W
600
L331t
1877

W 600 L331t 1877

28420580R

NLM 05116202 5

NATIONAL LIBRARY OF MEDICINE

SURGEON GENERAL'S OFFICE

LIBRARY.

Section, _____

No. 164530.

TRIAL

OF

ALLEN C. LAROS

AT EASTON, PENNSYLVANIA, AUGUST, 1876,

FOR THE MURDER OF

HIS FATHER, MARTIN LAROS,

BY POISON,

AND HIS DEFENCE, BASED UPON THE ALLEGATION OF

EPILEPTIC INSANITY,

TOGETHER WITH

THE ARGUMENT ON THE RULE FOR A NEW TRIAL

AND

PROCEEDINGS UPON THE PLEAS IN BAR OF THE SENTENCE.

FROM VARIOUS NEWSPAPER REPORTS AND MANUSCRIPT NOTES,
COLLATED AND REVISED
BY F. W. EDGAR, OF THE NORTHAMATON COUNTY BAR.

LIBRARY
SURGEON GENERAL'S OFFICE
MAR 13 1899
164530.

EASTON, PA.:
COLE & MORWITZ, PUBLISHERS.
1877.

Anney
W
600
L331t
1877

NOTE BY THE EDITOR.

Parts of this trial are reported verbatim; the rest is as nearly so as it is possible to make it now. The newspapers did not print all the details and a false economy had deprived our county court of its short-hand reporter.

I have collated the reports contained in the *Easton Daily Express*, *The Easton Daily Free Press*, the *Easton Weekly Argus* and the *Bethlehem Daily Times*, correcting and supplementing from my own manuscript notes, made during the progress of the trial, and from the very accurate and full notes of testimony taken by Mr. James W. Wilson, for the Commonwealth, and P. C. Evans, Esq., for the defence.

The proof sheets have been submitted to the counsel who were actively engaged in the case for their correction and approval. The testimony is believed to be truthfully reported. The speeches of counsel to the jury are for the most part merely abstracts. The arguments upon the various questions raised in the course of the trial are at least outlined and the authorities relied upon are noted where it was possible to obtain them. Effort has been made to reproduce as fully as possible the arguments for and against the positions assumed by the defence in regard to the physical and mental conditions and moral responsibility of epileptics;—and the positions assumed in regard to the degree of murder under the Pennsylvania statute in cases of poisoning, where the defendant shows such circumstances as to negative the specific intent to take life, or, where the jury fail to find the evidence of insanity strong enough to acquit altogether yet have a reasonable doubt that the prisoner was so free from mental disease as to be able to *wilfully and deliberately* premeditate the death of the deceased. Judge Meyers' charge to the jury is printed in full; so also is his opinion refusing a new trial.

I have prepared this pamphlet for the printer at the request of the publishers and the counsel who were engaged in the case.

F. W. E.

PRINTED AT THE OFFICE OF THE ARGUS,
EASTON, PA.

HISTORY OF THE CASE.

The Laros family lived at Mineral Spring, situated on the Delaware river, in Forks township, Northampton county, four miles above Easton. This little hamlet consists of a tavern and the homes of seven or eight families, near together along the river road. The Laros property, upon which stand the dwelling-house, out-kitchen, barn and out-buildings, faces the public road and extends down to the river, a distance of about fifty yards. On the opposite side of the road is the shop, where Martin Laros carried on undertaking and cabinet-making. The dwelling-house is a two-story brick, with an attic, and is about 38x25 feet, divided into three rooms and a hall down stairs and two rooms up stairs. The out-kitchen is a frame building, about 18x20 feet, detached from the main house and standing some twenty feet nearer the river. All the fences and out-buildings are neatly whitewashed, the garden is well kept, and the whole place bears evidence of the thrift and industry of the family. At the foot of the Laros property, just across the line, is the mineral spring which gives the hamlet its name.

Martin Laros, the father of the family, was fifty-seven years old, his wife was fifty-one. They had lived at Mineral Spring for thirty years. He taught school during the winter months, worked his small farm in the summer and at the same time was employed as undertaker and cabinet-maker. He was quiet, unobtrusive and respected in the neighborhood. Mrs. Laros was a woman of domestic habits and lively temperament. They have had seventeen children, thirteen of whom are now living. Several of them have been school teachers Some are living in the neighborbood and others have removed to a distance. At the time of the poisoning the family consisted of the father and mother, Allen (the prisoner), Erwin, Alvin, Clara, Alice and a very young grandchild. Moses Schug, also a member of the household,

was a bachelor, sixty-two years of age. He assisted Martin Laros on the farm and in the shop.

On Wednesday evening, May 31, 1876, while the family were at the supper table they were one by one taken violently ill. Neighbors came in to do what they could for the sick and physicians were summoned. Allen also assisted in caring for the sick; he was taken ill later in the evening. Mrs. Laros died at seven o'clock the next morning, Mr. Laros also died on Thursday, about noon, and Moses Schug at three o'clock on Friday afternoon. The other members of the family recovered in about a week.

Deputy Coroner Henry S. Carey impanelled the following named citizens: James E. Reilly, George Sharp, Jeremiah Uhler, Samuel Sandt, jr., Levi Sandt and J. P. Correll. The inquest was begun on Thursday afternoon and on Saturday the following verdict was rendered:

"That the said Martin Laros, Mary Ann Laros and Moses Schug "came to their deaths from the effects of arsenic poison, administered "in coffee on Wednesday evening, May 31, 1876, and that we believe "the same was administered by Allen C. Laros."

A warrant was issued at once, young Laros was arrested as he lay sick in his bed and taken to the county prison at Easton.

The prisoner is about twenty-two years of age, a little under the medium height and slightly built. His complexion is dark and rather sallow, his eyes and hair black. He had received an ordinary common school education and is fairly intelligent. He was temperate, industrious and moral and was a member of the "Forks" church. He was always disposed to be somewhat reticent and spent much of his time alone. For several years past he has taught school in the neighborhood and in connection with the duties of his school had begun the study of law.

The Commonwealth of Pennsylvania	Northampton County:
	In the Court of Oyer and Terminer.
vs.	*Sur indictment for the murder of Martin Laros.*
Allen C. Laros.	*August Term, A. D.* 1876.

Before the Honorable
Oliver H. Meyers, *President Judge*,
Joseph Laubach and Josiah Cole, *Associate Judges.*

For the Commonwealth were
John C. Merrill, Esq., *District Attorney*, and Edward J. Fox, Esq.

For the Defence were
Hon. William S. Kirkpatrick and Henry W. Scott, Esq.

Tuesday Afternoon, August 15.

The defendant's counsel move for a continuance until next term on the ground that an important and material witness who had been subpœnaed by the defendant was too ill to attend at the trial. They were unwilling to disclose his name and the nature of his testimony in open Court, but would submit affidavit of facts and a sworn statement to the Court for their private inspection.

Mr. Fox objected, and said that the commonwealth had a right to know the name of the witness and the nature of the evidence he was expected to give in order to resist the application and offer counter affidavits if necessary.

But Judge Meyers said—Let the counsel for the defendant present their reasons for a continuance, together with the affidavits, to us privately after the Court has adjourned.

Wednesday Morning, August 16.

Judge Meyers said:—Application has been made to have the case of Allen C. Laros continued on the ground of sickness of a material witness. The name and evidence of the witness has been given to the Court in confidence. The Court have been very careful in the examination of the question. The constitution and the bill of rights provide that the prisoner shall have a speedy trial, but does not grant the same privilege to the commonwealth. Courts have always been very lenient in cases where it can be shown that the prisoner has used due diligence in preparing his case and arranging his defence. Without dis-

closing the nature of the evidence we will say that the defendant has subpœnaed the witness, and he is not here, but is sick, and that he is material. The only question is whether the evidence of the witness is material, and the class of evidence to which this evidence in question belongs. If it had been locked up in the witness' own breast only, and not known to any one else, there perhaps would be some ground for waiting for that evidence, but when several witnesses know the facts the Court cannot help it if the defendant does not make provision for all casualties which may arise. The Court is unanimously of the opinion that the motion ought to be denied.

Mr. Kirkpatrick—I renew the application for a continuance and will lay additional ground to base it upon. The witness whose testimony was so material for the prisoner, and who could not attend, was Dr. Isaac Ray, of Philadelphia. I saw Dr. Ray personally and laid before him the facts. With the facts I laid before Dr. Ray, the pamphlet purporting to contain the evidence at the Coroner's inquest and certain alleged confessions of the prisoner, I did not state to him that I intended to summon him as a witness until after I had obtained his opinion. The Dr. stated it as his opinion that a person who administered poison under the circumstances stated to him was not morally responsible for his acts. The doctor is good authority in such matters, sixty-nine years of age and has passed thirty years in insane asylum practice in Maine and Rhode Island and abundantly able to give opinions of weight in this case. The presence of this witness, with his reputation in the profession, is of absolute importance to the prisoner and essential to the case. Your Honor, while expressing no doubt as to the materiality of the evidence, entertained the opinion that the testimony was not shut up in the breast of this particular witness. The prisoner's counsel have reliance on the standing, character and professional authority of this witness, and on account of the pecuniary circumstances of the prisoner his counsel are unable to obtain the opinion of other medical experts on insanity, whose testimony would be of equal weight with that of Dr. Ray. The standing and authority of Dr. Ray on questions of insanity are of enough weight to make him an absolutely important witness. We are practically in the position of a party who comes into Court with his whole case locked up in the bosom of a single witness.

Mr. Fox—If the case is to be continued for such cause it would be in the power of the prisoner to continue it from term to term. The counsel went to see the doctor when he was prostrate; they therefore chose him as their witness with their eyes open as to his physical condition. If Dr. Ray has exclusive information on the subject of insanity there would be some reason for a continuance. We have other physicians in Philadelphia and Trenton, experts on insanity. We have summoned a witness who knows nothing of the facts; we have not stated a single fact to him; he is coming here to hear the testimony himself and examine the prisoner personally. I refer to Dr. John Curwen, of the State (Pa.) Insane Asylum. We have not asked the doctor his opinion, nor shall we until he comes upon the stand. That

Dr. Ray should give an opinion upon the mere facts submitted and, without seeing or examining the prisoner, should say that the prisoner was not responsible for his acts, was monstrous and extraordinary and can only be explained by the fact that he is sixty-nine years old. Had the defendant's counsel gone to a chemist and had an analysis made of a limited amount of poison, and no other analysis were possible, then the illness of the chemist might be a good ground for continuance. We have no other motive than the cause of justice for urging that the trial proceed, for, as Your Honors know we would personally much prefer to try the case in the cool days of October than in the heated ones of August.

Mr. Scott—The Court has practically assumed that the evidence to be presented by Dr. Ray is material to the defence of the prisoner, but denies the application for continuance because this kind of evidence is not locked up in a single breast, and we should not have relied entirely upon one witness. Permit me to say that Your Honors do not yet understand and therefore cannot appreciate the difficulties which have surrounded the counsel for the defendant. We have been compelled to do that which no counsel ever before did for any prisoner arraigned at this Bar. We were forced to collect personally all the evidence in this case. We have traversed the county from one end to the other; wherever we had reason to expect we would find a man who could throw light upon the case there we went. There will not be a witness examined on behalf of the prisoner whom we did not ourselves find and secure, and in some instances it was only with the most desperate endeavor that we could persuade them to unseal to us their knowledge. The necessities of the prisoner and his relations with his family made one witness of this character our absolute limit and reliance. We procured Dr. Ray, who for thirty years upon the subject of mental disease has had the very highest reputation in two hemispheres. We expected he would be here. He sent a physician's certificate yesterday afternoon. This was the first knowledge we had of his inability to assist us at this time. We made the application at once. In other respects we are entirely ready, and our witnesses are now in Court. But Judge Kirkpatrick in his affidavit has said, and I now repeat it as solemnly as if under oath, that if this trial is to proceed it imperils the life of the prisoner and paralyzes his defence. The general principle of the books is that in cases of this kind a continuance should always be granted on account of the absence of a material witness; and under the circumstances we have brought ourselves altogether within the principle. What reason can there be against us? No injury can come to the commonwealth; the prisoner is safely confined behind those walls in sight of these windows. This great trial should be a careful and patient investigation. If after that he should be convicted let him receive the penalty of the crime; but in the name of the law I protest against the present trial. I have heard no reason urged, except the great cost to the county, in compelling these witnesses to return at another Court. If the question of costs shall weigh against a human life then let us proceed and add another victim as a holocaust to the great tragedy.

Judge Meyers—We adhere to the position taken by the Court this morning.

Mr. Kirkpatrick—Your Honor will note an exception.

Mr. Kirkpatrick—The defendant moves to quash the array for the following reasons, which I ask may be filed:—

1. That the jury wheel was not in the custody of the Jury Commissioners from the time the wheel was filled until the drawing of the said jurors.

2. That the return to the writ of *venire facias* does not set forth that the said jurors were taken or summoned from the body of the county.

3. That the writ of *venire* does not appear to have been executed by the proper officers, the return to the same being made by the Sheriff and one Reuben Schlabach, claiming to be a deputy, and setting forth a partial execution of the writ by the said Schlabach.

4. That the return to the said writ of *venire* does not set forth the execution and service thereof according to law.

5. That the jury process and the execution thereof is defective for errors apparent on the face of the record.

6. That the writ appears to be partially executed by one C. H. Rickert, to whom the writ of jury process was not directed, and who had no authority by law to execute or serve the same.

Upon this question the defendant called Oliver L. Fehr, the Clerk of the County Commissioners, to testify where the jury wheel was kept.

The Commonwealth called Birge Pierson, the Sheriff, who testified as to the sealing of the jury wheel and its custody.

Mr. Kirkpatrick makes a brief argument, quoting the old law governing the keeping of the wheel, as amended by Act of 1867 [Purdon's Digest, 829, pl. 4], substituting the Jury Commissioners and governing their action. After every drawing the Sheriff has taken and replaced the wheel in the vault, where access was had by several parties. This was contrary to the law; it was liable there to all kinds of interference. He cited 6 Binney, 179, to show the fatality of not drawing the jurors from the body of the county. Six of these jurors have been served with writs by C. H. Rickert, whose name does not appear before, and these six are in the jury panel. He also cited 6 Binney, 447; 23 P. F. Smith, p. 321, and 27, P. F. Smith, p. 205.

Mr. Fox—Attempting to speak in reply, is interrupted by Mr. Scott.

Mr. Scott—If Your Honor pleases, we now file our formal objection to the appearance of Edward J. Fox, Esq., on the side of the commonwealth as attorney to prosecute upon the appointment of the Court alone and without the request or consent of the District Attorney.

The Court—Will Mr. Merrill indorse his request upon the order of appointment?

Mr. Scott—The order of appointment was made on the 14th and Mr. Merrill's indorsement this moment made is also dated the 14th. I ask that it be changed to conform with the fact.

The Court—I will make the alteration—16th as of the 14th. The defendant's objection is overruled. Proceed Mr. Fox.

Mr. Fox continued his argument, commenting upon the statutes providing for the custody of the jury wheel by the Jury Commissioners. It was in a proper place, viz : their office, which was in this case the County Commissioners' office, and in the safest place, viz.: the vault. No charge has been made that the lock or seals have been disturbed. No suspicion of tampering has been proved.. The law does not require that the jurors be summoned from the body of the county. The *venire* says the names shall be taken from the wheel containing the names of the qualified electors. The fourth and fifth objections are vague. The six jurors are here, no matter how defective the summoning. Therefore there can be no prejudice to the defendant. I think, therefore, there is no ground for quashing.

Mr. Kirkpatrick replied and maintained that the Jury Commissioners had not held the wheel in the office where they met ; also spoke of the fact that the Sheriff had last had the wheel in his possession. The law means that the Jury Commissioners should have and hold the wheel in their own actual possession, not in the vault of another department. The stamps are ordinary ones, and we have no assurance the seals have not been tampered with. The service must be strictly according to law.

Mr. Fox offers the testimony of Sheriff Pierson that C. H. Rickert was his deputy before and at the time of summoning the said jurors.

Mr. Kirkpatrick objected that it would contradict the record of the return.

The Court allowed the question and the defendant asked for a bill of exception.

Mr. Fox offered to prove by A. J. Snyder, the Clerk of the Court, that the six jurors who appear to have been summoned by Rickert were in actual attendance and had answered to their namee.

Mr. Kirkpatrick objected that it was incompetent and irrelevant to the matter before the Court. The Court allowed the evidence to be given, to which ruling the defendant took an exception.

The witness proceeded, and then the six jurors being called, four petit jurors answered to their names and two it appeared were grand jurors.

Mr. Kirkpatrick met the objection of the commonwealth and said the cause of the prisoner is prejudiced in contemplation of law by error in the process, even if the jurors summoned were present in Court. He cited Whart. Crim. Law, 3 vol., §3,042 (a), to show that there might be a presumption of prejudice to the defendant.

WEDNESDAY AFTERNOON, August 16.

His Honor Judge Meyers delivered an opinion on the questions raised by the motion to quash the array. He said that there must be a compliance with the letter and spirit of the law as to the summoning of juries, otherwise the array would be quashed. The Jury Commissioners having selected the County Commissioners' office as their place of meeting, and the Clerk to the County Commissioners, acting as their clerk, it must be considered that when the wheel was kept in that office,was a compliance with the law requiring the wheel

to be kept in the charge or custody of the Commissioners; and as it was not shown that the wheel had been tampered with that question is disposed of. That as to the jurors not being summoned from the body of the county the Court held that those summoned being qualified electors of the county the jurors were from the body of the county. As to the service having been made not entirely by the Sheriff, but by Reuben Schlabach and C. H. Rickert, Deputy Sheriffs, in connection with the Sheriff, it appearing that the service was made personally by either the Sheriff or deputies at least ten days before Court, the Court held the service sufficient; also that although the return was made by both the Sheriff and one of the deputies, yet the return of the deputy can be treated as surplusage and the return is to be considered and treated as a return by the Sheriff.

The motion to quash the array is denied.

At the request of the defendant's counsel a bill of exceptions was sealed.

Mr. Scott, of counsel for the defendant, then moved to quash the indictment for the following reasons:—

1. That the indictment sets forth that the grand jury presented the bill "on their oaths and affirmations" respectively and does not specifically state that those who were affirmed were those who under the act *could* be legally affirmed.

2. That the indictment, containing but *one* count, contains it in two charges or offences, viz.: murder by common law and murder by statute. That at common law it was necessary to specify the particular instrument of death; by statute of 1860 it was not necessary to specify the immediate instrument of death, and that thus two offences were included in the same count of the indictment.

After hearing Mr. Scott in support of the motion and Mr. Fox contra the Court held that while the indictment might have been drawn with more brevity, yet there was no duplicity and it was good. And that in the absence of any proof of irregularity in the swearing of the grand jury they must be presumed to have been properly sworn and affirmed, the law presuming that to have been done which by law ought to be done.

The Court, therefore, overruled the motion to quash, and at the request of the defendant's counsel sealed a bill of exceptions.

Judge Meyers ordered the prisoner to be arraigned.

A. Jackson Snyder (the clerk)—Allen C. Laros stand up and hold up your right hand, hearken to this indictment:—

Northampton County: Ss.

The Grand Inquest of the Commonwealth of Pennsylvania, inquiring for the county of Northampton, upon their oaths and affirmations respectively do present that:

Allen C. Laros, late of said county, yeoman, not having the fear of God before his eyes, but being moved and seduced by the instigations of the devil, and of his malice aforethought, wickedly contriving and intending a certain Martin Laros with poison, wilfully, feloniously and of his malice aforethought to kill and murder on the thirty-first day of May, in the year of our Lord one thousand eight hundred and seventy-six,

with force and arms, at the county aforesaid, and within the jurisdiction of this Court, did knowingly, wilfully and feloniously, and of his malice aforethought, put, mix and mingle certain deadly poison—to wit: white arsenic—in certain coffee which at the time aforesaid had been prepared for the use of the said Martin Laros, he, the said Allen C. Laros, then and there, well knowing that the said coffee with which he, the said Allen C. Laros, did so mix and mingle the deadly poison aforesaid, was then and there prepared for the use of the said Martin Laros, with the intent to be then and there administered to him for his drinking the same and the said coffee with which the said poison was so mixed, as aforesaid, afterwards, to wit: On the said 31st day of May, in the year last aforesaid, was delivered to the said Martin Laros to be then and there drank by him, and the said Martin Laros not knowing the said poison to have been mixed with the said coffee did afterwards, to wit: On the 31st day of May, in the year last aforesaid, at the county aforesaid, there drink and swallow down into his body a large quantity of said poison, so mixed as aforesaid with the said coffee, and the said Martin Laros, of the poison aforesaid, and by the operation thereof, on the said 31st day of May, in the year last aforesaid, in the county aforesaid, became sick and greatly distempered in his body, of which said sickness and distemper of body, occasionod by the taking, drinking and swallowing down in the body of the said Martin Laros of the poison aforesaid, so mixed and mingled in the said coffee as aforesaid, he, the said Martin Laros, from the said 31st day of May, in the year last aforesaid, on which he had so drunk and swallowed down the same as aforesaid, until the 1st day of June, in the year last aforesaid, in the county aforesaid, did languish, and languishing did live, on which said 1st day of June, in the year last aforesaid, at the county aforesaid, he, the said Martin Laros, of the poison aforesaid, so taken, drank and swallowed down as aforesaid, and of the said sickness and distemper thereby occasioned did die. And so the inquest aforesaid, upon their oaths and affirmations respectively, as aforesaid, do say that the said Allen C. Laros, him, the said Martin Laros, in the manner and by the means aforesaid, then and there feloniously, wilfully and of his malice aforethonght, did kill and murder contrary to the form of the act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

(Signed) JOHN C. MERRILL,
District Attorney.

Indorsed:
June 14, 1876.
A true bill.
JOHN BIGLIN,
Foreman.

The Clerk—Allen C. Laros what say you, guilty or not guilty?
The Prisoner—Not guilty.
The Clerk—How will you be tried?
The Prisoner—by God and my country.
The Clerk—God send you a safe deliverance.
The issue was then made up.

The list of jurors was called and the drawing began.

Robert Ott, agent, Bethlehem borough, sworn on his *voir dire*.—Have formed an opinion as to the guilt or innocence of the prisoner; it depends on circumstances whether I could find a verdict of acquittal or conviction; I have no conscientious scruples against the death penalty; I formed my opinion from reading newspapers; I could find a verdict from the evidence; I can't tell whether I read the evidence in

pamphlet; I read the *Daily Times;* I read some of the testimony taken before the Coroner's inquest; from this I formed my opinion; my opinion would require considerable evidence to remove; it was a decided opinion; if I heard evidence that I considered him not guilty the impression would be removed; I could not tell whether my impression would influence me if on the jury; if I went into the jury box I could find a verdict according to the evidence; I feel so; my impression is not so decided that it would weigh in the case.

Accepted as juror No. 1 and sworn to try the issue.

Solomon Bachman, gentleman, Williams township. He is nearly seventy years of age and can only hear indistinctly. He was excused.

Robert H. Lerch, carpenter, Easton, sworn v. d.—I have formed and expressed an opinion; I have conscientious scruples against capital punishment; my conscience would not permit me to find a verdict in the first degree. Challenged for cause by commonwealth.

Amandus Young, carpenter, Allen, sworn v. d.—Have no opinion on the case; I have no conscientious scruples against hanging; I have heard and read of this case; I read Cole's German paper; it published the testimony at the Coroner's inquest; I came to no conclusion; I read no other paper. Challenged peremptorily by defendant.

John Best, farmer, Williams, sworn v. d.—I have formed but not expressed an opinion; have no conscientious scruples against hanging; my opinion was merely by hearsay; I could render a verdict according to the evidence; I have formed no opinion that would require some evidence to change.

Accepted as juror No. 2 and sworn to try the issue.

William Bachman, sworn on his *voir dire.*

The Clerk, examiniug—I have formed or expressed no opinion. I have no conscientious scruples against hanging.

By Mr. Fox—If it was true as the newspapers said I made up my mind. I read the Bethlehem *Times* and the Easton *Argus.* Read what was said at the Coroner's inquest.

By Mr. Kirkpatrick—I don't know whether it would require evidence to remove my impression or not. My impression would have effect on my verdict. It would have much weight.

By Mr. Fox—I could dismiss this impression if the evidence would warrant.

The defendant challenged for principal cause.

Mr. Kirkpatrick cited Whar. C. L., vol. 3, sec. 3075.

Mr. Fox cited O'Mara et al. *vs.* the Com., 25 P. F. Smith 425, and Ortwein *vs.* the Com., 26, Ibid. 421.

Mr. Fox, re-examining the juror—I can't tell now what it was I read in the papers. I think it was the testimony before the Coroner. I did form an opinion, but you can't tell by newspapers what to believe.

The Court—The challenge for principal cause is not sustained.

Mr. Kirkpatrick—We ask a bill of exception and now challenge to the favor.

Thereupon arose a discussion, in which Messrs. Fox, Kirkpatrick and Scott took part, as to the distinction between a challenge for principal cause and a challenge to the favor.

But the Court did not sustain the challenge to the favor, to which ruling the defendant took a bill of exception and challenged the juror peremptorily.

Henry G. Beck, farmer, Upper Mount Bethel, sworn v. d.—Have formed and expressed an opinion; I have no conscientious scruples against hanging; I formed an opinion of what I heard and read; read the papers; read the evidence before the Coroner's jury; if that was true what was in the paper he ought to be hung; except the witnesses would convince me I would go according to the papers; could find a verdict according to the evidence; it would require much evidence to remove my impressions; I read the *Free Press.* Challenged for cause by defendant.

Henry Ehrhard, farmer, Lower Saucon, sworn v. d.—I am not well enough to sit as a juror; was hurt while plowing. Excused.

Owen Walter, Justice of the Peace, Williams.—Called, but did not answer. The Court stated that it had received information that Mr. Walter was confined to his house by illness.

Philip Crock, Allen, sworn v. d.—Have formed and expressed an opinion; I am not against hanging; I did not put my mind on it because I could not believe it; could find a verdict according to the evidence: I read about this; I read the *Free Press;* read some of the evidence before the Coroner; I have not made up my mind; have not talked about it. Challenged peremptorily by the commonwealth.

John H. Blair, tinsmith, Bath, sworn v. d.—Partly formed an opinion; have no scruples against hanging; could render verdict according to evidence; read the papers; read the evidence before the Coroner; opinion was formed by reading Bethlehem *Times* and *Free Press;* did not read copy containing picture; it would take evidence to remove my impression; my partly formed opinion would have no weight with me in rendering the verdict; have seen but not read the pamphlets: did not read any part of them.

Challenged by defendant for principal cause. The challenge not sustained by the Court. Defendant challenged "for favor." Challenge not sustained. Exceptions taken to both rulings. Juror then challenged by defendant peremptorily.

Joseph M. Scott, Jr., manufacturer, Upper Mount Bethel, sworn v. d.—Had partly formed an opinion; no conscientious scruples against hanging; read about it in the papers: could find a verdict according to the evidence uninfluenced by my opinion; read very little about it; did not read the pamphlets; could render a verdict in accordance with the testimony.

Challenged peremptorily by the commonwealth.

Daniel S. Ritter, gentleman, Hanover, sworn v. d.—Partly formed an opinion; have no scruples against hanging; formed opinion from reading evidence before Coroner's jury; could form a verdict according to the evidence; would take little evidence to remove present impressions; my present impression would not influence me as a juror.

Accepted as juror No. 3 and sworn to try the issue.

David Lee, blacksmith, South Easton, sworn v. d.—Has formed an opinion; has conscientious scruples against hanging; could not find a

verdict according to the evidence. Challenged by commonwealth for cause.

Philip Hess, farmer, Upper Mount Bethel, sworn v. d.—Has formed an opinion: no scruples against hanging; formed opinion from reading and hearsay; it would take strong evidence to change my opinion; would be influenced by my present opinion; couldn't render a fair verdict according to evidence. Challenged by defendent for cause.

Samuel Lockard, farmer, Lower Mount Bethel, sworn v. d.—Has formed an opinion; has no scruples against hanging; formed opinion from papers and the evidence of the witnesses before the Coroner; I think I could render a verdict according to the evidence; my opinion as a juror would not alone be formed by what was testified in Court; it would take some evidence to remove my impression; my opinion would have some effect in forming my verdict; did not read the pamphlets; have not expressed an opinion to any one in particular; have talked about it at home; I think I could lay my opinion aside were I to go into the jury box; I would render the verdict according to the evidence; my opinion might have somewhat of weight.

The Judge asked him if his verdict would entirely depend on the evidence. He said his verdict would be as the evidence detailed in Court. My previously formed opinioned would have no effect on my mind on making the verdict.

Challenged by defendant for cause. Not sustained. Also "for favor;" not sustained. Exceptions taken to both rulings. Challenged by defendant peremptorily.

Daniel Rothrock, farmer, Lower Saucon, sworn v. d.—Has formed and expressed no opinion; has no scruples against hanging; have not read much of this case; could decide upon the evidence.

Accepted as juror No. 4 and sworn to try the issue.

Andrew Transue, farmer, Bethlehem township, sworn v. d.—Has formed and expressed no opinion; has no scruples against hanging; I read the testimony in the *Argus*, but formed no opinion; read part of a pamphlet; did not make up my mind whether he was guilty or not. Challenged peremptorily by defendent.

Conrad Ziemer, barber, Easton, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; could find a verdict according to the evidence uninfluenced by present opinion; the opinion is pretty strong; I read the testimony before the Coroner; would take strong evidence to remove my opinion; I have got my ideas about it; expressed my opinion what ought to be done. Challenged for cause by defendant.

Jacob H. Frankenfield, farmer, Hanover, sworn v. d.—Has formed an opinion, but not expressed it; has no scruples against hanging; formed an opinion from hearsay, but would not be influenced; read of it in the newspapers; read the testimony; think my opinion would have some influence with me; would take strong evidence to remove it; I would be governed by the evidence in my verdict; would think of my opinion in the jury box. The juror was ordered to stand aside.

Thomas Judge, innkeeper, South Bethlehem, sworn v. d.—Has formed and expressed an opinion; has no conscientious scruples against

hanging; the opinion would have bearing on my verdict; would influence me; think it would be pretty hard to convince me. Challenged for cause by defendant.

Peter S. Miller, farmer, Plainfield, sworn v. d.--Has formed and expressed an opinion; has no conscientious scruples agnunst hanging; read the newspapers; could render a verdict according to the evidence uninfluenced by my opinion; I talked about it; my opinion would have no weight with me in forming a verdict.

Accepted as juror No. 5 and sworn to try the issue.

Peter Nicholas, foreman, Allen, sworn v. d --Formed but never expressed an opinion; has no conscientious scruples against hanging; read testimony and pamphlets; could find a verdict according to the evidence.

Accepted as juror No. 6 and sworn to try the issue.

THURSDAY MORNING, August 17.

William Rader, carpenter, Nazareth, sworn v. d.--Has formed and expressed an opinion; has no conscientious scruples against hanging; read the newspapers; if sworn as a juror I could render a verdict according to the evidence without any influence from my present opinion; I read the Easton *Argus;* I think I would not be governed by the opinion I have formed; I never expressed an opinion, but had only general talk; I have no prejudice with regard to the defence of insanity in cases of this character.

Accepted as juror No. 7 and sworn to try the issue.

Frederick Troxell, painter, Easton, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; read the testimony at the Coroner's inquest; I think I could render a verdict according to the evidence uninfluenced by a former opinion; I read the testimony before the Coroner and formed my opinion from it; would be governed entirely by the evidence; my opinion is a loose one that would have no weight if in the jury box; I am not opposed to a defence founded upon insanity; the opinion I had formed is not a strong one; have talked about it; have expressed an opinion what ought to be done with Laros; it would not take strong evidence to dismiss my opinion.

Defendent challenges for cause. Not sustained. Exception taken. Defendant challenges to the favor.

Question by the Court--Have no bias in favor or against the prisoner; I stand indifferent. Not sustained. Challenged by defendant peremptorily.

Richard Wolfram, machinist, South Easton, sworn v. d.--Has formed an opinion; has no scruples against hanging; I read in the newspapers of the Coroner's inquest; I don't think I could find a verdict according to the evidence. Challenged by defendant for cause.

Thomas J. McFall, cordwainer, Forks, sworn v. d.—Has formed and expressed an opinion; has no conscientious scruples against hanging; think I could find a verdict according to the evidence given here uninfluenced by my opinion; read the Easton *Argus* and *Free Press;* formed my opinion from what I read and saw; was at the Coroner's

inquest; my present opinion would have some weight with me. Challenged for cause by defendant.

Henry H. Desh, drover, Bethlehem, sworn v. d.—Has formed and expressed an opinion; has no conscientious scruples against hanging; I think I would be influenced by my present opinion in forming a verdict. Challenged for cause by defendant.

William Rooker, potter, Easton, sworn v. d.—Has formed and expressed an opinion; has no conscientious scruples against hanging; it would be hard to exclude my present opinion in forming a verdict. Challenged for cause by defendant.

John Whitty, carpenter, South Bethlehem, sworn v. d.—Has formed and expressed no opinion; has no conscientious scruples against hanging; I have not read about this case; would not be against a defence founded upon insanity. Challenged peremptorily by defendant.

Henry Beil, Justice of the Peace, Allen, sworn v. d.—Has formed and expressed an opinion; has no conscientious scruples against hanging; could find a verdict according to the evidence uninfluenced by my opinion; I read the testimony in a German pamphlet; would not go for hanging a man if he is of unsound mind; my opinion was a decided one; would dismiss that opinion if I went into the jury; have expressed an opinion; talked about it to my neighbors; only the testimony in the pamphlet induced my opinion.

Accepted as juror No. 8 and sworn to try the issue.

William McEwen, shoemaker, Lower Mount Bethel, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; think I could form a verdict according to the evidence here; my opinion might have some weight; I would find according to the evidence; it would require strong evidence to overcome my opinion. Challenged by defendant for cause.

Reuben Nolf, laborer, Nazareth, sworn v. d. Has formed and expressed an opinion; has no scruples against hanging; could find a verdict from the evidence; read Cole's *Demokrat* and an Allentown paper; talked of the case to my neighbors; would not require strong evidence to remove my opinion; I would be willing to let off a man of unsound mind. Challenged peremptorily by the defendant.

Peter Stem, shoemaker, Upper Mount Bethel, sworn v. d. Has formed and expressed an opinion; has no scruples against hanging; my opinion is so strong that it would weigh with me. Challenged for cause by defendant.

John H. Buck, cigar maker, Easton, sworn v. d. Has formed an opinion; has no scruples against hanging; could not find a verdict according to the evidence. has a prejudice against the plea of insanity. Challenged for cause by defendant.

Aaron Steckel, Justice of the Peace, Moore, is hard of hearing and is excused.

William Jacoby, farmer, Upper Mount Bethel, sworn v. d. Has formed and expressed an opinion; has no scruples against hanging; might decide according to the evidence, but my opinion is fixed. Challenged for cause by defendant.

B. F. Schnable, clerk, Bethlehem, sworn v. d. Has formed but not

expressed an opinion; has no scruples against hanging; don't think I would be influenced by my present opinion; am not opposed to a defence on the ground of insanity.

Accepted as juror No. 9 and sworn to try the issue.

Andrew Luckenbach, merchant, Bethlehem, sworn v. d. Has formed and expressed an opinion; has no scruples against hanging; I think it would be difficult to form a verdict after my opinion. Challenged for cause by defendant.

Owen Richards, farmer, Williams, sworn v. d. Has formed or expressed no opinion; has no scruples against hanging; has not read much about this case; talked a little about it. Challenged peremptorily by defendant.

Ludwig Beck, innkeeper, Lower Mount Bethel, sworn d. v. Has not formed an opinion; has no scruples against hanging; has read about the case; have not talked much about the case; on the question of unsound mind I would be governed by the evidence. Challenged peremptorily by the Commonwealth.

Josiah A. Siegfried, clerk, Easton, sworn v. d. Has formed and expressed an opinion; has no scruples against hanging; could find a verdict according to the evidence; has no feelings against a defence of unsound mind.

Accepted as juror No. 10 and sworn to try the issue.

George A. Weaver, farmer, Saucon, sworn v. d. Has formed and expressed an opinion; has no scruples against hanging; would find a verdict in accordance with the evidence uninfluenced by my present opinion; I would require strong evidence to acquit a man of insanity; I read the testimony before the Coroner. Challenged by defendant for cause.

Question by the Court—Opinion was not very decided; I waited for more evidence; no feeling of bias against the defendant; I would stand indifferent.

Not sustained. Challenged by defendant "for favor." The juror was directed to stand aside.

P. A. Fritchman, Jr., Freemansburg, sworn v. d. Has formed and expressed an opinion; has no scruples against hanging; could find a verdict according to the evidence; don't think my opinion would influence me; I read the testimony before the Coroner; both the *Argus* and *Free Press;* has no objection to the plea of insanity. Challenged peremptorily by defendant.

Charles Frace, merchant, Easton, sworn v. d. Has formed and expressed an opinion; has no scruples against hanging; would find a verdict according to the evidence uninfluenced by my opinion; I read the testimony before the Coroner's inquest; I would not convict the prisoner if I thought he was of unsound mind.

Accepted as juror No. 11 and sworn to try the issue.

Frank Stewart, clerk, Easton, sworn v. d. Has formed and expressed an opinion; I am opposed to hanging for murder. Challenged for cause by commonwealth.

George P. Frederick, farmer, Plainfield, sworn v. d. Has formed and expressed an opinion; has no scruples against hanging; I think

my opinion would govern me. Challenged for cause by defendant.

C. H. Werst, clerk, Lower Saucon, was not called, having been excused for the term on account of serious illness.

The panel of jurors was now exhausted, except as to Jacob H. Frankenfield and George Weaver, who had been directed to stand aside.

Jacob Frankenfield, recalled. The opinion I had formed would have weight with me in the jury box. Challenged for cause by defendant.

George Weaver, recalled. Read the evidence in *Free Press;* was not always one way of thinking till he confessed; no fixed opinion now; could decide according to evidence given in court; if prisoner was insane I could not find him guilty.

Mr. Kirkpatrick asked this question: Have you formed an opinion as to the guilt or innocence of the prisoner from what you have read of the testimony taken at the inquest?

A.—Yes.

Q.—What was that opinion?

Mr. Fox objected to this as an improper question. But Mr. Kirkpatrick said that an answer to this question would be evidence on the challenge to the favor which we are now trying. Thereupon arose a discussion. The Court overruled the objection and admitted the question, which was renewed thus:

Q.—Was it your opinion that he was guilty?

A.—Could not think him guilty till there was further evidence at the trial in Court.

Q.—Did you make up your opinion before you were summoned as a juror?

A.—Before. It was no solid opinion. I made my opinion that so far as I heard he was guilty.

The Court—Challenge to the favor not sustained.

Mr. Kirkpatrick—Your Honors will note an exception. Challenged by defendant peremptorily.

The Court made an order that a special venire issue, returnable forthwith.

Mr. Scott filed objections thereto, viz.:

1. That the regular panel does not appear to have been exhausted, in that Owen Walter and C. H. Werst, who were summoned to appear as petit jurors at this term and whose names are contained in the return of the Sheriff to the venire, have not appeared, and that there is no return to an attachment issued to compel their attendance.

2. That no testimony has been presented to the Court as an excuse for the non-attendance of Owen Walter, one of the petit jurors summoned to attend.

The Court, at the request of the Commonwealth, issued an attachment for Owen Walter.

Writ of venire issues to Birge Pearson, Esq., Sheriff.

THURSDAY AFTERNOON, August 17.

Reuben Schlabach, Deputy Sheriff, made return to attachment

against Owen Walter, a juror, that he served the attachment personally at one o'clock P. M. to-day; that Mr. Walter was in bed sick, unable to come to Court. In the judgment of the deputy Mr. Walter's health would be prejudiced by being brought into Court. The Court decided that Mr. Walter was entitled to be excused.

Mr. Kirkpatrick files objections to writ of venire, viz.:

1st, That the said order and writ of venire are in the alterative directing the Sheriff to summon and return from the bystanders or from the body of the county the said thirty-six jurors.

2d, That the said order is not such an order for a *tales de circumstantibus* as is required by law.

3d, That the Court have no power to order any other persons to be summoned as jurors in the event the regular panel is exhausted except bystanders or such persons as are in actual attendance in Court.

4th, That the said order and writ of venire are irregular and not according to law.

But the Court cited Brown vs. the Commonwealth, 26 P. F. Smith, and overruled both the objections to the order and to the writ of venire, to which rulings the defendant asked a bill of exceptions.

The Sheriff selected the following jurors from the persons in attendance:

Benjamin Wagner, farmer, Palmer.
A. D. Stauffer, farmer, Bethlehem township.
John Bitters, treasurer, Easton.
Edward Siegfried, gentleman, Bath.
Charles Young, gentleman, Easton.
Renatus Luch, farmer, Bethlehem township.
Levin H. Fehr, shoemaker, Bath.
Robert Beidleman, grocer, Williams.
Jeremiah Lynn, tailor, Bethlehem borough.
Joseph W. Kessler, farmer, Plainfield.
Adam Meyers, farmer, Plainfield.
J. O. Wolslayer, dealer, Easton.
Tilghman H. Hay, farmer, Lower Nazareth.
James Seip, farmer, Palmer.
Reuben Walter, shoemaker, Easton.
Thomas Yeisley, miner, Williams.
Charles Hahn, farmer, Forks.
Alfred Miller, teacher, South Easton.
J. S. Stecker, painter, South Easton.
Aaron H. Bauers, cabinet maker, Easton.
Aaron C. Sandt, carpenter, Nazareth.
Jacob Leidy, bricklayer, Easton.
George Sandt, teacher, Easton.
Edwin D. Huhn, farmer, Palmer.
Urbanus Wirebach, laborer, South Easton.
W. F. Hoch, teacher, Bethlehem township.
Charles Shitz, laborer, South Easton.
J. P. Rohn, veterinary surgeon, Easton.
Samuel A. Fox, farmer, Bethlehem township.

Samuel Campbell, farmer, Bethlehem township.
Josiah J. Ealer, Justice of the Peace, Williams.
John U. Bachman, Justice of the Peace, Glendon.
Peter Lawall, yeoman, Easton.
John M. Wallace, teacher, Easton.
G. W. Frankenfield, farmer, Bethlehem township.
Jacob Walter, miller, Palmer.

And makes his return to the writ.

The list of jurors in the new panel is called, all answer and the drawing is begun.

Reuben Walter, shoemaker, Easton, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; I don't believe I could go against the opinion I now have; formed the opinion on what I heard. Challenged by defendant for cause.

Jacob Leidy, bricklayer, Easton, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; think I could find a verdict according to law and evidence; formed opinion on what I heard; read only little of the testimony; would take strong evidence to overcome my opinion; if I found that the prisoner was of unsound mind I would acquit him. Challenged by defendant for cause.

Charles Young, gentleman, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; think I could find a verdict according to the evidence; opinion was formed by what I had heard and read; my opinion would not control me. Defendant challenged for cause.

By the Court—My opinion was only a loose opinion. Challenge not sustained. The defendant then challenges to the favor.

By Mr. Kirkpatrick—I don't think I ever exactly thought he was guilty, but thought if all I read was true he was guilty, but you can't always believe what is in the papers.

The Court—Challenge to the favor not sustained. Challenged by defendant peremptorily.

William F. Hoch, teacher, Bethlehem township, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; my opinion would influence me in the verdict. Challenged for cause.

George Sandt, student, Easton, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; think I could find a verdict according to the evidence; the evidence would control me and nothing else; read the testimony in the *Free Press;* it would require strong evidence to change my opinion; have no prejudice against a plea of insanity; am acquainted with the Laros family; I am a distant relative of his mother; so distant I can't tell the degree; on my father's side; am son of Dr. John Sandt. [Dr. Sandt, who was in the audience, then stated that his son was a second cousin of the prisoner.] Challenged for cause by commonwealth. Sustained. The defendant excepts to the ruling.

Alfred Y. Miller, teacher, South Easton, sworn v. d.—Had an opinion; no conscientious scruples against hanging; I think I could find a verdict according to law and the evidence; I would endeavor to be

governed by the evidence; I think I could lay aside my opinion; read the papers; evidence before the Coroner; an opinion one would form from reading the papers; think I could lay my opinion entirely aside; read the *Free Press;* formed my opinion on what I read; it would require considerable evidence to outweigh my opinion; have no bias against the plea of insanity; I would give the prisoner all the benefit of the plea; am not related to the prisoner; have lived in South Easton eight or nine years; came from Mount Bethel. Challenged for cause by defendant.

By Mr. Kirkpatrick—If the same testimony were not produced I would form a new opinion; it would require considerable evidence to remove the impression. Challenge sustained.

Charles Shitz laborer, South Easton, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; I might or might not be controlled by my opinion. Juror directed to stand aside. Defendant takes an exception.

Aaron H. Bower, cabinet maker, Easton, sworn v. d.—Has formed and expressed an opinion; has no conscientious scruples against hanging; think I could give a verdict uninfluenced by my opinion; would be controlled entirely by the evidence; would acquit the prisoner if I thought he was of unsound mind; I have a fixed opinion now. Challenged for cause by defendant.

Adam Meyers, farmer, Plainfield, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; think I would form a verdict according to the evidence; I formed an opinion from what I read; it would require strong evidence to change my opinion. Defendant challenged for cause. Juror directed to stand aside. Defendant takes an exception.

Jeremiah Lynn, mechanic, Bethlehem, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; strong evidence would be required to change my opinion. Challenged for cause by defendant.

Joseph W. Kessler, farmer, Plainfield, sworn v. d.—Has formed and expressed an opinion; is not opposed to hanging for murder; the evidence would govern me in forming a verdict; I read the evidence before the Coroner. Challenged for cause by defendant.

Benjamin Wagner, farmer, Palmer, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging; have a pretty tight opinion: don't know that I would give a verdict contrary to my opinion. Challenged for cause by defendant.

Tilghman H. Hay, farmer, Bethlehem township, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging for murder; I don't know that I could dismiss my opinion if I went as a juror. Challenged for cause by defendant.

Charles Hahn, farmer, Palmer, sworn v. d.—Has formed and expressed an opinion; has no scruples against hanging for murder; I heard a great deal; could not change my opinion. Challenged for cause by defendant.

A. D. Stauffer, farmer, Bethlehem township, sworn v. d.—Has no scruples against hanging; read the testimony at the Coroner's inquest;

I don't think I would be influenced by my present opinion ; it would take strong evidence to change it; I would acquit a prisoner I believed was of unsound mind. Challenged for cause by defendant.

John M. Wallace, teacher, Easton, sworn v. d.—Has formed an opinion ; has no scruples against hanging; could give a verdict according to the evidence without influence of previous opinion ; I have no prejudice against a plea of insanity.

Accepted as juror No. 12 and sworn to try the issue.

Charles Frace, a juror who had been sworn (11), was asked by the Court if he was related in any way to the prisoner. He said he was not.

The jury as drawn is as follows:

1. Robert Ott, agent, Bethlehem borough.
2. John Best, farmer, Glendon.
3. Daniel S. Ritter, gentleman, Hanover.
4. Daniel Rothrock, farmer, Lower Saucon.
5. Peter S. Miller, farmer, Plainfield.
6. Peter, Nicholas, farmer, Allen.
7. William Rader, carpenter, Nazareth.
8. Henry Beil, Justice of the Peace, Allen.
9. Benjamin F. Schnable, clerk, Bethlehem.
10. Josiah A. Siegfried, clerk, Easton.
11. Charles Frace, merchant, Easton.
12. John M. Wallace, teacher, Sixth ward, Easton.

FRIDAY MORNING, August 18.

Judge Meyers said: Gentlemen of the Jury, I feel it my duty to say to you that you must divest yourselves of all previous opinions. You must give your undivided and patient attention to the evidence in the case, with an earnest determination to discharge your duty fearlessly and faithfully.

District Attorney John C. Merrill then opened the case for the Commonwealth as follows :

May it please the Court, Gentlemen of the Jury:—You are now about to enter upon a most solemn inquiry into the manner and the cause of the death of Martin Laros, late of Forks township, deceased. I shall not weary your ears with any declamation upon the sacredness of human life, or upon the terrible wickedness of heart and gross depravity of mind, which could conceive, premeditate, deliberate, and carry into execution the horrible crime of murder, a crime under any circumstances the most detestable and atrocious known to the laws, human or divine; under the circumstances to be developed in this trial, most cruel and heartless, scarcely paralleled, almost incredible; a crime in which cupidity overleaped all the tenderest and most holy affections of the human heart, even the affection which the child should bear toward its parent, aye, the affection which the child should bear toward the mother which gave it birth, an affection which should grow with the growth and strengthen with the years ; a crime in which all the sacred memories and hallowed associations of home were lost and for-

gotten ; in which the perpetrator stayed not his hand though father and mother and brother and sister and friend and even the innocent little babe were swallowed up in the deadly vortex of his most insatiate unconquerable greed.

Allen C. Laros, a young man of respectable parentage, of healthful surroundings, of good moral and intellectual training, a teacher of the young in one of the public schools in the township of Forks, where he was born and reared ; a young man to whom the world opened with promise of usefulness and honor is here before you to-day on his trial charged with murder in the foulest of all its forms, murder by poison, murder of his own father.

Gentlemen of the Jury, I shall somewhat invert the usual order of discussion by presenting to you briefly, first the law, as I anticipate it will arise in this case.

The common law has wisely defined murder to be, "when a person of sound memory and discretion unlawfully kills any reasonable creature in being in the peace of the state with malice prepense or aforethought, express or implied."

Not every killing of a human being is murder. It is necessary that a person who kills another, in order to be guilty of the crime of murder, should have criminal capacity, *i. e.*., "sound memory and discretion."

As the law presumes every man to be sane and to have a sufficient degree of reason to be responsible for his acts until the contrary is satisfactorily proved, it will devolve upon the Commonwealth, in the first instance, only to satisfy you of the other essential ingredients of the crime, to wit: "The unlawful killing of a human being with malice aforethought." Then if the defendant seeks to shield himself from responsibility for his act on the ground that he was not of "sound memory and discretion," it will be incumbent upon him to satisfy you by the weight of evidence, that at the time of the commission of the act he was laboring under such a defect of reason from disease of the mind, that he did not know the nature and quality of the act he was doing or that if he did know it that he did not know that what he was doing was wrong.

If this question arises at all, it must be introduced by the defendant.

The sanity of a person is not to be judged by any arbitrary standard of sanity or insanity, or by comparison of the acts and declarations of those who are unquestionably sane or insane, because what in one person would be regarded as indicative of insanity, in another, differently constituted, would afford no proof whatever, and indeed might be otherwise regarded in perfect accordance with his moral and mental constitution. Every man is to be judged rather by his consistency with himself—not by a single act of declaration, but by his whole range of life and conduct, or the whole of a particular line of thought and action.

"When a person adopts notions he once regarded as absurd or conduct opposed to his former habits and principles or completely changes his ordinary temper, manners and disposition ; the man of plain, practical sense indulging in speculative theories and projects ; the miser becoming a spendthrift, the spendthrift a miser ; the staid, quiet, unob-

trusive citizen becoming noisy, restless and obtrusive; the gay and boisterous becoming dull and disconsolate, even to the verge of despair; the careful, cautious man of business plunging into hazardous schemes of speculation; the pious and discreet becoming reckless and profligate, no stronger proof of insanity can be had, yet not one of these traits of character, disconnected from the natural traits of character, can be regarded as conclusive proof of insanity. In accordance with this fact it has been laid down, with the sanction of the highest legal and medical authority, that "insanity is the prolonged departure, without adequate cause, from the states of feeling and modes of thinking usual to the individual when in health."

The question whether a person is of "sound memory and discretion" does not necessarily involve the consideration of the question of insanity in general, which is a metaphysical question well calculated to mystify your understanding.

It is one of the misfortunes of metaphysical inquiry that many who assume to write and speak on such subjects, having no single, well-defined, clear ideas, not unfrequently fail to make themselves understood, or where their own perceptions are perfectly clear, in attempting to present in a compressed view a subject in its extent and relations comprehended only by master minds, they obscure the view to those less strong in their intellectual perceptions.

It is also unfortunate that there can be found speculative writers to support any imaginable theory—as that all criminals are insane—that the criminal act is irrational and of itself indicative of insanity, thus making the unnatural wickedness of an act the excuse for it. If any of these crazy theories are taken up and adopted by my learned friends on the other side, if they shall argue to you that the exceeding heinousness of the act in this case, independent of other circumstances, is of itself proof of insanity, your good sense will repel such an argument.

It is proper in the conflict of widely divergent theories and opinions which may be presented to you that you should accept nothing which you do not understand and which does not fully commend itself to your common sense.

You can very much simplify your inquiry, not by considering the general question of insanity, but the far more practical ones: Wherein, in what particular, does the mental unsoundness consist? Was the defendant suffering from this species of insanity at the time of the commission of the act?

The mode of proving insanity is by showing hereditary insanity, prior insanity, subsequent insanity, inconsistent and unnatural acts and declarations of the defendant, epilepsy and certain anomalies of pulse, secretion, &c.

It has been said that the defendant in this case is suffering from epilepsy. Epilepsy consists of periodical attacks of insensibility, accompanied with involuntary convulsive motions of the limbs, more or less violent. It is usually preceded and followed by a greater or less impaired state of mind and sometimes wholly prostrates the faculties, yet it has been asserted upon the highest authority that an epileptic may be as sane and responsible as anybody else.

Therefore if this should be the ground of defence it will be necessary not only to prove that the defendant is an epileptic, because epilepsy is not insanity, but that at the time of the commission of the act he was suffering from such an impaired state of mind from this disease that he did not know the nature of the act he was doing or had no controlling mental power.

If the insanity is of such a kind as to be intangible, if it is so refined as to be inappreciable and imperceptible to your broad common sense, if it is of a kind which nobody ever before saw or heard of in the defendant and if it is not indicated by any of the circumstances accompanying his act, then you may safely conclude that it is not of a kind to relieve from penal accountability.

The kinds of insanity which relieve from criminal responsibility are: 1st, Total insanity, easily distinguishable; 2d, When the defendant is incapable of distinguishing between right and wrong in reference to the particular act; 3d, When the defendant is under an insane delusion, which, if true, would relieve the act from criminal responsibility, or when the reasoning powers are so far depraved as to make the commission of the particular act the natural consequence of the delusion; 4th, When the defendant is under an insane, morbid, irresistible impulse to commit the particular act; and 5th, Moral insanity or insanity of the moral system co-existent with mental sanity, which later writers assert has no foundation in law or psychology.

It is assumed that it will not be contended in this case that the defendant was under an insane delusion, or that he was prompted by an insane, morbid, irresistible impulse.

He is either wholly sane and responsible or wholly insane and irresponsible, or so far insane as to be incapable of distinguishing between right and wrong in reference to the particular act.

I have dwelt thus upon this element in the crime of murder because I conceive it to be of paramount importance in this case. It is quite fashionable now-a-days when a particularly brutal and outrageous murder has been committed, and the proofs of guilt are clear and convincing, and there is no other earthly mode of escape, to seize upon and magnify every circumstance in the life of the defendant which had not before been of sufficient importance to attract attention, and to manufacture therefrom the grounds upon which to interpose in his behalf the plea of insanity, and juries, always properly tender of human life, have sometimes been beguiled by the skill and ingenious eloquence of counsel into a verdict of acquittal, where a sober consideration of the facts would have amply justified a verdict of guilty.

Another prime element in the crime of murder is "malice aforethought, express or implied." Express malice is when a person of sedate, deliberate mind and formed design kills another. Implied malice is such as arises of itself from the manner of the killing and the circumstances attending it.

Under our statute "all murders which shall have been committed by means of poison or lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the

perpetration or attempt to perpetrate any burglary, robbery, rape or arson shall be deemed murder in the first degree."

If it is shown that the murder was committed by means of poison you will have no difficulty with the element of malice, as it is implied from the act, and your verdict must be murder in the first degree, though it is possible, under our Pennsylvania decisions, to find a verdict of murder in the second degree where death was caused by means of poison.

It is not anticipated, however, that you will be called upon to determine between the grades of guilt, as we shall hold that he is guilty of murder in the first degree or entirely innocent.

We shall hold that the defendant, being of sound memory and discretion, with malice aforethought, by means of poison, did kill and murder Martin Laros, and that it is your solemn duty to convict him of murder in the first degree. This much for the law.

What are the facts? Martin Laros resided in Forks township, along the Delaware river, on the road leading from Easton to Mount Bethel, about five miles from Easton. His family, at home, consisted of himself, his wife, Moses Schug, a friend who had lived with them several years, Allen C. Laros, the defendant, Erwin, Alvin, Clara and Alice Laros. Martin Laros was a quiet, unobtrusive, universally respected citizen, who followed school teaching in winter, tilled his small farm in summer and filled in odd intervals with coffin making and general undertaking. His son, Allen C. Laros, the defendant, taught school at the brick school house in Schirnertown, not far from his home. The younger brothers attended school and assisted in such work on the farm as they were capable of performing, while the girls also attended school and assisted their mother in her household duties. On the evening of the 31st day of May last that family gathered themselves together around their supper table in an out kitchen to partake of their usual evening meal. The supper had been prepared chiefly by Clara and Alice. The coffee had been placed on the stove by Alice. Shortly afterward Clara observed that the coffee looked light, as though the cream had been put in it, and asked her sister, who replied that she did not put the milk in the coffee. This was the only unusual circumstance observed in the preparation of the supper, and it unfortunately attracted no attention. The family, all unconscious of the "feast of death" which had been prepared for them, began their repast. Soon Clara was taken ill and retired from the table to the yard, from whence she soon returned to hear other members of the family inquiring about the queer taste of various articles of food. Allen, who never drank coffee, when it was suggested that something was the matter with the coffee, daring not to refuse lest suspicion should alight at once upon his guilty head, appeared to taste the coffee "to see what was the matter." Shortly after the whole family became violently ill, and they all retired from the table to the yard, where occurred a most sickening, heart-rending spectacle in this great drama. Persons passing by were attracted to the scene, the neighbors gathered in and the family physician was sent for with geeat haste. Dr. Seem upon his arrival administered emetics and did everything he could to relieve

the suffering, but as some of them grew rapidly and alarmingly worse he despatched a messenger to Easton for assistance, directing that the antidote for arsenic be brought along. Dr. Junkin was hastily summoned. Upon his arrival the doctors consulted and determined that the afflicted were suffering from arsenical poisoning. The proper antidotes were promptly administered and all that human sympathy and human aid could do was done; but alas for human effort, Martin Laros steadily grew worse, until about three o'clock upon the afternoon of the following day when the "Angel of Death," kinder to him than his own son, came to relieve him of his sufferings and mercifully to spare him that one pang greater than death itself, the knowledge that his own faithless and unnatural son had been the wicked instrument of all his sufferings; that son who unmoved had sat, like Judas, at the table and saw him partake of the fatal draught, and who, in the midst of the moaning and groaning agonies of the sufferers in the yard, had at first assisted in caring for the sick, but who, soon after the arrival of the doctor, sought a sleepless couch, feigning a sickness which he did not feel and feeling a sickness which he did not feign. With the light of the following day the whole country round about was filled with the news of the terrible tragedy.

