparel, which were found upon the prisoners, and which it was believed might furnish evidence against them. Why then are the coats not produced, unless it is, because it was believed the appearance of the pockets was such as could afford no satisfaction to the minds of the jury. The Attorney-General retorts and asks why the prisoners do not produce them. I answer, that if your verdict be against the prisoners, it is to result from the evidence adduced by the government, and that from their failure to offer this, which has been confessedly in their power, and which it is agreed would be the best evidence of the purpose of the pockets, the conclusion is irresistible, that they have had no faith in its effect.*

Another proof of the guilt of the prisoners is deduced, from the rapidity with which they travelled, after they were seen passing through Wilbraham. It will be found, they travelled at the rate of little more than forty miles a day, from Wilbraham to the place of their apprehension. This, it is agreed, is more expeditious than their journey from Boston to Wilbraham. It will not, however, be contended that this is a very extraordinary degree of speed. I have heard it said (the truth of the remark I submit to your decision) that a man of robust constitution, accustomed to walking, will accomplish a long journey on foot in less time than would be necessary to perform it with a horse of ordinary speed. Another remark I have often heard on this subject, which appears to be founded in nature, that a person not recently accustomed to the exercise of walking, will travel with much greater ease and expedition, after the first day or two, than at the commencement of a journey. The limbs becoming gradually inured to

* It was the intention of Mr. Blake, to have noticed, here, the evidence resulting from the bank notes found upon the prisoners. This topic was accidentally omitted in the regular order of discussion. After the argument was closed, the omission was noticed; and leave was given by the Court to submit to the jury his remarks upon this point. The Attorney General, however, having candidly declared that he had no reliance upon the evidence, and that he should consider it out of the case in addressing the jury, the intended discussion was waived, by the Counsel for the prisoners.

this peculiar motion, the traveller will suffer much less fatigue and will be enabled to proceed with much more rapidity, on the third or fourth, than on the first day of his progress. If these remarks be correct, you will have no difficulty, in finding a satisfactory reason, why the prisoners, who were anxious to arrive at New-York the end of their journey, on foot, one for the purpose of transacting some pecuniary business, important to a man in his situation, and the other with an intention of embarking for Charleston, for the purpose of meeting a connection from whom he had been long separated, should have travelled at the rate of forty miles a day, in the month of November, or should have walked with considerably greater speed after passing through Wilbraham, than on the first days of their departure from Boston. You will not, at any rate, be constrained to believe that they refused to themselves the necessary repose of the night, that the ghost of the murdered Lyon flitted before them, denying "sleep to their eyes and slumber to their eyelids;" that they were goaded on in their flight, by the stings of an accusing conscience, or were haunted in their imaginations, by the hurried steps of their pursuers. There are natural causes by which you may account for these facts without an imputation of guilt; and you are bound by your oaths, thus to account for them, if they are in any degree, consistent with the innocence of the accused.

I have thus attempted, with as much brevity as was in any degree consistent with the importance of my trust, to notice the various circumstances relied upon by the counsel for the government, to strengthen and confirm the testimony of *Laertes Fuller*. How stands the account? Does any one of the facts--the pistols, the pockets or the speed with which they travelled, when considered alone and by itself, furnish any thing like the "*plain direct and manifest proof*" which the law requires? If separately considered, they amount to nothing. Consider them together, and what is the result? Are you acquainted with any rule in arithmetic by which an aggre-

gate sum can be formed from the addition of cyphers? Or are you conversant with any principle in physics by which different things *unsubstantial* and *immaterial* in their nature, can derive weight from conjunction, or by any process of combination can be converted into *substance* and *matter*. The decision of this cause must then ultimately depend on the testimony of *Laertes Fuller*. The reason for discrediting this witness, I have already considered, and I have only to request you to revert to this point in your enquiries. In doing this I beseech you to consider one other circumstance in the case which cannot, I think, fail to strengthen the natural and legal presumption in favor of innocence. I allude to the conduct of the prisoners, both before and since their apprehension.

If you have already persuaded yourselves there is nothing incredible in their travelling from Boston to Wilbraham, for the purpose of robbery and murder, that they should have neglected to improve the many favorable opportunities, which must have presented, under the cover of night, before their arrival at this fatal spot, that they should have resisted every other temptation, and at length yield to the untempting appearance of this stranger, that they should have ventured on the commission of this unheard of outrage, in the view of inhabitants, and with the chance of being overtaken by travellers in the very instant of perpetration, if you have already surmounted all these obstacles to a verdict of conviction there are yet, Gentlemen, some other traits in their subsequent conduct, which I believe you will find it difficult to reconcile with the possibility of guilt. Would they have continued to travel together on this public road, after having seen the boy, while attempting to conceal the horse and with every reason to believe an alarm would be given? The situation of the country between Wilbraham and Springfield, you well know, is favourable to concealment.— They went neither to the right nor to the left, but pursued their journey on a public post road. At the time

of their apprehension they had been waiting several hours for a packet to convey them to New-York.— They were immediately charged with the crime and were examined separately. Instead of committing themselves by a contradictory, prevaricating account which would have been the inevitable consequence of a consciousness of guilt, they perfectly agreed in their story, in stating the place from whence they came, the course they had pursued, and the end and object of their journey. In this story they have persisted from the time of their apprehension down to the present day. It is in the very nature and essence of guilt to attempt to screen itself from detection, by resorting to falsehood and prevarication. How then will you account for this open and consistent conduct of the prisoners, when it must have been obvious to them, if they were guilty, that the tendency of their story was to strengthen and confirm the suspicions against them ?

But gentlemen, I have perhaps wearied your patience by this minute review of the evidence. In a cause of such inconceivable importance, I ought not, however, to admit the idea that your patience can be exhausted, while there is a possibility of raising a reasonable doubt in favor of the accused. Having completed my summary of the evidence, I have yet to entreat your attention to a few topics which remain to be discussed.

The proof on which the counsel for the government rely in support of the prosecution, is in its nature *presumptive*. It is not my intention to enter into a dissertation upon this species of evidence ; or to attempt to draw a line of distinction between presumptive and positive proof. I shall however with the permission of the honorable court, recite to you a few cases, by way of enforcing the remarks I have already made upon the danger of trusting to this evidence, where the life of man is concerned. I will take three cases from the authority I have already quoted, and which are there introduced, by this learned but humane and benevolent judge, for the purpose of illustrating the doc-

trine I have endeavoured to maintain.* These cases are familiar to professional men, and to them may appear somewhat hackneyed, in their application. But to you, gentlemen, who have never, perhaps, before been called upon to deliberate in a case of this nature, I can have no doubt they will seem appropriate, and will not therefore be stale in their repetition.