We shall prove to you first that Martin Laros died from the effect of arsenical poison. We shall show you that the coffee pot used at the supper table and the remaining contents were cerefully preserved; that there was found remaining in the coffee pot a large quantity of sediment, which, when analyzed, proved to be arsenic; that from the size of the coffee pot, the amount of sediment remaining and the amount which would dissolve in the coffee, there must have been about four and a half ounces of arsenic, or enough to kill all the people of Forks township.

We shall prove that Martin Laros drank of that coffee; that the symptoms following were those usually accompanying the taking of the arsenic; that he died; that a post mortem examination of the body was had, and that the lining membranes of the stomach were found in a highly inflamable condition, clearly showing the presence of some very irritating substance, and that a scientific analysis of the contents of his stomach was made, clearly developing the presence of arsenic.

On this proof we shall ask you to say that he died from the effects of arsenic.

We shall prove to you, second, that Allen C. Laros administered that poison, that he is the criminal agent.

We shall show you that he was around the house while supper was in preparation, having left his dinner kettle in its usual place after his return from school, and that he was engaged in making a box for some flowers.

That when the rest became sick he also became sick and complained of pain and soreness more than those who had taken a much larger quantity of the coffee, shrinking away before the doctors touched his stomach, while the others would permit themselves to be touched and felt. His pulse, the temperature of his body and his general appear-

ance when compared with the others, caused the doctors to mistrust his symptoms. This was the first thing that attracted attention toward Allen C. Laros as the perpetrator of the crime.

The doctors will swear they believe that his sickness was at least partially feigned.

It was ascertained that Martin Laros was possessed of a certain sum of money which he kept in his desk or secretary on the first floor of the house. It was discovered that his desk had been broken open and that the money was missing.

Moses Schug was also possessed of certain moneys, which he kept in a trunk in the garret, and which upon inspection was found to have been rifled of the money.

Here was a motive for the crime—the greed for gain, which has slain its thousands and brought hundreds to the gallows.

Allen C. Laros was examined in reference to the sad affair and stoutly denied all knowledge of it, but admitted that he had been to Easton the day previous to the poisoning and purchased some tooth powder from a druggist in Third street, nearly opposite the United States Hotel.

Dr. Voorhies, the Third street druggist, was inquired of and answered that a young man answering in every particular the description of Allen C. Laros, had been to his store and wanted arsenic to poison rats; that he weighed him a small quantity, when he asked for more as he was weighing it, until about four and a half ounces were weighed; that he bought some tooth powder and had a mixture compounded for the pimples on his face; that he took some small articles to make change; that he then left, when the doctor found that he had retained too much change, and he went to the door and called him back. We shall call Dr. C. A. Voorhies upon the stand, and upon his oath, pointing to Allen C. Laros, he will say: "Thou art the man," recognizing and identifying him beyond all doubt.

The quantity of arsenic purchased will be found to be the same quantity found in the coffee pot.

Upon this proof Allen C. Laros was arrested. After the warrant was read to him he was besieged with the importunities and tears of his brothers and sisters for "God's sake to tell all he knew about it," but he persistently denied all knowledge of it.

The officers commenced their search in his room for the missing money, and he was told that he might as well tell where the money was, as otherwise the officers in their search would be obliged to tear up and ransack the whole house, but still he persisted in his denial of all knowledge of the sad affair. The officers continued their search. The importunities of his brothers and sisters and neighbors and the accumulating proofs of his guilt were at length too much for his burdened mind and he voluntarily rose up in his bed and said: "I did it."

Mr. Kirkpatrick here interrupted and said: "I desire, Your Honor, at this point, to note our objection to that portion of the commonwealth's opening in reference to the alleged confession of the prisoner."

Mr. Merrill proceeded:—

Then followed the full recital of his crime, detailing with such particularity where he had placed the money that the officers went to the place between the barn and the sheep stable and dug it up where he had buried it.

He, who just before had been so sick, but now so much relieved, was conveyed to the Easton Jail, where he was visited by the reporters of the Easton daily papers, and to them he again freely und voluntarily repeated the full story of his crime, requesting "that all God's good people should pray for him." All this we shall present in evidence before you.

With all these facts pointing incontestably to Allen C. Laros as the perpetrator of the crime it will be impossible for you to say he did not commit the act with which he is charged.

His only possible hope of escape from conviction is in satisfying you that at the time of the act he was laboring under such a defect of reason from disease of the mind that he was irresponsible, that he did not know what he was doing or had no controlling mental power, that in the language of the law, he was not of sound memory and discretion.

The law in its humanity favors the defendant. All its presumptions are in his favor, except the presumption of sanity, which alone is against him. The merciful Judge will resolve every question of doubt in his favor and the Commonwealth will strive to be fair and impartial in the proof submitted to you.

The law cries not for vengeance. The blood of Martin Laros calls not from the voiceless tomb where his body lies buried for an avenger; his kindly spirit, which has gone to its reward, in its fatherly charity would fain forgive, but the peace and safety of society demand that the law shall be vindicated, that human life shall be sacredly guarded against the assaults of the destroyer, and that you and I shall be secure in our homes, at our firesides and at our meals, and that any who, through cupidity or any of the baser passions of the human heart shall dare to take a human life shall forfet his own life. It is only thus by following the transgressor with punishment swift and sure that the law can be made "a terror to evil doers and a praise to them that do well."

You are the agents of the law, the mere instruments through which it is administered. If, upon a sober consideration of the facts in the case, you are satisfied that Allen C. Laros, by means of poison, with malice aforethought, did kill and murder Martin Laros, it is your duty to convict him of murder in the first degree and leave the consequence to the law. The sentence will not be yours, it will be the just and righteous judgment of the law.

Gentlemen of the jury, you are charged with a solemn duty, from which I know you will not shrink, and I doubt not that you will give to the facts developed in this trial that fair, impartial and exhaustive examination which the magnitude of the case demands.

May the God of Infinite Wisdom give you light to guide you to a correct conclusion.

Mr. Scott—We give notice at this stage of the proceedings that owing to the state of the record in regard to the appointment of Mr. Fox to assist the District Attorney the defendant will object to his (Mr. Fox) making the closing address to the jury. We expect the District Attorney to do that and they shall not say they had no timely notice. Notice and objection noted by the Court.

The Court—We will hear you upon this question, gentlemen, when the evidence is closed.

The Commonwealth then called its witnesses as follows:

ALICE LAROS.—Am eleven years old; have gone to school three or four years; go to Sunday school and church; I must tell the truth; it is a sin to lie; we are punished after death for it.

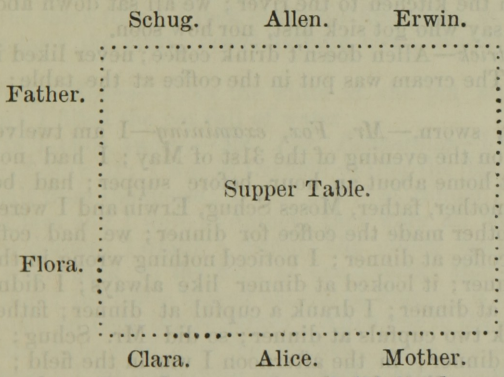
Witness sworn.

Mr. Fox, examining—My father was Martin Laros; he lived close to the Delaware, in Forks township; mother, father, Clara, Moses Schug and I lived together, and Flora Bauer; Moses Schug lived with us several years; I was home at the supper; Allen was home; he had been to school; the school at Schirnertown several miles down the river; don't know what time he came home; I was in the field killing potato bugs when he came home; I got supper; we had coffee; I got the coffee ready; I ground the coffee; in a hand coffee mill; roasted grains of coffee I put in the mill; I put it in the coffee pot after grinding; I got the pot from the cupboard; there was liquid coffee in the coffee pot when I put the grounds in; the coffee we had for dinner; I was not home at dinner; Clara was home at dinner; I looked in the coffee pot when I put in the coffee grounds; there was nothing white in at the time; then I put the pot on the stove and put in no water; the stove was in the kitchen; there is only one room in the kitchen; Allen was home when I put the pot on the stove; I wasn't in all the time the coffee was boiling; I didn't see Allen go in the kitchen while the coffee was boiling; in about a half hour after that we had supper; I think Clara took the pot off the stove; I looked in the coffee pot before it was put on the supper table; it looked white; it looked different from what it did when set on the stove; it looked as if milk might have been put in; I had put no milk in; it was dark brown when I fixed it; I also put essence in the pot; it was also dark colored; put in a tablespoonful of essence; when supper was ready all sat down to the table; I drank coffee; All but Allen drank coffee; the coffee tasted peppery; it had a biting taste on the lip; Clara said it tasted like pepper; she didn't say it loud; I drank two swallows; I had a cupful, but only drank two swallows; don't know how much father drank, think about a cupful; don't know how much mother or Moses drank; then we all got sick; I can't tell who got sick first; they threw up; supper wasn't over when we were taken sick; it did not burn inside of me when I got sick; I had burning in my throat; I felt sick all night; saw father before supper; he looked well; I vomited during the night a good many times; I don't know whether father was taken sick before or after me; father died the next afternoon; mother died in the

morning of the same day; Moses died on Friday; we got sick on Wednesday evening.

Cross-examined by Mr. Kirkpatrick.—I saw Allen come home from school; was not at the same school; first saw him after school come home; he was in the road; near the house: can't tell the time; had supper before the Belvidere Delaware train went up; can't tell if it went up while we were at supper; ate supper about usual hour; don't know the hour at which we usually eat; generally about train time; my brother Clinton also keeps school; I go to his school; I was at school that day; can't say what time our school left out; generally leaves out about four o'clock; our school is about a mile and a quarter from the house; I tarried along the way going home from school; talking and playing with the other girls; was home about half an hour before I fixed the coffee; saw Allen in the road before I fixed the coffee; supper was more than half an hour after I fixed the coffee; not much longer; had often made coffee before; supper was called about the time the coffee ought to be done; I sat aside of mother; takes not very long for the coffee to boil; Allen sat where I could see his face.

[The witness then explained the position of the family at the supper table by means of a diagram, of which this is a copy:—]



Clara and I talked during supper; I didn't take much notice what the rest did; didn't talk to Alvin much; nobody sat on the side with Alvin; couldn't talk to anybody without making some effort; did not notice who drank coffee and who did not; we had bread, butter and beets for supper; veal; don't know where veal came from; don't know whether father killed or bought it; we had pie; don't know what kind or whether there were several kinds; people at the table eat all they wanted; supper was not over when they got sick; got up from table so soon as they felt sick; don't know how soon doctor was sent for after they were taken sick; they ate some before they drank coffee: nothing was said at the table about the veal tasting queer that I remember; no one asked about the veal tasting queer; all got sick before supper was over; don't remember when the doctor got there; after dark; it was about nine o'clock; doctor gave me medicine; also to the others; I had vomited before that; can't say how many times;

the rest had also vomited; after I put the coffee on I stayed a little while; Clara was also in I think; also mother; no one else that I remember; left mother and Clara in the kitchen and went down to the river; went back again before supper; only Clara was there; don't remember what Clara was doing when I went away; mother was sewing near the window; she could see the stove; when I got back Clara was, I think, pouring water in the coffee pot; don't remember where mother was; think in the house; no one else was in the kitchen when I came back; while I was out I was at the river could see the wash house; plainly; first I saw Allen again after I put coffee on stove was at the supper table; he was sitting at the table when I got there; I didn't talk to him that I remember; when I saw Allen coming home from school he was walking slowly; nobody was with him; I didn't speak to him; he got home late; I was in the field near the road picking potato bugs when I saw Allen come home; one of my sisters was with me; he spoke to Clara.

Mr. Fox—Did not see Allen take any coffee.

By the Court—Between the time I saw Allen coming home from school and supper I saw Allen at the shop, but nowhere else; at the shop across the road; it is about twice the length of the Court House from the kitchen to the river; we all sat down about the same time; can't say who got sick first, nor how soon.

By Mr. Kirkpatrick—Allen doesn't drink coffee; never liked it.

By the Court—The cream was put in the coffee at the table; in the cups.

Clara Laros, sworn.—*Mr. Fox, examining*—I am twelve years old; I was home on the evening of the 31st of May; I had not been in the field; I got home about an hour before supper; had been at home to dinner; mother, father, Moses Schug, Erwin and I were home at dinner; my mother made the coffee for dinner; we had coffee for dinner; I drank coffee at dinner; I noticed nothing wrong in the taste of the coffee at dinner; it looked at dinner like always; I didn't put milk in my coffee at dinner; I drank a cupful at dinner; father and mother each drank two cupfuls at dinner; so did Mr. Schug; Erwin drank coffee at dinner; in the afternoon I was in the field; Erwin was with me; I was well during the afternoon; I saw mother before supper; mother was well before supper, and so were father, Moses Schug and Erwin; I poured water in the coffee pot before supper; it was hot water; I noticed something white in the coffee pot; it looked as if milk had been poured in; don't know who put the coffee on the table; don't know who poured out the coffee; I drank coffee at supper; I had a cupful; I drank two swallows; it didn't taste like it always did; father took coffee, so did Moses Schug, mother, Erwin, Alvin and Alice; I didn't see Allen take any; little Flora also took some; I ate nothing before I drank; I ate nothing at all at supper; after I took two swallows I went out because I felt so bad; I went into the yard; then I threw up; I felt sick at my stomach; I had a burning feeling in my throat; all of them got sick; Allen was sick; I was sick all night; how many people came there that night I don't know; I don't know that I saw Allen before supper; I was sick the next day.

Cross-examined by Mr. Scott—I came home an hour before supper; I was not in the field Alice was in; when I came home I went in the house; mother was in the house; when I went to the kitchen I think I saw Alice there; mother was there sewing; mother was in the wash house when I came home; Alice went down to the river; the coffee was on the stove and boiling; mother was sewing when Alice went out; after Alice went out I filled the coffee pot when it was boiling; did not see mother go out of the wash house; I sat at the table alongside of Alice; we talked together during supper; I paid no attention to what the rest did; all got sick at the supper table; we were at the supper table about ten minutes when we got sick; father said the meat tasted queer; he tasted the meat before making this remark; he ate meat before he took the coffee; we had pie for supper, but don't remember what kind; had also molasses cake; we had beets; they were pickled, sour beets; I don't know who made the molasses cake; at the table I took no notice of Allen particularly; he talked, but not much; I am positive my father made the remark about the meat: I don't remember Allen saying any particular thing; about nine o'clock Dr. Seem arrived; after dark; we made supper about train time; train time was seven o'clock; generally ate at that time: generally worked till about six o'clock when in the fields; the doctor gave us all medicine about the same time: I took coffee the first thing at the supper table; did not taste the meat; tasted nothing else; they all took coffee I am sure.

By Judge Meyers—I saw the white in the pot after I poured the water in; I filled the pot full of water.

Erwin Laros, sworn.—*Mr. Fox, Examining*—I was home on the evening of May 31; I was in the field during the day, about one mile and a half from the house; I was home at dinner; father, mother, Schug, Clara and I were at dinner; they were all well then; we had coffee for dinner; I drank a cupful; the others drank coffee at dinner, I went back to the field at one o'clock: they were all in good health then; the coffee looked natural at dinner; it tasted as usual; I came home an hour before supper; Allen was in the shop; it is on the other side of the road from the kitchen; I was not in the kitchen before supper; I sat down with the others; father, mother, Schug, Clara, Alice, Alvin and Allen; Flora was brought in; I took coffee for my supper; there was nothing on my plate to eat; I drank a half cup of coffee before I ate anything; I drank several times; it tasted peppery; it burned my lips and mouth; my father, mother and Moses Schug drank coffee; don't know if Allen drank anything; I had to vomit; I think Clara was the first one sick: I went into the yard to vomit: all of them vomited: don't know if Allen vomited: I was sick about one week: my mother died on Thursday morning: my father died on Thursday afternoon: Schug died on Friday afternoon: I am sixteen years old: don't know my father's age: fifty-six, I think: my mother was fifty some: Moses Schug was about sixty: he had been living in the family several years and was just like one of the family: some of the neighbors came in when we were sick.

Cross-examined by Mr. Scott—Clara was in the field with me in the

afternoon: the field is a mile and a half down the river: not toward Allen's school: father was in the shop with Allen: the shop is just across the road: the kitchen is about as far from here (meaning the stand) to the end of the Court House: you cannot see the kitchen from the shop: I was not in the shop with father and Allen: I saw Allen in the shop making a box: it was when I went home that I saw him: I was in the barn until supper was ready: the barn is five or six rods from the kitchen: nearer to the kitchen than the shop: I don't remember the train going up that night: I think train time is eight o'clock: no train passes our place at seven o'clock: we all sat down to supper together: father and Allen were in the kitchen when I went to supper: they were not seated: I mean the train goes up now at the time stated: I don't remember what time the train went up then: I ate some of the meat: I tasted the meat after I drank the coffee: father bought the meat: my father was at the table when I went out: so was mother and Mr. Schug: the veal was fried: I ate some beets: I had some pie: don't know the kind: I had not finished my supper before I was taken sick: my father I guess had got done his supper before he was taken sick: mother and Schug came out after father: the doctor give us all medicine.

Alvin Laros, sworn.—*Mr. Fox, examining*—I am Alice's twin brother: I was at home when they all got sick: I had been in school during the day: the school is a mile and a quarter away: I think I got home about five o'clock: Allen came home afterwards about half an hour: I was sprinkling water on the flowers around the house after I got home: when Allen came home I was down in the potato patch; I came from the potato patch about half an hour before supper was ready, when Allen was in the shop: he was called to supper from the shop: shop as far from the kitchen as the length of the Court House: may be a little farther: don't know who went into supper first: the rest did not go into supper before Allen came: I went in last: I drank coffee: not quite a cupful: father also drank, so did mother: don't know whether Allen did: Moses Schug and Erwin did: don't know whether Clara and alice did: I ate bread and butter and meat at supper: I ate meat first: the meat tasted like always: the coffee tasted like pepper: it burnt me in the throat: after I sat at the table I went out and vomited: so did the rest: Clara went out first: Erwin, I think, went next: then I: don't know who came out next: was too sick to notice: saw father coming out and vomit: not mother, but Moses Schug: was sick a week: I was sick at my stomach next day: had not the burning feeling: Dr. Seem came there that night: so did Dr. Junkin.

Mr. Kirkpatrick, cross-examining—I went to Clinton's school: Alice and I came home together that night: the school left out as always: we stopped a little on the way home: when I got home I went into the kitchen: mother was in the kitchen then: she was sewing: she was sitting at the window: she could see the stove: I stayed there a little while, not long: then went to the potato patch: I could see who passed up and down the road: saw Allen come home: he always came home late: he walked like he always does: I could see him plain from

where I was: I next saw Allen at the supper table: I was home about three-quarters of an hour from the field before supper: then I sprinkled water on the flowers and was down at the river: I sat alone at one end of the table: in about ten minutes after eating we got sick: we had pie and veal, beets and bread: we all got sick: mother and father got sick after supper: I vomited often before the doctor came.

FRIDAY AFTERNOON, August 18.

ALVIN LAROS, *cross-examination continued by Mr. Kirkpatrick*—Allen did not talk any when I saw him come from school: he was a short distance from me: I could see him well at the table: I looked at him: I noticed something strange about him: his face was very pale: fixed expression: his eyes looked wild and turned up in his head and showed nothing but the white: I noticed him particularly: he did not seem to know what was going on around him: he did not talk: sat perfectly still.

The defendant's counsel then asked the witness a question as to the appearance of Allen, and what he thought about him at the time.

The Commonwealth objected, and the counsel for both sides argued the question.

Mr. Kirkpatrick thought they had a right to cross-examine on all the attending circumstances at the table, as the Commonwealth had placed the prisoner there.

Mr. Fox argued that the object of this questioning was to set up a defence before the commonwealth had closed their case.

At the conclusion of the argument the counsel for the defendant withdrew the part of the question as to what the witness *thought*, and they then put the question in this form:—

Q.—What was the appearance of Allen C. Laros, your brother, while you were at the table on the night of May 31 last?

Objected to by commonwealth because it is a matter of defence and not cross-examination.

Objection sustained and an exception taken.

The defendant then asked:—

Q.—Were you alarmed at the appearance of the prisoner that evening at the table?

Objected to for same reasons. Sustained and exception taken.

The defendant then asked:—

Q.—Was there anything that ever happened to Allen before this evening that caused you to notice his appearance or pay attention thereto?

Objected to for same reason. Sustained and exception taken.

JOSEPH MILLER, sworn.—*Mr. Fox, examining*—I live between 200 and 300 yards from Mr. Laros'; I came there on the evening of the 31st of May; there was nobody there besides the family when I got there; Allen was in the yard; Jacob Seiple came afterward; the family lay there very sick; told Mrs. Laros to go in the house, and Allen brought out a settee cushion for her to lay on and helped me put his mother on it; Clinton Laros' wife got the buffalo robe and Moses Schug lay down on it; in that time more neighbors came in:

Mr. Laros said he felt very sick; Allen was around helping; went away and got supper and came back and stayed till one o'clock at night; I think Allen vomited after the doctor came; went to Laros' about five o'clock the next morning; Mrs Laros died about seven; didn't see Allen that morning.

Cross-examiued by Mr. Kirkpatrick—Didn't see Allen at all the next morning.

Levi Sandt, sworn.—*By Mr. Fox, examining.*—I live about 100 yards from Mr. Laros'; was there on the evening of the 31st of May: got there about eight o'clock; found all the family sick on the ground except Martin Laros, who sat on the bench; Allen and some one else carried Mrs. Laros in and laid her on the bed; stayed till ten o'clock; Allen was not vomiting while I was there; was there at five o'clock the next morning and during the day; was there when Martin Laros died, at one o'clock.

Cross-examined by Mr. Kirkpatrick—Got to Laros' about eight o'clock; not quite dark; Allen was helping to tend the others; saw him as soon as I got there; live in the third house from Laros'; was there over an hour before the doctor came; couldn't tell the exact time the doctor came; perhaps a little after nine o'clock.

John T. Yeisley, sworn.—*Mr. Fox, examining*—I live about 150 yds. from Laros'; was there on the evening of the 31st of May; got there about half-past seven; quite a number of neighbors were there; Mr. Laros came out of the house as I got there, but Alvin was out in the yard; Mr. Laros sat down and vomited when he came out and then went in again; saw Allen pass out and in the house; didn't see him vomit; I was there over half an hour; went away and came back again; saw two of the boys—Alvin and Erwin—and the two girls vomit.

Cross-examined by Mr. Kirkpatrick—Both Miller and Sandt were there; I saw them there soon after I got there.

Dr. A. K. Seem, sworn.—*Examined by Mr Fox*—Am a practicing physician; for twenty-three years; was Martin Laros' family physician; live about two and one-half or three miles from his place; was called on the evening of May 31 last to go to Martin Laros'; reached there about nine o'clock; when I arrived there I found Mr. Laros lying on the settee in the house in the front room, down stairs, main building; Mrs. Laros was in bed in an adjoining room; Mr. Schug and the children were lying on the floor; Alvin, Clara, Alice and Erwin, and the baby, Flora, in the cradle; they were vomiting; could not tell which first after I entered, but one after the other; I then went to Mr. Laros and inquired of him if he could account for the condition in which they were in; his symptoms were prostration; vomiting and purging; at times complained of griping pain in the bowels; said he had no constriction of fauces in the throat; spoke of no burning sensations; administered an emetic to him.

[Before that I went to Mrs. Laros, as Mr. Laros' answers were not satisfactory; got from her particulars of what they had for supper, and concluded that the trouble was in the coffee.]

At the request of the defendant the portion in brackets "[ ]" was stricken out.

Witness continues.—The emetic was sulphate of zinc; object was to evacuate the stomach of any poisonous materials that might be there; from the symptoms I observed in Martin Laros I concluded the trouble was poison in some form or other; thought it might be arsenic or a vegetable poison; was not certain which; only gave him one emetic; to several of the family I gave more than one; his operated very quickly; I was there eighteen hours; sent for other medical aid; for Dr. John M. Junkin, of Easton; sent for him about twelve o'clock that night; he got there about three the next morning; the next morning Martin Laros was much prostrated, stupified, still vomiting; he died about one o'clock the next day; in my opinion he died from the effects of arsenical poison; was not present at Martin Laros's *post mortem* examination; sent for Dr. Junkin about 12 o'clock at night with instructions to bring the antidote for arsenical poison; immediately after his arrival we administered the antidote, hydrated peroxyide of iron, and stimulants; whiskey and ammonia; also wine freely; got some of the contents of the coffee pot; Dr. Junkin and I divided the contents; made no analysis of it; examined it, but not chemically; I gave it to Henry S. Carey, the Coroner; I supposed it to contain arsenic; had the appearance of it; saw Allen Laros that night, when I reached there; he was assisting the sick ones; attending on them; helping; did not at that time complain to me of being sick; not until attention had been drawn to him; after I had given the emetics, I asked if all had had emetics; one of the attendants answered that Allen had not had any; this was in Allen's presence; then I asked the attendant if Allen had had any of the coffee; this was in Allen's presence as far as I know; it was in his presence; he was in the northwest corner of the room; Allen made no reply to this question; some one answered that Allen had taken two swallows of the coffee; I then, without examining him, prepared an emetic and gave it to him the same as I had to the rest; this was probably half an hour after I came: did not see him vomit: vomited after the emetic: attended him with the rest during the next eighteen hours: he did not show the same symptoms the rest did: his pulse and skin seemed natural: he complained of a great deal of tenderness over the stomach.

Q.—Doctor, professionally, as a practioner of medicine, state whether or not, from your examination of the prisoner and your attendance upon him at the time, he was suffering from any tenderness of the bowels?

Mr. Kirkpatrick objects.—Objection overruled.

A.—There may have been that tenderness in consequence of the emetic, even though there had been nothing further. I think there was nothing beyond that.

Ex. by the Court:—I don't know that there is anything peculiar in the appearance of a person dying from arsenic. The symptoms in Martin Laros' case were not altogether the symptoms of arsenical poison, they were mixed. The burning in the stomach and the choking in the throat were absent. He had not exclusively the ordinary symptoms.

The symptoms vary in different individuals, depending upon the dose and form in which arsenic is given and upon the person. A small dose would produce vomiting and prostration. A large dose would produce vomiting much quicker than a small dose. Arsenic dissolves more quickly in hot than in cold water. Hot water will hold 12 grains to the fluid ounce if boiled one hour, less than one hour 6 grains. Cold water half a grain. The minimum dose of arsenic to producce death is two grains in an adult. Administered in a hot liquid it is more quickly absorbed in the circulation. Administered in a hot liquid it would less likely to be found in the substance of the stomach than if in cold liquid. Arsenic is an irritant poison. Its effects on the lips would be to irritate. In a strong solution it would leave a biting sensation.

Martin Laros died in his house in this county.

Cross-examined by Mr. Kirkpatrick.—I got at Laros' about 9 o'clock, after candle light. It takes a half an hour to drive from my house to Laros. I started as soon as I was summoned. When I got there Mr. Laros was in the front room. He went out of the house while I was there. Couldn't tell how soon, but not very long. I think Mr. Seipel or Mr. Miller with him. He was out ten or fifteen minutes. I saw him come back. He came back to the settee, with his attendant. Allen was in the house at or about that time. Mr. Laros went out several times until I forbid him. Allen did not go out after I gave him the emetic, he went up stairs and to bed. It was sometime after I got there that I saw the coffee pot. It was brought to me by one of the family, and had it put into the cupboard. Divided the contents of the coffee-pot the next morning. Didn't see the coffee-pot between those two times. It was in the same room next morning. There may have been twenty persons in the house—possibly more—some were there all night. Dr. Junkin and I divided the contents of the coffee-pot the next morning. From the time I had it in my possession until the next morning I did not see the pot. Next morning some one brought it to me. I don't know who. At the time the pot was brought to me in the morning there were many people present. This was in the same room. Most of the neighbors were in and out of the house during the night. House was open all night. The coffee in the morning consisted of liquid, coffee grounds and a white sediment. We divided the liquid. The white powder we put in a newspaper. We divided the coffee into two equal portions. Dr. Junkin took one part and I the other. The sediment was also divided. By the sediment I mean the solid part. I was present all the time the coffee and grounds were divided. I took my portion and left it on the window of the room where I was. I was still busy attending the sick. This division was made about 9 o'clock, A. M. I didn't go home until noon. The package was right by me. I sat close where it was. I did not see it constantly. I was up stairs some times. I was up a number of times. I am not positive where I ate dinner. The package was tied and wrapped up. I took my portion along home, also the liquid. It was in a fruit jar as is used to can peaches. It was shut. I had it in the window. I took the package and the fruit jar home. I put the package

on a shelf in my office and the jar in my wash-house, neither locked up. The package was the white sediment. The front office is my waiting room. I wrote poison on the paper. I gave part to Mr. Carey and the rest I brought to the inquest. I carried it down in my pocket. The liquid portion Mr. Carey got at my house some time after the inquest. I gave it to him. It was on a Sunday, I think the second Sunday. I think a Mr. Whitesell was with Mr. Carey at the time. I asked whether Allen had taken any of the coffee. There were many people in the room at the time, going in and out and talking. I couldn't possibly say Allen heard the remark, it might be. I never attended a case of arsenical poisoning before. Never gave the subject of arsenic and its effects especial attention before that time. Arsenic is an irritant poison. There are no absolute characteristic symptoms of poison. There are diseases that have symptoms in common with arsenical poison. Cholera morbus resembles arsenical poisoning very closely. I agree with the assertion [Wood's Prac. Med.] that it is hazardous and untrue that the symptoms of irritant poisoning can be distinguished from those of billious cholera; they cannot be distinguished by symptoms, even where the discharges are bloody, Prostration is a symptom common to both. Vomiting and purging are also common symptoms. Paleness of face also. Also great pain in the stomach. There are a large number of agents, harmless and otherwise, that produce irritation. Sulphate of zinc is an irritant in large doses, it would produce inflammation of the stomach. Prof. Taylor's Medical Jurisprudence is authority. I would not say from the symptoms that Mr. Laros died of arsenical poisoning, not positively. There are other diseases which have symptoms of arsenical poison, as Asiatic cholera, cholera morbus, &c. Narcotic and virulent poisons are very distinct in their operations, and generally easily distinguished. There are rare cases in which they cannot be readily distinguished. Narcotic poisons do not act the same way on the stomach. To allay pain I administered tincture of opium or laudanum. Stale meat is sometimes the cause of cholera morbus. Could not say that very young veal would. Dr. Junkin and I examined the patient together. Were not sure that it was arsenic or vegetable poison. Pork and fat meat, and stale fish, might cause such symptoms as appeared in this case. I tried to give Mr. Laros the ammonia and whiskey, but could not get it to go down. As a general thing arsenic does not have a stupefying effect.

Re-examined.—Have in my practice known of bloody discharges in cases of cholera morbus. Usually in that disease, vomiting does not come at once, but there are premonitory symptoms. At midnight, from observation, I concluded it was a case of arsenical poison. I did not see any reason to change my opinion. It is now my opinion that he died from arsenical poison.

By Mr. Kirkpatrick—It is not *positively* my professional opinion from the symptoms of Martin Laros that Martin Laros died of arsenical poison; cholera morbus sometimes comes on suddenly.

By Mr. Fox—It is my opinion that Martin Laros died of arsenical poison, but I don't say so positively.

By Mr. Kirkpatrick—In a case of another person having similar symptoms to those of Martin Laros, without reference to anything else, I would not be willing to give it as my positive opinion as a scientific man or a physician, in a case of life and death, that such person died of arsenical poison.

Dr. JOHN M. JUNKIN, sworn with uplifted hand.—*Mr. Fox, examining*—Am a practicing physician of Easton; about thirty years; was called to visit Martin Laros on the morning of June 1; reached there about three o'clock in the morning; saw the sick; Mr. Laros on the settee; Mrs. Laros on the bed in the rear room; the rest on the floor; they had nearly all ceased vomiting; Mrs. Laros vomited once afterwards; Mr. Laros was in a torpid condition; difficult to get him to answer; he did say he felt better; almost the only word I got from him; his pulse was in a low, labored condition; skin cold and clammy; breathing rather slow, but not unnatural; did not seem disposed to take notice of anything; took trouble to get his attention; I prescribed stimulants as the first thing; he had been given them, and I advised that the quantity be increased; we talked the matter over, Dr. Seem and I, about the poison being arsenic; we had no doubt that the family had been poisoned; my opinion was they had been poisoned; I examined all of them.

Q.—Were the symptoms of all the sick alike?

Objected to by defendant for the reason that this issue is joined on the charge of murdering Martin Laros alone and that no inference could be drawn with regard to the cause of death in the case of Martin Laros from the symptoms, whatever they might be, of any other person or persons, and that it is incompetent and irrelevant.

Argument on this point was reserved and the question held unanswered for the present.

Witness continued—After examining Mr. Laros it was my opinion before I prescribed that he had been poisoned; I gave stimulants first; afterwards hydrated peroxyde of iron; for arsenical poisoning; would not have been proper to have given that for cholera morbus or Asiatic cholera, or Gastritis or Peritonitis; as the disease progressed I saw no reason to change my opinion; left an hour and a half before he died; he had not spoken for several hours before I left; we momentarily expected his death; from the symptoms I concluded at the time that he died from some poison.

SATURDAY MORNING, August 18.

The question raised last evening as to the competency of the question asked Dr. Junkin was then argued.

Mr. Fox quoted authorities to show that it should be admitted. He argued that when other members of the family were seized simultaneously with similar symptoms to those exhibited by deceased the fact of their partaking of a common poison was justly supposable. This would be substantiated if the person seized exhibited symptoms more or less violent in proportion to the quantity of the suspected article taken.

Mr. Scott maintained that the investigation should be confined to the

symptoms of Martin Laros and nobody else; that this poisoning case was different from those quoted, because this defendant stands indicted for two other similar crimes committed at the same time.

Mr. Fox said it was not a doubtful question and the objection was not well taken.

Defence further objected to Mr. Fox's question because it was leading.

Mr. Fox altered his question to "What were the symptoms of the other persons who were suffering?"

Judge Meyers held that where there was proof of the poisoning of another person at the same time when the person named in the indictment is alleged to have been poisoned, the evidence could be admitted, and therefore overruled the objection. The defendant took a bill of exceptions.

Dr. J. M. JUNKIN.—*Examination by Mr. Fox continued*—[Question answered.] They were vomiting and purging except the baby; when I reached there the baby had already recovered; Mrs. Laros was in a dying condition when I reached there; pulse imperceptible; her body was getting cold, especially the extremities; her face had the peculiar, pallid death look; Moses Schug was suffering very much from pain in the bowels, purging, &c.; his pulse was more excited than any of the others; he was also cold and continued so up to the time of his death; the discharge was tinted with mucus and blood; Alvin, the youngest boy, I think vomited once after I got there and complained of pain in the epigastric region; his extremities were not so cold and his pulse better; I don't think Erwin vomited after I got there, but he had pain in the stomach and bowels like the others; his pulse was languid; he was suffering from shock, as there was shock present in all three cases; the girls were affected like their older brother; from my observation the symptoms of the others were all of the same kind; they differed in degree; I was there until about twelve, noon; I went there next (Friday) morning about nine o'clock; Mr. and Mrs. Laros were both dead; Moses Schug was still living; he died that afternoon; the little girls, Clara and Alice, had somewhat recovered and were walking about; pulse almost healthy in its action; the vomiting and purging had ceased; Alvin, the youngest boy, seemed more languid and had to lie down more than any of the others; his pulse was languid; he complained of pain; there was still some depression; was there the next day (Saturday) towards noon, and on Sunday; didn't see them after Sunday; on Saturday and Sunday Alvin was improving; appeared more bright and cheerful; on Friday Erwin seemed more affected than any of the others; there was no purging or vomiting; he was gradually rallying; pulse becoming healthy; on Sunday, I think, he was walking about; I formed an opinion in the first hour that Martin Laros was suffering from having taken something into his stomach of a poisonous character; I judged it to be arsenic; gave the antidote for arsenic, hydrated peroxyde of iron.

Q.—From the symptoms of Martin Laros and your observation of those who were seized at the same time in the same house with him what, in your opinion, was the cause of his death?

Objected to *by defendant* as irrelevant and particularly that the question does not strictly embrace the basis on which the witness is permitted by law to give a professional opinion.

Objection overruled and exception given.

A.—In my opinion his death was caused by arsenic; after we had given the antidote to all, we asked for the coffee pot; it was handed to me from the cupboard at the side of the chimney in the front room where they were all sitting; I asked for something to put the contents in and a quart glass fruit jar was given me; I poured into it the coffee, leaving the grounds in the pot; the jar was just about filled with the liquid; while pouring it out I noticed a white deposit on the bottom of the coffee pot, which deposit was over one-eighth of an inch in depth; the pot at the bottom was over six inches in diameter; took the coffee pot and scraped the grounds off, leaving the white deposit by itself as much as possible; then I scraped the white deposit out on a paper, all I could get out; Dr. Seem and I did this together; we folded the paper up carefully and placed it beside the jar which was on the window sill; I examined the deposit by sight; had no time to do anything else; judged it to be arsenic; grounds we threw out doors; the white powder I afterward divided, putting part in another paper; the coffee I divided; gave half of each to Dr. Seem; I brought my part of the liquid and powder to Easton with me; I wanted to test the liquid myself, but had not time and got a young man, Mr. D. D. Davidson, to examine it for me; he is in the Scientific Department of Lafayette College; Chemical Department; told him to make an analysis of it; gave him about half a drachm of the powder and two ounces of the liquid. When I got there Allen Laros was lying up stairs on a pillow; I examined him; his pulse was slightly excited; very little out of the normal condition; skin natural, tongue slightly coated; he flinched very much during my examination of him; the effect of sulphate of zinc after an emetic would not be such; my opinion was that he was much more sensitive than the others were about the person; when I found he continued so over-sensitive I could not account for it, for he had taken less than the rest; he continued so until Friday afternoon.

Q.—From your observation of him, of his symptoms, what was your opinion of him?

A.—I thought he was not as sensitive as he said he was; on Thursday and Friday there was neither languor nor depression; the pulse was slightly excited; there was no coldness or clamminess of the surface; there was no complaint made by any of these patients of cramp in the limbs; Aitkin's "Science and Practice of Medicine" is a standard work; I believe the assertion there that the evacuations in cholera morbus are not necessarily bloody; in cholera morbus the pain in the epigastric region varies from slight to severe; in case of large doses of arsenic vomiting is always first, may, however, come on with purging.

By the Court—That varies in cholera morbus.

Mr. Fox, continuing the examination—Small doses of an irritant poison produce effects which greatly vary; arsenic is a cumulative poison; boiling water will dissolve much more arsenic than cold

water; depends on the length of time it is boiled: boiling water, if boiled more than an hour, will hold 800 gr. to the pint, cold water at 65 deg. Fahr. will hold 300 gr.; it depends on the kind of arsenic; white arsenic is the ordinary arsenic of the shops; arsenious acid is the technical name; I estimated that the coffee pot held three quarts of coffee; that one quart remained and two quarts had been used or thrown out; that being the case the one quart of cold liquid held at least 300 gr.; temperature of the two quarts when poured out I estimated at 120 deg., containing 1,200 gr. or say 400 gr. to the pint; about two oz. in the deposit on the bottom; over four oz. of arsenic altogether, nearly five oz.; considerably over four oz.; arsenic taken in hot liquid would be much more readily absorbed than in cold; copious vomiting would remove the arsenic not absorbed; arsenic produces irritation of intestines; afterwards inflammation; latter will not take place from twelve to forty or sixty hours; affects alimentary canal same way; produces diarrhœa; diarrhœa depends as to extent on amount of irritation; if severe would occasion bloody and mucous discharges.

Cross-examined by Mr. Kirkpatrick—When I arrived at Laros' I can't say which one I first examined; spoke to Dr. Seem before I examined the sick; this was between three and four o'clock in the morning; got some knowledge of the case; talked with him a moment or so about the case; Allen was the last one of the sick I saw; over three-quarters of an hour after I got there; up stairs in bed; lying on his right side, head on a pillow; did not seem to be in a stupor; did not say before the Coroner's inquest that he lay in a stupor; saw him frequently after that; about every hour after: second time about five A. M.; did not at any time seem to lie in a stupor; spoke to me the next time I saw him; always in reply to a question; sometimes in monosyllables, sometimes in words; seemed to wish to say as little as possible; difficult to get him to reply to questions; sometimes frequent questioning to get a reply; lying on the side, not always the same side; never on the back; face turned to the pillow; think he looked at me when I spoke; don't recollect if eyes were closed at other times; looked without turning up his face; can't say he always looked: from the symptoms alone in Allen's case I would judge pain; we always gather symptoms from examination and representation of patients; I examined him several times in connection with Dr. Seem; several times I went alone; never saw him exhibit convulsive movements or twitching; Dr. Seem talked about him (Allen) having such symptoms; Dr. Seem said he had something like a convulsion, he called it "a spell," between one and two o'clock on Friday afternoon, about the time of Schug's death; don't recollect that he called them spasms; don't recollect that Dr. Seem said he ever had such symptoms before; I divided the coffee with Dr. Seem; during the morning; about ten or eleven o'clock; the pot was brought to me; sediment was white; slightly colored by coffee, but surprisingly white after being in coffee: very slight, yellowish tinge; lighter in color, good deal, than boiled lime water sediment; saw the package and fruit jar on the window sill frequently; did not handle it till I left; went away about twelve; it

lay there two or three hours; can't say if the window was open; many people in and out; four or five of the sick were in the room; chances were that the windows were open; a man named Parks came down with me; in the carriage I placed the jar between my feet: package in my pocket; at home put jar and package in a cupboard, in which I kept my other bottles; my front office; cupboard not locked; has a door; sometimes stands open; office where I receive my patients; people came in and out; am often away from my office: premises entirely deserted at times; always locked; not for days at a time while these things were there; only while going to meals; my wife was there at other times; it was there about an hour before I gave it to anyone; after dinner gave Mr. Davidson a portion at my office; it was wrapped in several thicknesses of newspaper; it was moist; paper was thick on this account; an ordinary dose of sulphate of zinc would have no effect on the stomach three or four hours after administration: the greater the amount of poison the less zinc required; the poison would of itself act as a partial emetic; sulphate of zinc is considered the quickest emetic, leaving less injurious effects than any other; straining, retching, vomiting, &c., with sulphate of zinc would leave a soreness of muscles if straining was very violent, but it would not be the effects of the zinc; giving sulphate of zinc after vomiting might increase the soreness; Taylor is considered authority in poison; I think so; I never read Taylor's Med. Juris.; don't know anything about Dr. Reese, the editor of Taylor's work. [Mr. Kirkpatrick read from p. 183 of the work referred to.] I agree with that; it is possible under such conditions that pain may continue a very long time; other white articles have appearance of arsenic; by sight can be barely distinguished; in my practice only attended one other case of arsenical poison; that in my father's family, where five were poisoned by a negro; have given no special attention to the subject of poisons; arsenic is nearly or quite tasteless; Wharton & Stille's Med. Jurisp. is always considered high authority; [vol. 2, p. 356 of that work is referred to] when in solution the taste *may* be faint but sweetish; from the symptoms of Martin Laros and my observations of his condition alone, irrespective of anything else, I would say that he died of arsenical poisoning; in a case described to me, exhibiting the symptoms as described by you of Martin Laros alone, and given me to express as an expert my opinion of the cause of death, I would not say that the party died of poison unless some other evidence was given me; no man can decide anything from a hypothetical case; had I not heard or known anything of Martin Laros' case except the symptoms described I could not make up my mind that he died from arsenical poisoning; if, on a chemical examination after death, no poison was found in the stomach on the symptoms described I could not say without some collateral proof that the man died of arsenical poisoning; [Taylor's Med. Jur., p. 95, is read by Mr. Kirkpatrick] one or another of the vomited matter or the urine or the secreted matter ought to be examined, but an examination of them all is, in my judgment, not necessary; I do not agree with the passage read: [Whar. & St. Med. Jur. vol. 2, p. 295 is then read] I agree that the symptoms of bilious cholera cannot always be distinguished

from poisoning; symptoms alone can never alone supply the evidence of irritant poisoning; I agree with Christison as there quoted; I couldn't say from the condition of Martin Laros, with nothing else in consideration, that he died of arsenic; if there is no collateral proof I wouldn't say it; I think no verdict of guilty should be rendered if less than one one-thousandth part of a grain of arsenic has been found; [Taylor's Med. Juris. p. 155 is referred to] I agree with that; it depends on several circumstances how soon the symptoms of arsenical poisoning would be apparent; it would act much more quickly on an empty than on a full stomach.

Mr. Kirkpatrick—Wharton & Stille state that the symptoms of arsenical poisoning usually are not perceived until half an hour to an hour after taking the poison. In cholera morbus the symptoms may come on suddenly. Is that true?

The Witness—Yes, so far as I know that possibly may be so; but I don't understand how it can, for time must be given for the food to ferment first, usually a considerable period; probably one to ten hours before the symptoms of cholera morbus show themselves; the food must ferment or become corrupt first; [Mr. K. quoted Wood's Practice of Medicine that the symptoms of cholera morbus may come on suddenly] yes, I agree that it is possible; I made no notes of the symptoms of Martin Laros, depend entirely on my memory; since yesterday afternoon I said nothing in particular about the symptoms to anyone; we, the other doctors and I, joked each other about the examination, whether we would be wound up tight, or something like that; I agree with the passage you have just read in Taylor's Med. Juris. [page 95] that "meat diseased, fish decayed, &c., may give rise to symptoms similar to those of irritant poisoning."

SATURDAY AFTERNOON, August 19.

DR. J. M. JUNKIN, (continues.) *Re-examined by Mr. Fox.*—Have never known a case of billious cholera where the symptoms showed themselves in less than an hour after the food which caused it had been taken into the stomach. A hot solution of arsenic will act and produce its effects sooner than a cold solution. Hot water is often given to produce vomiting. A hot solution of arsenic will be much more quickly absorbed than powder or a cold solution. In the case of a hot solution introduced into the stomach followed by violent vomiting and purging the probabilities are against finding any of the arsenic in the stomach. If a patient previously in health, sitting at supper, should be suddenly seized with vomiting and purging, I should conclude that he was suffering from an irritant poison. Cholera morbus could not act so promptly. Poison may not positively be detected without chemical analysis. Dr. Seem told me that Allen C. Laros had a convulsive seizure, with clinching of the hands, etc., just at the time of Moses Schug's death. When I entered the room it was all over. He was lying quietly, with his eyes shut. I did not speak to him. I left only a small quantity of sediment in the coffee pot. I was at dinner the hour that the liquid and powder remained in my office before I gave it to Davidson.

By Mr. Kirkpatrick.—Cholera morbus does not immediately follow the introduction of the food into the stomach. An irritant poison produces the effect almost immediately; generally arsenic acts promptly. I attended two cases of arsenical poison. One before this. If Wharton and Stille say that arsenic acts between one and six hours, I differ from them. He is welcome to his opinion. I have my opinion, they have theirs. I understand by an irritant poison one that produces irritation either external or internal to the part to which it is applied. There may be vegetable irritants. There may be animal irritant poisons. On the subject of muscles, shell fish, &c., I am not posted. I would not class stale or blown meat with irritant poisons. I doubt whether cheese itself can become an irritant poison. It may from the production chemically of buttric acid and then act as an irritant poison. Bread may become, by vegetable fungous growth, poisonous. They might act by deranging the functions of the stomach. They would not likely act as arsenic.

Q.—"How about fresh bread?"

A.—"I like it fresh."

It is certainly not poisonous. Diseased meat or meat in a greater or less degree of putrefaction may or may not produce an irritant action. An irritant will produce irritation as a hard body scratching the surface would. The vital action changes the irritation to inflammation. It might or might not if it continued long enough, resemble arsenical poisoning in its effects, though produced by ordinary articles of diet. After death the stomach would show inflamatory action. I agree with Taylor in some cases, but not in all. If he states that meat in a putrescent condition acts as an irritant poison in every case, I don't agree with him. Putrescent meat is in some cases an irritant poison—in the majority, it is not. Prof. Taylor and Prof. Reese have a right to their opinions, and I have to mine, call it egotism or what you please. I judge that more poison would be absorbed from a hot solution than from a cold one, because a hot solution takes up more poison. It would be more quickly absorbed and in larger quantity from a hot solution. The reason it is more quickly absorbed is that it has a better opportunity, for more of the poison in a given time comes in contact with the inner surface of the stomach. The absorbtion is the passing through the pores of the stomach. It may be rapid or slow, according to circumstances, the stomach will act on anything near its own temperature more quickly. [The witness then described the appearance of the lining of the stomach.] In case of absorption of arsenic it would be increased by heated character of liquid, and then if death followed quickly, more arsenic would be apt to be found after death in the coating and linings of the stomach. As likely there as anywhere else.

By the Court:—Fatal dose of poison usually two grains. Others might take as much as ten grains and get over it.

By Mr. Kirkpatrick.—Part of my views I get from general principles. My own common sense largely. A great deal from my books written by writers of experience and authority; relied on them.

By the Court.—Vomiting is produced by irritation of the stomach.

also by nervous sensation. Persons who imagine or know they have taken putrid meat on their stomachs might vomit from that consciousness. The effect of the nerves on the stomach.

By Mr. Fox.--Gave my package of poison and jar of liquid to Coroner Carey, shortly after the occurance of the deaths. Two or three days after.

By Mr. Kirkpatrick.—Put no mark on paper given Carey. Small package, sealed with red sealing wax.

By the Court.—Don't know if arsenic would undergo a chemical change by being put in strong coffee.

By Mr. Kirkpatrick—The package was in my office from Thursday afternoon to Saturday afternoon. Carey was alone when I gave it to him. Keep medicines, packages, and a great variety of packages in my closet.

D. D. Davidson, sworn.—*Examined by Mr. Fox.*—I am a student in Lafayette College. In the classical course. Have attended the Chemical studies of the General Classical students. Also because of a partiality for the study took a partial course in Chemistry during my Sophomore year. I received from Dr. Junkin, the day after the poisoning, some of the liquid coffee and some of the sediment. Took it to the College Laboratory—the Laboratory for General Chemistry—in Pardee Hall. Left the liquid on my desk, No. 89, for chemical examination. I took the coffee grounds and the white sediment, and by successive pouring on of water obtained a white sediment. I then boiled the sediment in distilled water. I thus obtained a solution of this sediment and water. All the sediment was not thus taken up in the boiling, and I poured off the water and dried the remaining sediment. I thus had three different states of the original sediment. [The witness then produced three vials containing these three different states of the sediments, numbered as follows: No. 1.—Contained liquid coffee obtained from Dr. Junkin. No. 2.—Sediment in solution with water.—No. 3.—Dried sediment—the bottle containing No. 3 was accidentally broken after the experiments were concluded and before the case was called.] I made seven (7) different tests of these substances, viz:

1st Test—Blow-pipe Analysis:
A part of contents of No. 2, placed on a piece of charcoal and submitted to the flame of the blow-pipe, gave a flame of a purple color, white smoke and a garlic smell, but as several substances give a gar licy smell when heated, the contents of No. 3, with acetate of potash, were heated, and gave kakodyl, which has a peculiar, insupportable smell, some of which is confined in the vial.

2d Test—Metallic Mirror:
No. 3 heated with charcoal in a glass tube gave the metallic ring seen in piece of tubing produced, a portion of which ring, by heating, has sublimed to arsonious acid. This metallic ring, on examination by the eye, has an iron-grey color, brilliant and lustrous on the outer surface, and crystalline on the inner. Two crusts are deposited, one brighter than the other. By examination under a microscope of 130

diameters, the crystals appear of an octahedral, tetrahedral, and amorphous character.

3d Test—Reinsch's Test:

Solution No. 2, when acidulated with hydrochloric acid and heated, deposits on strips of polished copper arsenide of copper. It is an iron-grey film, which when heated in glass tubing gave beautiful octahedral, tetrahedral and amorphous crystals of arsenious acid, as seen under a microscope.

4th Test—Marsh's Test:

With solution No. 2, zinc and sulphuric acid, I made arsenuretted hydrogen, a gas. Lighted the same and obtained on porcelain the metallic mirror. I also made anti-monuretted hydrogen, and obtained stains on porcelain. The stains of these two substances are nearly alike, but when viewed closely the antimony stains are dark brown and almost black, while the arsenical stains are brighter and more lustrous. The arsenical stains, in chloronate of soda, dissolved in half an hour. The antimony stains not for three or four days.

5th Test—Scheele's Green, or Arsenite of Copper.

To No. 2, I added sulphate of copper and a drop or two of ammonia, and obtained Scheele's green, or arsenite of copper. A portion of this was dried on porcelain, and a portion put in a glass vial. Another portion was heated in glass tubing, when the arsenious acid sublimated on the side of the tubing in the three kinds of crystals already enumerated. A part of these crystals were put in solution with water and Scheele's green, and yellow sulphide of copper obtained. Of another part arsenuretted hydrogen was made and obtained on porcelain, a mirror of hair brown color.

6th Test—Ammonio Nitrate of Silver:

Solution No. 2, nitrate of silver and a drop or two of ammonia, gave a yellow substance, arsenide of silver. This, when heated to dryness on glass tubing, gave the arsenious acid crystals seen in tube exhibited.

7th Test—Hydrosulphuric acid test:

Solution No. 2, acidulated with hydrochloric acid threw down in the presence of hydrosulphuric acid a beautiful lemon colored precipitate. This, when heated to dryness on glass tubing, sublimated into arsenious acid crystals.

From these tests I conclusively found the sediment in the coffee to be arsenious acid or what is commonly known as white arsenic.

Cross-examiued by Mr. Kirkpatrick—I am twenty-three years old. A student in Lafayette Collegs. Been there three years. Am in the Classical Department. Don't know much about the Scientific Department. I studied chemistry about three months before I came to College. By myself. Read Steele's "Fourteen Weeks in Chemistry," also "Olmstead's Chemistry." When I began the study of chemistry in College I was in the first part of my Sophomore year. Studied it in connection with the full classical course during part of Sophomore and Junior years. I studied practical chemistry only during a part of the Sophomore year. Performed the tests I have here (all except three, including Reinsch's test) in the month of June last. Got the liquid and the package from Dr. Junkin on the 1st of June. Took

them to the labrat ory where the students in chemistry perform their experiments. Forty to fifty students usually work there. They were mostly present while I performed these tests. We have the ordinary chemicals on our desks. Can get what we need of poisons or the more costly chemicals from the Professor or the boy who has charge of the room where the general stock is kept. I spent about three weeks at this work. Always carried the liquid part and the dry part back and forth from my boarding place. At my room kept these and the results of my experiments in my trunk locked. When on the hill the articles were on my desk. Did not leave the desk while performing the first and second tests. Did leave it for chemicals while at the third. For materials. But in the same room. When I went home on my vacation I carried the liquid and the dry part with me and the results of my experiments. They were locked in my valise, and that is my trunk. Locked. On my return I continued the experiments in the laboratory on the fourth floor. Left the room during the progress of these experiments. There are several janitors. They have access to the various rooms in the College buildings. I detected arsenic in the first test by the garlic smell. [Whar. & St., vol. 2, p. 370, was read to the witness.] Yes, it is true that other substances may produce the same odor. But I made kakodyl from some of the sediment. I never smelt anything like that. There may have been organic matter in this dry stuff as I got it from the coffee. I got the copper for Reinsch's test from Dr. McIntire. Did not test it. I sand-papered it. I got hydrochloric acid in the room adjoining the labratory. Did not test it. For Marsh's test did not test the zinc. Did not test the sulphuric acid. Both may be contaminated with arsenic. I concluded they were pure, for no metallic ring appeared on the porcelain only the black spot until I had put in the sediment. Did not test the materials of which I made the hydro-sulphuric acid. Did not test the copper or the ammonia. If the materials were impure and contained arsenic there might be a small quantity of Scheele's green. The precipitate. But in my experiment there was a large quantity of the precipitate. [Whar. & St., vol. 2, p. 373, was read to the witness.] Yes, I admit that tests fifth, sixth and seventh are not infallible. Phosphoric acid, soluble salts of cadmium and organic acids would produce similar precipitates to scheeles green. The arsenide of silver might look like that, and like the lemon yellow precipitate. [The witness reads from a memorandum §425 of an old edition of Whart. & St.] But I treated the precipitates obtained in this way to heat on glass tubing and obtained octahedral, tetrahedral and amorphous crystals. No other substance than white arsenic give the same crystals. Not that I know of.