A man was indicted at Oxford assises in England (where theft as well as murder is punished with death) for stealing a horse. It was proved he had been taken with the horse on the same day he was stolen. On this evidence, as he could give no satisfactory account of the manner in which he became possessed of him, he was convicted, condemned and suffered death. Two assises afterwards, another man was convicted of another felony, and sentenced to death. Before his execution he acknowledged, that he had stolen the horse; that he had met the person on the road, who had suffered death for his crime; that finding himself closely pursued, he had dismounted, and requested this person to walk his horse whilst he should step over a hedge; that he availed himself of this opportunity to make his escape, while the other man was apprehended with the horse and died innocently.

On another occasion, a man in Staffordshire was indicted for the murder of a person who had long been missing, and "*upon strong presumptions,*" was convicted of the murder, it being supposed he had burnt him to ashes in his oven, the better to conceal his crime. Within a year after the execution, the man who was believed to be murdered returned from beyond sea, having been sent there against his will by his supposed murderer, who, altho' highly criminal, was innocent of the crime for which he suffered.

A man in Warwickshire was committed on suspicion of murdering his niece, a child with whose education he had been entrusted, who had a large fortune and to whom he was heir at law. It was proved he had treat-

ed her with great severity, and that correcting her on a certain occasion for some offence, she was heard to exclaim "good uncle do not kill me," after which time the child could not be found. Upon the proof of these facts he was admonished by the judges to produce the child against the next assises. Being unable to find her he resorted to a *pious fraud*, for the purpose of saving his life, which in the end proved the cause of his death. He procured another child, very nearly resembling her in age and appearance, apparelled her like his niece and brought her before the judges. On examination, the fraud was discovered. This was considered evidence of his guilt, and upon these *violent presumptions*, he was found guilty and executed.—Some years afterwards it appeared, that the child having been cruelly beaten, had run away and placed herself under the protection of a stranger who had concealed her from her uncle. On coming of age, she appeared and demanded her estate, and it was immediately made to appear that she was the same child for whose supposed murder, her uncle had been condemned to the gibbet.

The last case I shall relate will appear to you, perhaps, with less solemnity, because the book from which it is selected, is a two-penny pamphlet instead of a folio, and is taken from the pack of the pedlar, and not from the library of the lawyer. I do not vouch for the authenticity of the narrative. It may, perhaps, be a legendary tale, but whether true or fabulous, it will serve as a striking illustration of the doctrine for which I am contending. I refer to "*The life and adventures of Ambrose Gwinnett*," a book which was familiar to me in the earlier part of my life, and which then produced an impression that will not be easily effaced.

This extraordinary man assures us, that at the age of twenty, he was actually hung in chains, in England. Though strange and paradoxical as it may appear, he lived to a good old age, and afterwards published the

story of his life. He had occasion to travel on foot from Canterbury and to pass through Deal, a small seaport on the coast of England. The town being crowded, at this time, he had difficulty in procuring a lodging, but at length obtained one at a public house where he was known, on condition of sleeping with a man by the name of Collins, who was uncle to the landlady and who resided in the house. To this man he was introduced in the course of the evening, and had seen him counting money, which he put into the pocket of his nightgown as they retired to bed. In the course of the night, Gwinett was seized with a violent cholick. He awoke his bed-fellow who directed him to the necessary, and gave him a pen-knife from his pocket, which he told him, he might want in opening the door. On opening the penknife, a piece of money, which stuck between the blade and the handle, fell into his hand. He put them both in his pocket, remained some time in the yard and, on returning to his chamber, found his bed-fellow missing. This excited some surprize, but believing he might have withdrawn to another chamber, he went to bed and again fell asleep.

Gwinett arose early in the morning, and having paid his reckoning over night, left the house without seeing any of the family, and proceeded on his journey. About noon on the same day he was overtaken by officers of justice who seized him and charged him with the robbery and murder of the man with whom he had slept. He was carried back to Deal, and conveyed into the chamber where he had lodged. On examining the bed, the sheets and pillows were found stained with blood—A search was then proposed, and on examining the pockets of Gwinett, the penknife and piece of money were found. The penknife was immediately recognized, and on examining the money, it proved to be a pocket piece, which was engraved with the initials of the name of Mr. Collins and which was known to have been many years in his possession. Blood was afterwards discovered on the seat in the necessary, which

had been occasioned by the hemorrhoids, a disorder to which Gwinett was subject. This building was situated directly over the sea, and where the tide ebbed and flowed. There having been a high tide, the preceding night, it was at once concluded that the body had been conveyed into the necessary, thrown into the sea, and carried away by the tide. Gwinett was committed to prison, and this wonderful combination of circumstances appearing against him on his trial, he was convicted and condemned to be hung in chains.

By the carelessness of the Executioner, the sentence was executed in such a manner as to produce but a temporary suspension of life. This part of the story will appear, perhaps, altogether incredible. The writer gives at least a plausible account of the event. It is not necessary I should state the circumstances, as they are not immediately connected with the object of the narrative. He says he was taken down by his friends, soon after the execution and by great exertion restored to life. He was immediately sent to sea, that he might elude any search which might afterwards be made. After a variety of adventures he was at length taken prisoner by the Spaniards, and carried into the Havannah. Walking one day in the streets of that city, he met and immediately recognized the features of the man for whose supposed death he had suffered!!—After the first emotion of astonishment had subsided, Gwinett related to Mr. Collins, what had happened to him, and requested an explanation of his singular disappearance. In answer to these enquiries, Mr. Collins told him that after he (Gwinett,) had gone down into the yard, he discovered that the bandage had slipped from the arm in which he had been bled the day before—that the orifice was opened, and he found himself extremely weakened with the loss of blood, that he arose, slipped on his night-gown, for the purpose of going to a barber, who had bled him and who lived directly opposite—that in crossing the street he was seized by a press-gang, who at that time infested the town, and was hurried on board

a ship which then lay in the harbour—that the ship immediately put to sea, was afterwards taken by the Spaniards, and by a similar series of adventures, with those which had befallen Gwinett, he became a prisoner in the Havannah !!

If the story I have related is a mere fabrication, it must be acknowledged an ingenious illustration of the danger of yielding to presumptive evidence, where the life of man is at stake. The imagination can scarcely conceive of a more powerful combination of circumstances to produce conviction in the mind. However romantic the tale, there is nothing impossible, in any one of its incidents; and if it is circumscribed, even by the boundaries of possibility, I shall not I trust be accused of trifling with your understandings, in attempting to enforce my argument, even by a fabulous narration.

From some of the cases I have stated, you can have no doubt there have been instances, in which innocent men have suffered death, from the force of presumptive evidence. There have also, perhaps, been many more instances in which guilty men have escaped, where the evidence has been insufficient to produce conviction. Even if these cases have been disproportionate to the first, at the rate of an hundred to one, their escape has been sanctioned by the humane maxims of our law. “It is better that an hundred guilty persons should escape than that one innocent man should suffer.” “It is safer to err on the side of mercy than of justice. It is better to err in acquitting than in punishing.”

Admit for a moment, Gentlemen of the Jury, that the case of the wretched prisoners at the bar, should furnish another instance, in which guilty men should escape, because the evidence is not “*plain, direct and manifest*” against them. You can have no difficulty in reconciling your consciences to such an acquittal, while a single doubt is hanging over your minds, when you remember that “doubt in the breast of a jury is a certain assurance of acquittal, and that *doubt and acquittal are synonymous terms.*” Indeed, Gentlemen, it

ought to be deeply impressed on your minds that, if you pronounce a verdict of conviction, while you have a reasonable doubt of their guilt, if the lives of the prisoners are sacrificed by such a verdict, you are guilty, in the sight of God and your consciences, of the dreadful crime for which they are now on trial. If they are suffered to escape, will it be said they escape with impunity? I say nothing of their lingering imprisonment. I speak not of the awful solemnity of this trial. These are sufferings infinitely disproportionate to the enormity of the crime of which they are accused. The municipal law, which decrees the punishment of death for the crime of murder, is but a transcript of the law of heaven,—its voice is but an echo of the voice of God, which proclaimed from the beginning "*whosoever sheddeth man's blood, by man shall his blood be shed!*"

It is neither my right, my duty, nor my inclination, to attempt, on this solemn trial, an artful address to your passions. If I have any concern with your passions, it is rather to allay than to excite—it is rather to soothe the spirit of indignation, awakened by the atrocity of the murder, than to rouse your feelings of sympathy or compassion, for the wretched prisoners, or their more wretched connections. I may not, therefore, be permitted to speak of the afflicted mother—the brother, the wife, or the child, who appear in one interesting group before you, whose lives are interwoven with the life of one of the prisoners, who are tied to existence by the same brittle thread, which must be severed by the same stroke, that dooms him to the gibbet. I may, however, without incurring your displeasure, or the censure of the Court, be permitted to remark, that the agonizing solicitude displayed by them on this occasion, furnishes no very equivocal evidence, that the tender sympathies of a son, a brother, a husband and a father, have not been obliterated, in the breast of the prisoner, by a course of hardened profligacy, by a long career of wickedness and guilt. It is not an artful and insidious appeal to your feelings, resulting from any preconcerted

arrangement, which has drawn them this day before you. They have come from the involuntary and irresistible impulse of the heart. An impulse which assures you, in stronger language than the voice of witnesses, or any written testimonials to the former character and conduct of the prisoner, that his life has not hitherto been a life of sin, that he has not been the habitual slave of that malice, which is a necessary ingredient of murder, and which, in the language of the law, proceeds from "*a heart regardless of social duty, and fatally bent on mischief.*"* If you judge, from the countenance of his companion, he is too young and inexperienced to be hackneyed in the dreadful trade of robbery and death. Imagine, then, for a moment, that they are guilty, that this is their first departure from the pleasant paths of wisdom and virtue,—that "*seduced by the instigations of the devil,*" they have, by one tremendous leap, plunged from a precipice, into the deepest abyss of infamy and vice. Imagine the prison-doors to be thrown open and the world again bursting upon their view by a verdict of acquittal. They have eluded the vigilance of human research, but do they go unpunished? "The ways of transgressors are hard" and "*there is within them a worm that never dies.*"—They may fly from the sight of man, but they cannot fly from themselves or an accusing conscience. Your verdict cannot minister comfort or consolation to minds thus diseased. They may call upon the mountains to cover them, but they cannot be covered from the sight of him who seeth in secret and searcheth out the inmost recesses of the heart. Remorse will perpetually prey upon their existence. The few fleeting moments of a miserable life, will soon pass away. "They will be summoned to render an account to him whose scrutiny is not bounded by the narrow circle of human vision, whose research is not to be eluded, whose justice endureth forever, and who hath decreed from the beginning, that the transgressor shall not go unpunished."

* Foster's Crown Law, page 257.

The lives of the prisoners are now consigned to your disposal. Before you proceed to the performance of this awful duty, let me borrow the language of one of their countrymen, not degraded by the ignominious reproaches against his nation, but elevated to the highest rank among the orators of the elder world by the most splendid talents, the purest patriotism, and the most unsullied integrity. Let me beseech you to "remember that there is another than a human tribunal, where the best of us, will, on one day, have occasion to look back on the little good we may have done. In that solemn trial may your verdict on this day give assurance to your hopes, and afford you strength and consolation in the awful presence of an adjudging God!"*

* See "Curran's speech, in the trial of Patrick Finney, for High-Treason—January 1798.

NOTE.

Thomas Gould, Esq. was to have closed the defence—but, the evening having far elapsed and the prisoners signifying their assent, he declined addressing the jury.

The argument of Mr. Blake, was reduced to writing from the recollection of the speaker. As it was made with very little time for preparation, it cannot be expected that the exact phraseology in every instance should be preserved. It has been his object, however, to adhere strictly to the method which was pursued, and to preserve the language and mode of expression so far as was possible, from the mere exercise of the memory. He is aware it will be deemed, by many, unreasonably long. But when the magnitude of the trial is considered, he cannot believe, an apology will be necessary, to those to whom only it is addressed, who know how to appreciate the administration of justice, and have a proper estimate of the value of human life.

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The Attorney-General closed the cause in substance as follows :

GENTLEMEN OF THE JURY,

THE solemnity of this trial tends to establish a proper estimate on human life. The importance of it to the prisoners, has been urged, with irresistible eloquence by their counsel. It now remains for me, in the execution of my office, to arrange the evidence offered in the trial, so as to give it the proper and legal weight it ought to have. If in the performance of this

duty any thing should escape from me, which would bear unreasonably hard on the prisoners, you will impute it to error and not to any severity of feelings; for I have none. . . . If there should appear to be a warmth of expression, or a zeal of conduct, you will conceive that it comes from the habits of forensic debates, and not from any opinion I have of the prisoners' guilt.— The Judges are, by the constitution and the laws, to be of counsel for the prisoners, and I am relieved from the solicitude I should otherwise feel, by the consideration, that any undue impressions, which I may make, will be done away by them, in their direction to you.

The part you have to bear in this trial is affecting and important. Your verdict, will, no doubt, determine the fate of the prisoners as to life or death. The oath you have taken, formed in a concise, and accurate manner, describes your duty. You have sworn, "that you will well and truly try, and true deliverance make between the Commonwealth and the prisoners whom you have in charge, according to your evidence." You are thus taken and separated from your fellow citizens, by the hand of divine providence to this solemn duty. Your only concern is, that you may conduct yourselves in such a manner as to have, on sober reflection, the approbation of your own consciences. If you have not now, from the habits of integrity, consciences which will not yield to undue prejudices, and rise above the weakness of an unjustifiable timidity, it will be in vain for me to attempt to fortify your minds by any arguments I can lay before you.