By Mr. Fox—I made four tests on the 1st of June. Repeated the same ones last week. Same results as before. Was satisfied that arsenic was present. Obtained sulphuric acid and the zinc and the copper for these tests from Dr. McIntire.

By Mr. Kirkpatrick—I carried these last results with me on my person since I made them until now.

MONDAY MORNING, August 21.

HENRY S. CAREY, affirmed.—*Examined by Mr Fox*—Said that he was Deputy Coroner of this county; that he received on or about June 3 a package from Dr. Seem and on the 11th received from Dr. Seem another larger package of powder and a bottle of coffee. Also received a package and a bottle and three vials from Dr. Junkin. Two vials and a tube. Got them on Monday, June 5. Gave the bottles and the packages to Dr. Charles McIntire. Those received from the doctors on the 5th of June. Also gave him those I received on the 11th on the afternoon of the day I received them. I held the Coroner's inquest on the bodies of Martin Laros, his wife and Schug. Saw their bodies at the house. Was present afterward at the post mortem examination of Martin Laros and at the disinterment from the grave. Dr, Field and Dr. Jacob Heller made the post mortem. Saw that the body was that of Martin Laros. Dr. Field removed the stomach and part of the entrails. He gave them to me. I put in a jar the stomach and entrails and brought it home to Easton. Gave the stomach and entrails some time afterward to Dr. McIntire—on the 17th of June. Had it from the 6th to the 17th in my possession.

Cross-examined by Mr. Kirkpatrick—Think I got the package in the morning of June 5. On Monday. Got it at Dr. Junkin's office. A package and a jar. Took them to my shop. Put them on a table there. Left them there a few minutes. Took them with Dr. McIntire to the room in Pardee Hall, where he said he was going to analyze them. It appeared like a chemical room. Don't know what he did with them. I went away and left him there. Can't say whether there were other bottles and packages there. Did not leave the packages in my office while I went out any time, Got the package and jar from Dr. Seem, near Martin's Creek, on the 11th. Edward Seip was with me. Did not open them. Put them in the carriage and came home. Did not leave them in the carriage. Went in house to say that I had come back, then I went to Dr. McIntire's. Dr. McIntire had the coffee pot then. I gave Dr. McIntire the coffee pot on June 5 with the package from Dr. Junkin. Gave Dr. Seem's package to Dr. McIntire at his father's house. Had the package from Dr. Seem on my person until I gave it to Dr. McIntire. Left the coffee pot in the carriage when I reached Easton. Forgot it. Got it again about eleven o'clock in the same evening. Left it in carriage about seven o'clock P. M. Gave the package and jar to Dr. McIntire himself and took his receipt. Was not present when these bodies were buried. Saw the body in an out-building at the Forks Church with Dr. Field at the post mortem. Took notice of the outside appearance. The stomachs of Mr. and Mrs. Laros were both taken out. The jars they were put into were ordinary fruit jars, screw top. I held the jar and Dr. Field put them in. In separate jars. Jars alike. There were a number of people about the grave yard. I locked the jars in my safe in Mr. Brodie's office. It has one key. Mr. Brodie does not keep things in that safe. They were there two days. Then I took the safe and all its contents over to my office. Saw them two days afterward. Kept

the key in my pocket. In my office they began to smell very bad. On Sunday evening I got Dr. Field to look at them. He said they were not corked up tight. We disinfected the room and safe with chlorinated soda. Next day I put the bottles outside the safe all sealed and sent for the doctor. We took the wrapper off and found one of the jars cracked. Went to Mr. Pyatt's, got a new jar and emptied the contents of the cracked jar into the new one. We then wrapped them up and sealed the wrapper. Put them in a box and buried them in my garden until the 17th of June, then I dug them up. Gave them to Dr. McIntire. Think the doctor helped me dig them up.

By Mr. Fox—The seals were all right when the box was opened. When I came home I forgot the coffee pot. Left it in the carriage. Sent to Hemingway's. They had hired the carriage to a young man to go to Laros'. Don't know who the young man was I went to Hemingway's stable and waited until the carriage came back. Hoisted the drop in front and found the coffee pot.

By Mr. Kirkpatrick—It was said a package of powder (arsenic) was found on the clock at Laros'. It was not examined as I saw while I was there.

By the Court—The name was put on each jar to distinguish them. I wrote them on after I had sealed the jars. Don't remember which jar cracked. Buried them about two feet three inches deep. Put a stone on the box and put ground on top of that. I sealed all the joints of the box with sealing wax. The boards were half an inch thick. The contents were not disturbed. Think nobody knew where they were but myself. I buried them in the evening near my stable.

By Mr. Kirkpatrick—When they smelled in my office Dr. Field took both the wrappers off. The names were taken off one by one at a time with the wrappers. The wrappers were burnt.

By Mr. Fox—I put fresh wrappers on and sealed them. There was no mistake in getting the right name on the bottles.

D. D. Davidson, recalled.—[Witness shown the two bottles and the tube shown by Mr. Carey.] These are parts of the result of my first analysis of the substances got from Dr. Junkin. They are Scheele's green from the liquid office, the hydro-sulphuric acid test of the solution from the sediment and the metallic ring from the dry powder. In my opinion the substances tested contain arsenic.

By Mr. Kirkpatrick—Didn't test the substances for organic matter. The materials were the same as I tested in the first part of June. Did not put any marks on the test tubes or bottles.

H. S. Carey, recalled.—*By the Court*—I deposited the tube and two bottles containing the result of the tests in the safe of the Northampton County Savings Bank in a sealed box, afterwards in Judge Cole's office.

Dr. C. C. Field, sworn with uplifted hand.—*Examined by Mr. Fox*—Am a practicing physician for one-third of a century. I knew Martin Laros in his lifetime. I made a post mortem of his body. On the 6th of June I was requested by District Attorney Merrill and H. S. Carey to make the post mortem. I understood the bodies were in-

terred, but would be disinterred that day. Have previously made post mortem in a case of arsenical poisoning. In the case of Mr. Worman. Went up to the Forks Church with Dr. Heller. Dr. Reeser, of Forks township, was there and a number of other persons. The bodies were taken to an out-house. I recognized the body of Martin Laros. We found no marks of external violence. The abdomen at the bottom was of a purplish hue, blood having been extravasated immediately beneath the skin. The walls of the abdomen were then carefully opened. The extravasations were evident. Having opened the abdominal cavity we had presented to us the omentum. The omentum, instead of being natural, was infiltrated with blood of a dark purplish hue. On examining it found it quite delicate. Broke very readily. Entire omentum was in that condition. Elevating and turning it back we had presented to us the large and small bowels, intestines and stomach. All were of a dark purple hue. Highly congested, and in several parts of the small intestines, just below the stomach, were small openings. The liver, instead of the natural reddish brown color, was very dark, closely approaching black. After examining the external appearance of the contents of the abdomen we proceeded to remove the stomach and a portion of the intestinal canal, and, to prevent escape of contents, carefully drew the tube of the æsophagus down about five inches, secured the upper part with a cord, and just above the stomach we fastened another cord. We did this to prevent escape of contents and also to have opportunity of examining inner membrane of æsophagus. Found membrane much inflamed and more or less eroded or destroyed. We then carefully liberated the stomach from its attachments and examined the small intestines. A short distance below the stomach that portion was in a very delicate condition, so much so that in simply handling it part exuded. Seemed perforated. Separating about three feet of small intestines we secured the intestine as we had the æsophagus with a cord twice, about eight inches apart. This portion of the small intestines was very much congested and eroded. We carefully removed the stomach and that portion of the intestines and handed it to Mr. Carey for the purpose of having him put it in a fruit jar. Mr. Carey sealed it in our presence. Put a paper around it and put the name on the paper. Arsenical poison could have produced this inflammation and erosion. If I knew nothing but what I discovered at the post mortem I would say he died of inflammation and ulceration of the stomach and bowels. Could not tell the cause of this inflammation. The lining membrane of the æsophagus or stomach might be thus inflamed by a severe attack of cholera morbus. Arsenious acid could produce such a condition. The same condition I observed in the case of "Boss" Worman, who died from arsenic. Presented the same appearance. If added to the facts derived from the post mortem I had knowledge that Martin Laros was in good health until sixteen hours before his decease and was taken sick at the table in the manner he was (describing the symptoms) knowing nothing else, it would not be possible for me to say that the death was produced by arsenical poison. It could do it, but I could not under those circumstances say it did. Think such

erosion might take place in sixteen hours in Asiatic cholera. In Asiatic cholera the discharges are sometimes streaked with blood. Generally like rice water.

Q.—If in addition to other circumstances of the seizure and death and the results of the post mortem examination six other persons had been seized with similar symptoms at the same time with the deceased what would then be your opinion as to the cause of death?

Objected to by defendant's counsel because incompetent and irrelevant. Overruled and exception taken.

A.—That the same cause produced the same effect in each case.

Cross-examined by Mr. Kirkpatrick—If I was to divest myself of all other knowledge of the case except the symptoms and post mortem I would then say that I could not positively state what was the cause of the inflammation which caused the death. [Page 143 Taylor's Med. Juris. read in reference to post mortem appearances.] There may be cases of very little change in the throat, stomach, &c. This redness, ulceration, &c., might be the result of other poisons or of disease. [Taylor's Med. Juris., page 102, referring to the changes resembling those mentioned, which might be found where no poisoning was suspected, and the individual apparently healthy up to the time of his sudden death.] Yes, I have no doubt of the truth of that statement. Perforation may result from disease. Have made many post mortems. Have found case of sudden illness in a hard drinker followed by death. Poisoning was suspected. The stomach and bowels and intestines were congested and perforated, but no arsenic was found. The parts named were highly inflamed and ulcerated. I think it would be essential to find the arsenic before I could say that death was produced by it. The conditions named might be produced by other causes. [Wharton & Stille, vol. 2, p. 285, was read, referring to the similarity of these conditions to those produced by disease.] Should not be able to decide positively the cause of death unless the arsenic was found in the body or known to have been administered; such opinion would be hazardous. I say "either found in the body or known to have been administered to the deceased," because the arsenic might have been neutralized by the antidote or thrown off and so not be found in the body. [Wharton & Stille, volume 2, p. 295, was read.] I have found perforation in both of these post mortems. It might have come from a diseased stomach. In some cases of arsenical poisoning the burning in the stomach is wanting. In the case of Osterstock, suicide by poisoning, the usual symptoms were wanting. The first time he took a hot liquid. The acrid, burning pain soon induced him to send for me. The second time he made a paste of it with cold water and being completely overwhelmed died in a short time without the usual symptoms. The burning pain is one of the usual symptoms.

By Mr. Fox—Had he died in consequence of the first taking then if there had been a post mortem examination probably none of the arsenic would have been found. He took it the first time in a hot liquid and complained of a burning pain in stomach. The second time he

complained of no burning pain. Had purging, vomiting, liquid discharges, &c., and died in six hours.

Q.—If several of the family had similar symptoms as deceased, varying in degree, and it should appear that one of them drank of coffee sixteen hours before death, and upon a chemical examination of coffee arsenic was found in the coffee in sufficient quantity to produce death, would it be possible with the results of the post mortem examination to give a positive opinion that the person had died of arsenical poison even though no poison were found in the stomach?

Mr. Kirkpatrick—Defendant objects because the hypothetical question assumes certain facts which are not justified or presented in testimony; because it calls for an opinion as to the facts which are within the province of the jury and not properly within the province of an expert; that the question is not such a hypothetical proposition as is allowed by law, and that it is incompetent and irrelevant; also that this question assumes that the arsenic was found in the coffee before it was drunk.

Objection overruled. Defendant takes an exception.

Witness answers—If I knew he had taken arsenic in the coffee under such circumstances as you have described and had such symptoms then with the appearance I found in the post mortem examination I should say unequivocally and positively that the deceased died from arsenious poisoning.

Dr. CHARLES MCINTIRE, sworn with uplifted hand.—*Examined by Mr. Fox*—I am a doctor of medicine; a graduate of the University of Pennsylvania; studied three and one-half years before I graduated; Dr. Traill Green was my preceptor; he was at that time professor of chemistry in Lafayette College; I took a scientific course and graduated at Lafayette College; studied chemistry also in the course at the University; was adjunct professor of chemistry two years and assistant four years at Lafayette College; I received on the afternoon of June 5 from Mr. Carey, to whom I gave a receipt, several packages, which I marked with a lead pencil:—"From the coffee pot, Dr. Seem, No. 1;" "From the coffee pot, Dr. Junkin, No. 2;" "Liquid coffee in bottle from Mr. Carey;" I don't know from whom he got it; I called that "No. 4;" "Coffee pot and sediment, No. 5;" [coffee pot shown] on June 11 received a package and a jar from Mr. Carey; have not them with me; on Saturday, June 17, in Mr. Carey's back yard, I received a carefully sealed wooden box purporting to contain the post mortem material; all these substances were removed to the "Laboratory of Original Research" at Pardee Hall, northeast corner of the fourth floor; it has four windows and one door; bottom sash of each window is provided with a catch; each window has also inside hooked shutters; the door is provided with a Yale's dead latch, differing in character from any lock; it has three keys, all of which have been in my pocket since the beginning of my work; the door has also a transom window, fastened on the inside by a hook; upon leaving the laboratory at any time the sashes were closed and were sealed; the inside shutters, top and bottom, were closed and sealed; the hook of the transom was closed and sealed and the door sealed upon the outside after being

locked; the seal was not over the lock, but down in a dark corner; it was impossible for any one to enter the room during my absence without my knowledge; the seals during the week were at no time disturbed but by myself; the various dishes and apparatus used in the experiment were new and all chemicals in the analytical process were taken from the general stock and not from any bottle that had been in use in any other laboratory, and in every experiment were carefully tested as to their purity; I first took the package marked "From the coffee pot, Dr. Seem, No. 1."

Mr. Kirkpatrick—What do you propose to prove by this witness?

Mr. Fox—We propose to prove by this witness the chemical analysis which he made of the contents of the paper package, of the bottle and of the coffee pot which he received from Henry S. Carey, Deputy Coroner.

Mr. Kirkpatrick—The defendant objects that the substances and articles mentioned are not sufficiently identified; that their custody have not been sufficiently accounted for to the jury; that it has not been sufficiently shown that any of the substance contained in the packages and vessels was administered to or taken in any way into the body of the deceased; that the custody of the coffee pot in particular has not been accounted for; that the proper preliminary proof has not been adduced in regard to these articles, their care, whereabouts and identity prior to their receipt by the witness to render their analysis competent in this issue; and the general objection that the evidence is incompetent and irrelevant.

Objection overruled. Defendant takes an exception.

MONDAY AFTERNOON, August 21.

Dr. MCINTIRE on the stand.—Commenced with package marked "From the coffee pot, Dr. Seem, No. 1;" it contained a white powder, mingled with brown particles; a portion was treated with distilled water and hydro-choloric acid in order to obtain a solution of the substance; part of this solution was boiled in a test tube, and while boiling strips of bright copper were introduced one after another as long as any deposit was formed upon them; [The witness here displayed a case covered with glass and containing the results of his experiments.] this tube [showing tube marked "Reinsch's test,"] contains one of the strips of copper; arsenic, antimony, cadmium, silver, platinum, palladium, gold, selenious acid, tin, under certain conditions, and organic matter will cause a deposit on copper when heated in this way; none of them, however, will produce the characteristic crystalline form when heated in a closed glass tube, excepting arsenic; I accordingly took one of the strips of copper, placed it in a closed glass tube, heated it gently and obtained octahedral and tetrahedral crystals; [Models of the octahedral and tetrahedral crystals shown.] I examined them with a pocket lens and determined their forms; another portion of the solution was treated with a solution of sulphate of copper, to which aqua ammonia was added and a green precipitate (Scheele's green) was produced; no other metallic substance than arsenic will produce this precipitate; through another portion of the solution sulphuretted hydro-

gen gas was passed; arsenic, cadmium, tin, tellurium and selenium produce yellow precipitates by this reagent; the precipitate was filtered, carefully dried and a portion of it taken and mixed with sodium carbonate and potassium cyanide, previously well dried; placed in a closed glass tube, free from lead and gently heated; a metallic mirror condensed on the tube about an inch from the bottom of the tube where the lamp was applied: this reaction proved the yellow precipitate to be sulphide of arsenic and the original to contain arsenic; [Specimens shown.] a portion of the original powder was dried at less than 212 deg. Fah.; a portion mixed with cynanide of potassium and sodium carbonate and heated as before in a closed glass tube, which produced a mirror similar to the one produced by the sulphide of arsenic; another tube was similarly prepared, the closed end cut off, a stream of sulphuretted gas passed over the mirror, at the same time gently heating it a yellow deposit was formed on the tube beyond the metallic deposit; this again is indicative of arsenic; [Substances are marked "Reduction" and "Reduction sulph-hydric acid" on the chart.] another portion of the original powder was heated in a closed glass tube and all volatalized, condensing along the side of the tube, forming the characteristic crystals of arsenious acid; took a portion of the package marked "From the coffee pot, Dr. Junkin, No. 2;" it contained a whitish powder and brown particles looking like the other; put it through the same tests and got the same results as those in the case of the package marked "Dr. Seem, No. 1;" I next examined the contents of the coffee pot as it was handed to me.

Mr. Kirkpatrick—The defendant objects to an analysis of the coffee pot's contents for the same reasons as before given.

The examination of the witness was suspended here at the suggestion of the Court until evidence to identify the coffee pot is given.

CLARA LAROS, recalled.—*By Mr. Fox*—Had more than one coffee pot at home; one looked like this; [Coffee pot shown.] the other was different; the other had a round black handle; the pot like this had been mended; the coffee pot was of the same size and looked like this; this was the one used that evening; we usually kept it in the cupboard in the out kitchen; don't know what was done with it after supper that night; I was too sick to notice; the other one was not as old as this one; this coffee pot had been in use a good while; the handle of the other looked as if painted black; the other coffee pot had not been used that day at all; when I filled the coffee pot I filled it full.

Cross-examined by Mr. Kirkpatrick—There was no mark about the coffee pot by which I could tell the coffee pot; this is like the one we used.

ALICE LAROS, recalled.—*By Mr. Fox*—We had two coffee pots at home; one was like this; the other was differently made and don't look like this one; this one is like the one we used that night; I believe this to be the same one.

Cross-examined by Mr. Kirkpatrick—No mark about it which I know it by; I only say it looks like it; I would not swear it was the same one; there might be a great many others just like it.

Henry S. Carey, recalled.—*By Mr. Fox*—I think this is the very pot I took from the child at Laros' on Thursday afternoon; it would hold over three quarts.

Cross-examined by Mr. Kirkpatrick—Every tinsmith has his own form and way of putting together coffee pots; I myself have made pots similar to this; some larger; the child I saw with the coffee pot in its hand was walking around the yard swinging the pot by the handle, spout down; the child was between two and three years old.

Dr. McIntire recalled to the stand.

Mr. Kirkpatrick—We object to the testimony of this witness from this point.

The Court—Objection overruled.

Mr. Kirkpatrick—We will take an exception. And now the defendant further objects—

1. Because the Commonwealth have failed to account for the custody of the coffee pot after it came into the possession of Mr. Carey at the house and until it was transferred to the custody of Dr. McIntire.

2. Because they have failed to account for the custody and whereabouts of the coffee pot until it came into the possession of Dr. Seem on the night of the 31st of May and from that time until it came into the possession of Mr. Carey from the hands of the child.

3. That the identity of the coffee pot and its contents has not yet been sufficiently proved.

The Court—Objection overruled and exception sealed.

Dr. McIntire continues.—The coffee pot was coated on the bottom and along the sides with a white powder; I removed part of it by rinsing the coffee pot with cold distilled water, pouring it out in a clean glass vessel and allowing the floating particles to subside; pouring off the liquid I obtained another white powder with fewer brown particles; [Sample shown marked "contents of coffee pot."] a portion of this powder was treated in the same way as were the other two with the same results in every instance; [They are marked, on the card shown, as the others.] the deposit on the front side was left there when the liquid was poured off; whether this deposit was made on the bottom or sides of the pot would not depend on the heat or coldness of the liquid; I analyzed the bottle of liquid marked "Coffee No. 4;" through a portion of it I passed sulphuretted hydrogen gas; after having acidulated it with hydro-chloric acid, I obtained a yellow precipitate, which I dried; a portion was heated in a closed glass tube, with sodium carbonate and potassium cyanide, I obtained a metallic mirror near the top of the tube; [Specimens shown.] Another portion acidulated with hydro-chloric acid was tested by Reinsch's method, producing the coated copper, and this being heated, giving the characteristic crystals; I next tried Marsh's test; took a flask provided with a rubber stopper having two perforations, through one of which a funnel tube was put; through the other perforation a glass tube bent at right angles connected to another glass tube containing cotton wool and fused calcium chloride; this in turn was connected with a long glass tube, narrow in three or four places near the extremities bent at right angles and the extremity drawn into a fine jet; zinc was put in the

flask and through the funnel dilute l sulphuric acid was poured; the action of the sulphuric acid upon the zinc was to generate hydrogen gas; this was carefully tested and found to be absolutely pure; a small portion of the suspected liquid was poured into the flask through the funnel; a strip of filter paper moistened with a solution of nitrate of silver was held above the jet, it was immediately turned black; arsenic does this; the jet was then reversed and placed in a test tube containing a solution of nitrate of silver; a black precipitate immediately formed; this may be produced by arsenic or antimony; I filtered the liquid from the precipitate and carefully added aqua ammonia and obtained a yellow precipitate; this is arsenic, not antimony; it distinguishes them; turning the jet upright again I ignited the gas, placed a piece of cold porcelain over the flame and obtained a series of metallic mirrors similar to those shown on the card; to these spots was added a solution of chlorinated soda; they were dissolved, indicating that the substance was arsenic and not antimony; I placed under the long tube before described a lighted lamp, on the flask side of the narrowed part of the tube; there were formed metallic rings on that side of the lamp beyond the flask; several of these rings were obtained, over one of which I passed a stream of sulphuretted hydrogen gas, gently heating the deposit; a yellow deposit was formed upon the glass beyond the lamp; [Marsh's test and sulphuric acid test on a card.] the portion shown here was obtained at another time from two-thirds of a drop of coffee. I pronounce the substance obtained from Mr. Carey to be white arsenic of the shops, or simply arsenic mingled with a brown powder which *looks* like coffee; I don't know what it is; the coffee contains some form of arsenic; I made a quantitative analysis of the liquid; twelve and one-fourth grains to the fluid ounce were obtained from the liquid; analyzed June 15; thermometer 32 deg. Cent., about 90 deg. Fahr. Cold liquid will dissolve arsenic in varying quantities, depending on the several conditions; ordinarily about one-half grain to a fluid ounce at about 80 deg. to 90 deg. Fahr.; in boiling liquid, boiled from half to one hour, I determined the amount of arsenic dissolved at the boiling point forty grains to the fluid ounce; coffee will not dissolve arsenic as readily as water, about thirty grains to the ounce; I therefore conclude that the coffee had been boiling some time before the powder was put in, as the liquid contained twelve grains to the ounce; it was not likely put in when the liquid was cold. I made an arsenical solution containing 25 parts of coffee, fifty parts arsenious acid and 500 parts of water mixed and boiled for a quarter of an hour, while hot applied it to my lips and the tip of my tongue; in less than one minute the sensation on my tongue was of a pungent character, well described as peppery; in one minute and a half I had the same sensation on my lips; then I thoroughly washed my mouth; seven minutes after applying the solution I had still the peppery sensation; about twelve minutes after, the sensation was like that produced by a weak tincture of ginger; I repeated the experiment with the same solution after it had stood for forty-eight hours and in about a minute experienced the peppery sensation on my tongue, although not as plainly as when the solution was hot; didn't let the liquid get

to my throat. The copper I used was pure copper, prepared especially for the purpose of chemical analysis and the detection of arsenic; I tested the pieces before using; the pieces I gave to Mr. Davidson were of this kind; the dilute sulphuric acid he got from me was also pure; heard and saw Mr. Davidson's examination; I think his experiments were correctly made and the results show the presence of arsenic in the substance examined; was not present when he made the tests.

I made an analysis of the stomach and viscera of Martin Laros; on June 17 took the box received from Mr. Carey to the laboratory; took from the box a jar labelled on the paper wrapper "M. Laros:" tore off the sealed wrapper; found the jar to contain the stomach and a small bowel eighteen inches or two feet in length; they were removed into clean white porcelain dishes; another jar was labelled "Mary Ann Laros;" took care not to get the contents mixed; the exterior coat of the stomach of Martin Laros was reddened in some portions more than usual, the remainder of it having a brown tint; this stomach had been gashed with a knife, there was therefore no distension; I opened it with a clean pair of scissors, emptying the contents, two or three ounces of a dark semi-liquid material, and proceeded to examine the lining membrane; I first looked carefully to see if I could find any particles of solid material clinging to this membrane; I found none; I next examined the condition of the membrane; most noticeable was a general brown appearance; then at both extremities and on all sides of the extremities were small dark brown elongated spots, sometimes grouped together, giving the stomach a striated appearance; besides this, distinct from the darker brown spots, there was a redness which was best seen by holding up the stomach between myself and the light, when the finer blood vessels were seen to be very much congested; a small portion of it was cut open and the lining membrane was of same general appearance; in two or three places the membrane had raised up like a blister; both stomach and portions of the intestines were cut in small pieces and treated along with their contents to moderately strong hydro-choloric acid and allowed to remain on the steam bath for several days at nearly 212 deg, Fahr.; this was about College Commencement; the decomposed substances were placed in new and clean glass bottles, sealed, placed in a closet in the laboratory, locked and the door sealed in several places and the laboratory itself kept locked during commencement; after Commencement found all seals undisturbed; I took about half of the solution of the stomach, placed it in a large glass flask, heated it to boiling and added a strip of bright copper; it was not coated until they had been boiling together about ten minutes; the strip was removed and another substituted which exhausted the deposit; the length of time taken to form the deposit was evidence to me that if arsenic was present it was in very small quantities; the copper strips were accordingly boiled in ether in order to remove any adhering organic matter, then washed and dried; the copper was cut into fine pieces, introduced into a glass tube sealed at one end and then with a moist piece of paper wrapped around the end containing the copper the other end was drawn out to a fine tube; the copper end was then carefully heated at a low tem-

perature over a spirit lamp with a low flame and the small end of the tube examined with a microscope, first with about 100 diameters; crystals, octahedral in form, were discovered, which were more clearly made out and certainly recognized with a magnifying power of 200 diameters; these crystals were determined in three separate tubes with all the copper I had excepting this piece I have here; the other half of the solution of the stomach was treated in the same way with the same result; several tubes were then prepared in the same manner; these were not all examined by the microscope, but two were selected at random; the end of the tubes, in which a sublimate was formed, were boiled in an excess of distilled water and the solution carefully evaporated in order to concentrate it, the resulting liquid placed in an actively working Marsh apparatus, the tube of which was already heated to redness and the jet ignited; no spots were obtained on the porcelain held over the jet and I cannot say certainly but probably there was a darkening in the tube; the apparatus was so delicate that on attempting to remove the portion darkened the tube broke through the constriction; the intestines were examined in the same way, using a similar sized glass and the same re-agents throughout and no crystals obtained; this is the best test I can adduce of the purity of my re-agents; the most delicate test had now been made and the material had given out. In my opinion the substance which I found in my experiments on the stomach was arsenic in some form.

The appearance of the stomach indicates a great inflammation; in all probability that was caused by some irritant substance, and the brown spots especially correspond with the general results of arsenical poisoning; my opinion as to the fact of arsenical poisoning from an examination of the stomach is strengthened almost to a certainty by the finding of arsenic in the stomach; arsenic that is absorbed would be likely to be found in the liver; I instructed that the liver should be removed, but it was not done; if arsenic was given in a hot solution it would be absorbed more quickly than powder or a cold solution; given in powder it would have to be dissolved in the stomach before it would be absorbed; a person seized with cholera morbus and dying in sixteen hours would scarcely present the appearances found; could tell better if the post mortem was made shortly after death; the lining membrane of the œsophagus would not be eroded in an attack of cholera morbus of that duration; if a person in health would die after sixteen or eighteen hours' illness such erosion would not be the result of anything but an irritant poison; cholera morbus would not likely produce perforation of the intestines in sixteen to eighteen hours unless the person also had some chronic disease; the discharges in cholera morbus are not usually bloody with mucous; a person seized with violent vomiting and purging after taking a hot solution of arsenic the probability is that no arsenic would be found in the stomach; other substances may produce results similar to some of these tests; there are tests to distinguish arsenic from these substances; I have applied these tests in every case; I consider the tests described by Mr. Davidson as satisfactory and a proof amounting to demonstration.

Cross-examined by Mr. Kirkpatrick—I have never before this made

an analysis for legal investigation; I have been practicing medicine steadily for one year and a half; never had a case of arsenical poisoning; had a few cases of gastritis; have known a half dozen cases of cholera morbus; none in my own practice the last year and a half; this is my first post mortem examination and this was confined to the substances given me in these jars; I do not say that Martin Laros died from arsenical poison; there is only a great probability; it is possible the appearances may have had other causes than arsenical poison; those appearances I cannot say are peculiarly and distinctively characteristic of arsenical poison; perforations are not peculiarly characteristic of arsenical poison; by erosion I understand to mean a partial destruction of the tissue; as to arsenic taken in solution I can't say that it destroys the tissue; there is a possibility that it might; I can't give an opinion as to arsenic generally; it cannot chemically destroy tissue; certainly not mechanically; it might cause erosion in a strong solution; have not read much about arsenic in solution; arsenic is not corrosive, it is irritant; in my opinion it might cause erosion; probable and possible in my opinion; [Whart. & St., vol. 2, p. 391, is read to the witness] arsenic is usually described as that (*i. e.* irritant, not corrosive); it acts as escharotic externally; I don't see why it should not internally under certain conditions; [Taylor's Med. Jur., p. 102, is read] yes, entirely possible that inflammation may result from a variety of causes. I saw no ulcers on the stomach; perforation is generally the result of a corrosive poison; in my opinion there are never bloody stools in cholera morbus.

Q.—Dr. Seem said he had known it to be so; do you think he could have been correct in that assertion?

A.—I think not.

Wood's "Practice of Medicine" is a little out of date. It is safe. I never read the work. Dr. Wood had an extensive observation. Cholera morbus has long been well known. [Wood's Prac. of Med, p. 710, is read.] I do not agree with that.

The witness wished to explain why he did not agree. Mr. Fox said the witness had the right to explain. Mr. Kirkpatrick said the witness must give an answer to the question and nothing besides. The Court did not permit an explanation, but said the commonwealth might call out the explanation on the re-examination.

Dr. McIntire (continued).—Diagnosis is a matter of genius. Other things being equal experience is better than mere reading. In some cases arsenical poison can be distinguished from cholera morbus and in some cases it cannot. Commenced my experiments on the stomach of Martin Laros a couple of weeks ago. I began on the solution of the stomach with Reinsch's test. It took fifteen minutes to obtain a coating on the copper, washing it, then drying it over night. The strip of copper was one-third of an inch by two inches, very thin. The first and second strips were coated, the third was not. This was one-half of the solution. Violet tinge on the strip and some organic matter. The coating on copper was decided. I can't say very decided. I kept the solution boiling while I introduced the copper—ten or fifteen minutes on first strip, about the same time on other. The coat-

ing was of an ordinary appearance. Some organic matter and the arsenic. [Whar. & St., vol. 2, p. 382, is read.] No, sir; no indeed, I do not agree with that. It makes no difference in Reinsch's test. "Not by a big lot." It is a matter of very little consequence whether organic matter is excluded or not. The method suggested in the passage you have read, to exclude the organic matter, would drive off a large part of the arsenic. I place no reliance upon the appearance of the copper. If the coated copper was all I saw I could base no opinion upon it. Have experimented before this for minute quantities of arsenic in organic matter. It is impossible for me to make any estimate of the amount of arsenic on the copper from the looks of it, nor how much organic matter was present, nor how it affected the color. Crystals of arsenic cannot be seen with the naked eye.

All the results of analysis of whole stomach are contained in those six tubes and on those two pieces of copper. In none can the crystals of arsenic be seen with the naked eye. Did not count the crystals. Examined them first with glass of 100 diameters, afterward with one of 200 diameters. Did not accurately determine the whole amount of crystals of arsenic found. I approximated. Not over one five-thousandth part of a grain and not under one fifty-thousandth part. I include all the crystals in this estimate. I will not say from the amount of arsenic found by me in the chemical analysis of the stomach that the deceased came to his death by arsenic. Certainly not. I only say that I found arsenic, but not that he came to his death by it. [Taylor's Med. Juris., p. 155, is read to the witness.] I agree with that statement.

I have a microscope of 100 diameters, on which I do not place much reliance. Have been accustomed to examine crystals in chemical analysis with a microscope since 1869. The difficulty is exceedingly great to determine the form of minute crystals. A great many substances have octahedral crystals. I did not undertake this analysis for the purpose of finding arsenic. I used the tests that were only appropriate for that. Was told that arsenic was suspected. I stopped with Reinsch's test, used no other. Did not go farther. For other substances other tests would have been appropriate. Absorption would have carried arsenic to all parts of the system and would go directly to the liver.

I have been at the table assisting the counsel for the commonwealth in the examination of witnesses. Suggesting questions. I was employed as chemical expert. I include the duties of chemical counsel with those of chemical expert. Prof. Reese is my authority; he says it is very proper. I deem it my duty to assist the attorneys at the table in the trial of the cause. What I have done I consider it my duty to do so.

By Mr. Fox—I stayed at the table at your request. Reinsch's test would not be an appropriate test for organic substances. In Asiatic cholera or cholera morbus would not expect in the nature of the disease bloody discharges.

By the Court—None of the arsenic could have escaped in the steam bath.

By Mr. Fox—Arsenic existed in the stomach ; there was none in my materials or apparatus.

Mr. Kirkpatrick—[Reads p. 97 Reese's-Taylor's Med. Jur. to witness.] I agree that we can from the symptoms only infer the probability of a poison.

TUESDAY MORNING, August 22.

Dr. TRAILL GREEN, sworn.—*Examined by Mr. Fox*—Am a practicing physician. In the forty-second year of my practice. Have been professor of chemistry in Lafayette College thirty-nine years. Have made frequent experiments to detect the presence of poison in substances. Know Dr. McIntire. Was a pupil of mine and afterward an assistant. He studied medicine with me.

Q.—Is Dr. McIntire to your knowledge learned in the science of chemistry and qualified to make an analysis quantitative or qualitative?

Mr. Kirkpatrick—Objected. 1st, Because it calls for an opinion or statement from the witness as to the claims of another witness to credibility.

2. It calls for an opinion from the witness, which is not properly within the province of an expert, but which belongs to the jury.

3. It is incompetent and irrelevant.

Objection overruled. Defendant takes an exception.

Witness answered:—Highly competent by education and continued practice for several years. I heard the testimony of Dr. McIntire in court in this case and saw the results of the analysis which he produced. The methods he adopted to detect arsenic were correct methods.

Q.—Were the tests he adopted to prove the correctness of the results of his experiments correct also?

Mr. Kirkpatrick—Objected because incompetent and irrelevant.

Objection overruled. Defendant takes an exception.

Witness answered:—They were. Some of the results might have been produced by two or three substances. When those secondary tests are applied to verify the presence of arsenic they most certainly prove its exactness if it is there. I heard the testimony of Mr. Davidson in this case.

Q.—State whether or not the methods which he stated that he adopted to ascertain the existence of arsenic and the tests which he applied were scientifically correct?

Objected to because incompetent and irrelevant.

Objection overruled. Defendant takes an exception.

A.—They were scientifically correct. When arsenic is taken in a hot solution it would be more readily absorbed into the system than in powder or cold solution. If after taking a hot solution the patient should be seized with violent vomiting and purging and should die in sixteen or eighteen hours, cases frequently have occurred where not a trace of arsenic was found in the body. Have knowledge of the case of Chapman, of Bucks county, who was poisoned by Mina, a Spaniard, at Doylestown. The amount of arsenic in that case was a de-

posit obtained in a tube by Dr. Mitchell. In attempting to heat it the tube broke. He obtained the garlicky smell of arsenic at that moment. He never got anything more in the way of evidence. The quantity got must have been small. I have attended many cases of cholera morbus. Have attended cases of Asiatic cholera. More than the average number, I think. I was physician of the hospital established in Easton during the presence of the epidemic. I never saw bloody discharges in either of these diseases. I think there are no such in Asiatic cholera or cholera morbus. The latter disease would be the less likely to show such a symptom.

Q.—If you were called to see a patient apparently in full health at the time he sat down to the supper table, and who was seized soon after partaking of the meal with vomiting, followed by purging, which finally became mucous streaked with blood, great depression of the system, low pulse and a cold and clammy skin, griping pain in the epigastric region; that six other persons of the same family were seized at the same time after partaking of the same meal with similar symptoms more or less violent, and that some of them spoke of the coffee as having a peppery taste, as having left a burning feeling upon the lips and in the throat; that one of those persons got sick and died in about twelve hours, another in about eighteen hours and a third in from thirty-eight to forty hours, what would you conclude was the cause of their death?

Mr. Kirkpatrick—Objected to by the defendant for the reasons—

1. That the hypothetical question assumes a state of facts not corresponding to the evidence presented by the commonwealth.

2. That it assumes facts to which no testimony has been given on the part of the commonwealth.

3. That the hypothetical question calls for an opinion and inferences which are not within the province of an expert and which properly belongs to the jury.

4. That the question proposed calls for an opinion and inferences from symptoms of other persons than the case of the person, the cause of whose death is the subject matter of this issue.

5. That the testimony proposed to be given is incompetent and irrelevant.

Objection overruled. Exception taken.

Witness answered:—It is a physician's business to find out what was the matter. I would have wanted to look in the coffee pot. I should say poison. That poison most likely to produce those effects would be an irritant poison. Arsenic will produce the symptoms mentioned; other things might. I don't think of anything else, but my mind would be directed to arsenic because that is the article most commonly used. If the post mortem revealed an erosion of the lining of the æsophagus I should decide that it was caused by something which in passing through had got lodged there, or by an irritant. Cholera morbus and Asiatic cholera would not in my opinion produce erosion of the æsophagus in that short time—sixteen or eighteen hours; nor perforation of the intestines. The action of arsenic on such a mucous membrane as lines the æsophagus would be irritation, injection, in-

flammation, then the results of inflammation, viz.:—softening, darkening and if long continued ulceration. Heard the testimony of Drs. Field and McIntire. Added to the symptoms ante mortem their results confirmed me in the opinion that death ensued from arsenical poison. In my opinion arsenic applied to a membrane such as described would from continued application cause softening after some time. It might be a post mortem change. Applied to the skin it causes erosion. It is often used by cancer doctors to eat out the cancer. The action of arsenic on the lips or tongue is very much like the sensation produced by pepper. I speak from personal experiment made yesterday. The sensation continues several hours. I felt it this morning yet when I placed my tongue against my teeth. As though the part had been irritated. I looked at the tubes, supposed to contain crystals of arsenic obtained by Dr. McIntire, under the microscope. They were arsenic crystals. I looked at the tube which contained crystals from the analysis of the stomach. They were arsenic. Could not possibly be anything else obtained in that way.

Cross-examined by Mr. Kirkpatrick—In the case of a stranger it is possible from the symptoms alone to do more than infer the probability of a poison. Taylor is recognized as an authority on poisoning. Prof. Reese the editor, I am not very familiar with. [Taylor's Med. Jur., p. 87 is read to witness.] I don't accept that. I say that it is possible from the symptoms alone, without reference to anything else, to determine that a person died from poisoning. I don't accept Taylor's authority that poisoning cannot be detected by the symptoms alone. I must know the history of the case, what he has eaten, &c. As a physician I must know the history. I think poisoning can be diagnosed by symptoms alone. [Whart. & St. Med. Jur. vol. 2, p. 285 is read.] I do not agree with that. My reason is that toxicologists are only satisfied with a chemical analysis, they rely on chemistry too much, but a physician is more easily satisfied, he may judge from the symptoms. From the symptoms described, followed by the death of the patient so soon, I should decide poison, and nothing else, as the cause. From the symptoms alone I would say he died from poisoning. Without the burning sensation I would say he might have died from poison. [Wharton & Stille, volume 2, page 295, is read.] I agree with that; that it is improbable perforation would occur from the arsenic. Chronic disease may cause perforation. When it occurs after slight disease the perforation is a post mortem change. [Taylor page 105 is read.] Yes, perforation may happen when not manifested by external symptoms. It may be caused by poison or disease. A variety of diseases may produce the red post mortem appearance of the stomach. Cholera morbus may produce death in 24 hours or less. Simply from the appearance of the stomach I could not tell anything about the cause of death. I must know when he died and what the symptons were in addition to the post mortem appearance of stomach to tell the cause of death. I would not base an opinion upon the mere fact that less than one one-thousandth part of a grain of arsenic was found in a dead body. Not without something else. I must know the symptoms. [Taylor's

Med. Jur. p. 155 is read.] I don't agree with that. If I found only one crystal I would give chemical evidence to that fact, but would say nothing as to the cause of death upon that alone. In the Mrs. Chapman case I heard Dr. Mitchell relate that he got the garlicky smell. My recollection of that case is only from having a conversation with Dr. Mitchell. Don't remember that he said there was not sufficient arsenic to cause death. In the Wharton case, there was a difference of opinion as to the presence of poison. If Mr. Davidson did not test all his re-agents, it is not proper to depend upon the result of his analysis. The fact of his getting large precipitates is strong evidence of the presence of more arsenic than the re-agents could contain.

By Mr. Fox—I bought the chemicals for Pardee Hall myself and I know all about them. They are pure. In the Wharton case the alleged poison was antimony.

By Mr. Kirkpatrick—I don't know Prof. McCulloch.

Dr. McIntyre *recalled by Mr. Fox*—[Shows the wrapper taken from the jar.]—That is what is left of the wrapper taken from the jar containing the stomach of Martin Laros. There is his name, "Martin Laros."

By Mr. Kirkpatrick—It is a matter of small consequence in Reinsch's test whether organic matter is present. The color of the deposit on the copper might be wholly caused by organic matter. Nothing else, only arsenic would produce such crystals. Codeia is an alkaloid contained in opium. Codeia if deposited on the copper and gently heated would not produce crystals. It would be destroyed, or if not, would not be deposited in the place where the arsenic was formed. I know it will form into octahedral crystals. I am not certain that it sublimes. We have not codeia, as codeia, in tincture of opium, it is in chemical combination there. It would not deposit as codeia on the copper if it would be deposited there at all, it would lose its identity. After washing as I did, even if the codeia crystals had remained in that solution and adhered to the copper, they would not be found. I have never experimented with codeia.

Dr. Green, recalled.—*By Mr. Fox*—I have never found an authority for the statement that there are bloody stools in cholera morbus. [The witness here reads a passage from Wood's Prac. of Med., the same passage word for word that Mr. Kirkpatrick had read.] By the word discharges Wood means in this place discharges from the stomach, not from the bowels. The punctuation requires that interpretation. Any English reader would read it so.

By Mr. Kirkpatrick—Discharges generally means from the bowels. It may mean either from the stomach or from the bowels.

Henry S. Carey, recalled.—*By Mr. Fox*—[Looks at the wrapper of the jar which Dr. McIntire had produced.] That is not my handwriting on the label. I should not take it to be Dr. Field's writing.

Emmeline Sandt, sworn.—*Examined by Mr. Fox*—Was at Martin Laros' on the night the family were sick. I brought the coffee pot from the wash house to the main building and put it on the cupboard. Somebody told me to do it so nobody would drink out of it. It was before Dr. Seem came, between seven and eight in the evening. I was

helping the sick. Doctor asked for it when he came. Allen did not say anything about it. He lighted the light so I could get it out of the wash house. [Coffee pot shown to the witness.] This looks like the coffee pot. Mrs. Seem took it and set it in the sink. When I got it there was coffee in it to the depth of three inches. The coffee looked all right to me.

Cross-examined by Mr. Scott—Got there between seven and eight o'clock. Had been there about three-quarters of an hour before I got the coffee pot. Mrs. Kichline and three or four others were there when I came. The sick were all in the house before I went into the wash house to get the coffee pot. By that time the place was full. When I came in I put it on the cupboard in the kitchen. People were passing in and out. I didn't see the pot after I got it from the wash house until Dr. Seem came. After Dr. Seem got it I don't remember where he put it. Mrs. Seem took the coffee pot off the cupboard and put it in the sink. I suppose it sat in the sink all night. Some of the people stayed all night. The coffee in the pot was not poured off that night. The pot didn't look rusty then.

Dr. McIntire, recalled.—The coffee pot was exposed to the fumes in the laboratory, which took off the tin. It was not so rusty when I first took it.

Dr. C. A. Voorhies, sworn.

Mr. Scott—If Your Honor please, we ask that this witness may be instructed that he has the right to refuse to answer such questions as will crimininate him. If he answers these questions after warning, his testimony may be given in evidence against him upon prosecution under the statute [Purdon's Dig. vol. 1, p. 335 pl. 100] and although he has given, previously, his testimony before the Coroner upon promise of immunity by the District Attorney, that evidence cannot be used against him upon an indictment. The only way in which the Commonwealth can compel his answers now, is by tender of pardon. Wharton Crim. Law, vol. 1, §805.

Mr. Fox—The defendant has no right to interpose an objection.

Mr. Scott—We have a right; and we now ask the Court to instruct the witness.

The Court—Go on with your questions Mr. Fox; the witness doubtless understands his privilege.

Mr. Fox proceeds to examine the witness—In the latter part of May last I had a drug store. On May 29 or 30 I sold white arsenic to a person; to the defendant, Allen Laros. Sold him about four and a half ounces. He came in and asked for rat poison. I detailed the different proprietary articles to him. He didn't seem disposed to choose. I suggested arsenic as sometimes given for that purpose. He called for ten cents' worth. I weighed him an ounce. While weighing it he said I should make it twenty-five cents' worth. Before I had it wrapped up he told me I should make it fifty cents' worth. I wrapped it up in a double paper in one package. Wrote on the paper "Arsenic—poison for rats." He gave me a $5 bill. I was alone in the store at that time and couldn't make the change. He bought a bottle of tooth powder and asked me to prescribe for him, which I did.

For an eruption on his face. I then made the change and he left the store. I discovered after a moment that I had not given him change enough. I went to the door and called him back and gave him the dollar which was yet due. This was on May 29 or 30, I don't know which.

Cross-examined by Mr. Scott—It was either Monday or Tuesday. It was not Wednesday. I may have said before the Coroner that it was Monday, Tuesday or Wednesday. I fixed the date afterwards more definitely; not the day of the week. I fixed the date by reference to memoranda I had. I fixed the date when I heard of the circumstances. Toward the latter part of the week. Heard of the circumstances before Saturday. Was examined before the Coroner on Saturday. If I mentioned Monday, Tuesday or Wednesday I have no recollection to that effect. I have the dates in the memorandum book that I kept at the store. Saw the memoranda last some two weeks ago, before and after the Coroner's inquest. I had sold out my business. We were taking account of stock. We kept account of what had been sold after having begun to take the inventory. This was one of the articles. The dates are usually put down. The date of this is not in the book. I can fix the date to one of those two—29th or 30th—partly by the memoranda. I remember the circumstance distinctly. I am positive, from a better examination since made, that it was on Monday or Tuesday. He came there about four o'clock, maybe half an hour later, possibly, but not probably, earlier. I was alone in the store. He asked for rat poison first, as soon as he came in. He was there probably twenty minutes. I think he suggested a powder. He stood by the counter and watched me weighing the arsenic. I think he did not ask for anything else until I found I could not make the change. After taking the tooth powder he asked me to prescribe for the eruption on his face. Am not certain he was not looking around. Don't remember that he was looking in the show case. I think the change laid on the counter. I don't remember who held the $5 bill while the negotiations were pending concerning the change. After he went out he was going toward Centre square. He was distant when I got to the door twenty-five yards. Hardly as far as the end of the Court House. Called him only once before he turned. Don't remember what I called to him. I think I returned and gave the deficit of change on the show case. His purchase amounted to $1.25, I think, or $1.50. I counted out the change in the ordinary way. Don't recollect that he counted it. I think he passed out almost immediately. I had given him a dollar too little. I gave that to him in quarters. When he told me about the eruption he told it properly. I had never seen him before. Saw him again on the following Saturday with Dr. Seem. At his house in bed. Partially undressed, I think. I think he was lying on his right side. The first time I entered his room I was in probably twenty-five minutes. Saw him again before I was examined by the Coroner. Had difficulty to recognize him the first time. The first time I saw him I was not positive it was the same man. The second time I don't remember how he was lying. The second time I was in his room probably three-quarters

of an hour. It was about supper time. When I saw him in my store there was nothing to call my attention to him. He didn't express any surprise when I called him back to give him the change. I think he thanked me and walked off. Didn't seem nervous when in the store, nor in a hurry. Do not recall any backwardness in asking or answering questions. May have said he was nervous when I was before the Coroner. Have no recollection now if he was nervous or not. Don't know that I would undertake to recognize every stranger who came into my drug store that week. Did not examine him the second time. He looked when I saw him in bed as he did in my store. I recognize him because he became identified with the purchases. Those purchases had nothing to do with my identification of him at first. Was not identified with purchases wholly by my testimony. There was no evidence for me but eyesight. The purchase of articles was fixed by my testimony.

By Mr. Fox—I do believe the prisoner now as I look at him to be the man that purchased the arsenic. [A bottle labelled "Brown's Camphorated Saponaceous Dentrifrice" is shown to the witness.] He bought this at my store or one like it.

Q.—State whether or not the prisoner at the Coroner's inquest on the third day of June admitted to you or in your presence that he had purchased such a bottle of tooth powder from you or from a drug store in Third street, Easton, opposite the United States Hotel?

Mr. Scott—Objected to by the defendant—

1. Because it does not appear that this particular article was purchased of the witness.

2. That the Commonwealth have not shown affirmatively that no inducements were held out to the prisoner by the Coroner or by any person in the presence of the Coroner to make such admission.

3. That the evidence is in-admissible until the prisoner has had the opportunity to examine the Coroner or any other officer in authority at the inquest as to whether any inducements were held out by him or them in their presence.

4. That the admission purporting to have been made at the inquest before the Coroner, a committing magistrate, does not appear to have been voluntary or not under oath.

TUESDAY AFTERNOON, August 22.

Judge Meyers said:—We will not take the answer of the witness to the question now. The defendant may first examine this witness and other witnesses as to the circumstances of this admission. For this purpose the objection is sustained. After the preliminary testimony as to the circumstances of the admission has been given we will hear further argument.

Dr. VOORHIES—*Examined by Mr. Scott*—The prisoner had been put under oath and examined before I was examined. I don't know whether these admissions were made in answer to questions asked by the Coroner or District Attorney, probably by both. It was on his examination that his answers to me were made. This was after I had seen the prisoner in his room. Mr. Carey sent for me to come to the

inquest. Can't say if he was suspected at the time or not; quite probably he was. I was told by Carey that he was suspected.

Mr. CAREY, recalled.—*Examined by Mr. Scott*—I did not send for Dr. Voorhies; I went personally for him and brought him up; the examination of Laros was held in his room; he was sitting up on a chair, near the bed, with his feet on the bed, when the jury went in; he was examined after Dr. Voorhies had seen him the first time; I administered to him the oath.

By Mr. Fox—He was sworn previous to the production of the bottle of dentrifice.

The other points of the objection were then taken up.

Mr. Scott argued that as the statement was made under oath before a Coroner it was not a purely voluntary statement. The authorities all say this. This appears the more evident here in this case because the Coroner's jury adjourned to the prisoner's room to get his testimony while he was under suspicion. They used their power to get evidence to criminate him, and from the defendant himself while under suspicion, and put under oath for this very purpose; a most unwarranted proceeding. He cited:—Com. *v.* Harman, 4 Barr 269; Greenleaf Ev. vol. 1 sec. 226; Rex *v.* Owen, 9 C. & P. 238; Rex *v.* Dewis, 6 C. & P. 161; Rex *v.* Davis, 6 C. & P. 177; Tubby's case, 5 C. & P. 530; Bennett & Heard, vol. 2, p. 604; 2 C. & K. 474; U. S. *v.* Prescott, 1, Green Crim. L. Rep. 439.

Mr. Fox argued that the principle that excluded evidence of a prisoner is that he may not have told the truth, and from the authorities, that voluntary confessions are the highest evidence of crime. The offer is not to prove the confession of crime, but a collateral fact

He cited:—2 Russ. on Cr., star page 824 and note on page 826; Whart. C. L., vol. 1, §§683, 685, 686, 687, 689, 690 and the cases there referred to; Greenl. Ev. §231; Com. *v.* ——, 9 Pick, 526.

Mr. Kirkpatrick argued that the prisoner's examination took place with the purpose of finding out whether the prisoner was the guilty person. It would be the same as if the Court would put the prisoner on the stand and drag out of him the facts that would criminate him. It is not to be expected that the statement under all the circumstances of this case can be considered as a voluntary statement. There is a difference between a vague inquiry by a coroner's jury and an inquest like this directed against a particular man; and conducted with special reference to his guilt or innocence. This question as put by the Commonwealth is simply an attempt to get in all this evidence in violation of the rights of the prisoner.

The Court—We will hold this for the present under advisement. Mr. Fox you may call witnesses on another branch of the case.

Dr. MCINTIRE, recalled.—*By Mr. Fox.*—Codeia would be dissipated by the steam bath; if not, the action of the acid would have changed it into a compound, hydro-chlorate of codeine; the crystalline forms of this compound are not like those of arsenic; they are short, square prisms terminated with double basal pinacoids.

By Mr. Kirkpatrick—The crystalline forms of the compound are very complex and could not give the octahedral form; I have exam-

ined this subject since this morning; it depends on the light, the way it falls on the crystal whether we can determine the form; the substance was on the steam bath two or three days; I did not make any tests for any of the alkaloids; one of the forms of this alkaloid is octahedral; codeia would not deposit on copper; it could not remain there in a mechanical way, as it would be dissolved by the boiling in ether.

Mr. Fox—We offer in evidence the vials containing the results of Dr. McIntire's experiments.

Dr. VOORHIES, recalled.—*By Mr. Scott*—When the prisoner came to my store he did not bring a physician's prescription. He did not give his name; I did not ask it, and so I made no registry.

GILBERT MANSON (colored), sworn.—*Examined by Mr Fox*—Have charge of the stables of Mr. Hemingway; on the 1st of June Mr. Carey had a carriage; after Mr. Carey came back we let the carriage to Mr. Martin; [Mr. Martin is identified by witness]: the carriage stood in the shed for half an hour before Mr. Martin took it; nothing was disturbed as I saw.

Cross-examined by Mr. Scott—Mr. Carey returned about six o'clock; when Mr. Carey came down from Laros' the carriage was pulled under the shed; a man by the name of Thomas Johnson helps me around the stable; he was there before Mr. Carey came back; this stable is in an alley where there are a good many children; they don't go into the shed; I was not there all the time until Mr. Carey came; I never leave the stable more than ten or fifteen minutes at a time; while he (Thomas Johnson) put away the horse I was not at the stable; Thomas and Mr. Hemingway helped gear up the carriage for Mr. Martin; I was coming up the alley; nobody went off with Mr. Martin; he came back something after ten o'clock; don't think anybody came back with him; Carey was there when Mr. Martin came back.

URIAH MARTIN, sworn.—*Examined by Mr. Fox*—I got a carriage at Mr. Hemingway's on the evening of the 1st of June; went up to Martin Laros'; my wife was with me; did not know until after I got back that there was a coffee pot there under the seat; Mr. Carey got the coffee pot out from under the seat when we came back.

Cross-examined by Mr. Scott—We stopped at Kichline's; my wife and I got out; we were up there about two hours; the horse stood in front of the hotel; there were a good many people about; we got there about seven o'clock, dusk, and it was dark before we started back.

FRANCIS BONSCHER, sworn.—*Examined by Mr. Fox*—I know Allen Laros; two or three days before the death of his father I came to Easton with him; I live next to the Schirnertown school house; we walked down together; I left him at Dr. Vanderveer's corner; this was on Monday; I didn't see him afterwards that day; this was between four and five o'clock.

Cross-examined by Mr. Scott—Have often seen Allen go down the road to Easton in the afternoon after school; it is two miles from Easton.

SAMUEL SANDT, Jr., sworn on his voir dire.—*Examined by Mr. Fox*—On the day of Allen Laros' arrest I had a conversation with him; on Saturday, after his arrest in his father's house, where he was.

Cross-examined by Mr. Scott—I was a member of the Coroner's jury; the Coroner's jury had found a verdict and separated; the members of the jury may have been around the house; they were not in the room; in the room were Capt. William Bitters, George Schooley and myself; Allen had been arrested a short time before; was arrested by Capt. Bitters; Bitters read the warrant to him; don't know if he was a deputy; Schooley was in at the same time; [George Schooley, constable of the First ward, Easton.—*Ed.*]; 'Squire Hildebrand, I think, was also in at the time of the arrest; the 'Squire made out the warrant in the tavern in the Coroner's jury room; can't say how many in room when warrant was read; a good many; maybe a dozen or so, more or less; think Coroner Carey was present at time of arrest; can't recollect any of the Coroners jury but me being present when warrant was read; I told the people all to get out of the room, but one or two men to stay if they pleased; the constable was in, I suppose to watch him; it was Bitters was in; don't know that he had been directed by the Coroner or the Coroner's jury to watch him, or by the District Attorney; the two men who remained were Schooley and Bitters; after they went out the door was shut and locked; was locked by either Schooley or Bitters; don't know the kind of fastening; Allen Laros was then in bed; I told him he had better confess if he was guilty; Bitters and Schooley were by; Schooley had a rope there about six or seven feet long; think he got it in the shed; from a wagon; Schooley did not threaten to tie him; did not at any time threaten to tie him that I can recollect; rope laid on bed; can't say who put it there; don't know if Schooley got it in his hand; don't know if Schooley brought the rope in; was in when I got in; I saw it lie on the bed after the people had gone out; didn't see it until then; when I told Laros that he had better confess I think Schooley said also that if he was guilty he had better confess; can't recollect that Schooley said, "Come, now, you had better confess and tell all you know about it;" Allen had already denied that he was guilty, and that he did not know anything about it; I think Schooley said if he wouldn't confess he would take him off right away to jail; don't know that he said he would tie him; think Bitters also said he had better confess; Allen had before this been examined before the inquest; Allen was sitting on the bed; sitting up in bed.