When you attend to the oath you have taken, you will see that you are "well and truly to try, and true deliverance make," of consequence you are not to suffer any prejudice, or preconceived opinion, to have weight in your minds, because so far as these shall prevail you do not well and truly try; for you have before tried and formed a judgment. You are sequestered and set apart for this trial, and it is of no consequence to you,

what the opinion of the multitude, who attend the trial, may be, or what the conclusions of the whole community, who may have formed opinions abroad, are upon the issue. Your verdict is to deliver the prisoners over to the sentence of the law, or to restore them again to their former standing in society. Your verdict is, therefore, to be the voice of truth according to your evidence. The indictment being read to you, you are charged, as good men and true to stand together and hearken to your evidence. This solemn charge implies that you are to stand as separated from the rest of the community, and hearken to the evidence given you in the trial, as though you felt yourselves accountable to God alone for your conduct.

Thus situated, it is of great consequence to you to know, with accuracy, what is, and what is not, evidence in the case. It is of great consequence to you to know what established rules are to govern you in the construction and application of the evidence. I feel myself relieved from a great degree of anxiety, I should otherwise have, by the consideration, that the Judges will afford you such aid on these points, as will not only correct any errors I may commit; but will lead you into the plain path of your duty.

The evidence given you on this trial is the testimony of the witnesses who have been examined before you.

The most powerful eloquence, or the highest strains of rhetoric, have no evidence in them. Sympathy is an angelic affection of the human heart; it is intended by nature, to break the iron bars of prejudice, and to dissolve the icy hand of avarice, but it affords no proof as to the existence of facts. Compassion is the warm advocate of injured innocence, and the ready friend of him who is bending under oppression and wrongs; but in a fair and open trial it has no use. Mercy is a divine attribute, but where justice is excluded, mercy has no place. He who has said blessed are the merciful

for they shall obtain mercy, has placed the habitation of his throne in justice, and in a wonderful manner has maintained it there, in his dealings with our apostate race before the astonished eyes of those, who are surrounding the throne. It may be true, as has been repeatedly observed by the prisoners' counsel, that should they escape punishment here, they will, if they are guilty, be punished in another world: but this we have no concern in; the Supreme Being has not delegated his justice or his mercy to us, nor has he given us the power of pardon, as it regards him. He directs his justice, not according to the actions of men, as they affect societies, or individuals, but according to the motives their actions proceed from. The man who builds a temple, or saves his country, deserves the eulogy of his fellow men, yet his conduct, as it relates to his maker and final judge, may, from the motives he acts from, be highly criminal. The worst actions, as they relate to society, or individual men, if they proceed from a pure heart but erroneous understanding, may be innocent. The persecutions by Paul give a strong proof of this. The persecutions which have taken place in the christian church, may claim forgiveness, at least some of them, on this score. And therefore, when we speak to men of the actions of man, candour is indispensable, and eulogy may be proper; but when we address Him to whom all our motives are known, Him who knows our thoughts afar off; all flattery, and adulation are but prophanity, and all censoriousness, and slander, highly sinful. The idea that you should take into consideration the certainty of the prisoners being punished in another world for the crime they are charged with, if they are guilty, though they should escape in this, is no other than an application for a repeal of the law, by which they are to suffer; because the same argument will apply, with equal force in all cases.

The punishment of death has been annexed to the crime of murder in all civilized nations, and in tribes which have been considered as barbarous the avenger

of blood has generally been found. The Hebrews were but a barbarous people, yet the author of human life, in the code of laws which he gave them, directed the punishment of homicide, according to the degrees of guilt, resulting by nature from the transaction by which human life was destroyed; this was done in a degree of accuracy, of which the wisdom of the world has availed itself to the present day; and he therein annexed the punishment of death to the crime of murder. Nor do we find, in the rules given by him, who afterwards appeared to redeem the world from sin and misery, that this punishment was abrogated, or even mitigated by his benign interposition. Yet the justice of this punishment is no part of the evidence committed to you; you have no right to draw off your attention from the evidence to waste it on the contemplation of the rectitude of the laws which provide for the punishment of the offence. The form of the solemn oath you have taken admonishes you to attend to the evidence given you and to that alone.

We now come to the evidence in the cause. The prisoners offer no evidence in their own favour, but rest their defence upon that of the government.

Your first enquiry is, whether Marcus Lyon, the person said to have been murdered, is in fact dead.

To prove this fact you have the testimony of Robert Staunton to whom Lyon was well known; who has been his legal guardian in his minority, and who swears that he saw his corpse on the eleventh of November when an inquest of the coroner was taken upon it.

Your next inquiry is, whether Lyon died a violent death. As to this point you have the evidence of Doct. Merrick, and of others of the coroners inquest, who describe the wounds in his head; and prove that these were mortal wounds. Though these wounds were sufficient to have produced his death, yet it does by no means follow, beyond a *possibility* of doubt, that they were the cause of it. It might be said that he died suddenly of an apoplexy, nay of a stroke of lightning,

and those wounds might have been given him after he ceased to live. Such conjectures flowing from our own imagination would not be so plausible as some doubts, which have been raised in the defence, and yet they would be of the same class, if they had been suggested.

It may be as well to examine the nature of presumptive evidence, at this point in the trial as any where else.

Presumptive evidence is that class of proof, which allows of great controversy, and yet is more used in courts of justice than any other proof. It implies in all cases a possibility of error or mistake, otherwise it would not come under the denomination of presumptive evidence.

This is again divided into three classes : light presumption, which weighs nothing; probable presumption which has but little weight, and violent presumption, which is legal proof. Though this supposes a probability of error, yet it is the highest proof which can be had in the common occurrences of human life, and therefore justice demands its support.

There must, in order to raise a presumption, be some positive proof of certain facts, from whence the fact resting upon presumptive evidence is to be reasonably, and satisfactorily inferred. The death of the man said to be slain, can, in most cases, be established, as it is in this case, by positive proof. The several cases mentioned by the prisoners' counsel, of convictions of murder where there was no positive proof of the death, serve as a good caution, and have established the principle that there must be absolute testimony of the death of the man said to be slain, before there can be a conviction of murder : but this is the extent of their use.

Presumptive evidence is the result of conclusions fairly and reasonably made from facts proved by positive evidence, and which facts cannot be reasonably and naturally accounted for upon the supposition of the prisoners' innocence. The famous cause we have as a governing example in the books, where a man runs in

flight, from a house with a bloody sword in his hand, without being able to account for his conduct, and another man is found in the house weltering in his blood, run thro' with a sword. Here the flight, the circumstance of no *other* man being in the house, the apparent haste and confusion, are full evidence of the murder so as to throw the burden of proof upon him, so far at least, as to compel him to explain his conduct. It would be in vain for him to say that he found the man with a sword in his breast and hastily drew it out and run to give an alarm. This might be said by every assassin and murder might be committed with impunity at noon day and in any place if this was an answer.

There is no proof, *beyond a possible doubt*, where one discharges a gun at another, even in the midst of a crowd, that he killed him. Who could swear that the gun was charged with lead? Or who could say that another man unobserved did not discharge another musket in another direction which gave the wound? The impracticability of producing positive proof so as to exclude the necessity of presumptive evidence, in murders effected by drowning, strangling, and poison are still more obvious. Our proceedings are all liable to error, our conclusions are all marked with a great degree of imperfection, but we are with upright hearts to try and true deliverance make according to such evidence as the nature of the cause will admit of, and with all the reason and intelligence we have to exercise in the trial. Should you do wrong as to the prisoners, or to the government, from right motives, you are safe; should you do wrong from wrong motives, corruption or even from unjustifiable weakness, or timidity, you are criminal.

If, under these principles, you doubt whether the wounds, proved to exist on the head of Marcus Lyon, were the cause of his death, it would be in vain for me to reason upon the evidence. Should you doubt as to this fact, your enquiries are at an end. You need proceed no further. If you are satisfied that he died of

those wounds, you will then inquire, whether those who gave them are guilty of murder. Here again your labour will not be arduous; for there is no pretence, that the homicide was attended with any circumstances that can reduce it below the crime of murder: It appears by the testimony of Doct. Merrick, that he received a shot in his side by a pistol ball, which perforated the skin, and was stopt by a rib: It is probable that he was thrown from his horse by that shot; though that wound was not mortal. The wounds in his head were undoubtedly made by the pistols, which were found near where the murder was committed, in a broken and shattered condition. That he was killed in the highway is proved by the weapons, or broken parts of them being found there, by the marks on the ground of the body's being dragged to the water and the position it was found in. That it was placed there by him, or those who had murdered the man, is clear, because no one, who had innocently found a dead body in the road, would have removed it under such a design, and with such an attempt to conceal it.

Then if you are convinced that Marcus Lyon was murdered, your next question will be, whether the murder was committed by the prisoners.

The day, or the time of the day, when the murder was committed is of no consequence, any further, than as it may be of use in the question, whether the prisoners committed the fact. In that point of consideration it has become necessary to investigate it.

Staunton, who had been guardian of Lyon, testifies, that he left Woodstock in Connecticut, his native place, in the spring of eighteen hundred and five, for a journey to the interior of New-York; since which he never saw him until he was called to examine his corpse on the eleventh of November. Marvel Underwood testifies that Lyon left Cazenovia, (two hundred and twenty miles from the place where he was murdered) on Monday the fourth of November. That he came away with the horse, which was found, on the ninth, in the

field of John Bliss, the saddle, saddlebags, and cloths found there, and which are recognized by and delivered to his brothers and sisters. The hat he came away with, covered with an oil cloth, was found near the place of his death.

Griffin Bailey, was, on Saturday, about four miles and an half west of the place where Lyon was killed, and saw a man pass, after inquiring the road, eastward, about twelve o'clock, or between twelve and one, observed him, and his horse, and has no doubt as to the horse.

Thomas Glover was near the same place, saw the same man, and has the same impressions.

Ebenezer Russell saw such a person pass, took notice of the oil-cloth hat and of the horse about the same time of day.

John Dewy met the same man, knows the horse which he saw a quarter of a mile east of Sikes' tavern, and near the place where Lyon was killed.

These witnesses, perhaps establish the fact that Lyon arrived at the place where he was murdered not many minutes before or after one o'clock on the ninth of November.

Your next inquiry will be whether there is evidence to prove that the prisoners were there at that time.

Upon this point you have the evidence of Ithamar Stebbins, who swears, that on the night of the eighth, on his way from Boston with a waggon, he put up at Dwight's tavern in Western, about fifteen miles east of where the fact happened; that the prisoners came in, in the evening; that he lodged in the same chamber with them, and that he started in the morning half an hour after they had gone on, and does not know when or where he passed them; they had inquired the way to Springfield; that he came to Bates' tavern in Palmer at ten o'clock, about four miles and an half east of where the murder happened, and when he was coming away they came up about eleven o'clock, that he knew them again and conversed with them.

Thomas Powers, Esq. testifies, that at one o'clock he saw the prisoners near the parting of the new turnpike from the old road, and about seventy rods east of the place where Lyon's body was found; that they inquired the way, and went on into this new turnpike road, cut in the side of the mountain, on the bank of Chickopee river through a wood, and in length extending half a mile before it meets the old road again. He saw the prisoners after they were apprehended, knew them then, and knows them now.

You have the testimony of Thomas Glover, Ebenezer Russell, Jun. Oliver B. Morris, Hubbard Bliss, and John Dewey, that about two o'clock on that day, they saw two men about four and five miles from where Lyon was killed, walking to the westward in a great hurry. They describe the men to you, and you are to judge whether you have satisfactory proof, that the prisoners were the men.

If you are satisfied that the prisoners were the men whom those witnesses saw, and you believe the testimony of Mr. Powers, then you have proof that the prisoners were, at one o'clock, about the time Lyon entered on the turnpike, in the wood, seventy rods east of the place where he was murdered, and at two were five miles west of the same place.

To identify the men you have again the testimony of Ithamar Stebbins who knew the prisoners, and saw them pass in great haste at four o'clock nine miles west from the place where Lyon was found.

It is observed that none of the intermediate witnesses, between Powers and Stebbins, positively swear that the prisoners are the men who passed. This is true; and as they do not give any account of themselves in that time, or prove that any other travellers passed on that road, at that time of day, under the description given, you are to judge how far you are satisfied with the evidence offered to prove that they were at the place where the murder was committed at the time it happened.

But if Lyon was in fact murdered, and the prisoners were in a situation where they might have committed the deed, and there is no evidence that it was committed by any one else, you are asked with great propriety, and urged with strong argument, "are they to be condemned as murderers without proof that they are guilty?" By no means—the idea that you may be prejudiced against them because they are foreigners, can have no foundation but in a warm imagination, and the supposition that such an idea could operate in a charge against you, to blunt the force of the evidence, would be an ill treatment of your characters. The prisoners are men, they are as men entitled to as fair a trial as the men of the first rank and eminence can have.—The law must remain sacred, proof must have its usual and reasonable effect, and the guilt, or innocence of the prisoners must be determined on the evidence alone, without regard to out-door opinion against them, or the feelings of pity and compassion for them.

We come now to that part of the evidence, which will fix on the prisoners the crime they are under trial for, if it is sufficient in your minds for that purpose; or if it is not so, will leave you to pronounce them not guilty. The other evidence which has been offered, is only to bring the proof now to be considered to a point and to corroborate the facts now to be mentioned.