By Mr. Fox—I asked him if he was guilty; he said he wasn't; he denied it; I told him he had good parents, and Christian parents, I believed; I told him I believed they died as Christians; I told him if ever he wanted to meet them again he should make a confession and repent and then he might again at one time meet his parents; when I said that, he looked up and said—

Mr. Fox—Don't tell what he said.

Witness continues—I didn't say to him that it would be better for him to confess; have stated just exactly what was said by the rest of us as near as I can remember; Bitters said nothing until after Laros had answered me; Mr. Schooley did not say anything then; none but me at the time; what Schooley said about taking him to jail was said after Laros had answered me.

By Mr. Scott—The answer Allen made to me before was that he was not guilty; just before this last conversation I told him he should confess if he was guilty; did not say he had better confess if he was guilty; can't recollect if Schooley said he would take him to jail before or after Laros made the answers to me; it was a little while after I told him to confess that Schooley told him about taking him to jail; can't say if Bitters or Schooley spoke first after me; think Bitters said nothing to Laros until after Laros had replied to my question; I think Bitters spoke a few words in, when I spoke to him.

Q.—Did Schooley tell him that if he did not confess he would take him to the Easton jail right away—before he made the confession?

A.—I think he did.

Bitters had spoken before Schooley, I think.

By Mr. Fox—As soon as I told him about his parents, &c., Laros made a short answer; I think Schooley said he would take him to the Easton jail before he made that short answer.

William Bitters, called.

Mr. Scott—Will you make your proposition in writing, Mr. Fox?

Mr. Fox—The Commonwealth calls William Bitters to give testimony for the information of the Court as to the propriety of admitting in evidence the confession of the prisoner, made in the presence of the witness, and Samuel Sandt, Jr., and George Schooley.

Mr. Scott—The defendant objects to the admission of the testimony because the Commonwealth has elected to try the competency of the alleged confession by Samuel Sandt, Jr., to whom the alleged confession was made and who was sworn upon his voir dire for that purpose, and that it cannot be established aliunde; and because the Commonwealth, having offered the witness, Samuel Sandt, Jr., to prove the alleged confession, and he having stated in his examination before the Court such facts as render said confession and his testimony relating thereto inadmissable, the Commonwealth are bound by his answers and cannot contradict him.

The Court—Objection overruled. Exception taken.

Capt. Bitters is sworn on his voir dire.—*Examined by Mr. Fox*—I was at Martin Laros' house on Saturday, June 3; I was present in the room with Samuel Sandt and George Schooley when Allen Laros made a statement; Mr. Sandt spoke first and told Allen Laros that he knew his father and mother to be good Christians and that he was satisfied that they had gone to heaven, and that if he wished to meet them again he should make his confession before men and repent; then Laros asked a question; he did this immediately when Sandt spoke; he said, "Will you pray for me?" Sandt said he would; I said we would; Schooley said we would, and I supplemented it by adding that the world at large would pray for him; I then said that if any man needed the prayers of God's people *he* did [and I say so yet].

The Court ruled out the part of the answer in brackets.

Nothing else was said until he made a statement, to the best of my recollection; I don't remember that Schooley said anything more to Laros before he made the statement; he made the statement in a few

moments after the talk about the praying; during those few minutes all were silent.

By Mr. Scott—Don't recollect what Sandt said to him about confessing; I was engaged in other things about the room; I heard all that was said, but paid no great, particular attention; conversation was partly in English, partly in German; I understand German; I was engaged in other business; Sandt might have said it; Schooley was engaged in another part of the room in the same business I was at; Schooley and I were both about the same distance from Sandt; Laros was sitting on a chair close to the head of the bed; the prisoner was on the side of the bed towards Mr. Sandt; I didn't go near Laros; stood at bureau near foot of bed; do not know if Schooley left his place and went near the bed; I heard Laros deny to Mr. Sandt that he had anything to do with it; before he had requested us to pray for him; if Schooley said anything I don't recollect it; didn't pay any attention to it; saw Schooley have a rope there; don't know where he got it from; do not know who brought the rope into the room; can't say where the rope was in the room; I read the warrant of arrest; many people in the room; Coroner Carey was there, I think; 'Squire Hildebrand at foot of bed; people left the room probably ten or fifteen minutes after the warrant was read; don't know if any of the Coroner's jury were present when the warrant was read; don't think the District Attorney said anything to Laros; between the reading of the warrant and the people leaving the room his brothers and sisters and others talked to him; after the people left I locked one door; don't know who locked the other; it had a drop latch over the catch; Mr. Sandt commenced talking to him shortly after the doors were locked; before the warrant was read I had been deputized to keep watch on him; I was back in the yard.

George Schooley, called for the same purpose as Bitters. Same objection made and overruled. Exception taken.

Witness sworn v. d.—*Examined by Mr. Fox*—I was in the room with Samuel Sandt and William Bitters on the 3d of June; in the room with Allen Laros; Sandt was not in the room until after the warrant was read; Bitters and I commenced searching; some one knocked and Sandt came in; he went to the head of the bed and began to talk to Laros; I paid no attention to what Sandt said to him; I went on searching; when I got through searching the bureau I told Bitters I thought it no use to search there for money; I had a small piece of rope in my pocket, about three feet long; I had gotten the same from the wagon shed; I told Mr. Laros that if he knew anything about the case he might as well tell us; if he did not, then I would have to tie him fast until we got done searching; he raised up and wanted to know what he should say; Mr. Sandt told him he should say the truth and nothing else; that is about all I heard Sandt or Bitters say; I said nothing more until Laros made the statement; he was at the time under arrest; I had taken him in custody under the warrant.

By Mr. Scott—I had a rope that day; got it in the shed; I had it in my pocket; I threw the rope down near the bed, when I told him if he didn't behave himself I would have to tie him; had not offered to

misbehave himself; Bitters and I searched the drawers; while we were at this Sandt came in; before Sandt came in I said we would have to tie him while we searched the room; we had before done nothing but read the warrant; about ten minutes before; after the room was cleared and before Sandt came we said nothing to the prisoner about the warrant; did not tell him we would tie him if he didn't tell where the money was; can't say what Mr. Sandt said; Sandt said if he knew anything about it he had better tell it; that it would be better for his family and for him both; heard Mr. Sandt say this; I stopped searching and looked at Laros; I was at the foot of the bed; turned around and faced him: did not hear Bitters say anything up to that time; I never mentioned jail to him; nor about taking him to Easton, as I remember; I am constable; I deputized Bitters.

SAMUEL SANDT, Jr., recalled.

Mr. Scott—We will take your proposition, Mr. Fox.

Mr. Fox—The Commonwealth proposes to prove by this witness the confession of the prisoner that afternoon in the presence of this witness and Schooley and Bitters.

Mr. Scott—Objected to—

1. That the alleged confession proposed to be proven was made in the presence of the constable and his deputy, who made the arrest, upon improper inducements made by the witness, in the hearing and presence of the constable and his deputy, and upon threats and promises by the witness and constable, immediately preceding the time of the alleged confession.

2. That the preliminary evidence of the witness himself, of the constable and his deputy, show such facts and circumstances as make the alleged confession incompetent.

3. That the preliminary proof has not been offered by the Commonwealth as to the conduct, declarations and conversation of the justice who issued the warrant, of the Deputy Coroner who conducted the inquest and of the District Attorney, who were present at the reading of the warrant and before the alleged confession was made.

Mr. Fox—The Commonwealth do not propose to argue the question. If the Court has any doubt about the propriety of admitting the confession in evidence we prefer that it be excluded. But if the Court has no doubt then we certainly desire its admission.

The Court—We will hear the defendant.

Mr. Scott argued it was the law to reject a confession given under such circumstances as these. The Commonwealth must show affirmatively that the confession is competent. They have failed to account for the presence of the justice who issued the warrant, the District Attorney and the Deputy Coroner, who is a committing magistrate. In order to make a confession competent the Commonwealth must show affirmatively that there was no improper inducement held out to the the prisoner. The Deputy Coroner and the Justice have not been called to testify that they had not held out an inducement, in consideration of which he (Laros) may have confessed to Sandt, Bitters and Schooley. The principle of exclusion of such evidence is whether the circumstances under which the prisoner is placed might have compelled

him to confess to that which was not true. Mr. Schooley was present when Mr. Sandt said that he should confess if he was guilty, and it is presumed that Mr. Schooley, being an officer, consented by his silence to the statement of Sandt, and that it was the duty of Schooley, an officer, to warn the prisoner of the consequences of a confession. Mr. Scott said he would not read his authorities and handed his brief to the Court, on which were noted :—Rex *v.* Shepherd, 7 C. & P. 579; Rex *v.* Dunn, 4 C. & P. 543, 387 ; Rex *v.* Taylor, 8 C. & P. 733 ; Rex *v.* Thomas, 6 C. & P. 353; Greenleaf Ev. vol. 1, §221; Phillips Ev. star pp. 445, 451, 557 ; Bennett & Heard, vol. 2, pp. 572, 576 ; Whar. Crim. Law, vol. 1, §§685–6 ; Com. *v.* Harman, 4 Barr, 269.

WEDNESDAY MORNING, August 23.

The Court—The objections of the defendant to the admission in evidence of the alleged confession of the prisoner, made in the presence of Samuel Sandt, Jr., William Bitters and George Schooley, are sustained. The defendant's objections to the question asked of Dr. Voorhies in regard to the admission made by the prisoner at the Coroner's inquest to him or in his presence relative to the purchase of tooth powder are overruled.

Mr. Kirkpatrick—Your Honor will note exception to this last ruling.

JAMES E. REILLY, sworn v. d.—*Examined by Mr. Fox*—Am a reporter of the *Free Press*. Had a conversation with the prisoner with A. Harper Guiley. He was a special reporter with me. It was on Monday, the 5th of June. We held out no inducement nor promise to him. Told him I was a reporter of the *Free Press* and would like to have an interview with him. Made no threat or promise.

Cross-examined by Mr. Scott—Was the foreman at the Coroner's inquest. The inquest had separated on the Saturday preceding this Monday. The prisoner was lodged in jail about nine o'clock on Saturday night. I was not in the room when the warrant was read to him on Saturday. Not sure whether I put questions to the prisoner at the inquest or not; likely I did. Saw him after his arrest and before he was brought to Easton. He was coming out of the door with Constable Schooley. Had no conversation with him. I was present about five minutes at the magistrate's office where he was committed. The prisoner may have seen me. He was in the carriage. He was in the custody of Schooley. We saw him in jail five or ten minutes after eight o'clock on Monday morning. He was in bed. Mr. T. L. Wieand and Mr. Reed, the Deputy Warden, and Mr. Guiley were with me. Bitters was not there. Wieand and Reed went in with us. I already knew what had taken place between Schooley and Bitters and the prisoner at the house.

A. HARPER GUILEY, called.

Mr. Kirkpatrick—We make the same objection to this witness as we did to Bitters.

Objection overruled and exception taken.

The witness is sworn on his voir dire.—*Examined by Mr. Fox*—I was present with Mr. Reilly when a statement was made by defendant

in prison cell No. 12 on June 5 at eight o'clock. Messrs. Wieand and Reed were there with us. No promise was made by any one present. No threats were made. No inducement held out to make a statement. We merely told him that we were press representatives. He did not know me. Never saw me before.

Mr. Scott—No questions.

T. L. WIEAND, sworn v. d.

Mr. Scott—Your Honor will note our exception to the admission of testimony of witnesses called for this purpose—the same objection as we made to Bitters.

The Court—We note your exception.

Mr. Fox examines the witness—Was present when Mr. Reilly and Mr. Guiley had an interview with the prisoner. They made no promise to him. They made no threats to him. They held out no inducement other than that they would like to get all the information they could. Neither Reed nor I said anything before he made the statement.

Cross-examined by Mr. Scott—When I come to think, I was not there all the time. Mr. Reilly said it couldn't hurt him to tell it again, or something to that effect. He said it in the way to obtain all he could. Don't think the effect of it was that it would be better to tell. I was not there from the start.

DANIEL REED, sworn v. d.—*Examined by Mr. Fox*—Was present in the cell when Reilly and Guiley interviewed the prisoner. They made no promise, no threat. They held out no inducement to make a statement.

Cross-examined by Mr. Scott—I was absent about five minutes. While I was absent Mr. Wieand was there. They did not caution him.

By the Court—I held out no inducement to him.

JAMES E. REILLY, recalled.

Mr. Fox—The Commonwealth propose to prove by this witness the statement made by the prisoner to him and Mr. Guiley on June 5, 1876, in his cell in the Northampton County Prison.

Mr. Scott—The defendant objects because—

1. The Commonwealth have failed to show that the influences operating upon the mind of the prisoner at the time he made the statement, on the 3d of June, to the constable having him in custody, (which statement has been rejected by the Court) had ceased to operate upon the mind of the prisoner at the time of the second statement.

2. The preliminary proof fails to show facts and circumstances which would render the statement made to the witness admissible in evidence.

3. It is incompetent and irrelevant.

Mr. Scott argued that when a confession has been improperly extracted by an officer from a prisoner a subsequent confession, even to a third party, cannot be admitted in evidence if the prisoner's mind at the time of the second confession is still under the influence of the improper inducements or threats which called forth the first confession. He cited:—Com. *v.* Harman, 4 Barr, 269; Whart. C. L., vol. 1, § 694,

612 (note k.); Greenl. Ev., vol. 1, §221; Guild's case, 5 Halstead, 163; Archbold Crim. L., vol. 1, 417–418; Rex *v.* Taylor, 8 C. & P., 733; Regina *v.* Warringham (Bennett & Heard), vol. 1, p. 487; Phil. Ev., vol. 1, star pp. 457, 546, 522; Rex *v.* Swatkins, 4 C. & P., 548; Bennett & Heard, vol. 2, pp. 591, 607, 609; 5 C. & P, 535: East Pl. Cr., p. 658.

Mr. Fox said the reason a confession should not be admitted is when it is not a true one, when it is unworthy of credit. He cited:—Greenl. Ev., vol. 1, §220 (a); 2 Russell on Cr., 847, 848, Gibbon's case; Rex. *v.* Hardwicke, 6 C. & P., 404; Rex *v.* Richards, 5 C. & P., 318

The Court—We will decide this without further argument. We are clearly of opinion that the influences surrounding the first confession were such as to make that inadmissible. This second confession seems to have been given while the former influences were still operating. The objection is sustained.

Mr. Fox—We propose to prove that the defendant stated to this witness on the 5th of June that he put poison in the coffee pot.

Mr. Kirkpatrick—Objected to for the same reason.

The Court—Objection sustained.

Mr. Fox—One moment, Your Honor. I cite Greenl. Ev., §231; 2 Russ. on Cr., 862 (note).

The Court—Let the counsel for the defendant show the distinction in the rule.

Mr. Kirpatrick commented on the preliminary evidence to the offer of the second confession and argued that this case does not come under the exception to the rule and that the entire rule applies.

Mr. Fox makes a further argument, to which Mr. Kirkpatrick replies.

The Court—The mind of the Court in this is very clear. We have sustained two objections—to the admission of the confession made to Sandt, Bitters and Schooley, also to the general confession made to Reilly and Guiley in the jail; as to this offer also the objection is sustained.

William Schug, sworn v. d.—*Examined by Mr. Fox*—I was in the Northampton County Prison, sometime in the second or third week in July. I talked with Allen Laros. Made no promise to him. He saw me pass his cell and called my name, motioned to me to come in and shook hands with me.

By Mr. Scott—I was not in the cell. It was in the corridor. Can't recollect if anybody was by. Oliver Walton went into the prison with me. Saw Laros a few minutes after I got in. Moses Schug was a cousin of my father. Don't know whether the prisoner knew it. I knew Allen Laros a couple of years. I first asked him how he felt. He said "Tolerably fair." I asked him what he meant by doing a deed of that kind. This was after some conversation. He said something between the questions.

By Mr. Fox—This was the next thing I said after asking him how he felt.

[The counsel on both sides and Judge Meyers here talk privately with the witness.]

Mr. Scott proceeds to question the witness further—Oliver Walton went with me, nobody else. The Deputy Warden, Reed, was there. He went with me. Mr. Reed I don't think was within hearing while I was talking. Didn't tell Laros he'd better tell. Didn't tell him he could not make it any worse. Didn't tell him anything before I asked him what he meant. I didn't tell him it would be a great relief to the family to know why he did it. Don't know whether Mr. Reed heard what we said or not. Oliver Walton had business on the other side of the corridor, and don't think the prisoner saw him or that he heard the prisoner. Laros might have seen him. I don't think Walton heard what I said. It was after the 10th of July. Don't know what day. I was at the house just after Schug died. Not during the inquest. Prisoner saw me then, I was in his room.

DANIEL REED, recalled.—*By Mr. Fox*—Was in the prison when Mr. Schug was in. Didn't hear what he said. Mr. Scott and Mr. Kirkpatrick had seen the prisoner in his cell alone before that. Mr. Scott several times before Mr. Kirkpatrick. Both alone in cell with him.

By Mr. Scott—Didn't caution the prisoner not to say anything. Saw Mr. Walton. Didn't hear him caution the prisoner.

Mr. Fox—We offer the bill of indictment to prove that the bill was found in June Term and the record to show that the continuance was at the instance of defendant's counsel:

The Court—Examine the District Attorney as to that.

JOHN C. MERRILL, Esq., sworn v. d.—*By Mr. Fox*—This case was continued at the June Term at instance of Messrs. Scott and Kirkpatrick.

By Mr. Scott—This was on all the indictments. Don't remember giving notice that the indictment for murder of Moses Schug would be tried in June Term. Remember giving notice that the stomach of Moses Schug would be analyzed by Dr. McIntire, written notice. Afterward verbal notice of the analysis of the stomach of Martin Laros.

Mr Fox—The Commonwealth proposes to prove by Mr. William Schug the statement of the prisoner made to him.

Mr. Scott—Objected to for the same reasons as those interposed to the evidence of Reilly.

The Court—Objection overruled.

Mr. Scott—We will take an exception. The defendant now objects to the evidence of any admission or confession and from this witness in particular, because there is no evidence and no proof of the *corpus delicti* presented to the Court aliunde.

Mr. Scott proceeded in his argument to say that in the failure to show the *corpus delicti aliunde* no confession should be admitted in the evidence. There could be no conviction without proof of the *corpus delicti* outside of the confession. He cited:—Whart. Crim. L., vol. 1, §§683 749; Greenl. Ev., vol. 1, §217.

The Court—We will interrupt your argument, Mr. Scott. The

Commonwealth may offer testimony upon the *corpus delicti* before we decide the question raised by your objection.

HENRY S. CAREY, recalled.—*Examined by Mr. Fox*—I did not find the bottle of tooth powder at the house of Martin Laros. Tooth powder was handed to me. Don't know who gave it to me. It was sent for in consequence of a statement made by Allen Laros. [Looks at the bottle.] This is the same bottle. Dr. Voorhies was there at the time. Don't know whether he showed it to Allen Laros there or when he was being examined in the bedroom, but showed it to him same day.

Cross-examined by Mr. Scott—When he (Laros) was examined I did not have the bottle. He had been sworn before I got the bottle. In consequence of his statement, under oath, the bottle was produced. One of the family got it. Don't know who. Whoever it was did not get it in the room where we were holding the inquest.

By the Court—It was about two minutes after he told us where the bottle was when I got it. Have had it ever since, except when it was in the bank.

Mr. Fox—We propose to prove that the prisoner stated to Bitters and Schooley on the 3d of June that he had concealed money belonging to his father and Moses Schug in the ground between the privy and the sheep pen, which statement being communicated to the witness and 'Squire Hildebrand, the money was found by them in the place indicated by the prisoner.

WILLIAM BITTERS, recalled.

By Mr. Fox—We propose to prove by this witness everything to the word "sheep pen" in the above offer.

Mr. Kirkpatrick—The defendant wants the preliminary proof.

Mr. Fox—Certainly, you may examine the witness.

By Mr. Kirkpatrick—The statement was made by the prisoner in the afternoon of June 3. It was Saturday, between four and six, after we had been in the room. I, Schooley and Sandt. After all I spoke about yesterday had transpired. He said it in the room. It was after the conversation between the prisoner and Mr. Sandt and while he was in the room.

Mr. Kirkpatrick—The offer is objected to for the same reason as the objection to Samuel Sandt's testimony, as sustained by the Court. Also for the reason that it is sought by the offer to prove an independent and distinct offence, and that no inference can be drawn from the proposed evidence as to the issue now trying, and for the general reason that the proposed testimony is incompetent and irrelevant.

Objection overruled. Defendant takes an exception.

The witness (Bitters) is then sworn to give evidence in the issue.—*Examined by Mr. Fox*—He said the money could be found between privy and sheep pen. George Schooley was present when he said it. He did not say in what it was or what money it was.

By the Court—We asked what had become of the money that had been taken before he said where it was. In reply to our question he said where it was.

By Mr. Fox.—I was still in the room. I told Mr. Schooley to look for the money. I beckoned to Mr. Carey and told him to go along with Schooley to get the money.

Cross-examined by Mr. Scott—I have not been reading the answers out of the paper which I hold in my hand. I use it to refer to the circumstances. It is a printed paper. I referred to it generally and not particularly.

By Mr. Fox—I remember without the paper.

WEDNESDAY AFTERNOON, August 23.

GEO. SCHOOLEY, recalled, sworn in the issue.

Mr. Kirkpatrick—We make the same objection.

The Court—Overruled and exception noted.

Witness examined by Mr. Fox—On the 3d of June Laros told Mr. Sandt in my presence where the money was. Said it lay between the sheep stable and the privy. Don't know whether Sandt asked him anything about the money. Don't know what Sandt said first. When Laros said that, then I went out and called Mr Carey, and went between the sheep stable and out-house. We didn't find the money then. Went back and Laros said I should dig nearer the wall towards the river. When I got back Mr. Hildebrand had found the money. I saw it when I got back. Two pocket books. I saw the pocket books opened. Some money was in both. Ninety dollars in one and $140 or $240 in the other. All bills except ninety cents in silver. One book was an old one and the other a new one. They were a little damp, that's all. Did not seem to have been buried long.

Cross-examined by Mr. Kirkpatrick—This was about five o'clock P. M.; I counted the money; the bills were twenties, tens and fives; I think no fractional currency; couldn't tell how long they were buried; the place where it was I dug, but didn't dig deep enough; took a board away before I commenced to dig.

H. S. CAREY, recalled.—*Examined by Mr. Fox*—I went out to help look for this money; after we started 'Squire Hildebrand went with us; this was 158 feet from house, following the garden wall; we dug around to find the money; first a board was laid aside; we began digging with sticks; we couldn't find it; I got a potato fork; couldn't find it; I went for a shovel; while I was coming back 'Squire Hildebrand said, "I found it," and passed it over to me; they were buried fifteen inches deep; here are the pocketbooks; [witness produces pocket books]; this old one contains $90; the new one contains $241.80.

Cross-examined by Mr. Kirkpatrick—I looked at the ground before we commenced to dig; either I or Mr. Schooley removed the board; the space between the out-house and sheep stable is over a foot wide; we were digging not a great while before the money was found; don't think the board quite filled the space; the board did not appear to have laid there a great while; the ground looked as though it had been settled; it was very dry, sandy; have had the books in my possession except when I had them in bank or Cole's safe; I counted the money.

MARGARET LAROS, sworn.—*Examined by Mr. Fox*—Father had a desk in the house; he kept his money in it; the desk was in his bedroom down stairs in the back room; after his death I did not notice whether the secretary was broken open; I took the key and went to unlock it, but it was unlocked already; nobody examined it that I know of then; I was alone when I went to unlock it; I called my brother and sister and we went in and saw that the money was gone; it was kept in a drawer in the secretary, a little drawer inside; [pocket books shown to witness]; that looks like father's pocketbook; I never saw Moses Schug's pocketbook.

Cross-examined by Mr. Kirkpatrick—We went in on Thursday evening about five or six o'clook; I went alone first; found the outside lock of the secretary unlocked; the key was kept in a lower drawer in the desk; the inside drawer was opened when I looked in; don't know whether the lock was broken or not; Allen was in bed all the time after Wednesday night; father had a smaller pocketbook, which he carried with him; he always kept the key of the little drawer tied in the pocketbook he carried; would not swear that this was my father's pocketbook, only it looks like it.

HENRY S. CAREY, recalled.—*By Mr. Fox*—Allen Laros told me the new pocketbook was Moses Schug's.

At the request of the defendent this was ruled out by the Court.

Dr. VOORHIES, recalled.

Mr. Kirkpatrick—We further object that the corpus delicti has not been sufficiently proved.

The Court—Overruled and exception noted.

Witness examined by Mr. Fox—I saw a bottle of tooth powder at Laros' house on Saturday; it was similar to the one I sold to him at the time I sold him the arsenic; he said in my presence under oath that he had made a purchase of a bottle of tooth powder at a drug store near Sandt's store; said he got it one day during that week at a drug store nearly opposite the United States Hotel; my drug store was on North Third street, opposite United States Hotel, above Jake Sandt's store; is the only drug store on North Third street; the nearest one is a block and a half away.

Cross-examined by Mr. Kirkpatrick—This was in his room in the house in the presence of the Coroner, during the inquest; he was sitting on a chair, I think; am not certain; I think it was in answer to questions by Mr. Merrill; he said he bought a bottle of tooth powder; the bottle was not there at the time; think the question asked was whether he had been to Easton lately; he replied in the affirmative; in reply to a question he stated that he had bought a bottle of tooth powder; think he answered immediately; he was asked where he had purchased it and answered, "At the drug store above Jake Sandt's;" don't remember whether he said he was in Easton on Monday, Tuesday or Wednesday; he might have said Monday or Tuesday or Wednesday; that was the last that was said about the tooth powder.

WILLIAM SCHUG, recalled.

The Court—The objection of the defendant to the admission of the

confession proposed by the Commonwealth to be proved by this witness is overruled.

Mr. Scott—Your Honor will note an exception.

Witness is sworn in the issue and examined by Mr. Fox—When I came past the cell Allen spoke to me; he came out and I asked him how he felt; he said, "Pretty well;" he then asked what people talked about this affair; I said, "Not much at present as I knowed;" he asked what I thought they would make out of this case; I said it was more than I could tell him; then I asked him what he meant by doing a deed of that kind; he said, "Bill, I don't know why I done it; I had no cause to do so; I'm sorry it's the way it is, but it's too late;" that's all; Oliver came up and I walked away.

Cross-examined by Mr. Scott—The cell door was open; don't know whose cell he was in; I think three or four were in the cell he stepped out of; the conversation took place in the corridor; don't know the number of his cell; it was on the upper corridor; I don't think we were in front of the cell door; we shook hands, I think, and then walked to one side; it is more than I can tell whether we were in front of a cell; we talked in an ordinary tone, and any person in a cell near us if listening might have heard us.

Mr. Fox—The coffee pot and bottle of tooth powder are offered in evidence by the Commonwealth.

Mr. Kirkpatrick—Objected to by defendant on account of insufficient identification.

The Court—Objection overruled and exception noted.

Mr. Fox—We also offer the pocketbooks and their contents.

Mr. Kirkpatrick—Objected to for the same reason and that it is incompetent and irrelevent.

The Court—Objection overruled and exception noted.

Mr. Fox—Also the three bottles produced by Mr. Carey and the results of Mr. Davidson's experiments.

Mr. Kirkpatrick—The same objection.

The Court—Overruled and exception noted.

Benjamin Raesley, called.

The witness did not answer, when at the request of District Attorney Merrill, upon the affidavit of George Schooley, the constable who served the subpœna, an attachment was issued.

Mr. Fox—The Commonwealth rests.

Henry W. Scott, Esq., of counsel for the defendant, then arose and addressed the jury. He said:—

Gentlemen of the Jury—In an humble way, and with few words, I shall present the case of the prisoner at the Bar.

For three months he has been upon trial; has been tried in a way very few criminals arraigned in this Court have ever been tried; has been tried from the moment the community heard of the offence; from the time the officer placed his hand upon the defendant's shoulder and read to him the warrant of the law. It was not unnatural that the county should have been aroused to a sense of the injury inflicted on it by him who had done the deed.

It was well said by the learned District Attorney that rarely has the investigation of such a crime been presented to the consideration of a jury in this commonwealth. And in this county, amid our peaceful valleys, for a great number of years no man has been brought to answer the trial of life or death to him. For the last hundred years, if my memory is correct, and I believe that I am accurate, but two criminals have suffered the extremest penalty of the law.

When this case, therefore, was exhibited in all its horrifying deformity to the people of this county, where such crimes are so rare, when the appeal was so strong to those sanctions of society, of heart and of home, we consider it indeed not unnatural that the defendant accused of the act should have been put upon trial before he was brought to the Bar of this tribunal, where, holding up his hand, he has called Heaven to witness that he is not guilty as he stands indicted.

He was tried not only by the passions of the people, but also by the ordeal of newspaper, the most unreasonable of all, as sweeping and unrelenting as the torch of Omar, scattering its prolific accusations over the length and breadth of the country, instilling prejudice into the minds of the very people from whom they were to be taken, who now sit in judgment here. So that when you were called as jurors in the case, and the usual questions asked upon your *voir dire*, you, and all the rest, had already formed an opinion as to the guilt or innocence of the prisoner at the Bar. There is not one of you who had not formed an opinion; several of you had expressed that opinion; and yet when you declared upon that sacred volume that you could divest yourselves of that opinion, of that prejudice and feeling; could go into that jury box where you now sit and try the case according to the law and the evidence we were satisfied.

Notwithstanding that prejudice, notwithstanding the opinion formed and expressed, we have put that man's life into your hands.

So before you he, the prisoner at the Bar, and I, with my colleague who sits there, are trusting in your judgment when this evidence shall close; and if in your deliberations you get that far we expect you to pronounce the defendant not guilty by reason of insanity.

We intend to say hereafter that the case of the Commonwealth has not gone far enough to demand from the prisoner any defence; that there is not sufficient evidence to warrant the Court in permitting this jury, or any jury, to render a verdict to send a man to death as his doom. Still, as I say, notwithstanding this, which may be a question of law, we have the perfect defence which entitles us to ask and demands that you shall give such a verdict as I have stated.

I have been called quite often to sit beside a prisoner at the Bar of this Court; in some cases to examine and sift the evidence in matters of the highest moment in many of the gravest felonies, but never before have I felt, never hereafter shall I, or my colleague sitting there, expect to feel the weight of the responsibility now resting upon us.

If the Commonwealth make a mistake, as it is not likely to do with two such counsel to care for its interests; if they through inadvertence should forget or misstep it would be to the advantage of the man now

at the Bar to answer to life or to death; but if we who sit here fail to present some evidence which might be obtained, fail to gather the full force of all, fail to catch every point of law arising in the case, fail to persuade the Court upon some vital question where success is possible, but beyond our stretch, a human life, perchance an eternal soul, may hang upon our weakness or mistake.

The pilot of the ocean, as he stands at the wheel and rides the foam of the crested breakers, knows well that one unsteady turn might send his precious load of human souls to the sands of the sea; but he knows that if they go down to the bottom of the deep and sleep upon their coral beds they rest in no dishonored grave. They may go "unknelled, uncoffined and unknown," but their memory is richly treasured by the dear ones at home, forever loved, though forever lost. But we who stand here feel that one wrong turn of the wheel may send him to a dishonored grave; and the dishonor comes not alone to him who is lost; it comes to the kindred, to the kin, to the name; as well to those who live as to those who sleep.

Where the defence is based upon mental disease, and that the condition of the prisoner's mind was such as to make him irresponsible to the law for his acts, it is necessary for us on his behalf to satisfy you by the weight of the evidence of this want of moral responsibility. It is a principle of law, sanctioned by the traditions of a thousand years, that every reasonable doubt must be given to the defendant. But in this case, under the law of Pennsylvania, if your verdict finally depends upon this branch of the defence, the doubt is resolved in favor of the State and he goes to his death. For such consideration we ask you to hold the Commonwealth to the strictest proof.

That, preliminary to our case, you may understand our position, I will read from the opinion of a chief justice, now dead, in one of our Eastern States.

[Opinion delivered by the late Hon. Joel Parker, then Chief Justice of New Hampshire, afterwards Royale Professor of Law in the Dane Law School, Harvard University.—*Ed.*]

In speaking of the plea of insanity the learned Chief Justice said:

"The public papers, in giving reports of trials, often say:—'The defence was, as usual, insanity,' or make use of some other expression, indicating that this species of defence is resorted to in desperation for the purpose of aiding in the escape of criminals. Such opinions are propagated in many instances by those whose feelings are too much enlisted, or whose ignorance respecting the subject is too great to permit them to form a dispassionate and intelligent judgment; and they have a very pernicious tendency, inasmuch as they excite the public mind, and the unfortunate individual who is really entitled to the benefit of such defence is thereby sometimes deprived of a fair trial. They tend to make the defence of insanity odious, to create an impression against its truth in the outset, and thus to bias the minds of the jury against the prisoner and to induce them to give little heed to the evidence in the very cases where the greatest care and attention and impartiality are necessary for the development of truth and the attainment of justice. We all concur in the doctrine of the law that, for acts committed during a period of insanity, and induced by it, the party is not responsible; that, when the criminal mind is wanting, when, instead of being guided by the reason which God bestowed, the individual is excited and led on by insane fury

and impulse, or by the aberrations of a wandering intellect, or a morb'd and diseased imagination, or a false or distorted vision and perception of things, punishment should not follow the act as for an offence committed; that, when the faculty of distinguishing between right and wrong is wanting, the individual ought not to be held as a moral and accountable agent. As well, nay, much better, might we, as formerly done in France, institute prosecutions against the brute for offences committed by them, and hang a beast for homicide, than to prosecute and condemn a human being who is deprived of his reason, for in such case there is no hope of restoration to a right mind and a reinstating of a fellow citizen who has been once lost to the community in the rights and affections of humanity. But if we imbibe the idea that instances of insanity are rare, that derangement exists only when it manifests itself by incoherent language and unrestrained fury, that the defence, when offered, if probably the last resort of an untiring advocate, who, convinced that no real defence can avail, will not hesitate to palm off a pretended derangement to procure the escape of his client from merited punishment, if in this way we steel our hearts against all conviction, it is of little avail that we agree to the abstract proposition that insanity does in fact furnish a sufficient defence against an accusation for crime."

And thus do I address you in his language to bespeak a rational and willing ear to hear the defendant's case, soon to be presented from that stand.

We will show the condition of the prisoner's mind at the time of the tragedy, by whomever committed, to have been irresponsible for either the willing or unwilling act. We will first show by abundant and competent testimony the hereditary tendency to insanity and nervous disease for several generations, and in many branches of the family of the prisoner; this, in itself, is unimportant, but it is proper evidence to present with the other portion of the case by showing a tendency to morbid disturbance and unrest. We will show the defendant himself to be an epileptic. This disorder began at a period more than four years ago, which we shall trace by successive steps of longer or shorter intervals until the time of the poisoning. That for three weeks before this time almost daily he was so afflicted with epileptic convulsions as to dethrone his reason and destroy the powers of the mind. That on the Saturday previous to the crime he was afflicted with convulsions; that he had them on Sunday, on Monday, Tuesday, the day the Commonwealth say he bought the poison, if it was he who purchased it; on Wednesday, the day of the poisoning, and on Thursday and Friday, immediately after it; that since his confinement in prison he has been similarly afflicted by these convulsions, varying in duration from a few minutes to several hours.

During the continuance of the actual spasms the defendant is totally irresponsible because altogether unconscious. The question for you to decide in this case is upon the irresponsibility at a period of time between the convulsive spasms; and we will show by the very highest authority that for some hours before and after, the poor sufferers of this disease are not in a condition to understand the nature and consequences of their acts.

We are convinced that the evidence will satisfy you; it must and shall satisfy you that at the time of the commission of the deed, whether done by the prisoner or not, that he was in such condition of

mind, so mentally prostrated by the death grip of this infirmity, that in the eye of the law and the eye of God, the Higher Judge, he was totally irresponsible for his acts.

I will not detail to you the evidence of the defendant, but it will be of the kind and character mentioned above. After we shall have presented this case we will be entitled to receive and shall demand a verdict of not guilty. It makes no difference what your opinions were, no difference what your prejudices were, as they came to you ready fashioned from the garbled slanders of the press. You are here to try this case according to the law. In this place we know nothing but what that teaches; all else is lighter than the gossamer threads that are blown before the breath of the summer.

And at the close of this trial, when you record your judgment between the Commonwealth of Pennsylvania and this poor prisoner at the Bar, we have no doubt your verdict will be not guilty. It will be no accusation against you, or my colleague, or myself, that we stood here in a court of this county to try a prisoner arraigned at its Bar for the highest crime, and as jurors and counsel weighed his case in the balance of the law, that law made for his protection, as well as for yours and mine.

The defendant then called his witnesses as follows:—

Clinton J. Laros, sworn.—*Examined by Mr. Kirkpatrick*—I live in Forks township; thirty yards from hotel at Mineral Springs, north; am son of Martin Laros; am twenty-seven years old; am a married man; have been married over a year; father has thirteen children living at the present time; there are John G., thirty-one or thirty-two; Sally Ann Walter, twenty-nine; Clinton J. [the witness], twenty-seven; Uriah, somewhere near twenty-five; Charles, twenty-three; Margaret, Allen [the prisoner], Anna M., Erwin, Marietta, Clara, Alvin and Alice [twins]; there are four married; John, myself, Sally, Uriah and Charles have not been living at home for some time; all except Charles are married of those living away from home; Marietta has been away from home since last spring; before I was married I was not home; was teaching; have been teaching eleven years; was away from home except Sundays; been boarding; four years ago I was boarding at Mr. Mann's and teaching in Stockertown; I taught there three years in succession; while I was here, in the summer-time of one year, Allen was living at John Mann's, Lower Mount Bethel; I slept at Mann's house; Allen slept there; he was working for John Mann; we did not occupy the same room; he had a spell at that time; I was called to him one evening about eleven o'clock; he had been at my school previously; can't say how long before; might be three weeks or two months; I had some trouble to teach a child the letter "B"; in order to make her recollect the letter I made her repeat it twenty times in the presence of brother Allen; on the night of the spell I had gone to bed when it occurred; Mr. Mann called me; Mann said Allen was sick, he had kind of a spell; I went up to the room; can't say that Mann did; Allen was lying in bed; I saw him lying in bed pulling his hair, holding his throat with one hand and

talking all sorts of nonsense; the letter "B" he was repeating as the child had done; I think he continued the next day; I don't know how long I stayed with him that night; he was lying on his right side; had a hold of hair with one hand and the throat with the other; no recollection of his face; don't know whether his eyes were open or not; can't say that his face was away from me; did not appear to recognize me; don't know how long I was in the room with him; don't know that there was any trembling; think he was moved down stairs; can't say who did it; he was lying extended on the bed: I was there till half-past seven or eight o'clock in the morning; it either continued till next day or it was another one on the next day; can't say whether any one tried to remove his hand from his throat, but I think some one did; mother and father were sent for in the morning; he said he was going to fly to some place; he talked a great deal while he lay there; sometimes lay quiet; don't know how he got down stairs; saw him when he got down stairs; had spasms when he got down stairs; sent for Dr. Seem in the morning; he poured cold water on his face; did not appear to recognize any one; father and mother came over; I went off to school; did not see him when he got over the spell; don't know that I saw him when I got back from school; he had spells like that afterward; had them afterward as well as before, to a small extent; he always had his hands to his throat and was pulling his hair; never saw him have his hands away from his head; after he got over them he was stupid, irritable, easily provoked, short in his answers; would not answer questions; he has been that way three or four years; he was so for four years after having them spells; can't say how he walked; there was nothing about him by which I could tell when he had had a spell; on the night of 31st of May I saw Allen after I heard the folks were sick; was there before supper; I went away before they had sat down to eat; was there twice; when I was sent for I came back; it was between seven and eight; it was not dark; saw Allen the second time; saw him in the rear of the yard; he was standing up; he had Alvin in his arms; saw him afterward; saw him sometimes in yard; sometimes in the house; saw him lying down in the rear of the yard, say twenty feet from the kitchen; he was lying on his right side; he was vomiting at the time; think Dr. Seem was there at the time; doctor had not given him an emetic at that time; I attempted to speak to him; got no answer at first; took hold of him; shook him; told him to go in the house; he went into the house and sat down in the northeast corner; I helped him in; don't know that he talked; saw him when he started for bed; next saw him during the night in his room; don't know how he was lying; paid no particular attention; saw him during the night; next morning I saw him once in a while; once I came up and saw him pulling his hair like he used to when he was mad; told Dr. Seem I believed he had the same spells he used to have; can't tell how his eyes were; he was on his side; I went right out again; I saw the hand that was pulling his hair; think it was between seven and nine in the morning; didn't hear him talking; don't remember particularly what he did next day; I was about the house attending to the sick; on Thursday or Friday I

think it was I saw his eyes turned up so as to show only the whites; he did not appear to notice anybody; he didn't speak to me or I to him; don't remember that he turned his head; I was not there when the secretary was examined the first time; I examined it afterward and locked it; the lock of the inside door of the secretary was not broken; Levi Sandt gave me father's small pocketbook after father's death; found the key to the inside door in father's small pocketbook; don't know where father kept his money; I knew it was in the secretary somewhere from what I heard; Allen went in room where the doctor was; sat there awhile; don't know whether he vomited again.

Cross-examined by Mr. Fox—The spell at Mann's was three or four years ago; Allen was not teaching, but working for John Mann at that time; he commenced teaching in the fall of the year, three years ago; don't remember whether I stayed in the room with him all night or not: about eleven o'clock was called up; Dr. Seem came the next morning; don't know if he gave him any medicine for a tape worm or not; a tape worm came from him I heard; when the family was taken sick I got somebody else to go for the doctor; I saw him pull his hair at one time and roll his eyes at another time, and called Dr. Seem's attention to the latter; saw him have two or three spells at Mann's and then not again until the family was sick.

Erwin Laros, called.—*Examined by Mr. Kirkpatrick*—Am 16 years of age. I made fence in the spring. It was above Daniel Raub's. Allen was with me. It was four weeks before the affair at the house. It was in the afternoon. Allen went away and stayed an hour and a half. He went to another field. He had not been talking to me as I know of. When he came back I was still there. I noticed he looked pale, as if he was sick. He was walking toward me. He helped to make fence. I went for a drink to the river and returned in fifteen minutes and found he had put the post in the wrong way—upside down—and filled in the dirt. Asked him what was the matter. Asked again, then he said if I wouldn't say anything he'd tell me. I said I wouldn't. Asked him twice what was the matter. He said he had one of his spells. Said he had had them before. He did not say when. He said he had had them after school; not what day. He was crying. Cried for half an hour or longer. He said that they came on with headache; a rumbling noise in his head. Said his hands were shut. Didn't mention his eyes. Said it got black before his eyes. Said he didn't want me to tell, as he did not want the folks to find it out; they would think he wasn't right. He said when they came on he would go away where the rest wouldn't see him. He staggered when he walked sometimes. I noticed it. He was then short and cross in his disposition. Talked little. He answered short. On Saturday before this happened we were harrowing potatoes. He came home from school late several times and I asked him what was the matter.

Q.—Tell what Allen said to you and what you asked him, and the answers he made.

Mr. Fox—We object to that; make your proposition.

Mr. Kirkpatrick—The defendant proposes to give in evidence his

declarations to the witness on several occasions during a period of three weeks preceding the alleged act of poisoning with reference to his being subject to convulsions and his sensations at the time of the seizures.

Mr. Fox—Objected to as incompetent and that the defendant cannot give in evidence his own declarations as to the existence of an independent fact to establish his want of mental capacity.

The Court—Have you any authorities, Mr. Fox?

Mr. Fox—No, Your Honor, we withdraw the objection.

The Court—All declarations by the defendant might be received to show whether he was sane or insane, but for no other purpose.

Mr. Kirkpatrick—We withdraw the proposition for the present.

Witness continues—He talked short when he came home late from school several times. I don't know how many times. He walked as though he was drunk. On Saturday A. M. [May 27] while harrowing potatoes Allen and father were with me until eleven o'clock. Allen took the horses to the stable. About an hour and a half after, I went to the stable. Saw Allen there in the entry. He was lying down on his face. He did not look at me. He didn't move. His hands were shut, the thumbs inside [witness shows how]. Was there about fifteen minutes. I turned him over. He didn't know me. His face was pale, eyes shut. He trembled with his arms [witness shows the way he trembled, with a rigid arm]. He roused up while I was there and sat up. He did not talk any. His arms were stiff. His legs, I think, were straight. I asked him if he had one of his spells. He said he didn't know. This was when he sat up and opened his eyes. He said I shouldn't say anything. On Tuesday [May 30] he came home late. At night I slept in the same room with him. Moses Schug slept with me. Allen slept alone. In the night I heard what I thought to be Allen dreaming. Didn't hear his voice distinctly. Was muttering. Couldn't understand the words. He throwed himself around in bed. Remember Allen getting up at night a short time before this [poisoning] happened; two or three weeks before, maybe; it was midnight. He had his law book. Went into the entry. Don't know how long he stayed. I would be asleep when he came back. It happened more than once. I said nothing to him, nor he to me. I noticed during these three weeks he staggered. He did not say much.

Cross-examined by Mr. Fox—It was a board fence that we were making. Boards were nailed on, the posts were hewn. They were larger at the butt. When I came back from the river he was standing shovelling in dirt. I stopped him and asked him what was the matter. At that time he was crying. He said nothing of any other feeling than rumbling in his head. Did not say there was anything in his body rising up toward his head. He was never cross at other times. He taught school all week except Saturday. On the Tuesday night Moses waked me and told me. Have always slept in room with Allen. Have heard him make the noise before. Did not know whether it was snoring or nightmare. He was sometimes cross before he had these attacks. Before that day with the posts.

By Mr. Kirkpatrick—He was short in his answers. I don't remem-

ber what day. I did not know for what reason. When he was dizzy then he was cross.

By Mr. Fox—Between the time we made fence and that day in the stable he would walk as if drunk. Several times a week at home in the yard. If I would say anything it would make him cross. I did not mention it to any one. Don't remember that any one else was by.

By Mr. Kirkpatrick—Don't know why I did not say anything about it.

JULIANNE MANN, sworn.—*Examined by Mr. Kirkpatrick*—I am a daughter of John Mann. Remember when Allen Laros lived at our house. Remember something getting the matter with him. They were spells. Had them more than three times. Seen him in that state more than once. The first time I saw him in that condition was in the horse stable. He was lying there on his back and on the back of his head. Don't know how close to the horses. Did not notice his face. His eyes were shut. Did not notice his hands that time. Did not seem to know anybody. It was in the morning. Don't know how long he had been lying there. We carried him in the house. He had no straws in his hands that I noticed. Don't remember how long he was unconscious the first time. He did not seem to know anybody. Don't remember how long he was unconscious at other times; sometimes it was more than an hour. He was taken down stairs the first time on a settee. On the other times he was the same way. At other times he had his hands in his hair and at his throat; pulling at it.

Cross-examined by Mr. Fox—Dr. Seem was sent for that morning and came. He was not there always. He came at several different times to attend Allen. When we carried Allen in the house he lay quietly. He lay still in the stable. Don't remember seeing him when he opened his eyes. Don't remember who stayed with him. I did not see him every time. The doctor lived two miles off. He came soon. Allen during those spells did not always remain still, but pulled his hair and his throat. He would act as though teaching school. Don't recollect whether he knew himself about it.

By Mr. Kirkpatrick—He had spells oftener than when the doctor was there. He had some at night. He used to give out words and spell them backwards. Once he fought bumble bees. Don't think his talk was very foolish. There was no bumble bees there.

By the Court—After it was over I never noticed how he was.

By Mr. Kirkpatrick—Before them he was cross. He went to his work after he got over them.

Mrs. SALLY ANN WALTERS, sworn.—*Examined by Mr. Kirkpatrick*—Am married ten years. Live in Easton, on College Hill. Am a sister of Allen. Allen came to my house once in a while. Was there about six weeks before this happened. About half-past six P. M. He didn't say anything at all; was not talkative. He slept there that night. Heard something during the night. Heard him come down stairs. We had all gone to bed. About midnight. Heard him go through the house. He came down to the front step through the hall. I noticed next morning that the ground was scratched out from under the porch, which was raised from the ground. A good deal of dirt was

scratched out, half a pail full. Never had been that way before. The dirt was not thrown out when I went to bed. Before I went to bed there was a line across the porch. In the morning that was torn through the middle. Next morning Allen didn't say anything. Did not talk to anybody. His shirt bosom was all mud. If it had been that way the night before I would have noticed it, because when he went to bed he left his coat and vest in the kitchen. I told him to take his shirt off and I'd wash it. He did not because he had no other shirt with him. I was up to my father's house at half-past seven Thursday morning, the day after the family got sick. Saw Allen first upstairs in bed as soon as I got there. I noticed that he had both his hands in his hair and both eyes closed. He was pulling his hair. He was lying on his right side. His eyes, after being closed sometime, opened, and I saw they were unnatural. He didn't appear to know me. He appeared unconscious. I think one of my sisters was with me. Don't remember the color of his face. Had never seen anything of the kind before in him. I saw only the whites of his eyes; they were turned up in his head. I never noticed his walk when he came to my house. He did not stay long when he came. He would come once a month or so, not oftener. At the house I was attending to the sick and did not notice another spell then.

Cross-examined by Mr. Fox—He stayed at my house about six weeks before the death of my father. He took tea and was there all evening. Mr. Walter was home that night. I noticed nothing unusual in Allen's demeanor. Allen did not talk much at the breakfast table that morning other than to say what he wanted to eat. The ground was scratched out from under the porch and spread apart over the pavement. I saw no marks of animals' claws in the ground or finger marks. It was coal ashes and dirt. I saw his eyes turned up the time I looked at him when he was in bed at my father's house, when they were all sick. He opened his eyes in about five minutes. I don't remember who was in the room when he opened his eyes. I did not stay long in the room. I did not talk with him that day that I know of.

By Mr. Kirkpatrick—It rained the night Allen stayed at my house. The dirt was scattered loose over the pavement.

THURSDAY MORNING, August 24.

CLINTON J. LAROS, recalled.

Mr. Kirkpatrick—How did your father train his family in religious matters?

Mr. Fox—How is that evidence?

Mr. Kirkpatrick withdraws the question for the present.

Witness continues—I recollect my father's father. He lived on College Hill at Joe Laros' house. I lived there too.

Q.—How did he act when you saw him?

Mr. Fox—Objected, that if they go into the question of mental condition of ancestry they must prove insanity, not eccentricity. They must prove a general reputation of insanity in ancestor, not that he did queer things.

Mr. Kirkpatrick cited Ray's Med. Juris. of Insanity, §155; Whart. & St. Med. Juris., vol. 1, §364; and referred to the Walworth case and the position assumed by Mr. O'Conor in reference to the defendant in that case; and argued the propriety of obtaining from witnesses evidence of specific actions of defendant's ancestors.

Mr. Fox argued that the insanity must be notorious and that eccentricity was not transmissible, although disease might be. He cited Whart. Cr. L., vol. 1, §57; case of Ld. Ferres, p. 900 Roscoe's Crim. Ev.; Rex *v.* Oxford, 9 C. & P., 925.

Judge Meyers said that the jury would have no right to infer unsoundness of mind from the nature of the act itself.

Mr. Kirkpatrick cited Browne's Med. Juris. of Insanity on the subject of hereditary tendency; Wharton & Stille, vol. 1, §373.

Mr. Fox said that the article in Browne, just quoted, was an original article, and no single man was authority; that Browne was ultra in his views, and that in the opinion of that author all that was necessary to prove that the prisoner is insane is to prove that an ancestor was a high church man or that his grandmother had hysterics.

The Court—What do you intend to prove by this witness?

Mr. Kirkpatrick—Defendant proposes to prove by this witness that the paternal grandfather of the prisoner was mentally unsound for some period of time before last heard of; that without any accountable cause he wandered from home and has never been heard of since; that this occurred seventeen years ago.

Mr. Fox- As a whole not objected to by the Commonwealth.

The Court directed Mr. Kirkpatrick to state the question.

Q.—Did you notice anything peculiar about your grandfather within a short time of your seeing him last? If so state what it was.

Mr. Fox—Objected to, 1st, Because there must be proof of insanity in the grandfather and not of peculiar actions; 2d, That the witness, being at that time only ten years old, was incapable of forming an opinion as to the sanity of his grandfather.

The Court—Objection sustained and exception noted.

Mr. Kirkpatrick—We now propose to prove by the witness that the paternal grandfather of the witness acted in a manner indicating unsoundness of mind.

The Court—Now put your question.

Q.—Did you at any time see anything in your grandfather indicating unsoundness of mind?

Mr. Fox—Objected to that this witness, being only ten years old at the time, was incapable of forming an opinion as to the mental unsoundness of his grandfather.

The Court—Objection sustained and exception noted.

Mr. Kirkpatrick—Do you remember about your grandfather going away from home and never returning?

Mr. Fox—Objected to by the Commonwealth as incompetent and irrelevant.

The Court—Objection sustained and exception noted.

Mr. Kirkpatrick—While Allen was a member of his father's family

how did your father bring up his family with reference to religious and moral instruction and conduct?

Mr. Fox—Objected to as irrelevant and incompetent.

The Court—Let us have your authorities, Mr. Kirkpatrick.

Mr. Kirkpatrick cited Wharton & Stille, Med. Jur., vol. 1, §§388, 389.

The Court—Objection sustained and exception noted.

Mr. Kirkpatrick—What was the treatment of and conduct toward the prisoner while he was a member of your father's family on the part of your mother, father and the rest of the family? was it kind or otherwise?

Mr. Fox—Objected to as incompetent and irrelevant.

The Court—Objection sustained and exception noted.

Witness continued—Can't say when my paternal grandmother died; probably two years ago. I do not think she was of unsound mind. Don't know my father's mother's name. My mother's mother died three years ago, I think. I remember her doing things that looked like she was of unsound mind. She talked things that I do not think a person of sound mind would have said. She was so a year or more before her death. My brother Eugene was sixteen years old when he died. He died nearly two years ago.

Mr. Kirkpatrick—How did he die?

Mr. Fox—Objected to as irrelevant and incompetent.

The Court—Objection sustained and exception noted.

Mr. Kirkpatrick—We propose to prove by the witness that his brother Eugene prior to his death was quiet, uncommunicative and retiring, and that he died by hanging himself without any apparent motive or cause.

Mr. Fox—Objected to as irrelevant and incompetent.

The Court—Objection sustained. Exception noted.

Witness continued—I don't know anything about my grandfather's brother.

By Mr. Fox—I don't know how old my mother's mother was when she died; I think about eighty years. She was very old. She could not walk alone. She was childish.

Sarah Raub, sworn.—*Examined by Mr. Kirkdatrick*—I am twelve years old; Allen Laros was my teacher; I remember him going out on Friday [May 26] before this happened; he did nothing before going out; he looked pale; I did not notice his eyes; he walked straight; he was out about ten minutes; he looked paler than usual when he came back; he said nothing; I came up from school with him that night; he seemed all right; he did not talk much; he walked slow; Alme Job, another girl, was along.

Cross-examined by Mr. Fox—This was in the afternoon, about three o'clock, when he went out of school; he vomited, I saw that myself; he commenced teaching when he returned; he did not seem all right right away; he was pale and weak; nothing else; he heard lessons and talked sensible; I live above the Weygat; above Schug's; about three-quarters of a mile off; I went to school to him all winter and up to this time; it was the first time I saw him sick; it was cold enough,

so we had fire; I never saw anything wrong with him before; he began teaching in the fall; there were thirty or forty scholars there during the winter.

By Mr. Kirkpatrick—I never heard him complain; he put the windows down from the top in cold weather when the room got too close; never saw him put his head down on the desk.

ALME JOB, sworn.—*Examined by Mr. Kirkdatrick*—I walked home from school with Allen on Friday before that Wednesday the Laros family were taken sick. I saw him go out of school. It was in the afternoon before he went out, he laid his head on the desk. Kept it there not very long, however. When he went out he walked as usual. He was not out very long, probably ten minutes. I can tell the clock. When he came in he looked pale. I did not notice his eyes. I went up from school with him that night. He did not talk much; he seemed quiet. He didn't want to talk, I think. He was still pale. He walked slow. I don't live very far above the school. He lives in the second house above us.

Cross-examined by Mr. Fox—I am nine years old. When he went out I didn't see him vomit. He taught afterward. We were writing copy when he came in. He laid his head on the desk, then came and took the copies up and gave us recess. He was still pale. I often walked home with him. He talked less than usual. He usually talked. Don't know whether he talked any that night. I and my little brother and Sophia Raub went home with him. I only went to school this summer. I don't know how long I went to him. He had never been sick before, that I know of. He did not talk at all to me. He was still pale when I left him. He was sick at school before.

MAGGIE LAROS, called.—*Examined by Mr. Kirkpatrick*—Am a sister of Allen. Have been away from home the last three years a great deal of the time. I came home on Saturday evenings and was home on Sunday. Prior to that Wednesday night one Sunday, three or four weeks before that, I found him on the settee very pale. He laid on his back and had his hands closed, with the thumbs inside. His hands and feet were trembling. His eyes were shut. He was unconscious at the time. He laid that way ten minutes, then he opened his hands and was going to pull his hair. I restrained him. Then he talked. He talked foolishly; about fishing. I heard a few words. He talked about that one thing. He got another spasm then in ten or fifteen minutes. His hands were closed again as before. He bit his teeth together so that I heard them. He ground them in the spasm. The trembling lasted about ten minutes. Then he came to, got up suddenly and went out. He opened his eyes and looked strange, wild and stared. He did not speak to me. His hands were shut, so that I tried hard and could not open them. He did not talk during a spasm, but did between the convulsions. He was stiff when I found him. I noticed often that he walked queer for a year or two before this; he only did so at times; when he walked thus he was always short in his answers and cross; I did not know the reason; sometimes he would not answer me at all when I talked to him; sometimes these spells would last for a whole day; he would talk and act that way for a

whole day sometimes; I spoke to him frequently and told him he should not walk that way; he said he could not help it or said nothing; he walked as though he was weak in his legs; since he had his law books I have known him to get up in the night; just a few weeks before this occurrence he got up; he got his law books in the winter time; we always had the light lit in our room and he would come and get it and go out in the entry and sit there studying; I saw him so one night about three weeks before the family all got sick; I was sleeping and awoke, and not seeing any light in our room I looked out in the entry and saw Allen have our light reading his law books; he had gone to bed before, perhaps two or three hours; it was after midnight; when I asked him the reason he said he couldn't sleep at night; I know that he got up two or three times three or four weeks before this [poisoning]; he did so too before he got his law books; at other times he was cheerful and lively when he did not walk that way; when he went to bed he would often say he wished the night was over, because he couldn't sleep any how; I remember the Monday night [May 29] before the family got sick, Clara and I slept together; the masons who had fixed our spring-house slept at the house; Clara, Alice and I slept in one bed, Alvin and Allen in another bed in the same room; we did this to give the masons room; they went to bed before I and Clara did; it was about nine or half-past nine o'clock; Allen was talking to himself, but Alvin was asleep; I heard Allen talking again; I went to his bed and talked to him, but he did not answer; he mentioned fish and water and snakes; I could not understand all; saw him have two spasms while I was there; he would close his hands, with the thumbs inside, and shake all over; he then tried to pull his hair and pull the pillow back; the spasms would last about fifteen minutes; between them he would talk and would pull; I heard the grinding of his teeth again; his eyes were closed during the spasm and he would lie stiff, and when he would open his eyes he would show only the whites; he was unconscious; after the second spasm he got up and walked around a while and opened the shutters; he was not talking then; I told him to lay down; he did not answer me, but walked around a while; I took hold of him, led him to his bed and laid him down; he stared with his eyes; he looked pale and looked wild out of his eyes; he became still then and we went to bed; the light was then turned low; he talked again, but I didn't get up; I went to the window when he did for fear he was going to jump out; I tied the shutter; I went to sleep then; in the morning I noticed the bed clothes were scattered around on the floor, the cover to the bed tick was stripped off and his drawers were split; I told him of it, but he did not answer me; he seemed to be cross and looked wild out of his eyes; he walked so funny, too, as though he had been sick and couldn't walk straight; I always made his bed when I was at home; perhaps it was for three or four years; I often found the bed clothes scattered on the floor; a saddle and a buffalo robe hung over his bed, and I several times found them thrown on the floor; the covering to the feather tick I often found partially or wholly torn off; his clothing, too, was often torn; the sleeves torn out of his shirt, but he would not

tell us how they got torn, or would say he did not know how they got torn ; he often told me not to say anything of these things for fear the young folks would not go with him any more, and they would think he was crazy ; this was after that Sunday ; after these exhibitions, when the bed clothes were thrown around so, he would be cross and uncommunicative in the morning ; I often heard him talking foolishly at night when I went to close the entry window near his bedroom ; I could not distinguish what he said ; I saw him on Thursday or Friday morning [June 1 or 2] ; he was pale, hands clenched and was trembling ; one of my sisters was with me ; he looked as he always did when one of these things was on him ; the spasms usually lasted five to ten minutes : after they were over he would pull his hair and throw his hands around ; then he would talk, but I could not distinguish what he said.

Cross-examined by Mr. Fox—The Sunday I found him on the settee was about four weeks before father's death ; he had been at home all day ; so had I ; we ate dinner at twelve ; I did not see him between dinner and the time I found him ; when I went in and found him he was trembling at his hands and feet ; they were extended and seemed stiff ; his face was pale and quiet ; I caught his arms and they were stiff ; it lasted ten or fifteen minutes ; after the trembling, the talking and pulling commenced ; he got limber ; he talked only single words ; didn't see his face move during the rigidity of the limbs ; he laid flat on his back, face upwards ; his mouth was sometimes open and at other times closed ; there was no froth on his mouth ; no blood was on his mouth, nose or ears ; a similar spasm followed the first ; after the second spasm he opened his eyes and pulled his throat ; in about ten minutes he went out doors ; I watched him ; he went out in the barn yard and sat down about an hour, then he returned to the house ; when I talked to him he was short ; at dinner he did not talk much either ; in the morning he was up in his room reading ; I called no one when he had the spasm ; they were all out of the house then ; I told father and mother about it that afternoon ; the doctor was not called ; this was the first time I had seen anything of the sort ; don't remember what we had for dinner that day ; he was not a very hearty eater ; on the Monday night before father died Allen's face was pale ; both hands were closed ; his limbs were stiff and extended as before ; there was no motion in his face ; there was no blood from mouth, nose or ears that night ; he got up to the shutter fifteen minutes after the second spasm ; he stared at me ; he did not speak ; I don't think one side was affected more than another ; that evening I saw him when he came from the school ; he looked wild and walked so queer ; in the morning I saw nothing unusual about him ; in the evening he ate little supper and was cross ; don't know what he ate for supper ; I told father and mother next morning about these spells ; they did not send for a doctor ; before these spells if he gave me an answer it would be intelligent but short ; after they were over it was the same way.

By Mr. Kirkpatrick—We did not send for a doctor ; father and mother seemed to know all about these spells ; they said I should not say anything about them ; when Annie found him in one last fall and

told me about it they said we should say nothing to the little ones about it, as they might say something about it at school; he was forgetful, too; I noticed it often; these fits of forgetfulness would happen when he walked so queer and was irritable; I know of things that occurred while he was by, and he would ask afterwards, if we spoke of them, as to when they happened; he appeared to know nothing of them.

By Mr. Fox—It was about nine o'clock that Monday when I went to bed; stayed up with him one hour.

Mrs. Van Selan Water, recalled.—*By Mr. Kirkpatrick*—The night he went out at our house I heard him; he was barefooted; the door was open; he went out the front door; I heard him walk over the porch.

By Mr. Fox—I don't know how long he was out; his shirt was soiled with dirt on the sleeves and bosom; didn't notice what kind of dirt it was; it was muddy.

Thursday Afternoon, August 24.

Van Selan Walter, sworn.—*Examined by Mr. Kirkpatrick*—I am husband of Mrs. Walter, who was on the stand this morning; remember the night Allen was at my house; the night she spoke of; remember the appearance of the shirt in the morning; did not hear him go out; I slept all night; I saw dirt scratched out from under the porch; saw the line on porch broken; dirt was scattered on pavement; I never saw it that way before; the pavement in my yard, which is surrounded by a fence; I was sent to come up to Laros'; got there on Thursday at eight o'clock; saw Allen on Friday; once in a while I would see him; on Friday afternoon I saw him have one of his spasms; never saw him have one before; he was on a chair; fist clutched hard; eyes rolled up in his head; he said everything was getting black before his eyes, and then the spasm begun; I kept him from falling off the chair; I laid him upon the bed; spasm must have lasted some time; can't say exactly how long; may have been fifteen minutes; don't remember more than one spasm; his hand trembled; I laid him on his back and he turned, I think, on his right side; I may have turned him in working around him.

Q.—Were you alarmed at his appearance?

Mr. Fox—Objected to as irrelevant and incompetent.

The Court—Objection sustained and exception noted.

By Mr. Kirkpatrick—I was about the house all day attending the others, the sick.

Cross-examined by Mr. Fox—This was the day Moses Schug died; about the time he was dying; before he died Allen was not in the room with Moses Schug; it was the next room, door between closed, no one coming out and in; he was on the chamber-pot when this happened; I don't think he had diarrhœa; the first I noticed was his saying everything was getting black; his face was pale and twitching when I laid him on the bed; twitching round the mouth; think he was stretched out straight; don't remember how his hands looked; he lay mostly still on the bed; he would move his hands; he at first

clutched them and then kept them down ; I sent for Dr. Seem ; he came in before the spasm was over ; it was some time after the clutching; it was some time after I sent for the doctor before he came; Dr. Junkin came in some time after that ; when Dr. Junkin came over from the hotel I don't know if the spasm was over ; I saw the dirt at my porch when my wife called my attention to it ; I did not think of attributing it to Allen at that time ; I couldn't account for it then.

By the Court—I have no dogs.

By Mr. Fox—There are dogs and cats in the neighborhood.

By Mr. Kirkpatrick—I keep my chickens penned up.

CLARA LAROS, called—*Examined by Mr. Kirkpatrick*—I remember something being wrong with Allen before this happened [poisoning]: first time I noticed was down by the chicken pen : about two months before father and mother died : it was in the afternoon : I saw him lying under the chicken pen on his face ; he appeared unconscious : did not know anything: I spoke to him ; he did not talk anything : he was under there a quarter of an hour : then he got out : he was pale : he looked wild out of his eyes : he did not talk much : he went towards the stable, walking as if he were drunk or something like that : he seemed as though he did not want to talk ; I was in the room where Allen slept the night the masons slept at our house: he had gone to bed before us : when we came up stairs Maggie said Allen was talking : I saw something was the matter with him : Mag spoke to him and he gave no answer : he was lying on his back : he was undressed and had gone to bed : saw him have a spasm while lying there : noticed his hands : his hands were clenched, with the thumbs inside : Maggie took hold of him to pull him up : he got up then and walked the floor : then he went to bed again, I think, but I am not certain : got up again and opened the shutters ; Mag. went there and tied the shutters : don't remember what he did then : he said, "I don't know how to get in bed again :" I went to sleep : his hands shook this way [witness shows how, fists clenched, thumbs doubled inside] : while I was looking at him he talked about fishing; could not understand what he said : the bed clothes were lying on the floor next morning : the upper covering of the feather tick was stripped off; pillows were on the floor : did not notice his night clothes : he looked pale next day and walked funny : he did not want to hear anything when spoken to : on Wednesday he walked so as if he were drunk : he was short in his answers and did not want to hear anything from me : I noticed his walk often before, quite often : he walked sometimes as if he were weak : at such times he was short in his answers : I know of his getting up at night once : he got up at midnight after he had gone to bed : he was gone [with our lamp] a half hour and then I got to sleep.

Cross-examined by Mr. Fox—His head and body were under the chicken coop: it was about 18 inches above the ground : he was on his face : only his feet and part of his legs were sticking out : in about fifteen minutes he pushed himself out and then stood up : I asked him what he was doing : he said he saw a rabbit under there : he told me this when he was going towards the stable : this was on Sunday : he came to supper : did not eat much : did not talk any : I told Maggie

about it, but not father and mother: I think he went to school next day: he was pale yet: that night in the bedroom his face was pale, stiff and set: mouth shut and teeth closed tight: did not notice that his legs were stretched out: he had more than one spasm; he had two. After both were over he walked the floor.

By Mr. Kirkpatrick—He was biting on his teeth that way [witness grits her teeth]: I heard him: I stood aside of him: he was lying still there under the coop: his hands shook: what he said about the rabbit was after he came out from under the coop.

ALVIN LAROS, called.—*Examined by Kirkpatrick*—Remember cleaning stable four or five weeks before we were all sick: Allen helped, and then he went off: don't remember how long he was gone: about a half an hour, I think: I heard talking in the privy: I went to see what it was and looked in the cracks: saw Allen have a pole and cord string to it fishing: he was still talking: he said, "What a large fish:" he talked more, but I could not understand it: I went back to the stable then: Erwin was with me: he and I went on cleaning the stable: he said nothing more to me: before that Erwin said, "Let us look and see who it is;" Allen did not appear to know that we were there [witness described the position of the family at the table vid. diagram, p. 27]: at the supper table that Wednesday night I looked at Allen: he looked so queer: it seemed that he did not know anything: his face was pale: talked to no one and sat still: his eyes looked wild: the day I saw him through the crack in the privy he looked as he did that night at supper: I knew something was the matter: I had seen him before look just that way; the rest at the table were talking and eating: I was not talking: I looked at him a good while: every once in a while: I thought he had one of his spells: don't know how long we were at the supper table.

Cross-examined by Mr. Fox—He had a pin fast to the cord; he fished out on the floor and talked in German; "What a large fish;" the pole was about two feet long; he sat on the hole in the privy; his eyes were open; he had a hold of the pole with one hand, held on to the seat with the other, was looking towards his fish hook; I watched him a few minutes; I did not watch him long; he would pull up as if having a fish; I saw him afterward at the dinner table; this was on a Saturday; he ate some dinner; I don't remember that he talked; did not notice anything strange about him during the afternoon; did not tell father about it, or any one else; he was around home; he had not been doing any work in the morning; don't know what he did in the afternoon; this was about four weeks before father died. On Wednesday night at supper I thought he did not know anything, because he did not talk anything; nobody talked to him; I talked about his appearance to Maggie and Clinton; also to Mr. Kirkpatrick and Mr. Scott; I thought he looked queer then, before the family were taken sick; I told Mr. Kirkpatrick and Mr. Scott right away, before they asked me; I talked with them since last Court; I do not know that Allen tasted the coffee; don't know that he said anything when they said the coffee was peppery; he looked wild, as if frightened, out of his eyes.

By Judge Meyers—Don't know where he got the string and pin and pole from; Allen ate some at the supper table that night when he looked that way; don't know what he ate.

By Mr. Kirkpatrick—His eyes were turned up; could see a little of the black. Father said nothing about not telling about his spells. I was told in your office to tell all I knew. He walked after the fishing as if he were drunk; before that he walked sometimes as if he was weak in his legs.

ANNIE LAROS, sworn.—*Examined by Mr. Kirkpatrick*—Am a sister of Allen. Was not living at home when this [poisoning] happened. Have been home at different times. Saw him one afternoon last fall. I was hunting him. Had missed him. He was in his room. He was lying there with his hands clenched and thumbs turned in. [Witness shows how, with thumbs shut inside the closed hand.] He was trembling. His eyes were closed. He had two spasms. Between the spasms they were open. He pulled his hair and had his hand up to his throat. He tore his pillows. Between his spasms he talked, but I could not understand anything. His mouth was open. He was grinding on his teeth. He had hold of a pillow trying to tear it. I took it away from him. He did not seem to know anything. I told my mother, who went up to him and rubbed his hands and face with vinegar. She said she believed it was a spell he used to get at Mann's. I noticed these spells at different times. He was cross at such times and answered short. I took hold of him; he was stiff. I tried to move his hands at different times. His thumb of one hand was inverted. The hand was tightly closed. I could not open it. Sometimes in the morning he would have all the bed clothes on the floor and the pillow and feather tick would be uncovered. He often had his shirt torn. I often asked him about it, but he never gave me any answer. Saw the saddle and buffalo robe my sister spoke of lying on the bed often. Didn't notice anything about his walk or appearance at that time. I was home about two weeks before the poisoning. Allen seemed all right then. I saw him. On Thursday morning, after the occurrence [poisoning], I saw Allen. I lived on College Hill with my brother-in-law since last November. When I came up on Thursday he had one of his spasms. Don't remember how his mouth looked. He had his hands in his hair. Mother told me that other time not to say anything about it or the young folks would find it out and not go with him any more. My maternal grandmother was out of her mind a year or more before she died. Brother Eugene lived at Ferdinand Gahr's when he died. Before that he lived at Andrew Sandt's. He was sixteen when he died. He once lived at William Kichline's.

Q.—Did Eugene ever complain of anything at Gahr's? did he or did he not like it there?

Mr. Fox—Objected to as irrelevant and incompetent.

Mr. Kirkpatrick—Question to be followed by proof that he was satisfied with living there; that he liked the place, and that he died by committing suicide without any apparent reason or motive.

Mr. Fox—Objected to for same reason.

The Court—Objection sustained and exception noted.

Cross-examined by Mr. Fox—Mother was with me in Allen's room when he had the spasm last fall. He was lying on his back, mouth open, teeth grinding together, lips were parted, hands clenched at first. His face was very pale. After the spasm he was not so pale. He had his clothes on lying on the bed. He trembled, but lay still. Saw him also after mother's death, on that Thursday. He had a spasm when I came in. The room was full. Dr. Seem and Dr. Junkin were in the house; not in the room. We did not call the doctors. Don't know any person who was there; can't name them. Don't know whether Emeline Sandt or Mrs. Kichline was there. His face was rigid and general appearance like those [spasms] before.

By Mr. Kirkpatrick—He had another spasm on Friday afternoon. I saw him. He appeared the same way.

By Mr. Fox—He was lying there when I saw him.

MARGARET LAROS, recalled.—*By Mr. Fox*—Allen was always pale when these spasms came on; he was pale, then got red, then pale again. While he was stiff he was sometimes very pale, sometimes not.

By Mr. Kirkpatrick—It was not during the spasms, then he was pale. This redness and paleness I think was after the spasms. Am sure of the redness. Not very red. Looked as though he had fever. His mouth jerked by spells; one side, sometimes the other. He would grind on his teeth.

OLIVER UHLER, sworn.—*Examined by Mr. Scott*—Live in Plainfield township. Went to Allen Laros' school in 1874 and 1875. I recollect an occasion when he went out of school. I heard him halloo my name. I went out. He was lying by the side of the school house. Others came out afterward; Robert Wilhauer came. We took Allen in the school house. It was between two and three o'clock in the afternoon. School left out at four o'clock. We had no more school that afternoon. We laid him on a bench. He lay there about a quarter of an hour. His face was pale; his hands shut, both of them. Don't recollect whether the thumbs were turned in or not. His arms jerked. He did not talk. Didn't seem to know what was going on. He was taken home in a carriage by Andy Heitzman. He boarded at home. That is four or five miles from the school house.

Cross-examined by Mr. Fox—We carried him home. He boarded at home, at Mineral Springs, about four miles from the school house. It was in 1874–75, in the winter. I began in October and went until next spring, about four months. Don't know if it was near the beginning or end of the winter term. Before this came on I did not notice anything strange, nor after he came to. That was the only time I noticed any such occurrence. We we came out he said he had his leg broken. He said the horse kicked him on Sunday and he was lame. It was eight or ten feet from the school. There was ice there, and when we came out he said he had fallen and broken his leg. We carried him in, he could not walk, and that's the reason he rode home. He was conscious all the time.

By Mr. Scott—This was on Monday or Tuesday. He didn't come back to school until the next week. After we took him in he didn't

seem to notice what was going on. After we laid him on the bench he had these motions; he was unconscious then.

By Mr. Fox—While he was outside he was conscious. He didn't try to walk. In the room he seemed faint for twenty-five minutes. He looked pale and lay still.

DANIEL LAROS, sworn.—*Examined by Mr. Scott*—Am a brother of Martin Laros. My father's name was John. Sixteen or seventeen years since I last saw him. For the last four or five years before I last saw him he did not know what he was doing. He had been a drinking man, but had stopped, not altogether, for that length of time. He lived then on College Hill. He talked very little, only when you talked to him. His answers were sensible sometimes and sometimes foolish. When he had not been drinking his answers were not foolish. When he was sober he was foolish sometimes and sometimes he was sensible when he was drunk. I don't know where my father is; I don't know whether he is dead or living. I have lived over on Chestnut Hill for thirty years. Mrs. Youngkin, wife of Geo. H. Youngkin, is a sister of mine.

Q.—What was the condition of her mind at times within the period of the last three or four years, sound or unsound?

Mr. Fox—Objected to.

The Court—Objection overruled.

A.—She was sound all I know.

Witness continues—She came to my house. I fetched her and had her there a week three or four years ago. Her mind then was unsound.

Cross-examined by Mr. Fox—The last three years she was unsound as far as I know. The week she was at my house she was not sound, but afterward she was. Don't know what brought it on. She talked about money all the time. Said she hadn't any money. Don't know if she had any. Don't know how long before she came to my house she was unsound in mind. I knew she was not right when I took her to my house. She wanted to go home with me, so I took her. She stayed a week. Then she wanted to go back and I took her to her home. When I saw father last he was about sixty-five years old. He drank hard sometimes. He had no business. Sometimes he would walk around as though he didn't know anything. I think he knew the people about him. When he appeared foolish he might have been drinking.

SAMUEL LEVERS, sworn.—*Examined by Mr. Scott*—I am a brother to Mrs. Laros, mother of the prisoner. My father's name was George. I had an uncle named Robert Levers. He had a daughter married to William Berry, of Easton.

Mr. Fox—No cross-examination.

Mrs. ALMIRA BERRY, sworn.—*Examined by Mr. Scott*—My father's name was Robert Levers. I had a brother who had convulsions.

Mr. Fox objects. The Court ruled out what the witness had said and suggested that Mr. Scott state the question precisely.

Mr. Scott—State whether you had a brother who was subject to convulsions.

Mr. Fox—Objected as irrelevant and incompetent. He said the farthest the Courts have ever gone was the insanity of an uncle.

Mr. Kirkpatrick then read from Wharton & Stille, vol. 1, p. 374, where the insanity in collateral issue of an ancestor three generations back was admitted in evidence. He also cited upon the same subject Commonwealth *v.* Rogers, in 7th Metcalf, and "Andrews' case" (pamphlet).

The Court—Objection sustained and exception noted.

Mrs. Aaron Schug, sworn.—*Examined by Mr. Kirkpatrick*—I live in Forks township, near the river road. Allen came to my house about two years ago. He said he did not feel very well. Said nothing about his head. Thought it would be best to get cupped. I cupped him. He only came once.

Cross-examined by Mr. Fox—I cupped him on the back. Cut him light. Don't remember how many cups I put on him. Only a small quantity of blood came from him. He was then attending school in Easton. He came to my house on purpose. It was in June, two years ago. He talked while he was there. I don't remember what he said, only that he did not feel good sometimes and wanted to be cupped. I saw nothing wrong about him.

Daniel Reed, called and sworn in the issue.—*Examined by Mr Kirkpatrick*—I am deputy warden of the county prison; Laros was brought to jail on June 3; he was put in No. 12, on the first floor; on the 20th of June I went in his cell at six o'clock in the morning; had locked him up at eight o'clock the night before; the blind door of his cell had been kept shut and was so for four weeks after he came there; no one was allowed to talk with him unless I was along or Mr. Whitesell; six o'clock is the time for opening the cells; that morning he had his chaff tick on the floor, and he was sitting upon it, and his bedstead, broom, books, &c., were thrown to one side; I called Mr. Whitesell, then we went in; he was crying; we asked what was the matter; he said he felt bad; said he had a fit in the night, and felt bad, and asked to be taken out to have some air; he looked wild out of his eyes, which were red and bloodshot; Mr. Whitesell took him out in the yard for about ten minutes; then he asked to go back to his cell; his face was white, very pale; he said he felt bad; I spoke to him when I opened the door; he did not notice me; I called his name before I went into his cell; after that I went home to breakfast; when I came back he said he felt better; he was very dull; he spoke only in answer to my question; he was lying on the right side, with his face to the wall; the second time I went in he did not turn around; he was very dull all day; we had to speak first; he looked dull out of his eyes; nobody but Mr. Whitesell and I saw him that day; every-time I went in that day he laid on the bed on his right side; I saw him on Monday the 26th, in the morning, lying on the cell floor; I called Mr. Whitesell, he stood at the door and I went in; did not notice me when I came in; I spoke to him; he said he had had a spell; he had none when I came; he did not speak till I spoke to him; he looked as he had before; I picked him up and laid him on his bed; he was very dull; on the 30th of June I saw him again; all these

times he had all his bed clothes all tangled up; in opening the doors considerable noise is made; this did not disturb him; he did not move when I opened it; [on the 2d of July I found him again after a spell; the bed clothes were over the floor]; on the 17th of July I found him in the cell in a fit; his shirt was all torn; I found him struggling with his feet and gritting his teeth, his face was very white, his eyes were partly closed, his hands were clenched, with the thumbs inside [witness shows how]; he lay on his back in bed; his face moved, that is, his chin moved up and down, and I heard his teeth gritting; I called two prisoners in and they held him down; they were Lewis Stein and Moses Roberts; when I got back his wrists were all red from holding him down; they had to hold him tight to keep him in bed; he made no answer to me; he seemed to know nothing then; after the convulsion he looked very pale and dull and wouldn't notice me when I came into the cell and spoke to him; at other times he was more cheerful and had a better color; on the day before these spells came on he seemed dull and would not speak unless spoken to; I could generally tell when these spells would come on; on the 24th of July I found him lying on the floor in water, with his head on a pillow; the cell was flooded; he did not talk; I called Mr. Whitesell; we took him over to Louis Stein's cell (No. 21); Mr. Whitesell went after Dr. Seip, the jail physician; Allen then commenced to talk about fishing and catching black bass; there was some paper in the cell and he tried to stuff it in his pocket; I tried to get it from him; he doubled up his fists and said, "I will knock you to pieces"; the day before, I noticed he was pale; his answers were short; towards evening I saw he was getting pale and dull like; he was short in his answers; I could tell the difference other days when the spells weren't on; he was different; the other days he had a fresh look; the doctor came a little before eight o'clock in the morning; he was over the spell when the doctor came; the doctor said when he got them again I should send for him. In a few days after he got them again; doctor came up at seven o'clock in the evening; I sent for him; this was on the 2d of August; a man by the name of Smith was in the cell with him; both doctors came up—Dr. Seip and his son; doctor said I should go in first alone so that he could see how he (Laros) behaved when he did not know the doctor was there; I went in and sat aside of him; I sat so as to hide the doctor; the doctor waited outside where he could see the prisoner without being seen by him; then he got one of those spells; he was lying on his left side; he was shaking, had his hands clenched, thumbs inside; in the face he appeared as he did before; I said nothing to Laros about sending for the doctor; sometimes these spasms lasted all day; each spasm would last ten or fifteen minutes; between the spasms he would lie down on the bed as if asleep, then get up and sit on the bed and then lie down again; he talked about going a-fishing and said he saw such nice things on the wall he had to laugh; he said foolish things; this was between the spasms; he would sometimes work at his pockets and be stuffing things in them and talk about catching black bass; his talk was very foolish; the doctor tried experiments to see if he was conscious during the spasms; he did not wince; doctor held the flame

of the light to his bare foot, but he did not move; his face was turned toward the doctor; he did not appear to know anyone; I sat by the side of him; he did not notice anything; I watched him closely; then the doctor heated some wax and dropped it on his face, his forehead and his ankles; the first time the doctor came he took a knife and jabbed him on the back of the hand till the blood came, but he did not flinch; he tried a hot key on the prisoner's hand and his ankle; it was so hot that Whitesell could not hold it, but Laros did not move; on that evening, August 2, the doctor dropped hot wax on his foot and ankles; he did not move at all, he seemed unconscious; doctor was going to try something else; I said it was cruel; I said that to the doctor outside the door; he never moved at all and I told the doctor not so do so any more, as it was cruel; there were blisters on him: then the doctor put snuff up his nose while he had a spasm: he did it three times and Laros did not sneeze, but after the spasm he sneezed once: doctor threatened to pour boiling water on him; the doctor said, "Hand me that boiling water:" he said it loud: Laros was in a spasm: they made a move to get it, but got some cold water instead and threw it on him: he paid no attention to it at all: he did not wince: Laros complained next morning that bed bugs and roaches had bitten his feet the night before and that he was going to wear stockings: I never told him the doctor was there: after he was burned (the next day) he said the bed bugs or roaches had bitten him when he saw the sores on his legs: on the 5th of August he had another: it was about the same way: he was dull the whole day before: he would always say he felt good, though he appeared dull: sometimes the spasms were hard, sometimes milder: on the 17th of July he had the hardest: that time he tore his shirt all to pieces: he might have a half dozen spasms in an hour: during the day before and the day after these attacks he seemed bewildered in his mind: on the 17th of July, after the spasm, I asked him what he thought of it: he said, "Reed's a good man, he gives me bread, and so is Mr. Whitesell:" I think he was not in his right mind: within the two hours preceding and following a fit I don't think he was in his right mind: I saw the doctor run his thumb nail two or three times across Laros' eye-ball during a spasm without producing any effect. he did not seem to feel it: the doctor may have pressed his nail under the prisoner's thumb nail I don't remember about that.

Cross-examined by Mr. Fox—He had six spells: the last on the 5th of August: the doctor was present at two, on the 24th of July and on August 2, perhaps also on August 5: he had as high as six spasms at one time: on the 24th of July the doctor got there one and one-half hours after I first found the prisoner: I don't think he had convulsions when the doctor came: Mr. Whitesell went for the doctor: the doctor got there about half-past seven: I think the doctor saw him in convulsions twice: I am sure the doctor saw him once in convulsions when I was present: on the 2d of August the doctor was with him two hours and tried the experiments alluded to: he had as high as six convulsions in succession after intervals of about five minutes: when he was in these convulsions his face was very pale, hands clenched and

feet stretched out and grinding his teeth: he would lie so ten or fifteen minutes: maybe it would be five minutes between the spasms: when I put the men in to hold him was the time when he threw himself about most: during the spasm his mouth was shut, his eyes shut and he was deadly pale and would lie stiff and rigid: he tore his shirt after the spell was over: he tore his shirt only once: I held him once myself when he began tearing the sheet: he tore it when the spasm was over: except at these times he had a good color: after a couple of hours he would say if I asked him how he was, "Pretty well," and when I asked him if he could eat he would say, "Yes:" when I observed he looked pale the day before and the day after, if I asked him a question I got sensible answers from him, short answers, "yes" and "no" and "I feel pretty good:" he would answer my questions: I would have to speak first: he never had much to say in the jail: didn't express any apprehension as to what would become of him that I heard: when he had a good color and was not dull he would come out in the corridors and talk some with the other prisoners: after the 24th of July I put Monroe Smith in the cell with him to stay with him.

By Mr. Kirkpatrick—He might have had spells after the 5th of August and I not know of it. I have found him very dull in the morning sometimes and the bed clothes scattered around. I didn't ask Monroe Smith. Don't remember whether the doctor was there more than one night or not. He might have been. He was there the first time in the morning and the second time in the evening; that was the 2d of August. He stayed about two hours then. The doctor might have been there another time without my knowing it; I don't remember.

By Mr. Fox—His bed clothes would be rolled up in a heap, bunched up.

By Mr. Kirkpatrick—I found the bed clothes twice on the floor.

William A. Horn, sworn.—*Examined by Mr. Scott.*

Q.—Do you know the daughter of Mrs. William Berry?

A.—She lived at my house three months ago.

Q.—State whether she was of sound or unsound mind.

Mr. Fox—Objected to. Let us have your proposition.

Mr. Scott—Defendant proposes to prove by the witness that the daughter of Mrs. Berry (a grand-daughter of Robert Levers, who was an uncle of the mother of defendant), was and is insane and has been for years.

Mr. Fox—Objected to by the Commonwealth because the relationship between the person in question and the prisoner is too remote.

The Court—Objection sustained and exception noted.

James Monroe Smith, sworn.—*Examined by Mr. Kirkpatrick*—I was confined in the jail on the charge of obtaining credit at a hotel by false pretences; the charge was made by Wm. Lilly, of Bethlehem; the bill was ignored by the grand jury; I was requested by Dr. Seip and Mr. Reed to occupy the cell with Laros on Monday, July 24, I think; that night nothing special occurred; we were both up pretty much all night; we slept part of the night; noticed nothing in particular until the next night; after they closed up in the evening I was sitting on

my bed reading; he attracted my attention first by gritting his teeth; his feet and hands were trembling; that continued for about five or ten minutes; he was lying on his right side, his arm partly under his head; when the spasm was over he was restless; he would turn over and in five or ten minutes after he would have another; he had five or six between eight and ten o'clock; I laid down in my bed and sometime after, perhaps an hour, I saw him rise up in bed; I spoke to him two or three times, but he made no answer; then he got off the bed, took off the blanket, put it on the floor and sat down on it; then he got up and got a piece of willow off the shelf, the kind that baskets are made of, also some string out of his pocket; then he sat on the floor about an hour and a half; he never looked at me or noticed me; finally he got up, went to his coat, which was hanging on the wall, and felt in his pockets; I asked what he was looking for and got no answer; then he sat down in the corner where there was some waste paper swept together; I noticed he had something in his hand; it was a match; he struck it and lit the paper; then I put the fire out; he paid no paid no attention to me; he went back to the same position on the blanket; he mumbled something; all I could make out was "fish, fish;" this was after he had lit the paper; he was that way all of one and a half or two hours; he got up several times; it was about the same way each time; he mumbled about fish; then he went to bed again, and got up three or four times; I spoke to him a dozen times or more, but did not take hold of him; he did not notice me; he was restless all night; his breathing was unnatural, like a drunken person's; I don't think he slept; he appeared to be in a stupor, like a man intoxicated; he got up a little after six o'clock next morning; he appeared dull and stupid all day; he acted stupidly; didn't answer unless he was spoken to; this stupor continued twenty-four or thirty six hours; I noticed him particularly, closely; the doctor wanted me to watch him; he didn't get rid of his stupor until the next morning afterwards; between the spasms I never could attract his attention; he was not bright during the week; at times he walked in a staggering way, with eyes cast down; the first week I think he had the spells every other night; he had three that week; he had spasms similar to the ones I have detailed; that was the only night he got up that week; they usually began about eight o'clock in the evening; I saw him have spasms on Tuesday, Thursday and Saturday nights of that week; his hands would sometimes be doubled up and sometimes straight out; sometimes the spasms would be slight, sometimes severe; they would continue about two hours; I didn't think he was very bright at any time during the week; he walked staggering, with a scowling look; he walked as if dizzy; he complained of his head before and after the spells; the whole week he was about the same way; he complained a good bit of his head and also his throat after a spasm; he had spells twice during the next week; he would talk of fish and snakes during spells, and of them only; he always talked about the same things and acted in the same way; one night in the second week after a spasm he was feeling around over the bed, and I asked him what was the matter, when he said, "Snakes, snakes;" he

said this some little time after my question; I don't know whether it was in answer to it or not; he would look down steadily, then carefully pick up a piece of ravelling and put it in his pocket; the same way with bits of paper; the next week he had them three nights; the spasms all came on from seven to nine in the evening; the afternoon before he would have them he would act like he did on the day after he had a spasm; I could tell when they were coming on; I was told to watch all his actions carefully; the doctor was there twice in the night; I saw the doctor try experiments; they occurred just as Mr. Reed explained them; the statement by Mr. Reed was correct; he didn't seem to feel them at all or take any notice of them whatever; the next day he said nothing about the doctor being there; he didn't appear to recollect it; the experiments with the key were made on the first night; the others were made on the second night; prisoner manifested no feeling upon their application; the day after the doctor's visit he knew nothing about the visit; he told me he thought the cockroaches must have made the sore spots on him; on one Monday there were several of his sisters to see him; on the next Wednesday I asked him about them and he said they had been there, he believed, the week before; he denied their being to see him on Monday; he had a spasm on that Monday night and every night until the end of the week; those last week were not so severe; he had spasms on last Thursday, Friday and Saturday nights; the last night I spent with him was last Saturday [Aug. 19]; I tried him once with a piece of hot brass, so hot that it marked his hand; it burnt a blister on his hand; he didn't see me heat it, as he lay the other way; but he did not notice it, he kept on trembling [in the spasm]; he did not move his hand; he did not always grit his teeth; when the spasm was severe he did; one time the doctors came and left a wash to put on the blisters raised by the experiments; next day they came again and asked the prisoner where he got the wash for the blisters; he said Mr. Reed gave it to him; don't think he was in his right mind while those spells were on him; never was three days without the spasms; he was brighter when the periods between the spells were longer; before and after spasms he would answer intelligently sometimes, but would have no recollection of it afterwards; I don't think he was in his right mind at such times.

Friday Morning, August 25.

James Monroe Smith on the stand.—*Examination by Mr. Kirkpatrick continued*—Was present twice when the doctor performed his experiments. Mr. Whitesell and Mr. Reed both said he should not be tortured any more. I heard Mr. Reed's testimony. I saw the tests applied; they were correctly described. Mr. Reed and Mr. Whitesell expressed themselves satisfied. When in a spasm he didn't lay perfectly straight; he lay in all positions, on his sides, back and face. I noticed blood on two occasions; it proceeded from the nose; it was dark and didn't look fresh, as though it had been in the nose some time. I noticed it one morning when he had a fit the night before; I noticed blood on his shirt and hands. The first time I saw

the blood was the evening following a fit. It was on his shirt and hands. I saw blood on his hands and clothes twelve hours after one of his spells; it came from his nose. He got it on his hand and I saw him rub it on the bosom of his shirt. During the spasms his eyes were about half closed, the eyes turned toward the nose. I never noticed the eyeballs red. I never saw them so. They might have been and I not seen it.

Cross-examined by Mr. Fox—Don't think I was ever in his cell until I was called in to stay. I told him I was coming in to stay with him. I went in about the middle of the afternoon on the 24th of July. The cells were locked about eight o'clock. The first spell occurred on the second night I was in. It was July 25. He had them Thursday and Saturday of that week and Wednesday and Friday of the next week, and on the week following that he had three, and the first week of Court he had them on Thursday, Friday and Saturday. I might have said something to him on Thursday about the progress of the trial. On Friday he asked more for information than to tell anything. He asked me what I thought of Mr. Scott as a lawyer. I told him I thought he was doing all he could for him (Laros). He was pleased with the answer, seemed pleased. He had fits daily before the swearing of the jury. He didn't go fishing those three nights. I don't think they were any pretended fits. Some things I asked him about the trial he said he didn't remember. I don't think he was rational at the time. He did not seem to remember. I never saw but one person have epileptic fits before. I am satisfied by the tests that he did not pretend to have spasms. I know from his actions. If a man stood the test of red hot iron on his feet on two successive occasions and broke down on the third [as narrated by Mr. Fox to the witness] this would not alter my opinion as to the genuineness of his [Laros'] fits. Between the spasms he would have but very little more color than during the spasms. The greatest paleness was before and during the spasms. He was very pale during the tests. He would not get entirely over the paleness until twelve hours after the spasms were over. Sometimes during the trembling spasms the hands would lay out naturally. When his hands were clinched together his thumbs were inside. I never saw his thumbs otherwise when his hands were closed at all in a spasm. He generally gritted his teeth without much movement of the mouth.

Theodore Whitesell, sworn.—*Examined by Mr. Kirkpatrick*—I am the warden of the prison and Mr. Reed is the deputy. His duties are inside and mine in the office. I went in sometimes when I was called. I saw the spells on Laros. I was in an hour at one time. I was there while the doctor was there. The doctor was there August 2 and 7, both at night. I remember the time the cell was flooded with water; that was on July 24. Then Dr. Seip requested us to put some one in. Monroe Smith was put in just after that. I was there when the doctor applied his tests. The doctor applied the hot key to me and I couldn't stand it. This was after he had applied it on Laros; he didn't manifest any sensation; he did not seem to feel it. I saw the marks of the sealing wax. I did not see it dropped on. After the fit

was over, that time he let the water run, I walked him up and down; he seemed very weak.

Cross-examined by Mr. Fox—Since July 24 I saw him every day When we locked up. He would answer me when I spoke to him. He knew me these times when he had no fits on. He never called me by name. I never noticed anything unusual in him when I took him out and into the Court. He would say it was warm when I asked him whether it was warm. When he returned from the Court House last Thursday, Friday and Saturday he walked as well as usual. Observed nothing in his manner or conversation to indicate that anything was wrong. He seemed pretty much like other men. Noticed nothing wrong mentally about him.

By Mr. Kirkpatrick—I didn't pay particular attention. He never talked much. He was a very quiet prisoner.

By Mr. Fox—I thought the convulsions were genuine. To me the tests were satisfactory. Before that I had not made up my mind.

Dr. Amos Seip, sworn.—*Examined by Mr. Kirkdatrick*—Have practiced medicine twenty-nine years, nearly twenty years in Easton. I am physician of the jail. Have been since December, 1875. Have been physician to the jail at different times for the last fifteen years. I saw Laros at different times. I think I saw him the day after he was arrested or the day after that. The first time I saw him he complained of a very severe headache, and I prescribed for him. I think Mr. Reed sent for me on the morning of the 24th of July. He sent in consequence of my request. I was there the morning the cell was flooded. He was in the cell opposite the one in which he was usually confined. Prisoner was on the bed (this was July 24), barefooted, acting in a wild and incoherent manner, talking about fishing, seeing water snakes, &c., nonsensical talk. He was lying and sitting alternately. He would pick at small objects, take them up and put them in his pocket. Any bright object he would endeavor to get hold of. His pockets were stuffed with bits of paper and such things. He tried to get the warden's shoe-buckles and the bright tips of my shoe-strings. I asked him to walk. He seemed not to have control over his muscles; no control of his limbs. I thought he was shamming. I persuaded him to go out in the corridor. He consented to go if one of the prisoners would go with him. The attendant paced up and down with him. As he walked the gait grew steadier. I found his pulse very weak and feeble, skin cool and pale. At that time I knew nothing of his previous history. I had tried to avoid him. I avoided the case before this, but being drawn into it and finding it necessary I determined to ferret out the case. I directed that some one should be put in the cell with him. I selected a man for the purpose, Mr. Reed and I together. I examined several before I found one of sufficient intelligence. We finally settled on Mr. Smith. I didn't mention our intention to the prisoner [Laros] at the time. That morning he was very dull. It was difficult to get him to comprehend what I wanted him to do. I left directions to be sent for. If my memory is right as to the date on the 2d of August I was sent for. Was sent for twice at night according to my directions. On August 2 was sent for at night.

I told Mr. Reed to go into the cell and say nothing about my being there. I stayed outside the cell while Mr. Reed's body hid me from the prisoner's view, while I could see him. As I stood there I observed he lay on the left side in a semi-prone position. Soon saw him shaking and trembling. After that, as soon as the spasm began, I went in, still keeping behind Mr. Reed. I studied him some little time to see the character of the convulsions. That was my first view of them. The spasms were confined principally to the hands and lower extremities; hands were clenched and thumbs inverted; his eyes were nearly closed; his face was motionless, or nearly so, and very pale. I examined his pulse; it was about 85; respiration slightly increased; skin and surface were cool. He did not seem to recognize me at all. I then pinched him with my fingers with all my might and found him completely insensible. I took out a pocket-knife with a large, dull blade [shows a knife] and jabbed him upon the back of his hand till I drew blood. I stuck him four or five times. He did not flinch. He could not have seen me do it even if he had been conscious. He was perfectly insensible during the spasms. During the spasms there was rigid contraction of the muscles, which passed off with the spasm. After the knife tests I took the lamp and Dr. M. S. Seip held the flame under the prisoner's bare foot until I was afraid to have it remain there longer and told him to take it away. He [Laros] manifested no sensibility. I then heated a brass key so that nobody there could bear it and drew it over his feet, ankle and legs without a sign from the prisoner; also drew it over the temple with like negative results. He did not manifest the least sensitiveness. I heated it twice and applied it. I might as well have laid it on a piece of iron. I had been suspicious of him before that. I was nonplussed, puzzled. As he came out of the spell he became violent. He sat up on the bed and talked very incoherently. He made use of his usual expression, "I will knock you to pieces," and a constant talk about fishing and catching black bass; also incoherent talk about Easton policemen, "I'll fix 'em." Upon examining him further I observed that the skin was off on the side of his forehead. The warden told me that he had seen scabs there. It looked as though he might have either rubbed off the skin on the wall or on the rough pillow. There was an exudation of serum on the abrasion. While we had him on the bed, and trying to get him to answer something rational, he grew violent and called for Reed. Mr. Reed was in the corridor with his lantern. He [Laros] then made the remark that Mr. Reed would protect him. Mr. Reed came up, but the prisoner did not seem to recognize him. He grabbed the lantern with his teeth. It took considerable force to get it away from him. Then he tumbled over on the bed again, would groan and grind his teeth. After that he gnashed his teeth and went into another spasm. Three or four occurred at intervals of ten or fifteen minutes. We left then after being there about an hour. I left word that if any similar attacks came on I should be sent for. I was not perfectly satisfied. I went there the next morning; I found him dull and stupid. He did not seem to understand. I tried by a cross-examination to ascertain if he knew I had been there the night before.

He did not answer inteligently. The wounds he referred to bugs or roaches, which he said must have come from the water closet. That morning I was there half an hour. Got there about nine o'clock. He was in his cell. Did not see him out of it. He certainly was not rational that morning. The next visit was on the evening of August 7 [or August 5]. I got there about seven o'clock. I was sent for by the warden. When I got there I sent Mr. Reed in ahead as before so as not to let the prisoner know I was there. I watched from the outside. I went into the cell when I saw the convulsion was complete. I now tried to act on the prisoner's fears to learn if he was conscious. I had a previous understanding with Mr. Reed. I said loudly that it would be necessary to pour hot water on his limbs. My manner was positive. I told Mr. Reed to go get the boiling water. We stripped of his shoes and stockings and drew his legs out of bed. We dashed on water as cold as possible that he might be thrown off his guard by the shock. You might as well have thrown it on the ground. He did not manifest the least sensibility. He made no quiver. This test has been recommended by some of our leading authorities. It is regarded as a sure test. Is used by London policemen. I next thrust my thumb nail under his with no effect. I pressed with all my might. It amounted to nothing. It made no impression on him. I next used Scotch snuff. My back hid my manipulations from the prisoner. I took a straw and filled it with snuff and puffed it up his nostrils. He lay three minutes trembling. When he came out of the fit he sneezed once or twice. This sneezing was after he came out of the fit, not before. Aitken gives a case of feigned epilepsy which was detected by sneezing for half an hour by the prisoner after applying the snuff [see Aitkin's Prac. of Med., vol. 2, p. 858]. I then got the sealing wax. After baring the limbs I took a stick of the wax, held it in the flame until it blazed up and dropped eight or ten drops of burning wax on the foot and ankle. It flamed on the skin, but he gave no motion. I thought that might not be sufficient, but the warden complained that I was unnecessarily severe. I, however, dropped several drops on his temple, both sides. He did not seem to feel it in the least. He was perfectly unconscious. The scars are there yet. One small drop accidentally dropped on the left eyelid, which I at once removed. The wax adhered firmly to the skin and on removing it the skin came off with it. On account of these sores he was unable to wear his shoes and stockings for several days. [The bare foot and ankle of the prisoner were shown to the jury. Dr. Seip pointed out the unhealed sores made by the wax and also called attention to the scars on his temple and eyelid.] One of the places is seen to be suppurating even now and it is about eighteen days since it was burned. The scars on his hand were made by Mr. Smith with a hot rule. The white of the eye was very red, skin pale, pulse about 85 to 87, small and weak; respiration accelerated. He had three or four, possibly five spasms that night. During the interval he used his stereotyped phrase "I will knock you to pieces" and the same incoherent talk about fishing, always the same strain. One queer thing I noticed that evening. It had been accidentally discovered by Mr. Smith that if

you would fix your fingers claw-like and make a motion toward him he would shudder. I advanced toward him with claw-like fingers and he thrust himself down in the corner with the most terrified countenance I have ever seen, a physiognomy betokening mortal dread. He would crouch down in terror and hide his face in the bed clothes and then gradually peep out again. I practiced this until I thought to do so any more would be unnecessary cruelty. Before the spells came on he often complained of pain in his head, as though mice were nibbling there. I noticed the gritting of the teeth in these spasms. His hands were clenched, thumbs turned in and some moaning at these times. Epilepsy is often preceded by a peculiar feeling—the aura epileptica. He complained of a feeling which would originate in the bones of his lower extremities and rise gradually to his head. I suppose he felt an aura. There is nothing regular about it. It is sometimes in the thumb, sometimes in other parts. This patient would describe it as a gnawing in the bones. My son was with me on this occasion [August 7]. We were there about two hours. The white of the eyes were red; in one of the spasms I noticed a squint. I visited him daily for some time. Next day he appeared stupid and unable to remember what had occurred. He said the roaches must have bitten him and wanted them kept out. I gave him a soothing application for the ulcers resulting from the experiments. The day after I gave it to him he brought it to me and said Mr. Reed gave it to him, and asked what I thought of it. I don't think he had a connected thought that day. He seemed to lack the power of concentration and attention. I could hold no connected conversation with him. I was there from half to three-quarters of an hour. somewhere between 9 and 12 in the morning. This was while I was examining his head he grew indignant and complained bitterly of my hurting his head and tried to get away from me. He jerked away. This was after the second attack that I saw him. I thought his mind was affected for three days after that attack. I visited him on the third day. His mind was not as it should be. He did not seem to be himself. But on the fourth day he was as clear as a bell [August 11]. Can't swear as to dates positively, but can to the facts. When he was sitting up between the spasms that night [August 7] he would pull his hair. I made the experiments to ascertain his physical and mental condition. From my observation of him and experiments upon him I believe he had epilepsy. In my opinion he was suffering from that disease. Epilepsy does not exhibit all the symptoms of a typical case at all times; they differ often in the same individual. I have examined eminent authors upon this subject and studied it somewhat. I have examined the treatise of Echeverria on epilepsy. He is considered high authority on epilepsy. I have read the article on epilepsy in the new edition Am. Encyclop., by Dr. Brown-Sequard and revised by Dalton. William A. Hammond's work on the nervous diseases is among the standard works. I prefer Echeverria to Hammond, whom I think might be prejudiced on some points. I have examined the pamphlet of Echeverria on Epileptic Insanity, a paper read before the Association of Medical Superintendents of Institutions for the Insane at Baltimore, 1873. I think he men-

tions over 500 cases. Prof. Wood is among the highest authorities on this subject. Wood refers to the different expressions of the attack at different times. I have examined Echeverria on "The Criminal Responsibility of Epileptics" and consider it a reliable work. Brown-Sequard's statement as to the variety of epileptic seizures I agree with. I agree with Brown-Sequard that continued epileptic seizures may lead to insanity. The essential feature of epilepsy is loss of consciousness with or without muscular contraction. Epileptic insanity is regarded as more frequently the result of the milder form of epileptic seizures, especially where the seizures are frequent in number. The seizures may range from the more insignificant petit mal to the most profound grand mal. Both these varieties may exist in the same individual and often lead to a state of melancholy. In my experience I have noticed the nocturnal variety. I would put the prisoner's case under this class. Some cases recorded by Echeverria, Ray and Clymer whose minds were affected by the fits, although ordinarily no exhibition of an unusual character took place while carrying on ordinary business pursuits. Cases have occurred where the patients, suffering from epilepsy, after the fit and while the effect of it was still upon them, would seem to act rationally, but really have no knowledge of what they were about. After an attack the mind may be stupid or irritable, or even violent rage may be excited by the smallest provocation. [Mr. Kirkpatrick here reads from Ray on Insanity, pages 475 and 476, where it is said the symptoms may vary and that the ordinary stupor may be changed to violent irritability.] I agree with that. I have noticed those symptoms in the prisoner.

The Court, at the objection of Mr. Fox, here interposed in regard to the way the medical works were being used and said that it was not the testimony of the witness, but of the books, that was being taken. The defence did not press the point. The books were laid aside on the further examination of the witness.

Witness continues—The symptoms may vary greatly in different persons. Epileptics are generally pale during the seizure; there may be no redness at all. The books generally put a typical case. Cases in practice don't usually tally wholly with a typical case. The resulting mental aberration is usually due to the greatness of the number and the frequency of the seizures. The more frequent and the greater number the more the mind will be affected. Epilepsy is more frequently productive of mental disorders than any other disease. Seventy-five per cent result in deterioration of the mental faculties. Every convulsion almost always leaves at least some momentary effect upon the mind; a seizure almost always deteriorates the mind somewhat. From my observations of the prisoner for the period within twenty-four hours after the attacks I do not think he was strictly rational. Upon one occasion I saw him six to eight hours before an attack. He appeared dull and gave imperfect answers. Always complained of pain in his head. This was in the afternoon of August 2. During the day before the seizure I did not think his mind was clear. It was only upon one occasion that I saw him immediately before an attack, how-

ever. I don't think he could then or at such times calculate the effects of his acts. I heard the testimony as to his symptoms and his actions during the week of the occurrence [poisoning] as detailed by the witnesses, assuming it to be found true by the jury, and from my observation of him in the jail, I am led to form an opinion that on the evening of Wednesday, when the alleged act of poisoning was committed, he was not perfectly sound in his mind at its commission. I don't think he was fully responsible at that time.

Q.—From your knowledge, experience and study would the presence of an apparent motive for an act done by the person be possible to exist while such person was laboring at the time under the influence of epileptic insanity?

Mr. Fox—We object to that.

The Court—You may ask that question.

Witness—The question is hard to answer, because it involves more than I know what to do with.

Q.—Have there been such cases on record where persons have acted apparently from motive and yet were laboring at the time under the influence of epileptic insanity so far as your reading, study and personal observation have gone?

Mr. Fox—We object unless the witness can answer from his own knowledge and personal observation.

The Court—Objection overruled.

Witness—I think I have read of two cases. Don't think I ever met any in my experience. If my memory serves me I have met two such cases in my reading. In the works of Morel and Falret.

Cross-examined by Mr. Fox—I have seen quite a number of cases of epilepsy; have had two cases of epilepsy under my continued observation five or eight years; have seen twenty or thirty cases since I began practicing, perhaps forty; of the cases I have had four or five became insane; they were all violent; I think their friends kept them; don't think any of them were committed to an insane asylum; they had been subjects of epilepsy to my best knowledge four, five, ten or fifteen years before they became insane; of the balance of my cases a large proportion became imbecile after four, five, ten or fifteen years; never knew in my experience an epileptic to become insane in less than about four years; I have no record of the cases; those who were attacked oftenest were affected in mind soonest; I don't think I can remember any cases which became insane in less than four years; the frequency of paroxysms varied in the different patients; their paroxysms were from one day to three months apart; from my recollection the ones attacked the oftenest became insane soonest; have known them between attacks to attend to their business and to continue in this way for years; some of them would go about their affairs as soon as the fit was over; epilepsy is often feigned, and where the supposed subject is under an accusation of crime, tests must be resorted to in order to determine whether the epilepsy is genuine; my opinion of the nature of Allen Laros' attacks is formed from my own tests; that coupled with the testimony of his friends as to his previous symptoms and condition leads me to believe he was mentally unsound; my opin-

ion of the state of his mind at that time [Wednesday evening, May 31], depends upon the statements of his friends and my own observation; I assume the testimony as given by his friends here to be true; don't remember anybody testifying to an attack between those at Mann's and the one in the fall of '75: according to the testimony the convulsions at Mann's occurred about four years ago; if the convulsions at Mann's were caused by a tape worm, which was removed, and he had none until two months before his father's death, my opinion might be altered; the presence of a tape worm might explain the first convulsion at Mann's; I myself never saw insanity occur in less than four years after the first attack of epilepsy and in those cases the attacks were frequent; there are plenty of cases in the books where the mind deteriorated after one attack; his forgetfulness and naivete might be assumed; he could have assumed the non-recollection; if he was feigning the fits that I saw it would alter my opinion as to his mental and physical condition, but he was not feigning; utter unconsciousness during the fit is characteristic of epilepsy; a want of recollection of what happened during the period when he seemed to be unconscious would be strong evidence that he really was unconscious; if he were able to detail what happened during the fit afterward I would then conclude the fit had been feigned; if he went on quite as usual with his daily avocation this would not change my opinion, not without something else; a man might conduct his school, going through the ordinary routine of teaching, and yet be unsound in mind; he might go through some of the ordinary kinds of reasoning and teach his pupils correctly two days and at that time be incapable of judging right from wrong; this would not be extremely improbable; an epileptic patient might go through the routine of teaching mechanically and yet be affected at the time with epileptic insanity; I don't say he would teach *intelligently*, but he might do it *mechanically, automatically;* he might do it so that he would not be suspected and yet at the time be entirely under the influence of epileptic insanity; this seems to be the doctrine of modern writers; I think you will find it in Echeverria and Ray. [The witness here reads a passage from Echeverria's pamphlet, "Criminal Responsibility of Epileptics," page 61 (or see the same in American Journal of Insanity for January, 1873), the case of a young man who became epileptic after a fall. He would suddenly become unconscious in the midst of conversation and in a few minutes regain consciousness, entirely unaware of his condition. After one of these attacks he went into the street, took a horse and buggy which he found tied, rode to his father's grave, plucked flowers, returning gave them to his mother and invited her to ride. But she told him to take the horse to its owner; instead he put the horse in a livery stable as his own. The owner considered it a crimlnal action. This caused much mortification to the family; but the youth could never account for his conduct and completely forgot every circumstance. On another occasion he wandered to New York and shipped as a sailor. During the voyage, a few days after his departure, he came out of the state of epileptic insanity and expressed great surprise at finding himself on shipboard. Through the kindness of the captain and the exertions of

his friends he was returned home. He had similar attacks of insanity after nocturnal paroxysms and also after the fits of *petit mal.* In the intervening periods quite rational, but after the fits very mischievous and inclined to wander off; also at such times given to violence. The witness (Dr. Seip) also read of and related cases similar to the above.] Although Laros were able to teach school three days [Monday, Tuesday, Wednesday] and nothing unusual was noticed in his appearance and actions, it would in my opinion be possible that on Wednesday evening he was not capable of telling right from wrong; he might have had epileptic seizures before and he might at that time be influenced by the effect of the seizures; I do not think he was strictly responsible on that Wednesday evening, this upon the assumption that the evidence in regard to his symptoms and actions is true; I say *no* [to the question was he morally responsible on that Wednesday evening]; I say, provided he was affected in the way the witnesses testify, if he had those symptoms [vid. testimony of Erwin, p. 86; Mrs. Walter, p. 88; Maggie, p. 92; Clara, p. 95, and Alvin, p. 96.—*Ed.*] although he taught school on Monday and Tuesday he would not be responsible on that Wednesday evening; this is entirely consistent with the epileptic state.