This evidence is the testimony of Laertes Fuller, a boy thirteen years old. It may be necessary to consider what his testimony is, what objections are raised against the credibility of it, and what facts are proved by other witnesses in corroboration of it, before we apply it, and make our deductions as to its conclusion against the prisoners.

This witness swears, that between one and two o'clock in the afternoon of the ninth of November, the day before Lyon's body was found, he was near the parting of the road, and saw two men coming from the west, one leading and the other urging with a stick the horse that is now proved to be the one Lyon had rode

on. He noticed the horse, saddle and portmanteau ; that they turned up the old road towards John Bliss' house ; that one, which he now recognizes to be Daley, stopped, leaned over the wall and looked on him, where he had got over to pick up some apples ; that the other mounted the horse and rode up the hill towards Bliss'.

It is said that this boy is too young to be depended upon. The law does not determine upon the competency of a witness after he is seven years old, but the credit is left with the jury. The court has examined this witness as to his moral sensibility, and ideas of the sacred obligations of an oath, and are satisfied to admit him. He answers like a boy of good education, and testifies with caution and propriety.

It is said, that it is incredible that he should take such notice of Daley as to know him. This objection is not to his love of truth, but to the weakness of his mind ; for if he was corrupt, he would as positively swear to Halligan as to Daley, but he is cautious as to a recollection of him. His story, that he knows him, who looked over the fence at him, is simple, and will deserve more credit than if he attempted to support it by a combination of unusual facts, or improbable circumstances.

The prisoners were on Thursday of the next week in Springfield, and this lad pointed out Daley in a crowd. Were there any other men with one horse on that road on that day ; if there were would it not have been since discovered ? If any other men had been in possession of Lyon's horse at that time, having the dress and appearance of these men, where are they ?—Have they vanished ? Have they been traced or heard of ? The horse which had then been in possession of Lyon, was found turned loose in John Bliss' pasture within a few rods from where the boy observed the two men to be in possession of him ; within a short space of time after he saw them. Nobody saw the horse turned in, nor does John Bliss, or Pliny Bliss, who

first saw the horse there, before four o'clock, know how long he had been there.

If you are not satisfied that the prisoners were soon after one o'clock on the ninth of November, in possession of the horse, that Lyon rode to the place where he was killed, the prisoners must be acquitted; for all the other evidence, independent of this fact, can amount to nothing more, than that he was murdered, and the prisoners were where they could have perpetrated the fact.

If you believe them to have been thus in possession of his horse, you have then to decide whether this fact, with the corroborative circumstances attached to it, gives you proof that they murdered the man.

They were on a journey westward; why did they return back eastward, on the turnpike, and turn up the hill, out of their way, into the old road? Had they found the horse loose as astray, why did they not make him fast, or without touching him pass on and leave him, or take him on their rout until they could find some person to inquire of? If they chose to come back with him, why did they not mention the circumstance to the boy? Or, as his father's house, which they had passed, after they spoke with Powers was near by, and they could know of no other house near, Bliss' not being in sight, why did they not carry the horse there?—When they rose the hill near the boy, they came in sight of John Bliss' house, why did they not carry the horse there and explain their conduct; why did they turn him loose into the field and forsake him?

With these facts you will of course connect some others given in evidence. The prisoners, as they themselves confessed, came from Boston on Tuesday noon. They said that one of them was going to New-York to see a friend, the other to collect a small debt. They have given no evidence of the one's having a friend there, or of the other's having a debt due to him. The murder was perpetrated on Saturday at one o'clock, they had then from Tuesday noon travelled eighty-five miles in four days. They were apprehended on the next

Tuesday at Cross-cob-landing, near Greenwich in Connecticut, where they had arrived at eight in the morning. This place was one hundred and forty miles from where Lyon was killed. Thus it appears that they had, after Powers saw them at one o'clock on Saturday, travelled that distance in two days and nineteen hours, including three nights.

When they were found, they had such coats on as those Stebbins describes them to have had, on Friday night, when he saw them at Dwight's tavern, and such as Powers and the lad describe. Bardwell, who pursued and apprehended them, found in the side of each great coat, under the left arm, a pocket in the form of a holster fitted to carry the pistols with which Lyon was killed, or those which were found at the place where he was murdered. It is said by the prisoners' counsel, that this might be and probably was a mistake, and that these were pockets to carry bottles, and calls on the government to produce them for your examination.— They were in the coats on the examination before the magistrates, the prisoners have the same coats now on, the court will not strip them to find evidence against them in a trial for life. They may now shew the pockets by opening their coats, and successfully oppose the witnesses, or if they have altered or removed them since their commitment, they can explain the reason of their having done it. Stebbins says that they sat at Dwight's all the evening with their great coats on and back from the other company.

This, Gentlemen, is the arrangement that I have made of the evidence; where I have omitted any thing material, your memory will rectify it; if I have suggested any fact not contained in the evidence your good understandings will reject it. My situation, as to place, is novel, the weakness of my voice, in this unusual crowd, has compelled me, in order to be heard, to speak with the appearance of zeal and earnestness; I lament it as a misfortune, it has been produced from my situation and not from my feelings.

It is true, as has been repeatedly urged by the prisoners' counsel, that all the facts you have in evidence may exist in a state of compatibility with the prisoners' innocence. This position cannot be denied. It is true that it is possible that Lyon might have been murdered by other persons; that the prisoners might have come at the place, the moment after his body was cast into the river; they might have taken the horse with a felonious design, knowing nothing of the murder, or they might have taken him innocently as astray; their hurry carrying the strong appearance of flight, might have been from an ordinary occasion or not from guilt. But these facts being proved upon them, the question is, whether the established principles of law, collated and approved for the preservation of human life, and for the support of civil society do not reasonably, necessarily and justly deem them guilty, unless they can, by opposing evidence, blunt the sharp points of convincing proof and explain their conduct.

The expression "possibility of doubt" so often repeated in the trial is an error in language. There is no such legal expression in the books. Nothing exists beyond a possible doubt in the minds of men, not a few have doubted of their own existence, some have doubted of the existence of a God, and many more have doubted of other things less capable of demonstration but which the rational and candid mind embraces from the most satisfactory proof. It has been said by moralists, that there is no degree of guilt in a *mere* error of the head. This I agree to, but there are very few errors indeed that happen in this way. A man is no more to blame for a wrong conclusion, or an erroneous judgment, strictly such, than the ear, that inactive passive organ, is, for hearing profane language, or malicious slander—But when the error arises from undue prepossession, from prejudice, from partiality, avarice, envy, pride, malice, ambition, self-interest, or even from fear and cowardice, it is criminal. Even when wrong judgment is the result of idleness, or inattention,

it has a share of guilt. We have no right to form an opinion against any one until we have heard, and candidly, and impartially examined the evidence for and against him.