Q.—Could a man teach intelligently Monday and Tuesday, get poison, put it in the family coffee pot, take his father's pocketbook, bury it in the ground, sit down to the supper table with the family, then when they were all taken ill get up from the table, help the sick, and three days afterward tell just where the money was hid and yet be incapable of judging between right and wrong when he put the poison in the coffee pot?

A.—He could. I believe a man suffering with epilepsy could do all that. He could even chop a person's head off and not be morally responsible.

Q.—From your own observation could he?

A.—From my observation of that man Laros I believe he could do all that and not be responsible.

Q.—Is that founded on your own observation?

A.—It is my impression from what I have seen and read. I could not tell from any previous case because I have had none such as Laros' previously. I have had cases of epileptic insanity in which the patients might have done all you say Laros did and yet not be responsible.

I mean by moral responsibility the ability to distinguish between right and wrong.

Q.—From your observation alone, prior to seeing Laros, could a man having epilepsy have done what I have just mentioned, and would he be incapable of judging between right and wrong?

A.—Not from observation alone, because I never had any cases that correspond with Laros' case. My experience alone, without the Laros case and without the knowledge I have derived from reading, would not be sufficient for me to form an opinion as to the moral responsibility of the prisoner.

Q.—From your past experience, before you heard of Allen Laros,

could in your opinion, a man purchase poison, put it in a coffee pot, take the pocketbook, bury it and three days afterward tell where it was? and would he be responsible?

A.—Judging simply from my experience, without the Laros case and without my reading, he would be responsible.

Even if he could describe his motives for the deed I would consider it as entirely compatible with the epileptic state; if he should minutely describe all the occurrences it would not alter my opinion [as to Laros' mental state on that Wednesday night]; it would be strong evidence that he might be responsible; if he described where he put the pocketbook it would be evidence that he remembered what he was doing, but not necessarily that he knew the *effect* of what he was doing; epileptics become insane when the mind is affected; the boundary line between reason and insanity may be passed at any moment; an epileptic may, as a general rule, with exceptions, be responsible; they may be morally irresponsible without showing any symptoms of insanity; it is impossible to tell when an epileptic will become insane; he may be seized with it at any moment; the exceptions to the rule just mentioned are typefied by an epileptic who had up to a certain time acted sensibly, but suddenly showed a tendency to steal or do any crime; he may have been morally irresponsible for some period previous to the commission of the crime and yet the crime be the first manifestation of his insanity; he may become insane immediately before the commission of the crime; if an epileptic should appear to be all right in his mind and not just after or before an epileptic seizure would commit a crime, that alone would not convince me that he was insane; if he had suffered from seizures just previously or even some comparatively brief time before or after I should say he was insane; I would not be influenced by the atrocity of the crime.

FRIDAY AFTERNOON, August 25.

Dr. AMOS SEIP on the stand.—*Cross-examination by Mr. Fox continued*—It is sometimes necessary to use severe measures to detect feigned from real epilepsy. Am acquainted with Ray's work. One case is there mentioned where a man stood for four successive days the application of hot iron to his feet without flinching and finally confessed that he had been feigning. I tried the sealing wax a dozen times on this one occasion. I think the wax more potent than iron. I think it will produce as much heat if not more than hot iron. It is a better test. I held the key mentioned in my bare hand near the cool end, but after I had tried the hot end on Laros I put it on Whitesell and he couldn't stand it. I don't think a man could simulate epilepsy so well as Laros did. I do not think it possible to simulate to the extent that this man went in his symptoms. It is possible for one to simulate epilepsy, but not to such an extent. I don't think a person could stand the tests I subjected Laros to if he was simulating. Am acquainted with Esquirol's work. Don't recollect the passage in Ray which states that Dr. Camile deceived Esquirol, making him believe he had an epileptic fit. [Mr. Fox here read the incident referred to.]

Yes, that is possible. Trousseau is an eminent author. It is possible that an epileptic patient might be insane although no one had ever noticed any insane act. I think the commission of crime and nothing else would not be evidence of insanity in an epileptic. If he appeared sane before and then committed a crime I think he might be or might not be responsible. The bare fact that he committed a crime would not of itself be evidence that he was insane. The mere facts that an individual had an attack of epilepsy and then committed a crime would not be sufficient data from which I would conclude that he was insane; I might conclude that he was liable to be insane. The latter conclusion I would arrive at from a knowledge of his antecedent symptoms. If the crime was an unnatural one it might lead one to suspect insanity, although no sign of it had previously been manifested. It might even be in the case of an undoubted epileptic some evidence of insanity. The single fact of the crime would not render an opinion conclusive.

Q.—If a long interval—six months—was proved between an epileptic attack and a subsequent attack two months before the commission of a crime, and there was no evidence of mental derangement, and then that the person committed a crime, what would you conclude?

A.—I would conclude that it was a possible case of insanity; can't say positively.

If Allen Laros was not mentally deranged at the time of the alleged poisoning I would consider him morally responsible. I consider that on the night of Wednesday, when the crime was alleged to have been committed, he was mentally deranged. He may have been so the day before or the day after. I think he was that evening. Can't say how long, before that, he was insane. If no crime had been committed, and I heard all the circumstances of his actions and symptoms and had the results of my observations in the jail, I would have thought him mentally deranged on the 31st of May. I should think he might be insane twenty-four to thirty-six hours after a paroxysm. It would be possible for the insanity to continue longer than thirty-six hours after the paroxysm. Every act which followed the paroxysm he might feign and deceive me; that is possible His dull and sluggish mind and answers led me to form an opinion. He may have known I was the jail physician. I think I was capable of reading him or of leading him on by a cross-examination. I don't think he could have deceived me in regard to his mental condition. In his physical condition there were evidences of derangement. His tongue was coated. If he had intended to deceive me he would likely do the very things I noticed in him after the paroxysms. When a man attempts to feign insanity or anything else he generally overdoes it. Deceivers generally overact the convulsions. One cannot simulate unconsciousness during such tests as I subjected Laros to. Fishing with a willow switch and string in his cell is compatible with his condition and delusion. This same notion of fish and fishing seems to have always been present in all the attacks according to the evidence. In epileptic insanity there is generally present a repetition of the same acts or ideas. It is called the "echo" sign. [The doctor here read a passage

from Echeverria's pamphlet on Epileptic Insanity.] After he had recovered from the effects of the paroxysms I talked with Laros about the fishing and he didn't remember it. That he did not remember it I thought strengthened the proof of his weak mental condition. If he had remembered all that had occurred during the paroxysms or in the intervals between them this would be of weight to affect my opinion as to his insanity. That he remembered where he put the pocketbook, where and how he bought the poison, would have some weight in affecting the question of his mental state at those times and at the time he was telling about it, but would not be sufficient to change my opinion as given in my evidence as to his mental condition at the time of the alleged poisoning.

Re-examined by Mr. Kirkpatrick—In the case of Laros I do not consider him sound in mind for twenty-four or forty-eight hours before and after these paroxysms. The fits he had on Thursday and Friday, after the poisoning, taking the testimony on that point as true and my observations since, were the bases on which I formed the opinion of his irresponsibility on that Wednesday evening. He would be thus irresponsible for from twenty-four to thirty-six hours before and after the paroxysms, and this would be perfectly consistent with a belief in his sanity during long periods when he was free from paroxysms. If he had a succession of fits from the Saturday previous to that Wednesday of the poisoning until the following Friday it would increase the evidence for the belief that the person was insane on the evening of the intervening Wednesday. In the intervals he may be simply bewildered and recollect parts of acts, or quite insane; this would depend upon the length of the interval; he might be even perfectly sane for a little time. I don't consider Laros insane at all times. I never did. [Mr. Kirkpatrick here cited and read of the Montgomery case, where a man killed his wife, after five minutes' deliberation, by a blow from an axe, and yet the man was decided to be epileptically insane.] I have read the case. The idea of some deliberation and the recollection of it afterward would not be at all inconsistent with the theory of epileptic insanity at the time of the act. In case a party were affecting epileptic insanity they would be very apt to overdo the acting. They have even been known to put soap in the mouth to produce the frothing during a fit. It would be far more likely that an eminent doctor could deceive and completely simulate the epileptic symptoms than an ordinary person who had no special knowledge of or acquaintance with epilepsy.

By Mr. Fox—As to the test of snuff I never saw the man who don't take snuff habitually who wouldn't sneeze if snuff was put in his nose. It took Laros three minutes to sneeze; he sneezed once or twice after the paroxysm had passed, not before. Prior to the Laros case I never saw or heard of a case in which a man under the influence of epileptic insanity never gave, except during the periods of the twenty-four or forty-eight hours preceding or following the paroxysms, evidences of insanity. Out of thirty or forty epileptic patients of mine I don't recollect over four who became insane. I have a lady patient who is a sufferer from epileptic attacks. She shows some of the signs of an im-

paired mind. Don't exactly agree with what Dr. Hammond says. He deals in rather large figures.

By Mr. Kirkpatrick—While Laros was in a paroxysm I drew back the eye-lid and drew my thumb nail over the naked eye without producing any impression or twitching. He was quite belligerent sometimes between the spasms. He would strike on the bed as though he wanted to fight.

By Judge Meyers—From my observation and examination of the prisoner in the jail I came to the conclusion that he had epilepsy. From the evidence I think he must have had it before. I consider this a case of epileptic insanity; assuming the evidence given in the case to be true, and from my observation of his after symptoms I conclude he is not morally accountable for twenty-four or forty-eight hours before and after an attack of the epileptic seizures. I infer from the evidence and from my own observations that he was epileptically insane and was not responsible for his acts on that Wednesday evening at the time of the alleged poisoning. Had I been personally present on that Wednesday evening and talked with the prisoner it might be possible that I would change my opinion. After the attack of convulsions on August 2 I attended him daily for a week and noticed him particularly.

Dr. Michael S. Seip, sworn.—*Examined by Mr. Kirkpatrick*—Am son of Dr. Amos Seip. Was present several times with my father to see Laros; more than three times. Have heard his testimony as to first night. I was present that night. He was as father described. Assisted father in examining the case. Have been recently admitted to practice. Received diploma last spring. Graduated at University of Pennsylvania. Was also at Lafayette College. On the second night I observed the experiments as stated by my father. I saw the burning sealing wax dropped on the prisoner and his eye-ball scratched with the thumb nail. In no case did he show any sign of consciousness or sensation. The eye was opened to perform the eye-ball test. The hands in a paroxysm were clenched and the arms rigid. I noticed the eyes particularly on August 2 and 7. At one time, while he was applying the thumb to the ball, the ball was fixed; at another time there was a double squint. [Witness shows how with both eyes turned in towards his nose.] At another time the eye rolled. On the second visit they were congested; the pupil was also contracted. Paid particular attention to that symptom. The lid was partly open; I closed it, held it a moment or two, then I opened it suddenly, found it did not change in the least. It did not seem to have enlarged any while the lid was closed. As I suddenly opened the lid the pupil did not move under the stimulus of light. I held the light up this way. [Witness shows how by hand close up to his face.] A person has no control over the pupil of the eye to enlarge or contract it at will. A person feigning epileptic symptoms could not feign that. They remained contracted and did not respond to the light until the paroxysm was over. The pupil may be contracted or expanded or neither during a spasm, the test is the irresponsiveness to light. Atkin, Wood, Watson and others mention this irresponsiveness

to light. There was a disposition to violence between the spasms. Have seen him within a day before and a day after a paroxysm. One occasion before the paroxysm he was slow to comprehend and short in answering. After leaving the cell I told his cell mate, Smith; that I thought he would have a fit and he did have one that night. I thought his mind was unsound then. I saw him on the day following the fit on both occasions. He seemed dull and disinclined to talk. He answered short. Tried to test his recollection of our previous visit, but he had forgotten. He walked with his head down, as though watching the floor, and with a weak, shuffling gait, not the way he walked when he seemed more rational. I consider that he did not recover from the effects of the attack for two days. I judge from his actions and irritability. It would require close observation to see these signs in him. He seemed wandering in mind. His eyes wandered away from you as you looked at him. He was slow to perceive. I think his disease was epileptic in character. Have seen cases of epilepsy, but have had no extended experience. I think it was undoubtedly epilepsy. In my opinion, from reading and observation, the morbid condition of his mind following a paroxysm was caused by the disease, epilepsy. He would know what he was doing, I think, during the day or two following an attack, but I don't think he had full moral liberty. Don't think he was in possession of moral liberty right after a paroxysm.

Cross-examined by Mr. Fox—By not possessing moral liberty I mean he could not judge between right and wrong and understand or estimate the consequence of wrong. I would not condemn him for any act he did for two days after a paroxysm. His memory, judging from his answers, was impaired, I knew he did not remember from the way he conducted himself, the way he looked, the manner of his answering. He might have deceived me sometimes, but not every time. He said he didn't recollect our visits and accompanied it with that dull and vacant stare common to crazy people. Don't think he could deceive me in every instance. His manner of answering convinced me that he was not deceiving. I think if he wanted to deceive me he would have answered promptly. I asked him, "Laros, did you not know it was wrong to poison your father and mother?" He said, "I don't know anything about it." I concluded he did not know what he had done, that he was not morally responsible.

Q.—If he had told you of buying the poison, putting it in the coffee pot, taking and burying the pocketbooks, if three days after it had all occurred he had told you all about the circumstances, would that change your opinion?

Witness—I am not testifying as an expert.

Mr. Kirkpatrick—We object to that question. We have only asked this witness questions in regard to occurrences in the jail. You cannot go into any other matters.

Mr. Fox—We have a right to know how the witness forms his opinion and to test him in this way.

The Court—You cannot ask that question, Mr. Fox, of this witness.

You may make hypothetical questions of occurrences in the jail. The defendant has gone into nothing else.

Q.—Suppose you were satisfied he did remember all about it [the poisoning], would that change your opinion?

A. It would not. If I was satisfied now that he remembers now or that he had remembered it previously to the time of my questioning it would not change my present opinion that at the time I questioned him he did not remember.

Q.—Suppose you had been satisfied that he did know all about it, and had lied to you, would it have changed your opinion?

Mr. Kirkpatrick—We object to that question.

The Court—You can't ask that Mr. Fox.

Q.—*By Mr. Fox*—Suppose he had told you that he did remember all about it when you asked him whether he did not know it was wrong to poison his father and mother, would that have changed your opinion?

A.—It would if he had told me that he did remember it at that time.

Re-examined by Mr. Kirkpatrick—From my observation, conversation with him and his appearance I thought he was not deceiving me at the time. I had tested him in regard to other matters of memory of which I knew the facts. He did not know about them.

Dr. A. K. Seem, called.—*Examined by Mr. Kirkpatrick*—In 1872, at John Mann's, I saw Allen Laros apparently unconscious at the time; at the time described by Miss Julianne Mann. He was in bed and he was unconscious so far as I knew for some time. They told me they had found him in the stable in an unconscious state. I applied a cold douche and he soon recovered. Don't know whether he pulled his hair at the first seizure or not. At one of the visits he pulled his hair. I gave him santonine, thinking he was troubled with worms, and left directions to administer pumpkin seeds if the seizure recurred. I threw the water on his face two or three times before he came to. The first pitcherful I put on he did not appear to notice at all. The second time I saw him resembled the first. Don't know whether he trembled or not. He might have trembled. This second time was when I was called to his father's house, when it was said his leg was hurt. I think it was a year ago last winter. His leg was not broken. He was a little bruised. It did not strike me as serious. There was no paroxysm then. I got there afterwards. I cannot decide as to the nature of his disease.

Cross-examined by Mr. Fox—If it had been an epileptic convulsion I don't know what the effect of cold water would be. Have had no experience with epilepsy and that treatment. I don't know whether he got up right away or not. I left him apparently all right. I never learned what had been the effect of the vermifuge of my own knowledge. [Allen's mother said he passed a tape worm.] When I was sent for to his father's house it was supposed his leg was broken. They brought him from a school house on a settee. He had fallen. It was icy weather. They brought him to the house in a wagon. The first time I saw him at Mann's he moved after I had dashed water on him.

On that second time, when they thought his leg was broken, Allen did not say anything to me. I had not thought of epilepsy at that time.

By Mr. Kirkpatrick—The action of a purgative is derivative to produce a determination of blood from the head to expel worms, clean out effete matter. [Mr. Kirkpatrick here reads a passage from Aitkin's Prac. of Med., p. 361.] Yes, that is correct treatment. My experience in epilepsy is but very limited. Using my judgment I would call that good practice. After throwing on the water he came out of the fit in less than ten minutes. He did not at once come out of the paroxysm.

By Mr. Fox—Santonine is an anthelmintic, not a purgative.

Clinton Laros, recalled.—*By Mr. Scott*—When this [poisoning] took place Allen had a moustache, no whiskers.

Ann Eliza Laros, sworn.—*Examined by Mr. Kirkpatrick*—Am the wife of Clinton Laros. Was at Martin Laros' house not a year ago, maybe three months ago, and noticed Allen picking at his face. He sat on a chair. He did not talk. His mother told me not to look at him. I did not look long, as I hated to look at him. Knew of the convulsions at Mann's. I am sister of John Mann's wife. Don't remember how many times I saw Allen have them; probably seven or eight times, one spell at a time. Night and day time. He talked foolishly. Had spasms with clenched hands, face pale. Don't know what he said.

Cross-examined by Mr. Fox—I saw the spells at Mann's only. I never saw him have any after those at Mann's. He would talk foolishly when he got them. I saw him picking his face that time at his father's. This was about seven or eight weeks before the family were taken sick. Don't know whether Allen sat on the chair all the time.

Dr. Seip, recalled.—*By Mr. Kirkpatrick*—That case in Ray's Med. Jur., p. 451, referred to by Mr. Fox in my cross-examination [vid. p. 115], where hot iron was applied to a man's feet, was not a case of simulated epilepsy. He did not pretend to be an epileptic. It was pretended paralysis of the nerves of the tongue and ear. He pretended to be deaf and dumb.

Clara Laros, recalled.—*By Mr. Kirkpatrick*—I made Allen's bed on Wednesday morning [May 31]. The bed clothes were on the floor. I noticed Allen walked that day as though he was drunk. The feather bed I did not notice. He was cross and short in his answers.

Cross-examined by Mr. Fox—Saw him walk in the yard when he went to school. I didn't tell about it before on the witness stand because you didn't ask me. I told Mr. Kirkpatrick about it just now.

By Mr. Kirkpatrick—You made no suggestion to me. I didn't tell it on the stand because I wasn't asked. All you said was, "Who made Allen's bed that morning?"

Mr. Kirkpatrick—The defendant rests.

The Commonwealth calls witnesses in rebuttal as follows:—

Mrs. John Mann, sworn.—*Examined by Mr. Fox*—Allen Laros lived at our house four years ago. That was the time when he had

spasms at our house. Allen had several spasms. He showed me in a bottle a worm that came from him. It looked like a rain worm. After that he had no spasms. He showed nothing the matter with his mind as I saw while he was with us.

Cross-examined by Mr. Scott—These spasms came on about five times in eight months. He showed me the worm about a month before he left us. Had the spells sometimes when the doctor was not there He would have them sometimes at night. They often lasted half an hour, sometimes four or five hours, sometimes shorter. I sent for his parents the first time he got them. His father got there before Dr. Seem. Never threw cold water over him myself; I saw it thrown on him when Dr. Seem was there. The doctor threw it on him. Julia, my daughter, my sister and I tended to him.

John Mann, sworn.—*Examined by Mr Fox*—Allen Laros lived with us. Have known him ten to twelve years. Have never been with him much since he lived with me. He told me after the spasms that he had passed a worm. He had no spasms afterward. I saw nothing in him that would indicate that his mind was wrong. I often talked to him about farm work and gave directions. He did as I ordered about farm work. Saw nothing in his manner and conversation to indicate anything wrong. Have never seen anything of his spells since. When he hadn't the spells he seemed all right.

Cross-examined by Mr. Scott—Can't say how many times he had the spells when I saw him. We found him, the first time, in the stable and carried him into the house. We found him lying along side of a horse. I don't recollect how long it was before he came to. Can't tell whether he was all right when he had those spells. He said nothing, therefore I don't know. Don't recollect whether he talked while he had the spells. It is a good while ago; I don't remember very well.

Ellen Moser, sworn.—*Examined by Mr. Fox*—I went to school to Allen Laros. Was to school the day his father died and the two days before. Allen was there. There were about thirty scholars. Allen taught us those three days, morning and afternoon. Mental arithmetic, third and fourth reader and spelling book. I learned mental arithmetic. If we didn't answer right he corrected us. I went all the time he taught except a few days. He did not seem different on those three days in any way from what he had been on other days. Was not paler than usual. He was pleasant, and not cross, unless the children deserved it. When we wanted anything explained he would explain it. He made no shorter answers the week before than usual. He did not walk like a drunken man that I saw on those three days. He did not seem forgetful. He did not appear to forget anything about the lessons that week or the week previous. We would let out at four o'clock. I live one mile down the river. On Monday or Tuesday he walked down the river ahead of me. Mr. Boncher and Abe Mixsell were with him. He did not stagger, but walked straight as usual. On Friday of the week before he looked sick and was pale. He went out and when he came back he laid his head on the desk and left school out early Am twelve years old. Sarah Raub was taller

than I. The rest of the scholars were my size or smaller. He talked sensible on those three days.

Cross-examined by Mr. Scott—Sarah Raub is not much larger than I. Sophia Raub was the only girl who studied geography. I did not pay attention when he was hearing that. I study fourth reader and elementary arithmetic. Am back further than "three and three" and "two and three." We read little stories in the reader. He sat still while he read. He corrected as if we made mistakes those three days. Don't know when it was, but it was one of those three days, either Monday or Tuesday, he corrected me, but I don't know what for. He corrected us nearly every day. I made mistakes nearly every day. Noticed him the week before; when I was in my seat I used to watch him. I watched him all the time. Noticed nothing strange. It was on Monday or Tuesday that I saw him go down the road towards Easton. It was one of those days I know. I never told anybody that. All the scholars saw him go down. Recollect that it was Monday or Tuesday night because I kept it in my mind ever since. I don't know where he met Mr. Boncher. I saw Allen come back. Saw them go down together. They passed me at Ackerman's tavern. Told my mamma about these things. Yesterday I was subpœnaed. This morning Mr. Merrill took five or six of us in a room and talked to us together He didn't say much. I had occasion to watch him [Laros] because I was afraid he might whip me.

By Mr. Fox—Mr. Merrill asked us if we had all been at school.

Sophia Raub, sworn.—*Examined by Mr. Fox*—Went to Allen's school several months. He taught geography, arithmetic, spelling and fourth reader. Charley Gaumet and I studied geography. I was at school on Monday and Tuesday, but not on Wednesday. Did not see Allen Laros on Wednesday. I recited geography and arithmetic those days and the week before. The rest learned first reader, primer, and second and third readers, arithmetic and blackboard exercises. These (blackboard exercises) were dictated by Allen Laros. If they did it wrong he would correct them. Sometimes he did not. On Monday and Tuesday he looked and walked all right He did not look pale. Saw him walk down the river and back on Monday or Tuesday. I live three-quarters of a mile below Laros'. I walked home with him one day. Saw nothing wrong in his look or walk. In school I saw nothing which led me to think he forgot anything. He was pleasant nearly always. He was not different on Monday or Tuesday. Have seen him walk often. Never saw him walk weak or like a drunken man.

Cross-examined by Mr. Scott—The week before that I was at school. He was all right. I watched him sometimes. Nobody told me to watch him. We have no grammar. He took the geography in his hand and asken us questions. One would read in the reader and the other begin where one stopped. On Friday of the week before he was sick about an hour before school should let out. He had his head down on the desk. We were writing copy.

By Mr. Fox—When he wanted any of the children he called them

by name. He never was at a loss on Monday or Tuesday to recall the names.

By Mr. Scott—He knew their names well. The same scholars for a good while had been in the school. No change, no new ones.

By Mr. Fox—He gave us every time a new lesson and did not get them mixed.

By Mr. Kirkpatrick—I was sick a good deal. Was out of school much of the time.

MARY KUES, sworn.—*Examined by Mr. Fox*—Am thirteen years old. Began going to school when the summer school commenced. We went more than five or six weeks. Was there on Wednesday, May 31. Think I was there all the week before. Laros taught us. He was generally pleasant. I noticed nothing different on that Wednesday. He was not paler. He called us all by our right names.

Cross-examined by Mr. Scott—I can't tell more about that Wednesday than any other Wednesday. I would not have remembered anything even if he had been different, it is so long ago.

CAMILLA RUSH, called.

The Court—Do you propose, Mr. Kirkpatrick, to call any other school children to contradict these?

Mr. Kirkpatrick—No, Your Honor.

The Court—Then it is not worth while, Mr. Fox, to examine any more of these children.

Mr. Fox—Very well, Your Honor. We shall only call Alme Job, to ask her a few questions. [To the witness]: You may go, Camilla.

ALME JOB, called.—*Examined by Mr. Fox*—I went to school every day this summer. I learned reading, spelling and mental arithmetic. He was generally pleasant. I didn't see him cross the last three days. He called us by name. He did not make any mistake. He was not paler than usual. When we did our sums wrong he made us do them over. He walked like he always did. I saw him walk. I guess it was Monday he went down the road to Easton. I guess he went to Easton. He walked down the road, anyway. I did not see him in the morning.

Cross-examined by Mr. Scott—I don't remember more of those three days than any other days. I didn't watch him particularly to see how he looked or how he walked. On the Friday before, he was sick and had his head upon his desk. Don't know as he walked up with us on those three days.

SYDNEY KESSLER, sworn.—*Examined by Mr. Fox*—I lived near Martin Laros. I kept the hotel opposite two and a half years. Moved away in February last. Knew Allen Laros all this time. Saw him most every day when he was at home. He came over to our house most every day. Frequently talked with him. On the Monday before his father died I saw him about ten o'clock in the forenoon. I stopped and knocked at the school door. He came out and talked ten or fifteen minutes. He made sensible remarks and suggestions. It was a matter of business. He appeared to recollect and comprehend all about the matters we talked of. He said he had been to Kesslersville on the Sunday before and saw some of his old friends up there.

He was usually pleasant and cheerful. I never noticed that he was short in his answers and cross. Never saw him walk as though weak or drunk.

Q.—State from all your observation of the defendant during your acquaintance with him and from his demeanor and conversation whether he was of sound or unsound mind at any time prior to the evening of May 31, 1876.

Mr. Kirkpatrick—Defendant objects because it calls for an opinion from a non-expert witness; because it is incompetent and irrelevant, and because it is not rebutting testimony.

The Court—Objection overruled and exception noted.

Witness—Never noticed anything like unsoundness of mind.

Cross-examined by Mr. Kirkpatrick—From the Mineral Springs Hotel I moved to Easton and have been living there since. Have never been in Laros' house since, but passed the house about once a month. Saw Allen at the school house since and saw him in Philadelphia when we were both down. I saw him at the school house on Monday, May 29, at ten A. M. I was riding. I got out of my carriage. I knocked at the door. Laros opened the door. We talked ten or fifteen minutes. Had no particular business with him; merely wished to speak as an old acquaintance. Our conversation was general; on ordinary topics. I might have seen him several times since Feb. 1. Never had much to do with him during the winter. Did not have a lengthy conversation with him during last winter at any time. While I lived up there I saw him most every day. Never saw him have a spell, but heard that he had them at John Mann's. He was not irritable that I know of. I have had some difficulty with him. When we quarreled we were probably both to blame. Don't remember quarreling more than once. It might have been more than once. I have expressed a very decided opinion in this case. I said if it was true that he poisoned his father and mother I would like to see him hung and would like to help pull the rope. I put in that qualification, if it was true. I have said this several times. Have not said so lately.

By Mr. Fox—He often came over to the house last winter and sat and talked like the others.

By Mr. Kirkpatrick—Other people were there, sitting and talking. He talked or not, depending upon the subject of conversation. Sometimes he would pass me and not speak. He would have nothing to say at all. If we got angry we got good again.

Francis Boncher, recalled.—*Examined by Mr. Fox*—Knew Allen Laros five months. While he taught school there I saw him nearly every day. I did not talk every day with him. Talked once a week or more with him. He was pleasant. The day I came to Easton I noticed nothing unusual with him. Ackerman's boy was along for part of the way. They had conversation. He did not walk drunk. Saw nothing different than usual in him that day.

Cross-examined by Mr. Kirkpatrick—I live below the school house. I saw him once or twice a week. He never had much to say. I took no particular notice of him. When we walked down to Easton he

hadn't much to say. I can't remember what was said ; but very little.

Dr. A. K. Seem, recalled.—*Examined by Mr. Fox*—Saw no convulsions in Allen the day I was called, after the murder, saw nothing that indicated epileptic convulsions. I saw him in a condition like a deadly faint. Had known him a number of years ten to twelve years. Was the family physician for twenty years. Have known Allen for ten or twenty years. Saw nothing from which I inferred that his mind was unsound.

Q.—From what you saw and observed of him prior to the 31st of May, 1876, and on the 31st, and the 1st, 2d and 3d of June, state whether in your opinion his mind was sound or unsound.

Mr. Kirkpatrick—Objected to because it is irrelevant, incompetent and not rebutting testimony.

The Court—Objection overruled and exception noted.

Witness—I have not sufficient means of knowledge to make up my mind whether he was or was not sound in mind. Prior to that time I do not recollect seeing anything of him from the time of the leg-breaking business, which was about a year ago last winter, until the night of the tragedy. On those three days I saw nothing that would make me think him unsound in mind.

Cross-examined by Mr. Kirkpatrick—On those three days I was attending to the whole family. I don't think I paid as much attention to him as to the others. He was in bed and answered questions reluctantly and in monosyllables. I had hard work to get anything out of him. Could not swear whether he was unsound or sound in mind from not having sufficient knowledge. From what I saw I could not say one way or the other. He might have been sane or he might not have been for all I know. I have no recollection of saying to Samuel McFall and Mr. Raub three or four weeks ago that Allen was not right and I didn't think any of the family were quite right. I may have remarked upon Allen's peculiar expression of countenance, a queer expression of the eye. It was a matter of talk sometimes. I had noticed it. The circumstances of the case have no doubt attracted my attention to it. Was in his room a short time. I was sent for from the hotel because he had a spell. I said I supposed it was what he had had before. Was only in the room two or three times during the day. I would go in and come right out again.

Saturday Morning, August 26.

B. F. Raesley, sworn.—*Examined by Mr. Fox*—Am County Superintendent. Have known Allen Laros since the summer of 1873. He has been a teacher since the fall of '73. He taught three consecutive years. I examined him three times. Examined him in orthography, reading, writing, written and mental arithmetic, geography. Examined him last August 5, 1875. Visited his school three times. The last time on February 16, 1876. I spent at the last visit from two o'clock until after four o'clock in his school.

Q.—From conversation with him and your observation of him had you any reason to suppose he was of unsound mind ?

Mr. Kirkpatrick—Objected to as not rebutting and as incompetent and irrelevant.

The Court—Objection overruled and exception noted.

Witness answers—I never observed anything that would give me the impression that he was not of sound mind.

Cross-examined by Mr. Kirkpatrick—I was elected Superintendent in 1872. The first time I met him was in 1873. He brought a letter of introduction from his father. He was examined with about a dozen others at Kesslersville, Plainfield township. Oral and written examination. I recollect the manner in which he answered. In some branches he answered readily and in others he did not. The branches were the ordinary branches taught in the schools. His grade was fifty-five to sixty, one hundred being the highest. Last year his grade was sixty, one hundred being the standard. In orthography he took three and a half, five being zero and one being one hundred. In other branches, as mental arithmetic, he took number one. He must have answered every question to get number one. I might have had some little conversation with him at these examinations, as I do with teachers. I never noticed anything wrong with him. I asked a few questions probably during my visits at his own school. During my last visit he went on with the usual routine. I had a little conversation with him at intervals in the exercises. The thought never occurred to me to ask any questions to test his mental soundness. It never occurred to me that he might be unsound in mind.

By Mr. Fox—He compared favorably with the average teachers throughout the country.

James W. Hutchinson, sworn.—*Examined by Mr. Fox*—I live one and a half miles from Laros'. Have known Allen thirteen or fourteen years. Am a school teacher. He went to my school during the terms '63–4, '64–5, '65–6 and '66–7. Saw him since '72 at least every year. We talked together since '72. I was not there the night of the tragedy. Was there the evening following and saw Allen. From my observation of him and conversation with him since 1872 I think he was of sound mind.

Cross-examined by Mr. Kirkpatrick—During the last four years I don't know how often I have seen him. Saw him once or twice a year. Can't tell any particular time that I saw him or had any particular conversation with him in 1872, nor in 1873 can I recollect any or in 1874 have I any present recollection. In 1876 I am positive I spoke with him. Last spring I went to Plainfield with him. We talked about school matters. Saw him once since I think, last May some time. Don't recollect the subject of our conversation, nothing special, from which I could judge the state of his mind.

By Mr. Fox—When we went to Plainfield we walked a mile or so together. We went to debating school. Heard him. The question was, "Resolved that war produces a greater evil than intemperance," or vice versa I don't know which. He made a sensible speech. He quoted from Gough. It was a sensible speech.

By Mr. Kirkpatrick—He took the side of intemperance.

Daniel Kichline, sworn.—*Examined by Mr. Fox*—Knew Allen

Laros from a boy. I was away for about seven years. Saw him nearly every day during the last four months preceding the tragedy. Went over to the Laros house the night of the tragedy. Didn't see Allen then. I saw him on the first three days of the week his father died. From what I saw of him I think he was sound of mind. Don't know that he had any fits. I didn't know anything about them. Saw him walk by often. Never noticed anything wrong in his walk.

Cross-examined by Mr. Kirkpatrick—Never had my attention specially directed to him. He used to come to the hotel evenings with the other people and sit in my bar-room. When he went to school he did not pass my hotel. Can't define insanity. I couldn't tell where the line ought to be drawn between sanity and insanity. He would have to be pretty crazy before I would notice it.

By Mr. Fox—Never heard him make a senseless answer. Never saw him do anything strange or silly.

By Mr. Kirkpatrick—I never noticed particularly what he said.

Mrs. MARY A. KICHLINE, sworn.—*Examined by Mr. Fox*—Am wife of Daniel Kichline; I knew Allen Laros four months; saw him most every day; never had much to say to him; I was often at the house; was there the night they were sick and saw him helping the sick; he was holding his brother; never saw him do anything to make me think his mind was not right.

Cross-examined by Mr. Kirkpatrick—I have spoken to him; I never had my attention specially directed to him; never noticed him particularly; never talked much to the young men around the hotel; couldn't give you a definition of an unsound mind; if he was raving crazy I would know it; I never saw anything strange in him; I think if he was a little cracked I would have noticed it; a person might be of unsound mind and I not notice it.

CHARLES MESSINGER, sworn.—*Examined by Mr. Fox*—Lived at Forks; was a school director last year; I have known Allen over a year; I was sick so that I could not visit his school; saw him while the new school house was building last summer; saw him on the Saturday after the tragedy occurred; we employed him as a school teacher until then; I thought from the conversations I had with him that he was sane.

Cross-examined by Mr. Kirkpatrick—I had only a few words with him last summer; he suggested that we should have the permanent and professional teachers examined as well as the provisional ones; I never thought to look at him to see if he was all right; I always respected him as a young gentleman.

Mr. Fox—That is, you thought he was bright?

Mr. Kirkpatrick—That is leading.

Mr. Fox—Oh, is it? Well, I learned it from the other side.

JOHN J. WOODRING, sworn.—I was a school teacher, but never knew Allen Laros.

JOSEPH MESSINGER, sworn.—I am a school director. Allen Laros was not examined at our examination. Don't know much about him. I never had a conversation with him.

RICHARD FRITZ, sworn.—*Examined by Mr. Fox*—Live in Mount

Bethel. Have known Allen Laros three years. Saw him most every Sunday. Met him at different places. Saw him almost every Sunday for the last year. Saw him the Sunday before this [poisoning] happened. From my conversation with and observation of him I think he was sound in mind. Saw nothing strange in him.

Cross-examined by Mr. Scott—Sometimes we spoke, at others merely nodded. I never examined him specially. I never noticed anything strange. On the Sunday before this happened I saw him on Theodore Sandt's porch. I went by in my wagon. Did not talk. I did not stop. Saw him during the week three weeks before. Saw him on the Sunday between. Have no particular feeling in the case. I have expressed my opinion about the case pretty freely.

DANIEL WERKHEISER, sworn —*Examined by Mr. Fox*—Was a school director. Am not now. Knew Allen Laros. Never had much conversation with him. One election day at Kichline's hotel I heard him speak to some other people. I never saw anything to make me think he was unsound in mind.

Cross-examined by Mr. Scott—Don't remember what the conversation was. That was about two years ago. I did not notice him particularly. Since then have not had much talk with him.

HUGH WERKHEISER, sworn.—*Examined by Mr. Fox*—Live in Plainfield township. Allen Laros boarded with me in '73–'74. Five months. He was teaching school then. Was one of the family and ate with the family. Talked as one of them. Never saw anything about him to make me think he was of unsound mind. Was always cheerful. Pleasant. Quick in talk. Think he was in his right mind. Saw him frequently since. At Kessler's vendue this year. Have seen nothing to make me change my opinion. Never noticed anything strange in his manner or walk.

Cross-examined by Mr. Kirkpatrick—Lived a quarter of a mile from the school house. Don't think he was shorter at times in his speech than at others. Didn't chatter all the time. Of course there was times when he didn't talk; there are times when persons don't talk. He was absent from breakfast time until school was out. There were many people at Kessler's vendue. I talked to him and invited him to pay us a visit. I saw him after that, but can't say when.

By Mr. Fox—His habit of speaking was quick; gave short answers, but pleasant.

JOHN LEHR, sworn.—*Examined by Mr. Fox*—Knew Allen Laros from a child. Last two years have not talked with him much. Before that he worked for me two years and six years ago. Was there two years ago with the carpenters. Never saw anything wrong with his mind.

Cross examined by Mr. Kirkpatrick—Had as much to say as most people about their work. He was there about two weeks. Don't remember any particular thing that he did or said. Never had my attention particularly directed to his mind.

ALPHINUS SCHUG, sworn.—*Examined by Mr. Fox*—Live three-quarters of a mile below Laros'. Known Allen Laros several years. Saw him most every day this summer, morning and evening. Saw

him that Wednesday [of the poisoning] about half-past five P. M. Talked probably one-quarter of an hour. From all I saw of him before and on this Wednesday afternoon I saw nothing wrong with him. Thought he was sensible. Never saw him walk as if drunk. Saw him the day before and talked with him on Monday. Never saw anything wrong with his mind.

By Judge Meyers—On that Wednesday I saw him at Adam Job's nearly opposite my lime kilns. Talked about the time of day. He said it was half-past five. I said it was supper time. He talked more to Adam Job. Don't recollect what they were talking about. Were talking when I came up. He used to stop and tell the news when he passed there. He seemed to walk straight. I never noticed any paleness in him.

Cross-examined by Mr. Kirkpatrick—I don't remember any particular time I talked with him before that. He always talked to me. Would commence himself. Don't remember him saying he felt like drowning himself; or killing himself. Never complained of feeling bad. I turned around and saw him walking up the road after we went away. All he said while I was there was about the time of day. He pulled out his watch to see. I did not notice him particularly. I didn't tell Clinton Laros that Allen Laros had said to me the week before that he was going to drown himself. I did not tell anybody that.

By Judge Meyers—I am sure he and Job talked fifteen minutes. They talked in German about Job fixing up his house. Heard Job say they had everything nice there. I did not see anything in Laros' manner that struck me at the time as strange.

Adam Job, sworn.—*Examined by Mr. Fox*—I live on the Delaware River, a little over half a mile from Laros'. Lived there for twenty-six years. I have known Allen Laros for several years. The last few years I saw him every once in a while. The last two months saw him nearly every day. Saw him in the road in front of my house on the Wednesday [of the poisoning]. He was there for ten or fifteen minutes. Asked me if my house was most done. Told him yes. Asked what it cost. Told him it cost more than I thought. Said "The old man wants to build too." Asked frame or brick. Said "brick." He said, "I guess the old man will be like you—he wants to spend seven hundred dollars and it will cost more." Then Alphinus Schug came along and showed a photograph of himself and wife to Laros and me. Did not see anything about him at the time unusual. Didn't take notice how he walked or how he looked. Did not strike me as pale.

Cross-examined by Mr. Kirkpatrick—When he came up I was tending the mason who was working for me. Only one. Didn't notice him until he came up and addressed me. That was the whole conversation. Alph. Schug then came up. Don't think Laros was there five minutes before Schug came, Did not drop my work to watch him. Worked while I talked. We always passed the time of day. I never talked very much with him at any one time. I never took particular notice of him. I minded my own business.

Barbara Keller, sworn.—*Examined by Mr. Fox*—I live up the Delaware, a mile above the school house [where Laros taught]; saw Laros on Tuesday evening between four and five o'clock; he was going from school; I was in the road above the house; we talked fifteen minutes; had often been talking with him; whenever he saw me we always talked; we talked about my children, who went to his school; knew him since last October; never saw anything that made me think he was not right in his mind; he always talked sensible; thought he was a nice young man; sometimes in the summer he looked pale; noticed some time in the summer that he looked tired; I said to my daughter, "What makes Al. look so pale sometimes?" this was about two or three weeks before; he walked sometimes as if he was tired.

By Judge Meyers—I never talked with him when he was pale.

By Mr. Kirkpatrick—When I thought he did not feel good his answers were short.

By Mr. Fox—We made fun that Tuesday; we talked about the little girl; he had a bouquet in his hand; he didn't say where he got it: he said it was Decoration Day, and I said no Decoration Day for me, I must mind the children, but you don't have any children to mind.

By Mr. Kirkpatrick—I only said good evening when I saw he looked pale and he did the same; I noticed sometimes that he was pale; can't say when; I noticed it; he walked as though he was weak; can remember three or four times; thought something was the matter with him; this was generally in the morning; when I saw him on Decoration Day I talked more than he did; I made the joking remarks about the children; he did not talk much; only what I told; I made the fun.

Joseph Miller, recalled.—*Examined by Mr Fox*—Knew Allen Laros from a boy; talked together sometimes; saw him the night of the tragedy; I asked him what was the matter with his parents. He said some said the coffee tasted peppery, others said it was the meat, others said it was the beets; he got a cupful of coffee from the house and said, "I am no coffee drinker, but I took two swallows of it;" he brought it out for me to smell of and look at; I did not want to drink any and he took it back; always thought he was of sound mind; I never saw anything in him to make me think him unsound; he talked sensible.

Cross-examined by Mr. Scott—We never had much of a conversation together; on one occasion, last February a year ago, he called to me from the yard; he called my name as I passed; he wanted me to help him in the house; I did not find him in a fit; he was lying about thirty feet from the barn, and said the horse had kicked him; it was seven o'clock in the evening; found him lying on the sidewalk in the yard; told his father and Moses Schug and we carried him in the house; on Wednesday [evening of the poisoning] did not notice him more than I did the rest.

By Mr. Fox—He told me the horse had kicked him; they looked at his leg; don't know whether they found a bruise on it.

Mrs. KELLER, recalled.—*By Mr. Kirkpatrick*—Didn't notice Allen's face on Tuesday night.

SAMUEL SANDT, recalled.

Mr. Fox—The Commonwealth proposes to prove by this witness that on Saturday, June 3, the prisoner told the witness that he had taken the pocketbooks and money from his father and Moses Schug and buried them between the privy and sheep stable; that he had bought poison at a drug store in Easton, on Third street, above Jacob Sandt's; that he put the poison in the coffee pot, and that he had done it because he wanted to study law and his father and mother would not give him the money. This offer is made for the purpose of rebutting the presumption that his mental faculties or his memory was affected by epilepsy at the time he committed the act, or that he was mentally unsound.

Mr. Scott—Objected to (1) because these declarations have already been excluded upon the ground of the improper influence under which they were made; (2) because there is no other evidence of the declarations proposed in the offer from which it may be proven that those declarations are true, with the exception of the declaration relative to the finding of the pocketbook, which is already in evidence for all purposes of the case; (3) that it does not appear from any evidence in the case that a failure of memory is the necessary result of an epileptic attack; (4) because if competent at all it must have been presented as evidence in chief; (5) because not offered in good faith on the part of the Commonwealth for the purposes alleged, but to introduce in the case bearing upon the corpus delicti admissions of the prisoner which have already been excluded; (6) because it is incompetent and irrelevant.

An argument ensued upon the question which was thus presented. Messrs. Scott, Fox and Kirkpatrick each spoke at some length.

Judge Meyers said—The question is an important one and the Court ought not to decide it at once unless perfectly clear as to the bearing of the evidence on both sides. I understand that the defendant does not pretend that the act was committed during a paroxysm, but his theory is that it was committed under the influence of or shortly after one of the paroxysms. We will not decide the question now. You may call your medical witnesses, Mr. Fox; we shall hear them before we decide.

Dr. J. M. JUNKIN, recalled.—*Examined by Mr. Fox*—Have attended quite a number of cases of epilepsy; after a patient has been attacked by epilepsy the length of time before the mind will be affected varies; I have known it to be ten years before the mind was affected; can't say as to the shortest time; it is sometimes put at one, two or three years; from my own experience I can't say; from my reading and observation I conclude it would require several years at least; the memory, or mind, or judgment would not be affected over three minutes in an ordinary case after an attack; I have known persons who had epilepsy ten or twelve years and yet be able to attend to business in a few minutes after a fit; have known cases where they would get right up after a fit and walk off; in some cases they would have to

sleep all night before they could go about again; I have never known a case where the mind was affected twenty-four hours after an attack; have studied the subject; from my observation and study one of the tests of the giving way of the mind is the loss of memory; this is one of the first effects of the weakening of the mind; I think the ability to describe an event after two or three days would show that the mind was not affected; if one could remember to-morrow what had happened to-day just after a fit I should conclude his mind was clear; it would be strong evidence that his mind was all right when the incident occurred; if a person had an attack of epilepsy one day and on the next day committed a criminal act and would describe two days after the manner in which the act had been done I would conclude that the person was mentally sound and that he was morally responsible; I saw Allen Laros on Wednesday, but saw no fit; I saw him on Thursday, Friday and Saturday; I saw no evidences of epileptic convulsions; during the time of the Coroner's inquest I observed no signs of epilepsy in Allen; from my observations of him during those days I never had the slightest idea that he was insane.

By Judge Meyers—I have no case of epileptic insanity. I never saw a case of it. I never had a case of the giving away of the mind that I could trace to epilepsy. I never studied or experimented on such a case. Have seen no cases where the patient could remember the occurrences during the attack. The patient might recollect something and his mind not be clear. If a person could recollect a fact that transpired during the so-called semi-insane period I should think that he was responsible. If he didn't recollect it would be a clear case—he would not be morally responsible. It might be possible that he would recollect facts afterward that occurred while he was in a state of semi-unconsciousness. A person afflicted with epileptic insanity might still recollect facts.

By Mr. Fox—My idea of an epileptic convulsion is that it is a manifestation of some irritation at the brain centre. The epileptic fits are only a symptom of brain irritation caused either by reflex irritation of the stomach or organic disease. In my experience there would be some manifested disease of the brain before epileptic convulsions would come on. I have a case of brain disease of three years' standing which has just developed epileptic symptoms.

Cross-examined by Mr. Kirkpatrick—I have given no special study to this case. I have never given much study to the general subject of epilepsy. I have only consulted the ordinary medical works on the subject. Have had fifteen to twenty cases of epilepsy in my practice. [I have theorized upon them somewhat. My theory depends partly on what little I have gathered from books.] Mental derangement frequently follows epilepsy. Epilepsy does not of itself produce insanity. Insanity may be a consequence of epilepsy, but it is not the effect of it. Epilepsy is itself the effect of a cause; it is the symptom of some disease. The consequences of epilepsy depend on the cause of this symptom. Never knew nor ever read of a case of insanity resulting after only one epileptic seizure. [Mr. Kirkpatrick, holding one of Eche-

verria's pamphlets in his hand, asked the witness whether he recognized Echeverria as an authority upon the subject of epilepsy. The witness said that he did. Mr. Kirkpatrick then read of a case where dementia followed after one epileptic seizure.] Yes, that is possible, but I contend that the epilepsy in the case you have read was the result of some disease. The insanity was not the direct result of the epilepsy. The insanity was the result of the disease and the epilepsy was merely incidental. In the ordinary acceptation of the term "result" insanity is the result of epilepsy, but I consider that epilepsy is a symptom of that disease which produced the insanity. I have heard and read of cases where insanity resulted from epilepsy, using the word *result* in its ordinary sense.

Q.—How do you define epilepsy?

A.—It is the effect of some cause.

Q.—Of what cause?

A.—Of various causes. It is produced by some disease. My idea is that epilepsy is the symptom of some disease.

Q.—Will you name the diseases that produce epilepsy?

A.—Epilepsy may be caused by worms in the bowels or by a very serious affection of the brain or by some other disease.

Q.—What is a symptom?

A.—Symptoms are indicia of existing things.

Q.—Do not a large number of epileptic cases result in insanity?

A.—A large number of epileptic patients become insane.

Q.—Is it not a general rule that epilepsy will sooner or later produce insanity?

A.—The general, popular opinion is that long continued epilepsy may produce derangement.

Q.—How long, as a general rule, will an epileptic patient suffer before insanity occurs?

A.—I couldn't fix any time, but I think certainly not after only one attack.

Q.—You say epilepsy is produced by some disease. Now, suppose by a careful examination of a patient no other disease could be discovered might you not then consider the epilepsy itself a disease?

A.—No; I don't admit that epilepsy is ever a distinctive disease; it is a symptom of a disease, which disease is the cause of the epilepsy. The original disease may exist without any other physical manifestation than the epilepsy.

Q.—Have there been cases of that kind where the patient has died without ever shwoing any other symptom of that hidden disease than the epilepsy?

A.—There are such cases on record.

Q.—And might such a patient become insane?

A.—Yes, it is possible.

Q.—Now, suppose an epileptic patient who had never had any other symptoms than the epilepsy should become insane and die in that condition, and if at the post mortem examination no other signs of disease than the epilepsy could be discovered, what disease would produce the epilepsy and insanity?

A.—That's the question.—What the original disease is in every case I don't pretend to say.

[Mr. Kirkpatrick then asked the witness whether Echeverria was good authority as to the per centum of epileptic cases which resulted in insanity and read a passage from that author where it was stated at seventy per cent.] Yes, I suppose Echeverria ought to know. He has had a large experience; but there is much difference of opinion on that point. The percentage which results in insanity is from seven to seventy, according to different authors. It is possible seventy per cent. may become mentally deranged. I regard the ability to remember as a test of the ability to judge between right and wrong in a case of epileptic insanity. It is one of the best tests. I think the test of memory has great weight in favor of soundness of mind. In deciding whether a person is of sound mind I don't say the memory alone is a conclusive test. I only contend that a good memory after an epileptic attack shows mental soundness. If a person had so much control of his actions as to remember them he would in my opinion be morally accountable. It is possible for a person who has been laboring under epileptic insanity to have a recollection of the act more or less perfect and yet have been incapable of resisting the impulse to do the act. In such a case he would not be morally responsible. Don't know anything about the Montgomery case. Read the Walworth case in the newspapers. I have only a general recollection of the facts in the case. I do not recall the circumstances very distinctly. Don't know whether Dr. Gray's prediction as to the fate of young Walworth was fulfilled or not. Really I know very little about Dr. Ray; only what I have heard. I never read his book. I have been told about his book. I have been told that Ray holds that no great crime can be committed by a sane person. If that is so I don't have much faith in his judgment. [Mr. Kirkpatrick reads from Ray's Med. Jur. of Insanity, page 474.] That is a very accurate description, *i. e.* of epilepsy; and of the seizures; and the condition of the epileptic patient. [Mr. K. reads from same work, page 476.] I agree with that, *i. e.* that the mental disturbance may precede as well as follow the fit. [Mr. K. reads from same work, page 480.] That is possible; *i. e.* the case of the epileptic C. F. Oppel, who set fire to the royal stables in Saxony in 1725 with the idea of saving something from the fire to buy drink. [Mr. K. reads from Whart. & St. Med. Jur., vol. 1, p. 472.] That is so very often, *i. e.* epilepsy induces somnambulism, kleptomania, &c., &c.

By Mr. Fox—I do not believe a person laboring under an attack of epileptic insanity would give no other evidence of it than the commission of a great crime. That alone [the crime] would not make me believe him morally irresponsible.

Dr. John Curwen, sworn with uplifted hand.—*Examined by Mr. Fox*—Am a physician of over thirty years' standing. Am the Superintendent and Physician-in-chief of the Pennsylvania State Lunatic Asylum. Have been so for twenty-five years. Before that I was physician in the Pennsylvania Hospital for Insane (Kirkbride's) for five years and a half. I have had thirty years' experience with insanity

in its various forms. Have had during this time a large number of epileptic patients in my charge at ages ranging from three to seventy years Among my patients there were more males than females. Men are more apt to be epileptic than women There are two kinds of epilepsy recognized, the mild form (*petit mal*) and the more violent form (*grand mal*). The usual symptoms of the epileptic attack give the name to the two kinds. The mild form is merely unconsciousness or insensibility for a few moments. The more usual form of epilepsy shows more violent symptoms—convulsions, the violence of which vary with the individual. As to epileptic insanity, the mental disorder may precede or follow the fit. This mental disorder or irritability or violent temper in some cases may take the place of the convulsion itself. The lesser form of the disease is characterized by unconsciousness, that alone. In this form there is no gritting of the teeth or clasping of the hands. There is here unconsciousness for a brief time. It may be known by want of recollection and by the expression of the face. The convulsions in the violent kind of epilepsy vary in degree from slight to the most severe, sometimes so severe that it would seem the body would be racked all to pieces. The hands are always clenched in this form of epilepsy and jerk about in a great variety of ways. Don't recollect a case where the hands were not clinched. Never saw a case with unclosed hands. The limbs are rigid and often thrown about in different positions. This spasm usually affects one side more than the other. If both sides of the body it is alternately, not at the same time. It is generally either one side or the other. It is rare for both sides to be equally affected. Where insanity precedes epileptic convulsions there is generally a manifestation of insanity prior to the convulsion, but this is in those cases which have been for some time developing. Where epilepsy produces mental disease the epilepsy continues a considerable period—five ten or fifteen years—before the insanity occurs. The least time I remember before the supervention of insanity was in the neighborhood of five years after the epileptic seizures began. If a patient has an epileptic fit I think water thrown in the face would not restore him to consciousness; the fit must work itself out. If cold water would bring a person out of the fit I should conclude the supposed fit was some other nervous affection, not epilepsy. A person could not in my opinion be afflicted with epileptic insanity and yet give no other exhibition of it than the commission of a great crime. I don't believe in anything of the kind. In my opinion a man affected by epileptic insanity would not be able to teach intelligently an ordinary country school, in which arithmetic, geography, &c., were taught, and to talk to his neighbors on ordinary topics so that they [scholars and neighbors noticed nothing in him that would lead them to suspect unsoundness of mind. I doubt very much that it would be possible. In an epileptic who has not become so insane as to be manifest to ordinary persons the memory and mind, if affected at all, would not be clouded for a longer period than three hours after such convulsions as were described by the witnesses as occurring previous to the evening of Wednesday, May 31; this even on the assumption that those con-

vulsions were genuine. A man who has had epileptic convulsions for two months or a year or two who could remember the circumstances of an act he had done and could detail the occurrence afterward must have been at the time of the act entirely free from the effects of the epileptic paroxysm. A peculiarity of epilepsy is that a patient does not recollect afterward what occurred during the paroxysms, although what happened during one paroxysm might be remembered in a subsequent paroxysm, but would be forgotten in the interval between the paroxysms. If after the spasms have passed some hours or a day or two and that person details the circumstances of an act of that kind [some great crime] committed by him during a paroxysm or immediately afterward, his mind must have been free and not under the influence of the epilepsy when he committed the act. Memory is one of the very first faculties affected by epilepsy. If the evidence showed that the memory was not affected I should conclude that if the memory was good at the time the other mental faculties were also sound. If a man of ordinary intelligence, afflicted with epilepsy for a period not exceeding two years should commit some crime not while he was in a paroxysm, but a little time after one, and should have a full recollection of it and detail the manner of doing the crime, he could, I think, distinguish between right and wrong at the time of its commission.

Q.—If a person of ordinary intelligence, sufficient to teach a common country school up to the time of the act, and in whom ordinary observers saw no evidence of mental derangement and who had been subject to epileptic convulsions for a period not exceeding two years should more than twenty-four hours after any convulsion purchase poison, put it in the coffee pot, from which his father and mother drank and died in consequence, and should also take the money of his father and hide it by burying it in the ground; if that person should be able three days after that occurrence to describe where he had bought the poison and that he had put it in the coffee pot, and that he had taken the money, buried it in the ground, describing the place where it was found, what would be your opinion as to his ability to distinguish between right and wrong at the time of the commission of the act?

Mr. Kirkpatrick—Objected to because some of the facts assumed in the hypothetical question are facts upon which no evidence has been given in the case; (2) that the hypothetical question is not entirely consistent with the evidence as presented in any of its phases; (3) that it calls from the witness an opinion or judgment as to matters of fact that are for the jury; (4) that it calls for an opinion or decision from the witness, which is an inference to be drawn by the jury under directions of the Court as to the law applicable thereto; (5) that the question is not such a hypothetical question as is proper or permitted by law in this case; finally the question is incompetent and irrelevant.

SATURDAY AFTERNOON, August 26.

Mr. BORHEK, sworn.—*Examined by Mr. Fox*—Live in Allen township, Lehigh county. Was in Northampton County Prison this week. Had no conversation with Laros. I heard him speaking. Heard a

remark of the prisoner. He said that the Commonwealth had not weakened his case that day. This was all I heard.

Cross-examined by Mr. Scott—It was Tuesday, the 22d. Don't know whether it was in answer to a question or not.

The Court—The objections of the defendant to the question put to Dr. Curwen just before adjournment this morning are sustained. There is some doubt upon one of the objections, and though we should have no difficulty in deciding against the others we give the prisoner the benefit of the doubt and will not permit the question to be asked.

Dr CURWEN, *examination continued by Mr. Fox.*

Q.—Assuming the testimony of all the witnesses as to occurrence of epileptic convulsions of the defendant were true; that on the day of the occurrence he taught school over two miles from his father's house and there was not any outward manifestations of insanity; state whether on the evening of 31st of May he was in your opinion capable or incapable of distinguishing between right and wrong?

Mr. Kirkpatrick—Objected to (1) that the question calls for an opinion from the witness of a matter which lies entirely within the province of the jury; (2) it is incompetent and irrelevant and not such a hypothetical question as is permitted by law in this case.

The Court—Objection overruled and exception noted.

A.—I think he was capable of distinguishing between right and wrong.

I have seen several hundred cases of epilepsy. Have known cases of epilepsy of long standing where the mind remained unaffected. I know of a well authenticated case of forty years' standing of an officer in the army. He was able to attend to his duties and his mind was unimpaired. In the violent kind of epilepsy [grand mal] there is always frothing of the mouth at the close of the convulsion. In this form of epilepsy it is always a symptom. The face at first is pale, during the convulsion red and then swollen and dark; livid; purplish hue. The veins of the face and neck are swollen; after convulsions there remain spots. These symptoms are sure indications of epilepsy and are always present in the genuine attacks of the violent form of epilepsy. Epileptic convulsions are reported to be feigned often. It is so reported. I never saw any feigning of this myself. If a person accused of crime should have a supposed epileptic attack where the convulsions were more or less violent and not froth at the mouth, not livid in face, no distention of the veins of the neck, I should conclude that the convulsions were feigned. I would not consider the dropping of hot sealing wax on the person an infallible test of unconsciousness even if he should not flinch, nor striking the back of the hand with a knife blade, nor pouring cold water when hot water had been threatened. After a paroxysm it is usual for an epileptic to show signs of mental confusion from a few moments up to an hour. A person may have this confusion of mind and may have delusions for an hour or so and yet not be insane after that.

Cross-examined by Mr. Kirkpatrick—The experience I have had with epileptics has been with those I have had under my care. They were all insane. Most of them had been suffering from long continued in-

sanity; others of them from insanity of short duration. Insanity was in all these cases the result of epilepsy. The insanity was worse after an epiletic fit. These were cases of insanity the consequence of epilepsy. The shortest duration of insanity among these cases was two months, others had been insane for several years. In every case of epilepsy there is a temporary mental confusion for a varying period after an attack. This temporary confusion of mind is not such disturbance of mind as is properly insanity. In cases of epilepsy uncomplicated with insanity it would resemble the confusion of ideas that any person might have on being suddenly wakened from sleep. It would last from a few moments up to an hour. It would not be extraordinary for the confusion of ideas that one may have on being wakened suddenly from sleep to last several hours. I have seen cases where this confusion of ideas on waking suddenly from sleep lasted an hour and no one would have suspected derangement of the mind. Mental disturbance is where the mind is so much changed as to produce a change in the ordinary acting of an individual, such change as would make conduct, views and acts different or contrary from what they would be ordinarily. This confusion does not in all cases cause a loss of intelligence, at least it does not in ordinary epilepsy. In every case of epilepsy there is after an attack a temporary mental confusion for a longer or shorter period according to the individual. There is sometimes a mental disturbance; not always. The affection of mind would depend upon the disposition of the person and the character, hereditary tendency and upon the number and frequency of the the spasms. I do not think that the larger number of epileptics eventually become insane. Echeverria has devoted his life to the study of epileptic phenomena. I believe that he states that mental insanity resulted in 70 7-10 per cent. out of 500 cases that he mentions. His experience may be different from others. Other authorities may differ from this result. My experience does not accord with that of Echeverria. I would not put the per cent. so large. [Mr. Kirkpatrick called the attention of the witness to the pamphlet of Echeverria on the criminal responsibility of epileptics as illustrated by the Montgomery trial, page 39, where the experience of Sir Henry Holland is given, showing that, during a practice of forty years where he had noticed very many cases, in nearly every case the mind was more or less impaired; and that paralysis and epilepsy were frequently conjoined.] Sir Henry Holland was a general physician. He never paid any particular attention to epilepsy. He stood high in general practice, He complicates the matter by putting paralysis with epilepsy, and statistics based on the two together are of no account in deducing facts for a percentage table of epilepsy. Paralysis is not commonly found in connection with epilepsy. [Mr. Kirkpatrick reads from Ray's Med. Jur. of Insanity, page 475, where Esquirol is quoted.] Dr. Ray is high authority, but I would not say that a large majority of epileptic cases terminated in insanity. I don't doubt his experience. Don't think Esquirol tallies with Echeverria in percentage. So far as those statistics go they only indicate that insanity generally follows Epilepsy. The accuracy of statistics makes a great dif-

ference and that must be carefully looked to when one calculates the per cent. Paralysis is not generally joined with epilepsy. I have known only one or two cases in my own practice where paralysis was conjoined with epilepsy and those were hemiplegia. I consider that statistics gathered in that way are not the most reliable basis for a deduction. Hemiplegia is paralysis of one side of the body; paraplegia is paralysis of the whole of the body. I only recollect one or two cases of paralysis out of 100 cases of epilepsy I have had during a few years past. Echeverria would not thank you for pronouncing his name the way you do; he is very particular on that point. [Thereupon Mr. Kirkpatrick asked what the proper pronunciation was; Dr. Curwen told him; Mr. K. thanked him for the information and proceeded to ask Dr. Curwen's opinion of Echeverria.] I know Echeverria very well. I have great confidence in him. I want other evidence than the commission of a crime by an epileptic to convince me that he was the subject of epileptic insanity. If a person had epilepsy for several years and then at a certain time he should have a succession of fits and shortly after that committed a crime, I should take the commission of the crime as of some weight in favor of insanity in determining whether that person was responsible. The fact that he had committed an unnatural crime would go a great way with me in determining that he was insane at the time of the act provided I knew and was certain that he had the epilepsy and the series of attacks. If I knew undoubtedly that a person had epilepsy and he committed a crime it would have some weight on my mind, I would want to know all about the epilepsy. If I knew that a man had an attack of epilepsy and two or three days after committed a horrid crime and had an epileptic attack two or three days after that it would raise a suspicion in my mind that the deed had been committed under the influence of epilepsy. There is such a difference in the human constitution that it's hard to say in a general way where moral liberty begins or ends. If an act were committed between the spasms of several days it would create a suspicion in my mind that he was not entirely responsible.

Q.—If a man had been subject at intervals during several years to epileptic seizures and then during five or six weeks or two months he should have them more frequently and then he should have a series of attacks Friday, Saturday, Monday night, Tuesday night and on Wednesday evening should commit an atrocious crime, and on Thursday morning and on Friday also have seizures, would it not raise a strong presumption in your mind that, notwithstanding he taught school on Monday, Tuesday and Wednesday, he was at the time of the act and twelve hours before the seizure of Thursday morning under the influence of epileptic insanity?

A.—If he really had epilepsy it would raise a strong suspicion in my mind that twelve hours before a seizure, when the act was committed, he was under the influence of the epilepsy, but before deciding I would have to know all about the kind of epilepsy and how long he had it and all about his case. [Mr. Kirkpatrick reads a passage from Browne's Jur. of Insanity, §311, and asked the witness whether he considered him good authority.] He is a lawyer and therefore does

not know much about epilepsy. The case he puts is possible. In simple epilepsy it is possible that the mental confusion might last twenty-four hours after the spasm. [Ray's Med. Juris., pp. 476, 477 were read by Mr. Kirkpatrick, where the author says that usually violent attacks were more liable to be followed by irritableness, stupidity, &c., generally proportioned to the physical symptoms; also quoting Zacchias as to the mental obscurity immediately preceding and following the fits; that the principle is a sound one that epileptics should not be held accountable for criminal acts committed by them within three days before or after a fit.] That is correct. I don't take exception to anything Dr. Ray may say. I do not go quite to the length of his statements. I think twenty-four hours rather long for this obscurity to last. [Ray, pp. 482, 483, is read by Mr. K., where the author suggests that unless the symptoms of the epileptic showing mental disorder are of a very demonstrative character intimate friends and relatives of the patient are seldom competent to notice them.] I agree with that. If the friends and relatives of the epileptic should notice any peculiar and unusual actions in him twenty-four hours after an attack it would be some evidence of mental disturbance. [A passage from the Montgomery pamphlet, p. 35 and p. 44, is read to the witness.] I have no reason to doubt that statement. Mental disorder would be in proportion to the frequency of the attacks. If the attacks were very frequent then there would be a very strong suspicion of mental disorder. If a patient or a prisoner had an attack on Saturday morning and on Monday night another seizure (at which he had two fits in succession), and on Tuesday another, and on Wednesday evening he manifested appearances and condition similar to those which preceded or followed his previous seizures, and on Thursday and Friday he had attacks, I should think it likely he had an attack on that Wednesday evening; and if on Saturday he gave contradictory accounts of a criminal act said to have been committed by him on Wednesday I should think, if the attacks were genuine, that he had been and still was under the influence of epilepsy. If also on Monday an attack and gave contradictory accounts of the acts of Wednesday I would suppose he was laboring under the influence of epilepsy. Loss of memory always follows epilepsy; memory of things in daily occurrence. Defective memory is the result of epilepsy. I don't admit that a person can recollect clearly what occurred during a paroxysm; as a rule they do not recollect what took place immediately after the paroxysm. Don't think a person would recollect anything which occurred during the epileptic insanity; some things he might, but as a rule they do not. Remembrance of the criminal act committed during the period of epileptic insanity is a possibility, of course. One in epileptic insanity during the twenty-four hours succeeding an attack may afterward recall facts occurring during that period; it is possible, of course, for we cannot put a limit on the human mind. Don't know much about the Montgomery case. It is a possible case, for we can't limit the capacity of the human mind. I have an aversion to such cases as the Walworth case. I never read them if I can avoid it. I don't know anything about the Walworth case. [Mr. K. read from

the pamphlet containing an account of that case a few paragraphs giving an outline of the circumstances.]

Witness—Such acts as these are often committed after the paroxysm.

Mr. Kirkpatrick—There was no paroxysm at the time of this commission.

Witness—There must have been, I think although the fact does not appear in the evidence. There might have been an attack and no one have seen it.

Q.—When an epileptic speaks of a matter when there is great excitement, as after a great poisoning, might the defendant not be merely repeating the information received from others as his own statement?

A.—He might. As I said before we can't limit the possibilities in the case of the human mind.

[Mr. K. then asked the opinion of the witness as to Walworth's insanity.]

Witness—It is hard to render a decision from isolated paragraphs as you read them from the report of the trial. I would want to know young Walworth's previous history and fully study all the circumtances of the case before deciding. It is possible Walworth was under the influence of epileptic insanity, that is all I can say.

Mr. Kirkpatrick then based an hypothetical question upon the testimony of Dr. Gray in the Walworth case, to which Mr. Fox objected, and the Court allowed Mr. Kirkpatrick to ask the witness whether he agreed with Dr. Gray in his opinion.

[The testimony of Dr. Gray in the Walworth case was detailed and witness asked whether he agreed with his (Dr. Gray's) opinion as to young Walworth's insanity.] I do not agree with the opinion of Dr. Gray that the actions of young Walworth were entirely consistent with the theory of epilepsy.

I would not agree with Dr. Gray in his decision made there unless I could have a chance to study the case more fully; I might possibly then agree with Dr. Gray, possibly not.

Dr. Gray is authority. I would leave out the word "high." I do not consider him high authority, and he knows it. I have no hesitation in saying so here.

[Ray, p. 479, was cited, the case of an incendiary, who was an epileptic and a drinker, and after drinking felt inclined to build a fire.] Dr. Ray's opinions are entitled to respect. I don't know that I would agree with his comments on that case. But his opinion is always entitled to great weight. [Ray, p. 281, was cited.] The presence of a motive would not entirely decide the question of responsibility; insane people always have motives and make plans. The state of facts in the Montgomery case as you narrate it is also possible. The existence of motive is not inconsistent with mental unsoundness; an insane man has always an insane motive. An insane man lays plans and has motives. The case of Dr. Geoffry is entirely possible. [Curwen's report before the Pennsylvania Medical Society in 1869 was referred to by Mr. K.] I don't think I would swear by that document now. A man changes his opinion as he grows older and has more experience. The passage designated [p. —] is straight. I won't qualify that. There is

great diversity by different writers as to the length of time the irresponsibility may last after an attack. Authorities draw widely different conclusions. [Echeverria on Epilepsy, p. 361, is read.] He has a hobby. [Page 369 is read and witness asked whether he agreed with him.] I agree with his facts; I think they can be relied upon; I dissent somewhat from his opinions.

Mr. Fox—We object to these prolonged citations from every author who has written on the subject of epilepsy.

Mr. Kirkpatrick—This is always proper on cross-examination. If the witness will disagree with the works of authority upon the subject of investigation we are entitled to have that disagreement weighed in the scales of our case. And if the witness admits these books to be authority the reasons for the questions become more apparent.

The Court—The propositions you make from the books are inconsistent with the facts of this case. The difficulty in permitting this kind of questions in the case is that the cases from the books differ from the case which is being tried, and another difficulty is the doubt whether the witness can properly be asked such hypothetical questions as you propose. The witness is an expert and can decide as well as the authorities as to the state of the prisoner's mind, memory and motive. I think the kind of evidence you have been producing is not of any value in this case and I shall tell the jury so.

Mr. Kirkpatrick—Now, let the Court understand how we stand in this case. We had expected to have Dr. Ray himself, as a witness learned in the science of this investigation, to answer the case of the Commonwealth. Your Honor compelled us to go to trial in his absence though we alleged the strongest reasons for a continuance. That witness is sick and unable to speak for us. And from his book, and from the other authors whose lives have been devoted to this subject, we must speak now or be silent. These authorities and citations as submitted to the witness are the means by which we test his knowledge and qualifications to speak, and protect ourselves from the effect of his oracular deliverances.

The Court—You may ask the witness if he agrees or disagrees with the authorities and nothing more.

The witness continues—There is no case of epilepsy that will comply with all the symptoms of a typical case as given in the books. Whenever there is a visible seizure in epilepsy there is frothing at the lips. Absence of frothing might indicate a very mild seizure. Frothing is the last symptom of every visible paroxysm of epileptic convulsions, it comes at the close of the paroxysm. There are distinctive symptoms in every case. We diagnose epilepsy by exclusion. The symptoms detailed by Dr. Seip [vid. pages 107 to 112]. I heard his testimony, but I doubt that they show simple epilepsy; they may show something of an epileptoid character. The symptoms [in Laros' case] that undoubtedly correspond with epilepsy are the clenched hands and rigidity, inverted thumbs and unconsciousness; but I never saw a case of epilepsy which had not that purplish, livid hue of face I alluded to. [Mr. K. referred to Hammond in regard to the variety of epileptic symptoms in different

persons.] I don't recognize Dr. Hammond as high authority. I don't recognize Dr. Hammond as any authority at all. A man who says he has had 10,000 cases of epilepsy and has never been in a hospital at all can not be believed. He has had no practical experience in epilepsy. In the same person there may be a similarity in recurring attacks of epilepsy unless modified by treatment. [Brown-Sequard's article, revised by Dalton, in the Amer. Encyclop. was referred to by Mr. K.] Epilepsy is most strikingly uniform except when complicated with other diseases. Brown-Sequard's statements must be taken with much allowance. I have private professional reasons for differing from Brown-Sequard. I prefer not to give them here. He is recognized as authority by a certain class of scientific men. I have no faith in him. Prof. Dalton is of high standing. His revision might make the article all right.

There is a definition of epilepsy given in every medical book. I never make a definition if I can avoid it. I don't define from principle. I don't consider myself qualified to give a definition. I doubt the conclusions of Dr. Seip's tests from my reading. I never saw such tests tried. I never saw a case of feigned epilepsy. I can't mention a case. The response to snuff and sealing wax depends on a man's cutaneous sensibility, which differs in every individual. It is possible to withstand all those tests applied by Dr. Seip and not flinch if the person had an object, and it has been done. If a man's life is in peril he could undergo all the tests that you have enumerated and never move. A man on trial for life could go through more torture than in an ordinary case to save that life. It is barely possible the same might have been done by Laros. [Mr. K. reads Atkin's Prac. of Med., page 358.] Those are the tests usually applied. I might suggest some other tests if I had such a case. I do not think of any now. I think it barely possible that Laros was feigning just as it is barely possible that such was the case in some of the cases you have put to me. I admit that endurance without flinching or showing the least feeling would be extraordinary, but the circumstances here [in Laros' case] are extraordinary also. Immobility of the pupil is a symptom of epilepsy. [Mr. K. reads from Wood's Prac. of Med., page 784, as to various symptoms.] I do not agree with Dr. Wood altogether. I know that Dr. Wood has not had much experience with epilepsy. I have always found the pupil dilated. Dr. Seip, jr., described the pupil of the eye as contracted. He held the light close up and of course it did not change any, it was contracted as much as it could be. I have noticed spots akin to extravasation under the skin on the forehead. Their extent depends on the violence of the convulsion. These dark spots under the skin are evidences of epilepsy. These spots appear all over the forehead. They would not be so extensive if the convulsions were not of so decided a type. I am speaking largely from my own experience. I saw several hundred cases regularly every day. I have never seen strabismus as a characteristic symptom of epilepsy. It is possible. I should consider it a symptom of a complication of diseases. The disease as described by Dr. Seip was epileptoid in character. The grinding of the teeth and clinching of the hands and

the spasm show the epileptoid character. Epilepsy and something else. This may be a combination of epilepsy and hysteria. There may or may not be unconsciousness in hysteria. Vomiting is sometimes a premonitory symptom of an epileptic seizure. I have noticed it. The doubled fist and the inverted thumb is a universal symptom of epilepsy; it is a sure sign and so is frothing at the mouth. The froth is an expulsion of accumulated mucus from the throat. Grinding of the teeth is rare, not very frequently a symptom in epilepsy. I never saw the eyes roll in an attack, nor the squint. I suppose some other nervous disease with epilepsy might produce it. It is possible in epilepsy. I don't see how the mucus matter from the throat is going past the mouth to lodge in the nose The mouth is not generally open. The blood which was found gathered in the nose [vid. testimony of James Monroe Smith, page 105], is not in harmony with my idea of the disease. I don't see how it got there. It is possible for it to get there from the mouth, but not probable at all. Possibilities have no limit More than half of the epileptics bite their tongues, hence their bloody froth.

Re-examined by Mr. Fox—The extended fingers I never saw in epilepsy. If there were no frothing at the mouth and no distention of the cervical veins I should conclude the fits were not genuine. A few fits without other evidence of mental disease and the fact of the commission of a great crime would not without something else lead me to conclude that a person was insane. The description of the attacks just a few months previous to the tragedy and the symptoms of the other attacks I have heard described by the various witnesses are not fully consistent with my experience in epilepsy. Frothing, swelled veins in the neck and lividity of face are essential symptoms, and without these I would doubt the genuineness of the epilepsy.

By Mr. Kirkpatrick—The cases mentioned by Echeverria and Hammond were confirmed cases of epileptic insanity. The symptoms that I mentioned [frothing, veins of neck swelled, clinched hands and lividity of face] might possibly be absent in cases even of pure epilepsy. [Mr. K. read from Aitken's Prac. of Med., p. 348.] That is correct. There are some cases where there is no spasm or paroxysm and yet be pure epilepsy. [Pamph. of Echeverria, p. 33, is read.] I don't deny that the case may be possible, but more likely to occur in insanity than epilepsy. After a paroxysm I don't think a patient is more liable to pick up bright objects than usual. There may be disorder of the moral and not of the mental powers. They may be impelled by an insane impulse. The great danger from epileptics is that blind impulse which succeeds a paroxysm. The "insane impulse" may take the place of an epileptic fit in epileptic insanity. It usually immediately succeeds a paroxysm. After the return of consciousness they may remember the impulse and say "I don't know why I done it." [Mr. K. read from Browne's Jur. of Insanity, p. 319.] That condition is possible. If circumstances are pointed out to them they may give an account of it. I don't think they would remember the impulse and the act unless their attention is called to the circumstance.

By Judge Meyers—I don't see how a man in a paroxysm would hide

himself under a chicken coop. It is not likely a person attacked with epilepsy could crawl.

By Mr. Kirkpatrick—He might crawl under a chicken pen after a fit or possibly when he felt it coming on. They usuall get help when they feel the fit coming on. There is a mere possibility of their going away by themselves. An epileptic is usually shy and unwilling to have his infirmity known. They have an aura sometimes; it is quite common.

Dr. Traill Green, recalled.—*Examined by Mr. Fox*—Have had the average number of epilepsy in my cases. One or two a year. I can't tell how many I've had. Probably forty cases. None of my cases resulted in insanity. One gentleman had characteristic attacks of epilepsy for twenty-five or thirty years and became a preacher. Within two or three years the last I heard of him he was still in the possession of his faculties and is still officiating. I never saw that it affected his intellect. The symptoms of epilepsy are falling down if the subject is not lying down at the time, then contraction of the muscles, then perfect insensibility and rigidity, then active convulsions, the face will be pale at first and then purplish; at the conclusion of the convulsion there is frothing at the mouth and distention of the veins of the neck and head. If during an apparent convulsion the hands were clinched and there was paleness but no lividity and no distention of veins and no froth, and there was actual unconsciousness, I should say the person was in an epileptic fit. The expression of the face would show whether he was conscious. A mild attack might not have all the symptoms of a severe one. If the person was unconscious in the paroxysm I should say it was epilepsy, but a very light attack. If a person had symptoms just as this man [Laros] was described to have and should really be unconscious I should call it epilepsy. I don't know what you would call it if not epilepsy; somewhat peculiar, but epilepsy. In the petit mal I think one attack would not rapidly follow another. After paroxysms the most violent I have seen persons wake up clear at once without any want of intellect Sometimes when persons have an attack in the street, a very violent one, as soon as it is over they get right up and walk off without anything the matter with their minds. In a large number of cases they go to sleep for an hour or two, then wake up intelligent as ever. I have known many cases where they have attacks in the night and wake up all right in the morning. I don't think the mind would be affected by epilepsy for several years, anyhow. If a person in a fit was restored by dashing cold water in his face I should say that it certainly was not an epileptic fit. I would doubt its genuineness. A person in a fit of hysterics might be restored by a dash of cold water. Epilepsy can be feigned and people do feign it. That is proved by the invention of the severe tests to detect it. In a case where a man wanted to save his life by feigning epilepsy the tests by Dr Seip are not decisive, and for this reason:—Martyrs have endured much more severe tests than Dr. Seip tried; they have been tortured on the rack, they have burned their hands off in the fire without flinching. I think a man with strong

nerves could stand all the tests. I don't think a man could be insane and the fact not be detected by ordinary people.

Q.—If a man had attacks of epilepsy on three days and taught school on those days and no one noticed that anything was the matter with his mind and he should commit a crime on the evening of the third day what would you say of his mind at the time the act was committed, sound or unsound?

A.—I would want more evidence than that to say he was insane.

Cross-examined by Mr. Kirkpatrick—It might be on that occasion at Mann's when water was dashed on Laros and he revived that he was just coming out of the fit. It might be the spasm had spent itself. It would be remarkable if the doctor should apply the cold water every time just as the paroxysm was concluding.

Q.—Did you ever see any martyrs?

A.—Oh no, I never saw any martyrs.

Q.—How do you know they stood the tortures without flinching?

A.—Why I read about them in books; I have faith in history.

When a man is feigning epilepsy to save his life it is hard to catch him unawares. A man in feigned epilepsy is ready for the tests. When the eyelids were being forced open he'd know that something was going on; you couldn't catch him that way. I think I could run my finger nail on my eye at any time; I wouldn't flinch at all. I think I could conceal the pain from anybody else. If I thought a person put coal dust in my eye for a purpose I would hold very still. If they opened my eye and scratched it with the finger nail I could stand that; but if they threw anything in my eye as I stood here I would wink irresistibly. Feigning is a different affair. When a man has made up his mind to feign I don't think he could be caught by any of these tests. I couldn't stand a lighted lamp applied to my feet if I didn't know anything about it beforehand, but if I felt them taking off my shoes and stockings I would be ready for them. Am sure I could stand a lamp flame to my foot if I wanted to; they might cut it off and I wouldn't move. I would not say that another man could stand all these tests until I had tried him myself. I only say what I could stand. There may be false motive and false deliberation in epileptic insanity. Not a real motive, a motive altogether disproportioned to the crime. [Mr. K. calls attention of the witness to Echeverria on Epilepsy, p. 340.] I don't know Echeverria at all. Don't know anything about him. I would want to know the character of his cases before I followed him blindly. Specialists are as likely to be wrong as other people. Other things being equal one of special experience in epilepsy would be of more credit than a general practitioneer. I never give testimony on books without seeing the punctuation and all about it. [Dr. Green here took the book and, after looking at it a little said]: The passage you have read is a possible case, *i. e.* where the man playing whist had an epileptic attack and resumed play without dropping his cards. [Mr. K. then said that Echeverria put the proportion of epileptics who become insane at 70 per cent. and asked the witness whether he agreed with that.] I attach no importance whatever to those statistics unless I know all about the cases. I won't

agree with Echeverria until I see and read the cases myself. If the cold water restored Laros he might have been just coming out of a fit. He would hardly be so three times straight ahead. [Mr. K. then read some statistics from another work and asked the opinion of the witness.] I don't attach any importance to statistics unless I know the cases. I doubt the statistics because the percentage of resulting insanity is so large. A man opening a hospital would be likely to get all the old cases and of course the per cent. in those might be large; that don't prove anything.

By Judge Meyers—Vertigo is a condition in which objects seem to run round, as when a person is giddy from running around a circle. I don't think a person could remember what he did during an attack of that kind afterward; if he did he had sound mind and memory. A man who gives an accurate description of things that occurred some time ago must be of a very sound mind.

HENRY S. CAREY, recalled.—*Examined by Mr. Fox*—I saw Allen Laros those three days. Never heard him talk only when I spoke to him at the time I administered the oath to him. Saw nothing to make me think him unsound. Thought he was sound and had nothing the matter with him.

Cross-examined by Mr. Kirkpatrick—Don't remember that I had to put questions to him repeatedly to get answers. He was in bed on his right side. A man who doesn't talk simple and foolish and remembers is of sound mind. Insanity is losing one's mind, talking simple.

Mr. Fox—If your Honors are in any doubt about the propriety of of permitting the Commonwealth to prove by Samuel Sandt the proposition [vid. p. 132] we offered this morning and upon which your Honor reserved decision until the medical experts had been examined, then we will withdraw our offer.

The Court—We are in a great deal of doubt.

Mr. Fox—Then the Commonwealth closes its case.

Mr. Kirkpatrick—The defendant also closes.

The Court—We will now hear your arguments, gentlemen, upon the objection to the private counsel for the Commonwealth [vid. page 26] making the closing address to the jury.

Mr. Scott then made a brief argument and referred to Purdon's Dig., vol. 1, pa. 490, pl. 5, 9, 13; McFarland trial, N. Y., 1870; Stokes trial, N. Y., 1872; Com. *v.* Williams, 2 Cush., p. 582; Com. *v.* Knapp, 10 Pick., 477; Com. *v.* King, 8 Gray, 502; Rush *v.* Cavenaugh, 2 Barr, 189; Bishop Crim Proceed., vol. 1, §§998–1000.

Mr. Fox replied: he said that it was a matter of indifference to him whether he spoke or not. This question was never raised in this county before. The order in which counsel should speak to the jury was not an affair to be decided by the Court. The District Attorney and the private counsel had the right to arrange that matter to suit themselves. The jury had not been sworn, the defendant had not pleaded at the time I was called upon to assist the District Attorney in this cause.

The Court—District Attorney Merrill and Mr. Fox can settle this matter between themselves. They may do as they please about their order of speaking to the jury. We do not consider this a case for the Court to interfere to require the District Attorney to make the closing address to the jury.

Mr. Scott—Your Honor will note our exception.

MONDAY MORNING, August 28.

Mr Kirkpatrick—If your Honors please, the defendant now presents the following propositions of law to your Honors and prays that the jury may be instructed thereon when the charge is given. [The points were read and filed; the argument of defendant in favor of these points and authorities cited may be found in Mr. Scott's address to the Court following Mr. Merrill's speech, *vid.* also Mr. Kirkpatrick's speech Monday afternoon; *vid.* argument of Mr. Fox *contra* on Tuesday afternoon; *vid.* the points themselves and answer of the Court thereto in Judge Meyers' charge to the jury Wednesday morning.—*Ed.*]

District Attorney John C. Merrill then addressed the Court in behalf of the Commonwealth as follows:—

MAY IT PLEASE THE COURT—1. *As to the legal presumption:*—In 1843 the fifteen Judges of England in reference to an inquiry from the House of Lords answered:—"The law presumes every man to be sane and to have a sufficient degree of reason to be responsible for his acts until the contrary is *satisfactorily* proved. To establish a defence on the ground of insanity it must be clearly proved that at the time of the commission of the act the defendant was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong," 1 Wharton's Crim. law, §16. This is unquestionably the law of Pennsylvania to-day, as the latest decisions most fully attest. I refer to Com. *v.* Ortwein, 26 P. F. Smith, 414; Lynch *v.* Commonwealth, 213, with which your Honor is familiar and to which I propose to direct the attention of the jury.

2. *As to the degree of insanity which will relieve from penal accountability:*—I refer to the case of Com. *v.* Mosler, 4th Barr, 264, in which Judge Gibson, one of the greatest judges who ever sat upon the Bench, says, "Insanity to constitute a proper ground of defence to a criminal accusation must be shown to exist to such a degree as to blind its subject to the consequence of his acts and deprive him of all freedom of agency." Judge Agnew in a very late case—Com. *v.* Ortwein, 26 P. F. Smith, 415—says:—"Insanity as a defence must be so great as to have controlled the will and taken away the freedom of moral action." And in another late case—Brown *v.* Commonwealth, 28 Smith, 128—Justice Agnew says:—"If the prisoner had power of mind enough to be conscious of *what* he was doing at the time then he was responsible for the act. The words "conscious of what he was doing" meaning the

real nature and true character of the act as a crime and not the mere act itself.

3. *Insanity not to be inferred from the nature of the act itself:*—In Com. *v.* Mosler, 4 Barr, 268, a case where a man had killed his wife, Judge Gibson says:—"But it is said there is intrinsic evidence of insanity from the nature of the act. To the eye of reason every murderer may seem a madman, but in the eye of the law he is still responsible," and in Ortwein *v.* the Commonwealth, 26 P. F. Smith, 425, Judge Agnew says:—"The moment a great crime would be committed, indeed often before, would preparations begin to lay ground to doubt the sanity of the perpetrator. The more enormous and horrible the crime the less credible by reason of its enormity would be the evidence in support of it and proportionately weak would be the required proof of insanity to acquit of it."

4. *Moral insanity:*—There is no such thing as moral insanity, *i. e.* insanity of the moral system co-existent with mental sanity. This doctrine is repudiated by an almost unbroken current of authorities both in England and in the United States, 1st Wharton Crim. law, §31; Wharton & Stille's Med. Jur. (1873), §§531-537.

5. *Irresistible impulse:*—Irresistible impulse and moral insanity are sometimes confounded in the books, as where a man may be conscious of what he is doing, may have his mental faculties, but be impelled by a morbid, insane impulse to commit a particular act. This though recognized by the Courts is a very dangerous doctrine and should be accepted only upon the very clearest proof, 1st Wharton Crim. law, §§25-26; Judge Capron's opinion, Wharton 1, §30, note.

6. *The true view:*—"The true view is that when such irresistible impulse is proved in an *insane person* it is a good defence though he was able to distinguish between right and wrong. With a sane person, however, it is not a defence, as the law makes all sane persons responsible for their impulses," 1st Wharton Crim. law, §30 and note *h*, giving authorities.

7. *Scientific treatises:*—With regard to the reading of scientific treatises Judge Redfield says:—"When objected to they have not generally been allowed to be read either to Court or jury," 1st Wharton Crim. law, §50 (*m*), though there are authorities both ways, which makes the propriety of it doubtful and juries should be cautioned in reference to them—that they are not law, that they are but the theories of scientific men. Judge Capron in People *v.* Huntingdon, N. Y., in 1856, after referring to the theories of medical men upon the question of insanity, remarks:—"I have referred to them only to aid you in understanding more clearly my subsequent remarks on the test of insanity adopted by the Courts. Our purpose being practical, not scientific—our search being for legal recognitions and not theories—I feel bound to charge you in conformity with the decision of the Courts which have the authority to declare the law in a particular case. We are in a court of law, not in a school of science; our action, therefore, must be governed by legal adjudication and not by theories and speculations of the schools," 1st Wharton Crim. law, §30, note *e*.

8. *The grade of crime:*—With regard to the grade of crime the

statute provides "That all murder which shall be committed by means of poison or lying in wait or any other kind of wilful, deliberate, premeditated killing or which shall be committed in the perpetration or attempt to perpetrate burglary, robbery, rape or arson shall be murder in the first degree." If the jury believe Allen C. Laros was sane at the time of the commission of the act it is their duty to convict him of murder in the first degree. It is only possible to find him guilty of murder in the second degree if they believe that his mind was impaired to such a degree as to make him incapable of a specific intent to take life; that the same rule applies as where intoxication is set up to lower the grade of guilt. The jury must be clearly satisfied that his mind was to some extent impaired to make him not fully responsible for his act. If there is any doubt about it, whether his mind was impaired at all, they must convict of murder in the first degree. Nothing less than clear satisfaction that there existed some impairment of mind at the time of the act, making the defendant incapable of the specific intent to take life, will suffice to lower the grade of guilt, just as nothing less than clear preponderance of proof of insanity will suffice to acquit. Wharton Crim. law, vol. 1, §24, note.

9. *Distinctive character of insanity in this case:*—There is no proof in this case of an insane delusion and no such thing as moral insanity recognized by the Court. The insanity is general in this case—"such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it that he did not know that what he was doing was wrong." There can be no irresistible impulse in this case; an impulse is a thing of short duration, a violent outburst of passion, or but a passing shadow upon the life. There is no case on record where a man has been under an insane impulse for three days. It is absurd to suppose that he was struggling with an impulse all this time and was finally overcome.

Mr. Merrill then addressed the jury as follows:—

Gentlemen of the Jury:—I will not prolong the time or insult your intelligence with any discussion of the guilt or innocence of the accused. The *corpus delicti* is already established; of this you are assured. Before you were permitted to enter the jury box you were sworn to divest yourselves of all previous bias or impressions and to try this case upon the evidence produced upon the witness stand. This is demanded not only by the defendant, but also by the Commonwealth. It is your duty also to divest yourselves of all sympathy for this unfortunate prisoner. You are not to regard what may be the consequences to him. His punishment if guilty will be the result of his acts, not of your finding. You are to determine whether the facts in evidence point to guilt or innocence, and your sympathies have no more to do with it than your prejudices—both must alike be disregarded.

What are the facts? It is alleged that the defendant is suffering from epilepsy; that the uniform effect of the disease is to produce a morbid, insane state of mind before and after the attacks, and that this defendant at the time of the commission of the act was suffering from

the effect of these attacks and was therefore irresponsible for his acts. The proof of the first attack of what are called "spasms" was at John Mann's in 1872. Dr. Seem was called to attend him. He says he revived under the application of cold water. Dr. Curwen says this would not revive an epileptic. The defendant while there exhibited a tape worm, after which no "spasms" were observed. Dr. Seip in his testimony says "that the presence of a tape worm in the stomach would account for these spasms." Dr. Junkin says that an irritation of the bowels might cause them, but if these spasms were caused by tape worm or by any irritation in the stomach there was no organic lesion of the brain and hence no impairment of the mind. Dr. Seem does not say those attacks were epilepsy, nobody swears that they were. There is no satisfactory proof of it. You cannot determine by the evidence that those attacks were epileptic. The preponderance of proof is the other way. The next time of an alleged spasm was in the winter of 1874–5, at the Plainfield school house, some two years after the "spasms" at Mann's, during which interval there is no proof of any attacks whatever. At the school house he fell upon the ice and hurt his leg and had a faint on account of his fall and the pain, which is quite usual on receiving an injury of that kind. He was next observed by one of his sisters in the fall of 1875, and then nothing more was observed by anybody until within a few weeks of the tragedy. Though Allen Laros was much away from home and moved among a large circle of friends and acquaintances no person comes into Court, not even his brothers and sisters, to swear to any indications of insanity, and no person not of his own household ever observed anything like those "spasms" referred to by his brothers and sisters. If his brothers and sisters are to be believed, and there is no reason to doubt them, there is proof of "spasms" or a nervous affection of some kind, but they of his own kin, bound by most sacred ties, do not undertake to say that he was insane at any time. There may be proof of "spasms," but "spasms" are not insanity. It is not contended that he committed the act while in a spasm. He teaches school Monday, Tuesday and Wednesday before the fatal tragedy. School children, who are more observant of peculiarities than grown persons, are called, all of whom swear that nothing unusual was observed. He is seen and conversed with by a number of persons, none of whom swear to any symptoms of insanity. He is met on Wednesday evening about half-past five o'clock according to his own time, less than two hours before the fatal supper, by Adam Job and Alphinus Schug, with whom he held a perfectly rational conversation upon ordinary topics. He converses with Joseph Miller, jr., about coffee just after the tragedy, while the neighbors were gathering in, remarking that "some said it was in the meat, some in the beets, others said the coffee tasted peppery. He was no coffee drinker himself, but had taken two swallows," and procured a cup of coffee for Miller "to see what was the matter." Drs. Seem and Junkin were there, the Coroner was there and neighbors and friends gathered in during the three days following the tragedy, yet neither the doctors who had examined him in reference to the nature of his sickness, whether it was real or feigned, the Coroner, nor friend or

neighbor, or brother or sister swears he was insane at the time of the commission of the act. Alvin, his little brother, says:—"He looked wild at the supper table and turned his eyes sideways." Alvin sat at the end of the table, Allen at the side. His was a side view. Clara and Alice sat directly opposite to him and saw not the glare of his eye. If it had been unusual *they* would have observed it. If he did look "wild" and "turn his eyes aside" it was not at all inconsistent with his sanity. And well might he avert his eyes from that horrible scene when he saw his own mother lift to her lips and drink to the dregs that fatal cup which he had prepared. Oh, if he could look unmoved then his heart were adamant and reason were indeed dethroned.

He was committed to prison June 3, 1876. No "spasms" are authenticated by the presence of anyone until July 24, 1876, fifty-one days after his incarceration. True, we had his word for it. He had told the warden he had had "spells," but this, on July 24, when Dr. Seip was present, was the only one proved up to that time. Dr. Seip also saw him August 7. Warden Reed says that the effect of these "spells" was visible probably two hours before and two hours afterward. Dr. Seip in his indiscreet zeal to shield the prisoner makes the effect from twenty-four to thirty-six hours before and afterward. The prisoner Smith, who was put in his cell to watch him, says he had "spells" Wednesday, Thursday and Friday after this trial began. Gentlemen, you have seen him in court during that time. True, he has been silent, but have you seen anything unusual, the staggering walk or the dull and moody expression? Can your own senses deceive you? But it is said that the effect of the "spasms" vary; that they are sometimes slight, sometimes violent. If so then you can draw no legitimate inference from any one of them and it is impossible for you to say, though he had "spells" at the very time of the act, that he was under their influence. If it were shown that the defendant was subject to attacks, epileptic or otherwise, uniformly, every time depriving him of his reason for the same space of time before and after an attack, and that he had one of these "spells" at or about the time of the commission of the act, and that the act itself was committed within the period during which he always suffered in mind, the conclusion would be irresistible that he was irresponsible at the time of the act. This is the vital point in this case. We say even if he had attacks they were not uniform in character, and this seems to be admitted. That the attacks were not epileptic, that the weight of testimony is against epilepsy at Mann's, that the medical testimony, with the exception of Dr. Seip, is all against it. As it seems to be agreed that epilepsy does not affect the brain under four years, unless you find that he was suffering from epilepsy at Mann's, even if he had actual epilepsy or were really insane in prison, you cannot say that his mind was at all impaired at the time of the act. The legal requirement to relieve from penal responsibility is that his mind was impaired *at the time of the act* "to such an extent as to blind him to the consequence of his act and to deprive him of all freedom of moral action." A defective memory is another of the primary effects of epilepsy. The doctors all said that if a man remembered and could tell what occurred

they would consider him conscious of what he was doing at the time of the act. He *remembered and told* where the pocketbook could be found. His act also shows intelligent design. He was moved by a motive, the usual one moving rational men to the commission of the greatest crimes—the greed for gain. He wanted money. If unreasoning, irrational and blind he could have placed the poison in almost any article of food. *He selected the coffee, from which he never drank. He concealed his crime,* appeared to taste the coffee, assisted in caring for the sick and stoutly denied all knowledge of the sad affair. *He concealed the fruit of his crime*—the money—and in every respect comported himself as well as the most rational criminal. There is everything in the surroundings of the case to indicate sanity, nothing showing insanity.

It is said a man may be imperceptibly insane, as that subtle essence, the mind, cannot be seen ; that its outward manifestations may all appear sane; that a man may be perfectly conscious of what he is doing while within rages a storm impelling him to acts, the consequence of which he clearly perceives but cannot avoid. Chief Justice Gibson says this is a most dangerous doctrine and should not be received except in the clearest cases, and that such an impulse should be shown to be habitual or at least to have exhibited itself more than once before it should be accepted as a defence. If Allen C. Laros was under an irresistible impulse it must have commenced on Monday evening, the time of the purchase of the poison and continued until Wednesday evening, the time it was administered, and we have the unparalleled instance of a man battling with an impulse for three whole days, at last yielding to its overwhelming violence. Can this be so?

Gentlemen of the Jury, a doubt of sanity will not do. You must be *satisfied* that the defendant was insane at the time of the commission of the act before you can acquit him. Nobody but Dr. Seip says he was insane at the time of the act. He did not see him till long afterwards and draws his inference from entirely insufficient data. You have heard the testimony of the persons who saw him at the time of the act, of Dr. Curwen and the other medical witnesses, and under their testimony and all the circumstances surrounding his wicked and unnatural act you cannot say that he was irresponsible. We would not unjustly convict. We ask but a fair consideration of the evidence developed on the trial and feel that you who have given such unflagging attention through this long period will give a fair deliverance between the Commonwealth of Pennsylvania and the prisoner at the Bar.

Henry W. Scott, Esq., then spoke in behalf of the defendant as follows:—

[Upon the conclusion of Mr. Merrill's speech Mr. Scott occupied the remainder of the morning until the noon adjournment in presenting to the Court the questions of law raised by the defendant. It is deemed sufficient to give only the outline of his argument and authorities cited from his brief.—*Ed.*]

MAY IT PLEASE THE COURT:—The law embraced in the submitted points may be disposed of under three heads:—

I. The law upon proof of the *corpus delicti*.

II. Murder in second degree where death results from poison.

III. Limit of legal responsibility in Pennsylvania upon mental disease.

I.

Corpus Delicti.

Wharton Crim. law, vol. 1, secs. 683–746, note *b*.—In cases of homicide the *corpus delicti* consists not only of the fact of death, but criminal agency as well; and the body of the offence is to be proven by direct testimony or by presumptive evidence of the most irresistible kind. The jury must find the death; the criminal agency of the defendant in administering arsenious acid; and the death of Martin Laros from the kind of poison described in the bill of indictment.

Greenleaf Ev., vol. 1, sec. 217; People *v.* Badgeley, 16 Wend., 53; Phillips Ev., vol. 1, pa. 556; Bennett & Heard, Lead. Cas., vol. 2, pp. 625–6–8.—The confessions of the party, not made in open court, uncorroborated by circumstances, will not sustain a conviction. There must be a prima facie case upon proof of corpus delicti before the confession, if there be any confession in this case at all, can be considered by the jury.

Starkie Ev., pa. 862; Wharton Crim. law, vol. 2, sec. 2692. Though the purchase of the poison is proven, yet "between preparation and execution there is a gap which criminal jurisprudence cannot fill." And when upon chemical analysis no poison is found in sufficient quantity to cause death; where no examination is made of vomit or ejected matter; where an analysis of the stomachs of those who exhibited in their sickness similar symptoms was made and not the slightest evidence of arsenic was detected, and where the symptoms are precisely similar to those of some natural disease, there can be no conviction until the jury are satisfied to a moral certainty of the death by arsenious acid through the criminal agency of the defendant.

2 C. & K., 221; Fisher's Dig., pa. 2812, evidence.—"Where a "knowledge of any fact is obtained by means of a confession which "cannot be received the party should be acquitted, unless the fact itself "would be sufficient to warrant a conviction without any confession "leading to it." The confessions being here excluded, the fact that the pocketbook and money were found at the spot indicated by the prisoner, if established, is no evidence for the jury in the absence of corroborative proof *aliunde* of the body of the offence. If the indictment was for larceny the fact of finding would put the defendant to explaining his possession of stolen property; but the larceny in this evidence has no connection with the murder.

Mrs. Wharton's case; Paul Schœppe's case; trial of Mrs. Chapman. Wharton Crim. law, vol. 3, sec. 3280.—Power of the Court in criminal cases to direct the jury to acquit:—"Where the whole case, leaving out disputed facts, requires an acquittal this course is eminently "proper; and there are instances of unfounded prosecution pressed by "popular prejudice where such a course is the peremptory duty of the "Judge."

II.

Murder in the Second Degree.

Murder by poison is only presumptively murder in the first degree under the Pennsylvania statute:—"All murder which shall be perpetrated by means of poison, or by lying in wait, or by any *other kind "of wilful, deliberate and premeditated killing;* or which shall be committed in the perpetration of, or attempt to perpetrate any arson, rape, "robbery or burglary, shall be deemed murder of the first degree." Where death is the consequence of the perpetration of the four offences herein mentioned, or of the attempt to perpetrate them, the intention to take life is excluded from consideration. But death by poison, and by lying in wait, is indicated as "wilful, deliberate and premeditated," and consequently the specific intent to take life is the essence of the offence. The presumption is, from the statute, that the use of poison, or homicide by lying in wait, is wilful, deliberate and premeditated; but this presumption, like every other, may be overcome.

The Virginia statute omits the word "other." There, murder in the first degree is "by poison, by lying in wait, imprisonment, starving, or "by wilful, deliberate and premeditated killing," and in Com. *v.* Jones, 1 Leigh, 610, Judge Daniel has referred to this omission, as explaining the sense of the construction we put upon the Pennsylvania statute (vid. also Burgess case, 2 Virg. cases, 488; Whiteford's case, citing 1 Leigh, *supra*). When a man uses a deadly weapon (which is similar to the use of poison) the presumption is that he intends the necessary and usual consequences of his act; and if death is caused by that act it is presumptively murder in the first degree; but a defendant in either case may reduce the degree by explanation. Com. *v.* Earle, 1 Wh., 525.—In this case the indictment was framed under the old act of 1794, of which the one in the code of 1860 is an exact copy. The defendant was charged with committing murder by poison. The verdict was "Guilty in manner and form as indicted," and sentence of death was passed. It was held that this was proper. But here the presumption operated to settle the verdict, and unless it had been specifically stated to be of the second degree the intendment of the jury would run with that presumption. In a later case—Johnson *v.* Com., 12 Harris, 386—where the defendant was indicted for feloniously, wilfully and of his malice aforethought casting the deceased into a dam, &c., and holding her in and under the water, whereby she was drowned, it was held that a verdict of "Guilty in manner as indicted" would not support a sentence for murder in the first degree.

Chauncey Ex. Parte., 2 Ash., 227; Com. *v.* Dougherty, 1 Br, app. xxi.; Lane *v* Com., 9 P. F. Sm., 373; Lewis' Crim. Law, pp. 392–3; Rhodes *v.* Com., 12 Wr., 396; Com. *v.* Flanagan, 7 W. & S., 418;

Shaffner *v.* Com., 22 Sm., 60; Kelley v. Com., 1 Gr., 484.—If from intoxication, or weak mind, or any other cause the defendant is not capable of forming the specific intent to take life, where such intent is necessary, the offence is stripped of the malignant features necessary to make it murder in the first degree. The general purpose of the Pennsylvania statute of division is to provide that no defendant can be capitally punished if his mind is not capable of the specific intent; and if by mental disease that capacity is wanting, or if as to that there exists the reasonable doubt, the verdict should be murder in the second degree. Even rage is short frenzy—*Ira furor brevis est*—and death occasioned by great provocation in a fight may be murder in the second degree or manslaughter. By the Austrian and Bavarian code this matter has been settled by the recognition of degrees in penal responsibility. Diminished responsibility (verminderte zurechnungsfähigkeit) is defined as a condition in which the mind from any cause is incapable of calm premeditation or exact and wilful deliberation.

Stephens' Crim. Law of Eng. (London, 1863), pa. 92.—"Partial in-"sanity may be evidence to disprove the presence of the kind of malice "required by the law to constitute the particular crime of which the "defendant is charged." If the jury should not be able to find by the weight of the evidence that the defendant was of such unsound mind as to make him irresponsible to the law, but if *they have a reasonable doubt of it*, or if they are not satisfied beyond a reasonable doubt that he was so free from mental disease as to make him capable of forming the specific intent to take life, the verdict must be in second degree. And this case is distinguished from the cases of Rhodes *v.* Com., 12 Wr.; Lane *v.* Com., 9 P. F. Smith, and Shaffner *v.* Com., 22 Smith, because in those trials it was simply held that the jury had the absolute power to find a verdict in the second degree, and it would be the duty of the Court to receive it, though against the charge; but in this case it is the duty of the Court to submit the questions of fact to the jury to determine the effect of the mental disorder upon his capacity.

Ortwein *v.* Com., 26 Sm., 415.—This case was tried in the Court below in Allegheny county. Judge Stowe in his charge to the jury said:—"Where the self-governing power is wanting, *whether caused by* "*insanity*, gross intoxication or other controlling influence it cannot be "said truthfully that the mind is fully conscious of its own purposes "and deliberates or premeditates the sense of the act, describing mur-"der in the first degree."

Wharton Crim. Law, vol. 1, sec. 710.—If there is a doubt of the degree, upon the whole of the case, the jury must acquit of the higher and convict of the lower.

Wharton Crim. Law, vol. 1, sec. 57 (*a*), 24 note; Wharton & St. Med. Jurisp., vol. 1, secs. 181, 212, 214-15, 770, note *x*, 476-77-80.—"It was formerly held that insanity and sanity were as states sharply "distinguishable, and that men were nearly wholly sane so as to be "wholly responsible or wholly insane so as to be wholly irresponsible. "*Psychologically the position is now abandoned as unsound.* * * * "There are therefore certain phases of the mind which cannot be posi-"tively spoken of as either sane or insane. Is a man in one of these

"phases to be acquitted of crime? If so he would be a dangerous "member of the community. Is he to be convicted? At this justice "would revolt, for at the time of the commission of the guilty act he "was, it could readily be shown, not in a condition of mind coolly to "premeditate or accurately to conceive of a malicious design. The "only course under such circumstances is to find the defendant guilty of "the offence in a diminished grade, when the law establishes such grade."

State *v.* Leak, Phillips' Law Rept., N. C., 450.—Negligent use of poison, knowing the character of poison, and administering it recklessly in a fatal dose is murder, but only in second degree unless there is an intention to kill.

III.

Legal Responsibility upon Mental Disease.

Right and wrong test:—When this doctrine was first applied it was not discovered that the perceptions, emotions and will, distinct from the intellect, might be disordered. Such is no longer the test, unconnected with the very nature and quality of the act itself, and the defendant may clearly see and understand the nature of the act, but, in the words of C. J. Gibson, "There may be an unseen ligament pressing upon the mind, drawing it to consequences which it sees, but cannot avoid."

These points are framed in the language of the Supreme Court.

Moral insanity:—This question has only an indirect importance upon the case of the defendant as modifying the right and wrong test. In Pennsylvania and New York the theory of moral irresponsibility lightens the yoke of self-governing power, and since the decision of Com. *v.* Mosler, 4 Barr, 266, an unbroken line of adjudication has supported the doctrine.—Com. *v.* Moore, 2 Pittsburg, 504; Brown *v.* Com, 28 Sm., 123; Com. *v.* Winnemore, 1 Brews, 356-7; Ortwein *v.* Com, 26 Sm., 415; Freeth's case, 3 Phila., 105; Com. *v.* Mosler, 4 Barr, 266; Lewis Crim Law, pp. 401-3-4; Com. *v.* Haskell, 2 Brews., 491.

Dr. Ray was said by Mr. Fox to be of "questionable authority" on this subject. But I hold in my hand a pamphlet bearing the name of Dr. John Curwen, who for two weeks has been sitting by the side of Mr. Fox as his *expert* in this case, wherein on page 11 he speaks of "that very able and distinguished writer in the Jurisprudence of Insanity, Dr. Ray." And again—pages 16-17—"No one will for a mo- "ment deny that the intellectual powers by themselves may at any time "become disordered, while the moral powers may not appear to be in "the least disturbed. * * * In the same way we can readily im- "agine that the moral, emotional or effective powers may also become "disordered and the intellectual faculties may not appear to be in- "volved, * * * and if the moral powers may be and frequently are "thus disordered have we not an insanity of the moral powers as fully "developed, as in others we have an insanity of the intellectual?"

MONDAY AFTERNOON, August 28.

[At two o'clock Mr. Scott proceeded to address the jury as follows. He closed at four and a half o'clock.—*Ed.*]

With submission to the Court:—

GENTLEMEN OF THE JURY:—To your great relief, doubtless, to our great relief certainly, this solemn investigation is drawing to a close. For this man the last words will soon be spoken; our duties will then be finished and yours will begin. It is not necessary that I should remind you of the responsibilities in the case It is not a pleasant duty to sit in judgment upon human life; nor is that life to be easily taken away. It was God's first best gift to man. I know well that this jury will appreciate the responsibility cast upon them by the law, when they retire to their room to decide the fate of the prisoner at the Bar. Never before, in any trial in this county, was such interest manifested by her people. This vast crowd to-day, which, while I speak, swells and throbs like a mighty pulse, lends additional sanction to the duty which devolves upon counsel and jury alike. You will soon pass from this court-room to your deliberations, and after the verdict to your homes; but whether he walks free from the Bar of this Court, or to an asylum, or to his death, he goes a doomed man. There has been laid upon him the mailed hand of mental disease, and no other earthly misfortune can compare with this. The surroundings of the case are somewhat peculiar. To a stranger in this room, unfamiliar with the trial, and conversant with the prosecution of crime, the table of the Commonwealth would seem to be the place of the prisoner. Around that table have been gathered not only the skilful gentlemen conducting the case on behalf of the State, but also those other gentlemen conducting the case on behalf of themselves. They have suggested to counsel, from time to time, the questions to be asked, and have grouped themselves by that table as if their professional reputation was on trial and not the poor man who sits here. The District Attorney is the sworn officer of the law. It is his duty to conduct the prosecution in the name of the people of the Commonwealth. He represents you and he represents me; more than that, by a fiction of the law he is supposed to represent the prisoner and see that no wrong is done to him. Not content with this official prosecution, he has placed beside him the leader of this Bar; he who bears the silver bow of Apollo and wings his shafts with unerring, and ofttimes fatal precision. He will, by his eloquent recital of this sad story to its climax, play upon your passions like the master-hand that strikes the chords of the lyre to perfect harmony. I have seen jurors cheeks blanch and their eyes moisten under his dangerous and fatal eloquence. But all this shall not swerve you from duty. Upon this side sat the defendant with none but his counsel by him. No professional expert whispered assistance to them; indeed he had not at his command the treasury of a rich county to provide for the necessities of his case; but he opposes to their theories, the accumulated truths of science, contained in these books now piled before me. Here, unfriended and alone, save by the presence of counsel and the armor of innocence, he confides his life to the hands of this jury.

We have shown, as I promised in opening, that at the time of the alleged poisoning the prisoner was in such a state of unsoundness of mind that he was not criminally responsible for such an act, if it were possible to say that his hand was the guilty agent. But before you

reach this question of mental disease you will have a long road to travel. At first permit me to explain the kind of verdict you have the power to return. If you find the defendant guilty of causing the death of his father, Martin Laros, by arsenious acid as charged in the indictment, and further find him to have been of sound mind upon this evening of May 31 your verdict will be guilty of murder in the first degree. If the Commonwealth have failed to show beyond a reasonable doubt that Martin Laros died from the effects of arsenical poisoning, or if he did so die, and they have failed to connect the defendant with the administration of this arsenic, your verdict will be not guilty generally.

If you find that the defendant administered the poison and this arsenic was the cause of death, but that he was so disordered in mind by reason of these epileptic attacks, as to make him incapable of forming that deliberation and specific intent to take life, necessary to constitute murder in the first degree, or if you have a reasonable doubt of this, although he is to be held accountable to the law for the crime, notwithstanding death was occasioned by poisoning, your verdict will be for murder in the *second* degree. But if, as we say, you find him to have been irresponsible for any criminal act upon the day of the murder, and at the time, you will return the verdict "Not guilty by reason of insanity." This form of the verdict, regulated in this State by an act of Assembly, was first rendered in the case of Hadfield, whom Erskine defended, upon the suggestion to Lord Kenyon by Sir William Garrow that this return by the jury would legalize the further detention of the prisoner. And so, you will understand, this verdict does not send him into the world with a dangerous malady upon him, but imposes the restraint of confinement, with medical treatment for his disease.