There is no standing in which our race can be placed, where the possibility of doubt is excluded. Nay there can be none below the great first cause, where all doubts are impossible. Doubts may be done away so far as our happiness is concerned; this must be so; because security must be the foundation of consummate felicity. But there is but one Being whose intelligence comprehends the universe, and to whom all things are perfectly known, and ascertained.

When we hear the testimony of credible witnesses, we know that they may be corrupt; we know that they may be mistaken; yet the necessity of our situation claims credit for them. Our senses may deceive us, yet we cannot refuse their evidence. There are more things above and below our sight, than our vision comprehends. We do not see the atmosphere we breathe in; much less the vital principle it contains, by which our animation is sustained. Our sphere is comparatively small, our station comparatively low. Our state of existence is imperfect, and our intelligence limited; yet when our duty calls upon us to act, we need not tremble for fear of doing wrong; we are candidates for another state of existence, on the introduction to which our fate will not depend upon the enquiry whether we have done right, but whether we have acted with an upright heart, and from pure motives,

The Hon. Judge Sewall then delivered his opinion and the Hon. Judge Sedgwick succeeded him. The following is the substance of their charge to the jury, published without their inspection or approbation. The errors are, therefore, to be attributed to the compiler, who has endeavoured to express the sentiments of the Court, in their language, without succeeding very well in either.

GENTLEMEN,

THE prisoners at the bar are charged, in three different forms, of having murdered Marcus Lyon.—First, Daley is said to have killed him, by striking with a pistol, and Halligan, to have been present aiding and encouraging. Secondly, he is said, not only to have stricken him, but to have thrown his body into the river and thereby to have caused his death, and Halligan, to have been present as before. And, thirdly, *both* are said to have inflicted the wounds, which instantly terminated the life of the deceased. All these charges the prisoners deny, and, as every man is presumed to be innocent of whatever kindred or country until he is proved to be guilty, the government must satisfy your minds, *beyond all reasonable doubt*, that they are true and therefore that the accused are guilty of the crime with which they are charged.

You have heard the testimony, which has been introduced, to establish their guilt and the very eloquent and able defence of their counsel. It only remains for us to inform you, what evidence is requisite to authorize a verdict of conviction, and how far, in our apprehension, that evidence hath been furnished.

It should be proved to your full conviction, that Marcus Lyon is dead; that he came to his death by the voluntary agency of some human being or beings; and that they were the prisoners, whom you have in charge.

That Lyon is dead, you cannot have a doubt. That he was murdered, the wound on his side, the bruises on his head such as no man could have inflicted on himself, nor received by accident, the immersion of his body and the placing of the stone upon his head, sufficiently evince. The counsel for the prisoners admit these facts, and therefore, if you believe the witnesses, you are to consider them as established.

Your next and most important enquiry will be; who were the agents in this melancholy transaction? Were they the prisoners? Or, were they not?

Marvel Underwood testifies, that Lyon left Cazenovia on the fourth of November last, with the professed determination of returning to his friends at Woodstock, where he had formerly resided; that he rode a light bay mare and took a portmanteau, both of which are the same that were found at Wilbraham.—The next that you hear of him comes from Ebenezer Russell, Jun. who tells you, that, about five miles west of the place where Lyon was murdered, not far from half past twelve o'clock on the ninth of November, he saw a man passing to the east, who wore an oil cloth hat, the same, he thinks, that was found the day following.—Ithamar Stebbins testifies, that, on the same day coming from Boston, he met a man, between twelve and one o'clock but a *mile* distant from the place where the robbery and murder were committed, leading his horse down a hill. He observed minutely and is able to swear, that the horse he then saw was the same he afterwards saw at Springfield.

Griffin Bailey informs you, that, about the same time and near the same place, he observed a man riding to the eastward; that he saw Lyon after his death and took him to be the same person whom he had observed near the nine mile pond.

Thomas Glover testifies to you, that, on the same day, within *half* a mile of the place of Lyon's death, he saw between twelve and one o'clock a man travelling in the same direction having on a light coloured home-made great coat, and, further, that the man whom he saw at Wilbraham after he was dead is the very person who passed him, as he hath described, on the ninth of November.

Nearly six days had elapsed, from the time Lyon left Marvel Underwood's in Cazenovia. He might, therefore, easily have reached Wilbraham at this time, and, if the witnesses are correct, he was seen there, by several people, very near the place of his death, and traveling directly towards the spot where he was in fact murdered.

We need not review the testimony to shew that the prisoners were but a little east of this place, on the same day, and nearly at the same time, travelling to the west, or, that they were seen, after they had passed it, pursuing their journey towards Springfield. But we hear nothing further of Lyon until we are informed that his horse was discovered on the ninth, and his body on the tenth, near the place where they probably must have met. The prisoners, therefore, might have been guilty of the murder.

As to the purchase of pistols at Boston, similar to those which were found, and the bank-bills taken from Halligan, they ought to have no influence on your decision. They are circumstances too remote to bear upon the present cause, and neither tend to evince the guilt or innocence of the accused.

Your verdict must depend upon the testimony of Lartertes Fuller. That brings you to a point, and, if believed, leaves but very little room for doubt. He tells you, that, on the ninth of November, he saw two men sixty rods from his father's house, on the turnpike road travelling to the west; that they turned round a hill which intervened and left his sight; that, in a few moments, driving some hogs towards the woods on the same road, he met two men with a horse going to the east; that they turned up the old road; that one of these men was Daley, and that, the horse was the same found in the pasture of Mr. Bliss, which has been proved to be Marcus Lyon's. He, further tells you, that he followed them, that the one rode off the horse, while the other leaned upon the wall and viewed *him*, that he is sure that man was Daley one of the prisoners at the bar, and that he was able to select him, several days subsequent, from a large number of people assembled at Springfield. If you believe this witness, Gentlemen, you must return a verdict of conviction; because, when it is proved to you that Lyon was murdered, that the prisoners were on the same road, in possession of his property almost upon the very spot where the body

was found, rendering no account of themselves whatever during that period, you can hardly have a reasonable doubt but they are guilty of the crime of which they are accused.

But you are told, that this boy is not to be believed, that he is too young, easily liable to imposition or mistake ; that it is impossible and altogether incredible he should observe so accurately as to distinguish and recognize the countenance of a man, at such a distance, after so long a time, and on so slight a view. Of this, Gentlemen, you are the judges. You have listened to his testimony and seen the manner in which he gave it. But we deem it our duty to observe to you, that he hath ever been consistent, that the story he told his father on the Sunday following, to the coroner and his inquest, and to the justices who examined the prisoners after they were apprehended, has ever been uniform and the same with one immaterial exception, which does not seem to affect his veracity. Other witnesses testify, that the prisoners were near that place ; a horse was found such as the lad has described ; and if his testimony be not sufficiently fortified by all these concurrent circumstances, there is yet another fact which merits your consideration.

Flight has ever been considered as an evidence of guilt. Those, who have no apprehension of danger, can have no inducement to flee. But the guilty hurry from the scene and the witnesses of their crimes and seek for shelter and protection from the punishment that awaits them in crowds or concealment. Why did the prisoners travel with such astonishing speed after one o'clock on Saturday and yet so leisurely for the four or five days preceding !

But you are further told, that the term of fifteen minutes, the period which elapsed from the time the boy saw two men from his father's house to the time he saw the prisoners with the horse, is too brief for the perpetration of such various and dreadful deeds as have been here disclosed. In the first place, Gentlemen, you have

no evidence that the men whom the lad first saw were the prisoners whom he met with the horse. The time, therefore, might have been longer than is supposed. But, you will recollect that, Lyon had received a shot in his side, and, although large and athletic, the force of the bullet must have disarmed and rendered him the unresisting subject of whatever his murderers pleased to inflict. He had no warning of his danger, nor time of preparation for defence, because his mittens and great coat were found upon him. In this situation, you will easily conceive, that men, acting with the fierceness and expedition of those who engage in such transactions, might have destroyed him and rifled his pockets, have thrown his body into the river which ran by the road and retreated six or seven rods even during the short term of fifteen minutes. Every moment liable to detection and punishment, there is little reason to believe they were very deliberate or dilatory. But, Gentlemen, you are the only judges of the evidence. The question before you is merely a question of fact depending on a chain of circumstances and ultimately on the testimony of the boy. If, upon reviewing and duly considering the cause, you are satisfied that his story is correct, however painful the event may be to the parties concerned, you must discharge your duty to yourselves. But if you have well founded and reasonable doubts of the truth of his testimony; if you believe that he is mistaken, that the prisoners were not seen with the horse, or that the murder was committed by some person unknown, you must acquit them. To you they have made their appeal and to you the government hath given the power of deciding on their guilt or innocence. You will try the issue according to your evidence and according to your oath, and *the deliverance* make between the Commonwealth and the prisoners at the bar.

The trial was concluded not far from eleven o'clock in the evening—About twelve the jury returned a verdict of conviction—The prisoners were remanded and on the Friday following arraigned. The Attorney-General moved, in behalf of the Commonwealth, that sentence of death be pronounced against Dominic Daley and James Halligan according to the laws of the land.—The Hon. Theodore Sedgwick, presiding Justice, addressed them in substance as follows:

PRISONERS,

THE grand inquest for the body of this county have by indictment, charged you with the murder of MARCUS LYON. You have been arraigned upon this indictment and severally pleaded that you are not guilty. That you might be assisted in your trial learned, able, and eloquent counsel have been assigned you by the court. The duties devolved upon them by this important trust, they have executed with great talents and fidelity. By the humane indulgence of our laws you were invested with the right of challenging, peremptorily, twenty jurors. Of this benevolent provision you have availed yourselves to its utmost extent. A jury thus selected, almost by yourselves, sworn to try the issue joined between the government and you, have upon their solemn oaths declared that you are guilty of the atrocious offence charged against you. The ATTORNEY GENERAL in pursuance of the duties of his office, has moved the court to award against you the awful sentence pronounced by the law, for the punishment of your crime. Before I do this I deem it my duty to observe, that it is almost impossible to doubt of your guilt and that therefore you ought to entertain no hope of mercy from the government. The crime of which you are found guilty is the highest against the law of nature, of which a man, in a state of society can be guilty. A fellow creature—a stranger to you—one who never had offended you, you have ruthlessly cut off from all hopes and prospects in this life; you have

forever severed the connexion by which he was united with all that was dear to him here below. And what is infinitely more distressing to a reflecting mind, you have sent him without warning, to the bar of an almighty and just judge. For a crime so horrid and so abhorred by every pure and virtuous mind, you have demonstrated that you are unworthy the society of men—that your minds are regardless of social duty—that you possess dispositions wicked, perverse, and incorrigible, and that your continuance in this life is hostile to the preservation of morality and the security of society. You cannot therefore expect that your term of existence here will be prolonged. It becomes me then to recommend to you to look beyond this life, to direct all your views to another and an eternal state of existence; you will soon very soon appear before a tribunal infinitely more awful than that which has now investigated your guilt. There not only actions but motives also are intimately known—there justice is administered without a possibility of ERROR; and, blessed be GOD, that consistently with all the rights of divine government it can be administered in mercy. Here then must you look for pardon; upon this foundation alone can you build any rational hope. This consolatory consideration do I most sincerely and ardently recommend to your highest regard and improvement. In the way which divine wisdom has devised, I entreat you to seek for reconciliation and forgiveness; in this way seek to be instructed. A learned, pious, and venerable clergy will not only without reluctance, but with cheerfulness give you the instruction which you may need and desire; they will give you their prayers to a merciful GOD, that he will, for the sake of his son our all sufficient saviour, pardon this atrocious crime and all the sins of which you have been guilty. That you may repent of all and for all be forgiven I most sincerely and fervently pray. It now only remains that we do as our duty enjoins, pronounce against you the sentence of the law, which is, that you DOMINIC DALEY, be taken

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THE alarm which great crimes generally produce, and the anxiety we feel to know by whom they were committed, the evidence of guilt and the final issue, lead me to believe that a correct report of this trial may be interesting to the public. Perhaps we can rarely find in our country, an instance of murder attended with circumstances of equal aggravation ;—perpetrated in the open day, on a public road, with several houses in the vicinity, on the person of an unoffending traveller, whose appearance offered but slender inducements to robbery, and a stranger who is ever entitled to hospitality and protection.

The deceased was returning from Cazenovia, in the state of New-York, to his friends at Woodstock, in Connecticut. Near Chicapee river in Wilbraham, the murder and robbery were committed of which the prisoners have been convicted.

The penalty they are to suffer naturally excites our commiseration. Providence has so connected her children, and bound them together by some inscrutable affinity, that not a sorrow swells the heart of one, but the others feel the pang. In view of their punishment, we are apt to overlook the atrocity of their crimes, and, without considering the protection of the innocent, to reprobate the laws, which condemn the guilty. But justice can never excuse the murderer though she often turns from the closing scene and mourns in silence for his sufferings. It is to be hoped that the horror, with which this deed is viewed, and the still deeper horrors that succeed, may have a salutary influence on the public mind, so that by adverting to the end of these things we may shun the beginning.

I do not pretend to give this case to the public, *verbum verbo*, as it appeared at the trial. In some instances, I have taken the liberty to alter, and in some have forgotten the original. But as several gentlemen have obligingly furnished me with their notes and manuscripts, I believe the substance will be retained, and for all that may interest or benefit, request them to accept the acknowledgements of their humble servant—

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