The Commonwealth must first prove that Martin Laros died from the effects of poisoning by arsenious acid. They rest their proof of this upon the symptoms of those who were suffering ; the post mortem appearances of those who were dead ; and the discovery of the poison by chemical agency. You recollect that upon the evening of this thirty-first of May the whole family were taken sick at the supper table, and a very short time after they began the meal, they were seized with vomiting and rushed into the yard. It is alleged that the poison, whatever might be its nature, was contained in the coffee pot. Allen Laros drinks no coffee; that is important to remember. For supper they had beets, pickles, fried veal, rhubarb pie and molasses cake. We will examine the contents of that coffee pot hereafter. The Commonwealth say that from the effects of this poisoning, three of the family died, to wit—Martin Laros, Mrs. Laros and Moses Schug—and that the symptoms exhibited by those who were sick, and afterwards recovered were precisely the same as of those who died. The question asked of Dr. Junkin was answered :—"The symptoms of all who were suffering were alike in kind, though differing in degree." Now permit me to recall the symptoms as in evidence [Mr. Scott read the testimony of different witnesses]. Two of the unfailing signs of death from arsenical poisoning are the burning sensation in the epigastric region,

and the constriction of the throat. This is admitted by their own witnesses, and I need discuss that no further. Here were eight people at once suffering, as they say, from the administration of arsenic, and not one manifesting the usual, and indeed invariable symptoms. Is it possible that this sign should escape the attention of the two physicians? The question was pointedly put by them to the different people as they lay sick and the answer was the same from each. There was no burning and there was no constriction. The symptoms in all were alike in kind, though differing in degree. It is given as authority [Wharton & Stille's Med. Jurisp., vol. 2, part 1, sec. 330] that in cases of arsenical poisoning taken with food, the symptoms are seldom manifested until the lapse of an hour or more; and yet in this case they came in less than ten minutes. And there is yet a stronger circumstance than this. The peculiar taste experienced by them all was described as "peppery." And Martin Laros when he sat down to the table ate some of the meat *before* he drank the coffee and at once said the meat tasted peppery. This is their own evidence. Did the biting taste come from the meat? certainly not from the coffee—to Martin Laros. [Mr. Scott discussed at length the evidence of symptoms.] Allen Laros, the prisoner, drinks no coffee; he drank none then. What made him sick? Recollect that he too was vomiting in the yard before he had taken the emetic prepared by Dr. Seem. Of that there is no doubt, for the doctor testifies that Allen was the last to whom the emetic was given; that he went at once upstairs to bed, and was out no more that night; and before it was dark, Clinton Laros and Joseph Miller saw him lying on his side in the yard, vomiting with the others. Do not understand that we have endeavored to prove that these people died from cholera morbus, bilious cholera. We are not obliged to prove anything. It is simply our duty to resist the proof of the Commonwealth. But we show from these books of authority, and from their own evidence, that these symptoms are more nearly those of cholera morbus than of arsenical poisoning. [Mr. Scott reads from Wh. & St. Med. Jur., vol 2, part 1, sec. 333; Wood's Prac. of Med., vol. 1, page 710.] The suffering of Allen Laros was not from the coffee; he drank none. The burning taste first experienced by Martin Laros, the deceased, was not from the coffee; he had not yet partaken of that. Not one of them had the burning in the stomach and the constriction of the throat, infallible signs of the presence of arsenic. There were the bilious vomiting and purging; there were the pains in the abdomen; the symptoms came suddenly as in cholera morbus. But the prosecution say that the discharges from the bowels were bloody, and this never occurs in cholera morbus. And so to their expert physicians upon the stand we read the passage from Wood's Prac. of Med., vol. 1, pa. 710, upon bilious cholera:—"The vomiting and purging are almost "incessant; everything taken into the stomach is promptly rejected, "the discharges being often brown or blackish, acid, or *even bloody.*" Then Dr. Green explains this authority by referring the word "discharges" to the contents of the stomach. But in irritant poisoning also the vomiting is of mucus and of blood; and as it is our province to show a correspondence of symptoms, that construction gives no im-

provement to their case. We are satisfied to let the passage of the author from the context explain itself. Dr. Green's construction is what Curran called "A stunted and verbal interpretation, standing on "tip-toe between itself and meaning." And Dr. Seem, with a varied experience, has met similar cases in bilious cholera. No man's life hangs upon doubtful symptoms; and here those symptoms themselves depend upon the failing and fleeting recollections of the witnesses now produced. God save us all if our lives depend upon the doubtful memory of men! Modern science has demonstrated the unreliability of symptoms alone in determining the presence of poison, and upon that science, as upon a rock, the defendant builds his case. Christison, the great authority on poisons, referring to the work of Orfila, vol. 2, pa. 360, says in treating of arsenic:—"The present doctrine of toxicol- "ogists and medical jurists seems universally to be, that symptoms alone "can never supply decisive proof of its administration. All these "symptoms may be caused by natural disease. * * * Conse- "quently every sound medical jurist will join in condemning unreserv- "edly the practice, which prevailed last century, of deciding questions "of poisoning, in such circumstances, from symptoms alone." And again, "It is now laid down by every esteemed author in medical juris- "prudence that the symptoms, however exquisitely developed, can "never justify an opinion in favor of more than high probability." Wharton & Stille's Med. Jurisp., vol. 2, part 1, sec. 333.—"We con- "sider the assertion hazardous and untrue that, in every case, the symp- "toms of irritant poisoning can be distinguished from those of bilious "cholera." When their own experts were pressed with these authori- ties and many more, only one would dare swear that from the symp- toms alone he would pronounce the death to have been caused by ar- senical poisoning. That exception was Dr. Junkin, who having seen in his lifetime two cases besides this, is above all science and all law.

The post mortem is their next reliance. But Dr. Field is not able to say, and will not say where human life may be the forfeit, from the appearances at the examination of those dead bodies, that death was caused by irritant poisoning. [Mr. Scott then detailed the results ob- tained from the post mortem.] The imflammation and erosion, he says, might have been caused by natural agencies, and the appearance of the stomach and intestines was not easily distinguishable from that which would be caused by bilious cholera. Perforation was discov- ered, and this is strong against the theory of arsenical poisoning. Wharton & Stille, vol. 2, sec. 334.—"Perforation from arsenic, which "poison is the one to which it will most probably be attributed, is so "rare an event that but three cases are said to be on record; and the "fact of the perforation being so unusual, in a form of poisoning so un- "common, renders it highly probable that in these instances it was due "to an already diseased state of the coats of the stomach." Because they failed to find the poison in the stomach, as they expected, the theory of the Commonwealth is this:—That the arsenic was ejected from the stomach by excessive vomiting; or, because it was taken in a hot solution, that it was quickly absorbed into the blood vessels of the body. The latter branch of this theory, we will dispose of hereafter.

If the stomach had ejected at once the arsenic taken down, there could have been no absorption ; and therefore no death, Wharton & Stille, vol. 2, sec. 325. Excessive vomiting like this would have weakened the stomach, and left it in a precarious condition to receive the emetic which was given. Sulphate of zinc was that emetic, as you remember ; and is itself classed as an irritant poison. It might then easily have caused the post mortem appearances of inflammation ; and worse than that, which is more to the purpose, under the conditions of the system when administered, the stomach weakened by excessive vomiting, and the poison ejected, if arsenic was there, death would have been a necessary result. Taylor Med. Jurisp. pa. 183. [Mr. Scott discussed at length the evidence upon this point.] Gentlemen of the Jury, say if you can ; say if you will ; say, if you dare, that there is any proof, from symptoms of suffering, and appearances of the post mortem that death was caused from poisoning by arsenic.

We proceed another step, to the chemical analysis ; and of this there are two branches. The first is that of Mr. Davidson upon the contents of the coffee-pot; and the package from Dr. Junkin and Dr. Seem. There can be no doubt that the results of his examination, displayed before the jury, contain quantities greater or less in extent of arsenious acid. But that gives me no pause. That poison was not in the coffee-pot, from which the packages were taken, at supper time on this thirty-first of May. That is the vital point ; and if it had been there in the large quantities now produced, Dr. McIntire's examination of the stomachs of the deceased, would have produced similar results. After supper upon that fatal night, for a period of more than three hours, with the house and the yard filled with people, having free access to all parts of the premises, they have failed to account for the custody and keeping of this vessel of death. As exhibited in court, here and now, upon that table, not one witness identifies it, as the one used upon the occasion. There were fifty or sixty people there for some hours. At 10 o'clock or after, Emmeline Sandt brings the coffee-pot to Dr. Seem ; but he finds nothing then. It is deposited upon the sink in the kitchen, where it remains exposed until nine o'clock in the morning, without examination. Many people are through the house all night ; *and we have shown there was a package of arsenic at that very time in one of those rooms, not in the keeping of this defendant—then sick in bed—not purchased by him ;* and they have not produced one witness, from their whole array to prove that package remained untouched. They are not able. In the morning, after fourteen hours of public exposure, this vessel is examined by Dr. Seem and Dr. Junkin, and the contents divided, liquid and sediment. [Mr. Scott then discussed the evidence upon the custody of these packages ; that they were lying upon the sill at the open window, until the afternoon.] And then when this coffee-pot was put into the possession of the Coroner for examination, he left it under the seat of the carriage at the livery stable ; and that carriage was immediately hired to Mr. Martin, who with his wife, at 7 o'clock in the evening, drove back to Mineral Springs, the scene of the tragedy ; the horse was tied in front of Mr. Kichline's hotel for more than two hours ; after dark, with a

hundred people around, drawn by curiosity and excitement. Then the carriage is returned, after ten o'clock, and Mr. Carey awaits its coming. And they purpose giving to you, the chemical analysis made upon the contents of that flying vessel, and ask you to condemn *him* to death. This analysis was not made for the case. They depended upon the results of Dr. McIntire's examination; and when that failed their purpose, they were driven to this expedient. Mr. Davidson is modest enough to make no pretensions to be an expert. He has had but little experience in chemistry. He is a student in the College, and boarded with Dr. Junkin, who handed him this package to examine for experiment. He tested none of the chemicals used in his analysis to detect the presence of arsenic there; many of them, he admits, in an impure state contain arsenic. [Mr. Scott referred to Wh. & Stille's Med. Jurisp., vol. 2, secs. 423, 426, 426, 430, upon the fallacies of the tests employed.] The analysis of Dr. McIntire presents a different consideration; and this is the last point in the proof of the corpus. The examination was made of the stomach and intestines; and two small crystals of arsenic, not perceptible by the sense of the naked eye, are produced here as the result of that investigation. They ask for a conviction upon that; and the other branch of the theory discussed before, is brought as the argument here. They no longer seek to convict upon the presence of arsenic as found in the deceased, but upon its absence. Their experts have said that the arsenic must have been dropped into the coffee-pot, while upon the stove, and after boiling for some time, to have held so much in solution; and this warm coffee then taken into the body, would facilitate the rapid absorption of the arsenic through the blood vessels of the system. This theory is advanced to account for the absence of arsenic in the stomachs examined; but that is fatal evidence for them. Not five miles away, in that little church-yard, rest those bodies yet. When the examination of the stomach failed to give forth the poison, it was their duty to put a tongue in those dead bodies which would "speak with most miraculous organ." They find two crystals, as they say, which I have not seen; which you have not seen, which lie buried in those small tubes from human sight. And yet, if their theory is true, that sleeping dust contains the evidence of the crime; and that is not produced. In the stomach of Martin Laros, these crystals were found; in the stomach of Mrs. Laros, and of Moses Schug, none. "The symptoms were all alike in kind though differing in degree." What caused the death of the other two? Why are the rest living? These two crystals contain more than the fifty-thousandth part of a grain and *less than a five-thousandth part;* and yet the smallest dose that causes death is two grains. Chemical analysis can marry and divorce the elements of the physical world at its pleasure; it can penetrate the mysteries of nature with a skill as exquisite as that of

> "The hand that rounded Peter's dome,
> And groined the aisles of Christian Rome,"

and it fails to find the least trace of arsenic; none is there to cause death. It would take, by Dr. McIntire's own evidence, at least ten thousand times more poison, than his analysis found. *At least!* He

is not sure that it might not be one hundred thousand times that much. If it was there in quantity sufficient for fatal purposes, where is it now? Either vomited from the system at once, upon that night; or hiding in that body still. And if ejected within a few minutes after its lodgement, as they said, there would have been no death, and if in those sleeping bodies, they could, and can yet resolve your doubts; for two other indictments are upon his head.

They never died by poison! whence came those two crystals? if any crystals were at all produced; for no glass has been furnished to you or to me, and none in court, that we could see them there. Let Dr. Stille answer—Med. Jurisp., vol. 2, p. 291.—"The fallacies at-"tending chemical analysis when conducted by an expert chemist are "few; they arise chiefly *from the fact of the possible accidental impreg-"nation of the reagents,* or of the substance to be examined, with the "same mineral poison, as that which is the object of the analyst to de-"tect." And although Dr. McIntyre tested these reagents, it is not impossible; not improbable, that in the various chemicals used there remained that "accidental presence" of the hundred-thousandth part enough of arsenic to take a human life. Taylor's Med Jurisp., page 155.—"A reasonable objection may be taken to a dogmatic reliance "upon the alleged discovery in a dead body of minute fractional por-"tions of a grain; and considering the great liability to fallacy from "the accidental presence of arsenic from the articles used, the chemical "evidence in the French case of Madame LaFarge (1840) in which "the whole quantity discovered in the dead body was stated to be the "hundred and thirtieth part of a grain, was of a most unsatisfactory "kind, and should have been rejected by the Court. *No man with any "respect for his character, or for the common sense of a jury,* would base "chemical evidence on the thousandth or less than the thousandth part "of a grain in a case of life and death." They made no analysis of the vomit or ejected matter. Then the proof would have been sure. You cannot condemn to death, upon hypothesis. Remember the cases already referred to in this trial, of Mrs. Wharton; of Paul Schœppe; he was convicted of murder in the first degree; the evidence there was better than this. From his cell. he heard the ringing of the hammers, as they built the scaffold to seal his doom. But science was not satisfied. Another trial was secured; and it was shown that the tests of the chemical examination to discover poison, were not reliable; his prison gates were opened, and he walked a free man. Mr. Fox has said already here, that he should have been hung. The opinion of the world is the other way; the opinion of science is the other way; the opinion of the law, the opinion of the jury who sat in judgment were the other way. And if we are not to try this case according to the truths of science, and by the law, let us know it; we will adjourn this Court; you may go to your homes; and he will go to his death. But let me say, as Lord Chatham said it, "This I know, that where law ends, there tyranny begins."

These experts have been willing to say for the Commonwealth, that with the evidence of these two crystals of arsenious acid, added to the symptoms and post mortem appearances, death was caused by poison.

But I care not, how great their reputation may be ; they cannot and shall not swear down the science of a hundred years. They would swear away a life in their professional pride and send a man to the gallows through their *esprit de corps.* They have shown their feeling here. They sat at that table, around Mr. Fox, who again and again, as they were trampled down, rallied them to the conflict, like King Henry of Navarre, with his white waving plume marshalling his hosts to battle. And in return for his service, they, each in succession, sat beside him, and loaded him to the muzzle with a medical dictionary, which he fired off with the choice epithets of that Æsculapian art. They are all here, if the Court please, like those philosophers, whom Cicero describes, in *De Divinatione,* willing, even anxious to support some theory, however absurd. *Nil tam absurde potest dici, quod non dicatur ab aliquo philosophorum.*

Assuming for the purpose of argument, that they have proven the death of Martin Laros to have been caused by arsenic, we advance to the question of the defendant's connection with the crime ; and here we rest secure, for their own evidence establishes his innocence.

They have called Dr. Voorhies, the druggist, to prove the purchase of four and a half ounces of arsenic, two days before the act. [Mr. Scott adverted at length to the testimony of identification of the prisoner, and referred to Purdon's Digest, "Crimes" act, placitum 100.] If this defendant purchased the poison as alleged, without a prescription and without registry of his name, and if he was guilty of this crime, then I charge Dr. Voorhies with being an accessory to the murder, for this act of the Legislature was passed for the very purpose of preventing these improper sales of poisonous drugs. If he had demanded the name from the purchaser to be entered of record, to use hereafter as a written witness against him, the man would have walked from the store, as he came ; and this druggist, who goes to sleep upon the stand while under examination, would not have been here to criminate himself. This is but little to the purpose. If the defendant purchased the poison, it makes no difference. The Commonwealth's case puts this poison in the coffee-pot while upon the stove in the kitchen during the preparation for supper. It must have been put in then, or not at all ; for Alice brought that vessel from the closet for the purposes of supper. Nothing was in it then. They say it was put in after the water was boiling, as it could only thus have held so much in solution. Be it so! that is their science. For us it is enough that if put in at all, it was necessarily done after the pot was upon the stove. Now, remember well the evidence, for this is the dividing line between life and death. Alvin and Alice were that day at school to their brother Clinton ; and returned home earlier than Allen, who taught three miles away. They went to the field ; and while there Allen passed on the way home. Clara was also in the field. Half an hour before supper they returned to the house. The mother was in the wash-house. Alice went in ; took the coffee-pot from the closet ; put the coffee in it for supper ; placed it on the stove. Nothing was wrong then. Where was Allen, when she came from the field ? In the shop with his father, across the road, above the line of the main building ;

out of sight of the wash-house. Alice went out down to the river; left Clara and her mother in this place when supper was preparing; the mother was sewing, with face to the stove. When Alice returned, Clara and her mother were still there; the mother was still sewing. Clara said she remained; did not see her mother go out before supper; Allen did not come in. That is the whole story. The Commonwealth to establish the criminal agency of the defendant, must give him the opportunity to put the poison in this pot; Allen did not come in with the first to supper. If he had been in the wash-house in the interval that Alice was at the river, his only chance was before the eyes of his mother and in sight of Clara. But he did not even come in. They have excluded him from this opportunity; they have negatived, not proven his guilt; [Mr. Scott here elaborated this evidence.] They have given in evidence, as proof of the motive, the larceny of money, and the finding of the pocket-book of deceased. The money was not missed until Thursday night; at that time the father and mother were both dead; and recollect that the prisoner had not left his bed after Dr. Seem administered the emetic on Wednesday night. The inside drawer of the secretary where the money was kept was locked by a key carried by his father in a smaller book in his pecket; the lock was not broken when examined, and when the money was missed. If Allen took the money he had it already before supper on Wednesday night; what then was his motive for the deed? He could have easily escaped with the money; he could just as easily have escaped after the murder. But innocent, and unsuspecting of accusation, he made no effort for that. Recollect that the door of the secretary was *unlocked*, when examined; the outside door was locked by a key kept in an open drawer below. Any one from the many people whom the scenes of that night, in that house gathered together, amid the confusion and distress, had free access to that drawer. Allen never left his bed.

They say that on Saturday when accused of the crime, he indicated where the money was to be found buried. Schooley, Carey and Hildebrandt repaired to the place. Both the constable and coroner dug for it; but found it not. They went to the house, and after some time were returning again to the spot; but met Hildebrandt with the pocketbook in his hand.

Why was Hildebrandt not called as a witness? the other two who searched and did not find it at the designated place, were sworn; the man who found it, was not placed upon the stand. Is it not clear? It was not found where the prisoner said; he knew not where it was. Goaded to frenzy by racking brain, and torturing disease, and false accusations he tried to purchase peace by Cassandra's raving auguries, —and failed.

This is the last of their case except the alleged conversation with William Schug in the county prison. As the Court will instruct you, before you can take this into consideration, you must be satisfied from the proof of the Commonwealth that there is other corroborative evidence to the corpus of the offence; to the fact of death and criminal agency in such death; and that there is some circumstance to indicate the defendant's connection with the crime. There is none here; they

have affirmatively shut him out from guilty participation. It is a principle of law, in this country, that in a capital case, no man shall be condemned to death upon his own confession alone; and that principle has been moulded into shape from the experience of the world, where men have been convicted and executed upon their own confession; and their alleged victims have afterwards returned to their homes, alive and well.[Mr. Scott read several of these cases.] But in point of fact there is no confession here. In answer to Mr. Schug's question, "What did you mean?" the prisoner said, "I don't know what I meant; I had no reason; I am sorry the way it is; but it is too late." That is all. Nothing to indicate that he referred to the commission of this monstrous crime. He was sorry the way it was. Why not? His father and mother were dead; the family was scattered in these few months; some to the church-yard, and some to the jail. Too late to restore that family circle complete! Too late! too late! will ring in their ears to the last syllable of recorded time. And if it was a confession of this identical offence, you cannot convict; there is no corroborative evidence of the *corpus delicti*; and if he meant to confess the crime, then the Commonwealth have shown it false; for they prove him innocent. They have excluded him from that opportunity to commit the deed. It was one of those delusory actions of the mind, similar to that which induced him to direct the officers of the law, to that place where the money was not found buried. His reason was weakened by the disease of these epileptic attacks in the prison. The witness was related to one of the victims. Borne down by despair and by suffering, the world in arms against him, he vainly sought support upon a broken reed. [Mr. Scott read from Wharton & Stille's Med. Jurisp, vol. 1, sec. 200, (*b*), for weight to be given to confessions by persons of weakened mind.] Why had he never, in terms unmistakable, confessed before? Why did not his unconscious tongue give forth his crime to the world, when he lay with these convulsions, and their heavy grips? The spirit of his murdered father, the spirit of his murdered mother would stand beside him; the phantoms of a tribe of avenging shades and shadows, would haunt him on, and torture him ever. Even unexecuted purposes of guilt, are babbled forth by insane tongues; and in their frenzy and their fancy, they think the deed was done. The monastic system has presented us the phantoms of sensuality of Jerome, and the phantoms of pride of Simon Stylites. Sir David Wilkie in one of his drawings—a copy of a Spanish picture—has painted a young monk, feverish with the internal gnawings of mere permitted conceptions, appealing for solace to an aged confessor; and the agonized expression of the supplicant, and the sad wise sympathy of the confessor, tell the story plainly. But with all these mortal murders on his crown, this defendant's mouth was sealed, when the raving spasms came!

This is all their case. You cannot convict the defendant; you have no need to consider his mental condition, as the excuse for the crime. They have not proven that Martin Laros died by poison; they have not proven he had the symptoms of arsenical poisoning; they have not produced in court, by all their skilful analysis from the stomach of the

deceased, any arsenic that you, or I have seen. If it was the cause of death, they have themselves proven the defendant innocent. But his counsel would be recreant, if they neglected to present the whole of his defence. We say you should stop here; but his little bark is too heavily freighted with human hopes to justify a rest upon the oar.

We have carried you backward four years to the time he lived at John Mann's, and from thence forward to this trial. We have shown those abnormal and irregular conditions of the defendant's mind, resulting from epilepsy. At intervals during this period, he was suffering from the disease. For a month before this evening, these spasms came in quicker succession. Recollect, we do not say that this man is insane. Possibly as he sits there now, he understands as fully as you do, the remarks I make. But for an indefinite period, before and after these attacks, the mind is not in condition to understand the nature and quality of a criminal act. This branch of the defence will be discussed by my colleague; but it applies to the case of the Commonwealth in another way than as a total excuse; if you could ever find that his hand committed the deed.

The law of Pennsylvania, compels the defendant to satisfy you, by the weight of the evidence, of his irresponsibility upon this Wednesday night. If we could have proven that he had one of these convulsive spasms, with the clenched hand, and the fixed eye, and the grinding teeth, at the very moment the instrument of death was used, that would be a satisfactory proof; for then the suffering patient is altogether unconscious. But this is different. We have proven these spasms upon Tuesday night; upon Thursday morning; and the evidence of attack while he sat at the table for that fatal evening meal. We have proven—how often! before confinement, and since, that for a period of several hours, after the spells had passed away, his mind was clouded and confused; by his conversations and his acts, not responsible. Dr. Ray was pronounced to be the very highest authority by Dr. Curwen, who sat at the table of the prosecution as their expert. His work on the Jurisprudence of Insanity is authority in the Courts of two hemispheres. He declares for an immunity of punishment to epileptics for acts committed within three days before or after an attack. [Reads from secs. 465–469.] We have brought the defendant much closer than that. "All epilepsy," says Marcé, "warrants upon "the event of a criminal act, the suspicion of mental disorder; and "this suspicion is increased in the absence of any strong personal mo- "tive" What personal motive had this defendant for taking the life of his father and mother, and the whole of that family gathered together. Does not reason turn to insanity as the only explanation? Judge Beardslee of New York in the Freeman case, said that an insane act was evidence of an insane mind. They say he taught school upon the day of the deed; and nothing wrong was noticed. The answer is in Browne's Jurisp. of Insanity, page 451—"The individual "who is liable to epileptic fits is to all appearance in every respect like "his fellow-men, except at the time of seizure. *He is able to conduct "his business; he is able to perform his professional duties;* he is able to "continue his amusements and pursuits, with as much zest, intelligence

"and vigor." [Mr. Scott discussed the evidence at length; and referring to ingenuity and reasoning of lunatics, read Erskine's speech for Hadfield, vol. 2, pa. 497. Wh. & Stille, vol. 1, sec. 378.]

If the evidence has failed to satisfy you, under the law, that he was altogether irresponsible for the act, if you should find him guilty, your verdict could be only for murder in the second degree. His mind was in that condition which rendered it incapable of forming the specific intent to take life. The defendant is not to prove this by the weight of the evidence. If you have a reasonable doubt, of the power of his mind to deliberate and premeditate, you must acquit of the higher degree, and convict of the lower. [Wh. Crim. Law, vol. 1, 710.] Intoxication is always permitted to be given in evidence to reduce the degree. When the hand of God has been laid upon a man in disease, which obscures the mind, shall it be said he has not the same rights, as that man, who in a drunken brawl, stabs his adversary to the heart, with an assassin's knife? "Partial insanity may be evidence to dis-"prove the presence of the kind of malice required by the law to con-"tribute the particular crime, of which the prisoner is accused." [Stephen's Crim. Law of Eng, Lond., 1863, pa. 92.] "*Epileptic*, "nervous and cerebral diseases, and hereditary tendency may be put "in evidence to lower the grade of the offence, though they do not "amount to insanity. In so doing, we but follow the authorities which "declare that drunkenness, though no defence, to crime may be used "to show that an assault was not deliberate." [Wh. Crim. Law, vol. 1, sec. 24, s^3.]

You have no doubt his mind was affected as the result of these attacks; you can have no doubt of that. How long had he suffered in silence? how often had he fled to a hiding place, when he felt the dread symptoms approaching? Away in the fields, out in the woods, from human sight, with no eye but God's to watch his struggles. How he cried, when at last in the field his brother discovered the infirmity; how he charged him with secrecy; how he wandered at night through that old house; how he complained, "Oh! would that the night were gone; I can sleep no more." All this is part of the history of the case. How like that most terrible picture of madness in all antiquity, which Sentonius has painted, of the crazed old Roman Emperor, wandering at midnight through the deserted halls of the palaces of the Imperial Cæsars. Do you doubt that the disease is epilepsy? Even Dr. Green upon the other side has said, he didn't know what to call it, if it wasn't that. Dr. Curwen also says it was epileptoid in its character. Dr. Junkin, with *his* science, calls epilepsy a symptom and not a disease; but then he doesn't believe in these books of authority; he stands, as he says, upon common sense; these men are welcome to their opinion; he will hold to his. And when he is asked to tell us what this malady is, he plays Hamlet in high tragedy before the Court, and answers "That's the question!" Excellent man! take him to the bedside of the patient. He can tell him the sickness is not typhoid fever; it is not small-pox; it is not bilious cholera; but when the sufferer anxiously asks the nature of his affliction, he receives for satisfaction "Ah! that's the question." But Dr. Seip whom we call here

is not an interested witness; he appears in his official position; he is the physician of the prison. Night and day, when he was called he saw the defendant in his cell; saw him with the spells upon him; saw him when they had passed away. Not another docter here, saw him, except as he sat in Court beside his counsel. With the opportunity for watching; the opportunity for examination, Dr. Seip was not deceived. He says it is epilepsy. You have heard what tests were applied in the presence of the warden, and others in the jail. [Mr. Scott described the tests.] He never knew, until he heard it here, what branded those marks upon his face. When these excruciating tests were used, he never quivered to the touch. All the symptoms; the foolish talk; the gritting teeth; the hand clenched upon the thumb; the fixed eye; the confused look; the knife; the sealing wax; the burning lamp; all—all were unhappy prologues to the swelling act of this imperial theme. And yet Dr. Green has thought the tests insufficient. He was not able to suggest another; but was sure he could stand a burning lamp, applied to the sole of the foot, and make no motion. He says, martyrs have placed their arms in fire and held them there until consumed. I have heard of Fox's martyrs before. This is the last edition with improved revisions by one of them. I think he would find that one test alone satisfactory. If not, we might roast him upon a gridiron, and let him sing the song of St. Lawrence,

"This side enough is toasted;
Then turn me tyrant, and eat.
And see whether raw, or roasted,
I am the better meat."

The proof of epilepsy does not depend upon the testimony of Dr. Seip; and the warden and witnesses in the jail. We have shown a correspondence of symptoms, for four years before. To say, he feigned epilepsy in prison for his defence, is to say that for two years, he meditated the crime; that he anticipated this defence; that he, this boy, studied the mysteries of science, learned the symptoms of disease; and then practised the simulation. We have called for proof the living members of the family. Ah more! we have invoked the testimony of the dead. We have called from the grave that father and mother, to the Bar of this Court, to plead with their living voice, and their skeleton fingers for justice to that forsaken son. His sisters have said that when the family learned of this disorder the strict injunction was laid upon them all, never to tell it abroad. "For then the young people, would think he was not right; and would not go in his company any more." How like that tenderest touch in all the fictions of the classic tongues! when Andromache stood upon the towers of Ilium and saw Hector dragged by swift horses towards the hollow ships of the Greeks, gasping through her sobs, she bewailed the sad fate, that through his death, deprived their boy, of all companions of his own age, since now the husband, the father, the hero is gone. They all knew of his disease; they sought to shield him form the rough approaches of the world. He, with his ambition wasted; with his mind weakening, can sleep no more. "Would that the night were gone!" I repeat his prayer.

I have finished my part of the case; yet I am loth to close. His life is in your hands. If you find him guilty, the doom which comes to him, blasts the living and the dead. But I feel it is safe to leave him to you. Judge not, that ye be not judged.

Hon. *William S. Kirkpatrick* then spoke in behalf of the defendant as follows:—

[Upon the conclusion of Mr. Scott's speech, Mr. Kirkpatrick occupied the remainder of the afternoon session, about an hour and a half. He continued the next day (Tuesday), speaking the entire morning session and the first hour in the afternoon. His address is not very fully reported.—*Ed.*]

If the Court please:—

GENTLEMEN OF THE JURY:—It is my duty—a duty that weighs heavily upon me—to say the last word on behalf of the prisoner at the bar. I am sure that amid the changing scenes of this long and eventful trial, you have at all times realized the solemn nature of your office. If some of the witnesses who have been so industriously and devotedly holding up the hands of the Commonwealth have, in their untimely and feeble attempts at wit and in pedantic parade sought by unseemly displays to cater to the amusement of the crowd and belittle the one great issue of life and death, you at least by your grave and decorous attention have shown your appreciation of the solemn question suspended in debate. Under the laws of this Commonwealth, upon proper cause shown, we might have removed this case out of the lurid atmosphere which has enveloped this community ever since the harrowing details of this great tragedy were made public, but confiding in that sense of justice and respect for law which have ever characterized this people, we have been content to commit the unhappy fortunes of our client to a jury selected from his own neighborhood. As we anxiously looked upon your faces when subjected to the necessary scrutiny, we saw in them the resolution to blot out all previous opinions and prejudices and deal justly with the prisoner. There is not a member of this jury who has not frankly admitted that he had prejudged the case, but we know that, difficult as it is, you will divest yourselves of that opinion, whatever it may have been, and will try the issue according to the law and the evidence. Remember that the oath you all have registered appeals to you with its powerful sanctions to expel from your minds every preconception and rigorously exacts a verdict based upon the evidence alone. No previous opinion must weigh a feather's weight. Bear in mind that unless you arrive at a moral certainty of the truth of every allegation contained in the indictment you cannot—you dare not—find a verdict of guilty. If your judgments waver—if you hesitate—if doubt arrests for a moment the swift assent, you must acquit. A single link in the chain unforged or

broken—and you are bound to find a verdict for the prisoner. Upon your deliberations depend a human life, that sacred thing, fragile and fleeting yet priceless, shielded by the most impressive sanctions of God and man. I tremble when I think that I may be mentally and physically unequal to the task before me.

As has been our duty we have relentlessly exposed the weakness of the Commonwealth's own case. They have utterly failed to establish the fact of poisoning or criminal agency. Their own testimony begets that reasonable doubt which must bar your path to a verdict like a drawn sword. It is just here that you must exercise restraint and caution. It is here you must battle with and mercilessly subdue all former impressions, as the insidious foes of your consciences, and remembering that the law is honored and the ends of justice best subserved by strict and literal fidelity to your obligations as jurors, you must sternly resolve to consider nothing but the sworn testimony and to give it no more weight than it is intrinsically entitled to.

This branch of the case has already been elaborately discussed by my colleague, and if you rely upon the evidence alone, as you must, you will feel its absolute insufficiency to convince. I will not, therefore, weaken the force of what my associate has so well said by reiteration, but will at once address myself to that portion of this defence which has fallen to my lot. We say that even if you find that Allen C. Laros administered the poison, and that Martin Laros died from it, the prisoner was not morally or criminally responsible for his acts at the time by reason of mental disease, and without discussing any further the fact of poisoning, I boldly challenge you to find that this young man is a fit subject for punishment.

We do not stand here, holding on to the plea of insanity with desperate clutch, as the last resort of a hopeless defence, but to see that the law is vindicated in the acquittal of this poor, stricken creature, and that justice is not profaned by the sacrifice of an irresponsible being. I know that the defence of insanity is looked upon with suspicion and is regarded as the usual device of counsel who seek triumph at the expense of public justice; but such is not our position. We are not here to aid in the escape of a criminal from the grasp of the law, but to ward off with our feeble hands the impending arm of an avenger from one whom a stroke from heaven has already blasted, to prevent if possible the ghastly consummation of a dreadful mistake. Justice needs no bleeding victim. Her sanctuaries are defiled when the spirit of the avenger animates and impels her ministers. You will not rest securer, the peace of the community will not be more serene by the inconsiderate sacrifice of this defendant, stricken as he is by mental and physical disease, in obedience to the dictate of an unreasoning prejudice and an insatiate appetite for retaliation. In the distributions of providence we know that there are many unfortunates who for some mysterious reason seem to suffer under the heavy hand of God. We cannot fathom the Almighty's purpose. We only know that, bereft of reason, the light of the soul gone out, they are tossed by impulse and passion, the objects of pity and alarm. Toward them the

law extends its protection and does not hold them answerable to its penalty.

In this issue we claim that the defendant at the time of the commission of the alleged act was not morally or criminally responsible; that by reason of disease his body and mind were shattered, his intellect clouded, the perception of right and wrong obliterated and impulse unreined—and if, Gentlemen of the Jury, you are satisfied that such was the state of the defendant's reason at the time, you are bound to acquit, the interests of society demand it, the claims of humanity will compel you to so declare in spite of the clamor of the crowd. There can be no doubt from the testimony that the defendant has for years been the victim of a disease which ultimately overthrows the reason and with every attack weakens and confounds the mental faculties. There can be no doubt, in view of the immutable facts of science and from the circumstances detailed by the witnesses, that the defendant has, at times and for a long time prior to that fatal night, been laboring under the effects of epileptic insanity. The testimony of the Commonwealth itself develops the fact that he was suffering under the influence of this dread disease on that very night and could not have been responsible for any act. I think it is fully established that the prisoner is the victim of this dreadful disease so vividly described in the scientific treatises and by the medical witnesses, that the disease leads in its train insanity in its most fearful phase—the aberration and destruction of the moral nature; that the effect of this disease in its paroxysms is to distract and impair the faculties for a time after and before each attack, and that on the 31st day of May last the defendant was suffering from this very disease and its consequences. Was he the subject of epilepsy? Does not the evidence fully demonstrate its presence and that the prisoner's mind was involved? There can be no other theory to meet the facts than that of fraud and simulation, and to accept that view supposes a foresight and an antecedent preparation which could not have been possible. Preposterous idea! that this consummate acting should be kept up for four years in anticipation of a murder of most exceptional horror without adequate motive and of a most novel and precarious defence; that this young man could have forseen years back the long chain of events culminating in the poisoning of his father, mother, brothers and sisters and have laid the scheme of a defence of unusual difficulty and intricacy!

Addressing the Court Mr. Kirkpatrick said that, as preliminary to the discussion of the facts, it is well to clearly understand the legal principles pertinent to our defence, and the limits of the possible action of the jury. We have already embodied in propositional form our views of the law of this case and have presented them to the Court. As to the test of legal responsibility the counsel stated that the illiberal and unscientific notions of the English Courts had been somewhat expanded in Pennsylvania, and our judges have timidly recognized what science had long discerned, that there may exist disease of the moral faculties contemporaneously with the perception as an intellectual operation, of the moral quality of the act. There may be the irresistible impulse to a criminal act, the result of mental disease, the

mind perceiving its character, but powerless through a pervading disorder to abstain or resist. The test in all these cases lies in the word "power." By moral insanity is not meant mere perversion of the moral nature, but that subjugation and overwhelming of the reason, conscience and will through radical defect, resulting in irresistible and uncontrollable impulse to crime. The counsel here referred to Com. *v.* Mosler, 4 Barr, 266; Com. *v.* Sherlock, 14 Leg. Int., 33; Com. *v.* Smith, 15 Leg. Int., 33; Lewis' Crim. Law, 404; Ortwein *v.* Com., 26 P. F. S., 424, as illustrating the boundaries of legal discretion as related to crime in Pennsylvania. The speaker contended that, tried by the ancient standards of legal insanity, the prisoner would under the evidence be adjudged irresponsible, but even if there were evidence in the conduct of the prisoner at the time of the alleged poisoning or afterwards of an apparent moral recognition of the character of the act and its consequences, he was satisfied that there would be found the elements of insanity as defined and ascertained by the law of this Commonwealth. These views are the chart by which we undertake to explore the testimony, and by which we hope to arrive at a safe, a just and satisfactory conclusion. Within the limits of legal irresponsibility as thus assumed, we will find somewhere the case of this poor creature who sits there shrouded in the darkening twilight of mental and physical disease.

Judge Kirkpatrick proceeded to discuss the powers of the jury and the range of their possible action. However the laws of the different States have fluctuated in regard to the measure of proof required where the defence of insanity has been set up, it seems to be settled here that the defendant must establish his defence by the weight of the testimony. This is the law as pronounced by the Supreme Court upon every proper occasion, culminating in the case of Ortwein *v.* Com., 26 P. F. Smith, 414. We think this evidence is absolutely sufficient to satisfy the most incredulous. But if it should not attain to the standard required to satisfy the minds of the jury, it cannot be ignored. It must at least arrest the serious attention and assail the mind with doubts that will not down at the Commonwealth's bidding. The failure to satisfy by the weight of the evidence in this case does not relieve the jury of all further consideration. There is the question of degree and upon that there must be a decision. Criminal cases are not governed by artificial presumptions. If there be the proof of the fact of poisoning there is no absolute inexorable presumption that it is a case of murder in the first degree. It is only a natural inference operating to convince as to the intent by its own natural force and influence upon the mind. In the first place there may be murder by poison without the specific intent to take life, and a verdict of murder in the second degree may be properly found under the law in a case of poison.—Chauncey ex parte, 2 Ashm., 227; Com. *v.* Dougherty, 1 Browne, app. xxi.; Lane *v.* Com., 9 P. F. Sm., 373; Shaffner *v.* Com., 22 P. F. S., 60. The statute defining murder does not make murder by poison absolutely of the first degree, but seems to require the element of formed intent to take life. The jury have the absolue power and discretion to find either degree. Their action is free and theirs is

the sole power and responsibility without peremptory instruction or definition from the Court, and this is the intention of the statute committing to them the duty of determining the degree.—Lane *v.* Com., 9 Smith. This jury, therefore, are the absolute arbiters of the grade and in deliberating therein they are free from the dominition of all artificial rules and presumptions. The sole fact of poisoning, without any qualifying circumstances, would of itself generate belief that there was the specific intent to kill, because men are supposed to intend the natural results of their acts, just as the use of a deadly weapon would convince of the same intent, but if there be accompanying circumstances or testimony showing an intent to use the poison for another purpose than to take life, to stupefy, or for an innocent purpose, there must be conviction only of the second degree or acquittal. The key to the degree being the intent and murder by poison being only of the first degree where there is absence of evidence qualifying the natural inference from such an act, if the evidence in this case satisfies the jury that there was mental disturbance or confusion arising from any cause, whether disease or intoxication, or whether permanent or temporary, although that mental state may not come within the narrow limits of legal insanity, it is the duty of this jury to convict of the lesser grade if by reason thereof there could not have been formed the deliberate and specific intent to take life. This is the doctrine of the cases in which intoxication becomes a subject of material inquiry, not to excuse, but as bearing upon the subtle question of purpose. If intoxication, which is a species of temporary insanity, may confound, excite and bewilder so as to deprive the mind of its power of deliberation and intelligent volition, how much more where that same condition is the result of disease, especially a disease which science and skill have taught us through this long case pre-eminently produces these very results. The counsel here referred to the preface to Wh. on Med. Jurisp., where the subject is discussed at length.

More than that, if the evidence of insanity, upon grounds of public policy, may not be sufficient to acquit by reason of its failure to preponderate and causes you to doubt as to whether the mind was in a condition to form the specific intent or to deliberate, or if you doubt that he was legally responsible, which means the power to form criminal intent, you must find, in the interests of humanity and under the overshadowing wing of the law's great merciful presumption, for the lesser degree.

At common law all killing was presumptively murder, the law recognizing the element of malice express or constructive unless repelled by some circumstance. In the unrefined and indiscriminating jurisprudence of our rude English ancestry all distinctions based on the intent were confounded and heaped together. But with the advancing light of knowledge and culture the notions of our criminal jurisprudence have become more accurate and philosophic. Crime is analyzed and divided into degrees. The mind of the criminal is contemplated and its states, its intents are classified. The cold, designing assassin is separated and placed upon a higher plane of guilt than he who in the tumult of passion, surprise or weakness may slay in the prosecu-

tion of some other unlawful enterprise. While, therefore, the naked fact of killing is still presumptively murder, it is only murder in the second degree.—1 Wh. Cr. Law, §710. The statute has defined murder by poison as of the first degree, because it is the employment of an agent notoriously destructive and deadly.

The reasons that operate to put the burden on the defendant in order to acquittal by reason of insanity are placed upon the grounds of policy. It must be by the weight of the evidence and not by an equilibrium of belief or doubt. The presumption of sanity, which is the natural and normal condition of man, must be overcome, or outweighed, because a contrary presumption would be fatal to the interests of society. Moreover, to acquit, the jury must find such fact of insanity affirmatively, and how can they do so contrary to the general experience unless they find it by the ordinary standard governing the finding of any fact contained specially in their verdict? This is part thereof and is the declaration of a fact required by the statute to be specially found to exist as their justification. How can they find it unless the evidence satisfies them of its existence or when their minds are distracted by doubt and uncertainty? The counsel here read from Ortwein *v.* Com., 26 Smith, as suggesting these views. This is, therefore, a rule of policy and positive law, and only governs to secure society from the dangerous consequences of inconsiderate acquittal. It is entirely foreign to the question of mitigation or degree. Just as intoxication as a rule of policy and for the public security will not excuse crime, but yet, when exploring for intent to fix the degree, becomes a fact of the highest significance and importance. It must be evident that this rule as to the weight of testimony does not apply to the determination of the degree. No interest of the community is jeopardized by excluding it there. Punishment is meted out, but in the interest of mercy, which tempers human and divine justice, in the name of that beautiful charity which presumes no evil, and which softens and irradiates the stern lineaments of all civilized codes, let the doubt be given in favor of the less henious grade.

If there be doubt as to the existence of the specific intent to take life, whether it be a doubt as to mental responsibility or mental state, if the presumption of deadly intent from the use of poison is neutralized, or balanced by other circumstances of motive or purpose, how can you find affirmatively the fact of premeditation? how can this jury pronounce the dreadful deliverance of guilty of murder in the first degree. If there be a single tittle of evidence which causes this jury to pause, which makes them shrink from that awful conclusion, if they cannot acquit, let them find the milder degree. To do otherwise would be to violate the commonest instincts of our nature, to run counter to all the rules of ordinary human conduct, to ruthlessly trample down the dictates of charity and mercy.

Gentlemen, these considerations are not urged because we recognize our client's guilt even in a mitigated sense. They are only pressed upon your attention because our duty oblige us to contemplate all the contingencies of your decision, to make clear the principles regulating

your action, to show you that the paths of justice and mercy may be the same.

We do not stand here, however, begging for the mere pittance of a verdict of murder in the second degree. We seek to extort no unwilling compromise. Confident of the strength of our case, we ask for a total acquittal. We say that by the smitings of disease this defendant has been made irresponsible, that he should be placed where the healer can come to him, where he will be protected and restrained from harm to his fellows and to himself. The prisoner is armed by his very weakness and disease—they are now his shield and protection.

My propositions are, that this young man is the subject of epilepsy and has been for at least four years, that epilepsy is a disease that sooner or later produces insanity, that the mind is more or less involved or affected at the time of every attack, and that Allen C. Laros was laboring under a state of insanity as the result of epilepsy at the time of the poisoning of Martin Laros, such as the law recognizes as sufficient to excuse.

We do not rely upon mere scientific theories and guesses such as the Commonwealth depend upon to meet our defence. We are intrenched in palpable facts—exhibitions and circumstances which credible witnesses have seen and told. We have produced a long array of witnesses who have narrated, one after another, that which has actually occurred. From the testimony of John Mann's family to the occurrences in the jail, can there be any doubt that the spasms and convulsions detailed were epileptic seizures? Can there be any question that they were the indications of at least some peculiar nervous disease? Can there be any doubt as to the testimony of the brothers and sisters of Allen Laros, or of Dr. Seem, or of those who now sleep in the church yard? Can there be any hesitation as to the accuracy of observation or recollection of all these witnesses? Do they not all closely correspond in their description of the peculiar features of these spells? Without community of interest or suspicion of concert they all agree. Wherever we hear of these attacks they present the same general peculiarities. How can you doubt that he was in the grasp of some powerful disease? that on every occasion it was the same? As to the experts who have been marshalled about the Commonwealth's table, their dogmatic opinions and assertions cannot outweigh the testimony of those who felt, touched and lived with the prisoner. One solid fact observed and detailed is worth all the theories that have been crowded into this case by the Commonwealth's experts. The story of a plain, simple farmer like John Mann, accustomed to describe what he sees in plain language, with no reason to distort or exaggerate, is worth all the vagaries of Dr. Green. Can the doubts and the vascillating testimony of Dr. Curwen disturb for a moment the conviction produced by the untarnished statement of John Mann's wife and the others who saw and described these attacks on many different occasions?

[The counsel here commenced to review the testimony of John Mann and his family, when the Court announced the hour of adjournment.]

The next morning in resuming Judge Kirkpatrick said he had barely announced the propositions that the defence undertook to maintain The present question is, Was Allen Laros the subject of epilepsy? This is the first step in our theory. And here let me warn you not to judge this defence too hastily because of its novelty to you. I see in this silent waiting crowd who surround you the evidences of the deep and absorbing interest that centers in your deliberations. The tide of prejudice and passion breaks in vain against us. If there be one in this great audience who is impatient of this prolonged trial, this calm and passionless investigation, and thirsts for swift and sanguinary retribution, let him remember that "Vengeance is mine, saith the Lord." I know of no sublimer spectacle on earth than that of a court of justice deliberately and dispassionately inquiring into the truth of a grave charge involving life or liberty, and rendering its judgment without regard to the feelings, the emotions, the prejudices of the hour. It presents the image of a sanctuary where all is hushed and holy and where the hunted fugitive may grasp the horns of the altar safe from the pursuit of the impetuous avenger. It is here that the loud clamor of passion is stilled and reason sits enshrined. Let us then approach the question of this man's legal responsibility in the spirit of the impartial searcher after truth. Let us apply the cold investigating faculty, and whatever may be the finding, let us fearlessly accept the result.

The repetition of these scenes through a period of more than four years, each resembling the rest, with no cause or motive to deceive, show that this man was afflicted with some chronic disease. What reason could he have had to feign any affection, especially of a kind that would make him an object of pity and alarm to his companions and friends? If through perversity or for some special reason he should have been guily of pretence and acting, what conceivable object could he have had on all these different occasions which we have multiplied by witness after witness in every conceivable variety of situation and circumstance. Judge Kirkpatrick here referred to the testimony of the Mann family. Detailed the circumstances of the first attack of which we have any account That it was genuine there can be no doubt. The fraud would have been exposed or at least suspected. While there he had seven or eight attacks. The doctor was sent for. He evidently considered them the subject of treatment and acknowledges even now that he could not tell their character. There was the trembling and the clenching of the hands—the pallor of the face, the apparent insensibility. The wild and rambling talk after the paroxysms had ceased or between their intermissions. That Dr. Seem was unable to diagnose the case and that he cannot decide its nature even now, is explained by his own admission that he has little or no experience with cases of epilepsy. He was as ready to admit that it was epilepsy as anything else. Remember that most of the attacks were mostly nocturnal, as the evidence abundantly shows. It is surprising that we have been able to produce as much testimony on the point as we have. The Commonwealth have and will urge that these attaeks were feigned, that they have been exaggerated, that they could not be epilepsy.

You will remember the pains of this unfortunate family to conceal this boy's infirmity. How natural! You know with what suspicion all troubles of this kind are regarded, especially in the country. The fact that this trouble was not generally known is easily understood. The whole family conspired and combined to hide the sad secret. The story of the worm which was exhibited was only a part of the scheme. They must explain and by a pious fraud cover up the real disgrace, so they exhibit a little rain worm. The Commonwealth's counsel will argue that he was afflicted with worms and that they were the causes of the convulsions. Even if this were so, the books tell us and their own witnesses confronted by high authority have admitted that this disease is one of the causes of epilepsy. [The counsel here read to jury from Aitkin's Prac. of Med., pages 361–362.] I care not whether this attributing the trouble to worms was the real truth or whether it was part of a plan to conceal Allen's infirmity, there is little to be gained to the Commonwealth from this fact. That this was not the difficulty I know you will concede, as you follow me through this evidence. Another reason why the fact of the prisoner being afflicted with epilepsy was not notorious is that the attacks generally came on at night. More than that, one of the characteristics of epileptic patients is that as they feel the approach of the paroxysms, as they generally do, by a peculiar sensation known as the aura, they hide away, seek some secret spot and by fictitious explanations seek to conceal the infirmity. All this will account for the fact that it was not matter of general note.

Whatever be the cause, he had some disease which certainly exhibited itself in a peculiar way, and it exhibited in every instance of which we have given many, notwithstanding the difficulties in getting testimony, some of the distinctive and characteristic symptoms of epilepsy. Many of these features were exhibited on that night of confusion and alarm at Mann's and on the occasion when Dr. Seem was called. There was the state of unconsciousness, the trembling and convulsive movements, the clenched hands. It does very well for experts to lecture to you and oscillate like pendulums from one extreme to the other when impelled by examination and cross-examination, but I would give infinitely more weight to those who have seen. Seeing is believing, you know. They attempt to intimate that it was feigned, but why? If there was nothing but what occurred in the jail we might suspect, although even then it would be certainly very singular for this apparently unsophisticated youth to attempt to prove himself insane in this most indirect and difficult way. I would be content to rest this case as to the fact of epilepsy upon what occurred four years ago, taken in connection with what took place in the prison within the last few months. There is a remarkable correspondence between the two times and only differ in such particulars as might be likely to be imperfectly remembered during such a long period of time and when detailed by unscientific observers. I think if we can establish that this disease existed before the alleged act it would be nonsense to say it did not exist after, and nobody but an opinionated theorist would thus contend. Mr. Kirkpatrick adverted to the testimony of Oliver

Uhler [page 98] as to the occurrence at the Plainfield school house. The Commonwealth will seek to convince you that he slipped and fell on the ice. But what was there in a bruised or broken leg to induce the epileptic grip of the fingers and the convulsive movement of the limbs? These are the evidence that the disease had its grasp upon his body and his mind. This is the fact that lifts its index finger out of the intricacies and snares of Mr. Fox's cross-examination, and points unerringly to the truth. What reason had he for feigning them? There was rather the most powerful motive for concealment. Ah, gentlemen! it was this mighty disease which had seized him and was wrestling with him. Feeling it approach, its grasp closing around him, he rushes from the school room that he may struggle alone and unseen, that his pupils may not see the pitiable spectable of his humiliation and despair. Then there is the story of Joe Miller. Where did he see him? Lying in the yard between the barn and the house. When roused, Laros says he was kicked by a horse. This incident by itself is of little significance, but in the light of what we know at Mann's and the after developments, how important the circumstance. How we can from this single incident construct the whole story of one of these paroxysms just as the scientist will reconstruct a whole skeleton from a single bone. Was he kicked by the horse as he says? Was he bruised or injured? We can understand him. Of course, he must give a plausible explanation. Unless he can deceive Miller he sees the danger of having his weakness published to the neighborhood.

Thus far we may say that we have given but glimpses of the great mystery of this prisoner's life. But go with me to the prison for a moment. There in all the minute details of practiced observers we discover the key. The dark hints suggested in these early, indistinct accounts become luminous with significance. As the light is flashed over this boy's sad history, we can see him, struggling and staggering and prostrate, a poor, pitiful epileptic, using every effort and artifice to hide what he considers a shameful secret and striving with weak and unaided arm to escape out of the eddying and ever narrowing circles of this whirlpool which was drawing him down.

Now let us enter the precincts of that fated family. There we will find testimony a thousand times weightier than what I have thus far discussed. Ah! what a sorrowful story is here unfolded. The skeleton at their board is unveiled. [The counsel here referred to the testimony of Annie Laros.] You will remember the vividness with which his sister Annie described the spasms in his room that afternoon last fall—his clenched hands and introverted thumbs, the spasms, the grinding of the teeth, the deadly pallor of the face, the mutterings and incoherent talk between the spasms. The terrible picture now becomes more distinct. The features of the demon epilepsy leer out from the gloom of the canvas with more startling distinctness. Was all this merely preparation in anticipation of crime? Has the witness falsified? Was it simulation, and was the witness imposed upon? What motive then existed for fraud and deception on the part of this prisoner? What consummate powers does that theory presuppose on the

part of this rustic youth? The forgery of the most terrible, the most unusual in his experience of all nervous diseases. The counterfeiting without exaggeration or burlesque of a disease calling into play the most violent contortions, spasms and conflicting muscular effort. It demands a knowledge of science and an opportunity of observation, which could not be supposed in the case of this boy not yet of age, and which would be perfectly marvellous. There was the deadly pallor which no power of the will could command. What a perfect imitation must that have been if assumed! Nature never yet has been copied. There are tints and lines and forms which no painter yet ever transferred to his canvas. Raphael with his inspired pencil never yet caught all the beauties of the human face divine, nor Claude all the colors of the sleeping landscape. The highest art and study fall far short of the original. How is it to be supposed for a moment that Laros could have been so familiar with the science of disease that he could copy the most extraordinary and complicated of them all? Where could he have acquired the knowledge necessary to suggest and carry out the imitation?

Then we have the testimony of Erwin as to what occurred in the field when they are making fence. You will remember how Allen left him and remained away—his paleness and agitation when he returned—his confusion and apparent absence of mind in putting in the fence post upside down. You will remember, too, how, when his brother noticed that something remarkable had occurred, and when repeatedly pressed to say what was the matter he made a confidant of Erwin and unbosomed himself of the dreadful secret. How he wept with despair! He tells Erwin about his "spells,"—that he had them before. They came on with a headache. There was a rumbling noise in his head. Then it got black before his eyes. Then, in the language of the witness, he "said he didn't want me to tell, as he did not want folks to find it out; they would think he wasn't right. He said when they [the attacks] came on he would go away where the rest couldn't see him." This explains why so few of the outside world knew his malady. We here discover the most powerful motive for concealment. How often did this poor boy, when he felt the premonitions of the dreadful spasms, when he felt the tightening fingers of the epileptic seizure laying hold of his body and mind, run away into the fields, some lonely solitude, and there struggle alone in the closing darkness that gathered around him and settled down upon his soul. I can imagine I now see that prostrate form and upturned convulsed face, wracked and torn, succumbing in the struggle with this conquering disease, away from the haunts of his companions and the sympathy of his brothers and sisters, with none but the sweet, pitying eye of heaven to look down upon his misery and helplessness. How his mind must have been tortured, how he must have cast about for pretexts and excuses, how he must have trembled lest the malady might seize and at any moment unmask him to those from whom he had so long concealed the fact. Ambitious and proud and hopeful, with a life before him, with youth to buoy him up, what dark hours of despair and baffled aims must have been his in his solitudes!

This brother, Erwin, taciturn, unimaginative and almost stupid, as he appeared before you, in describing him on that and other occasions, touched the keyboard and went through the whole diapason of this disease.

But this is not all. There is the testimony of his sister Clara and his brother Alvin. [The counsel alluded to their testimony.] Let me call your attention now to the evidence of Maggie Laros. She is the most vivid and circumstantial of all. She tells you that she knew of it before and she also tells you of the mistaken anxiety of the poor mother now gone to her silent home, to conceal her boy's infirmity. [The counsel here read to the jury a portion of Maggie Laros' testimony, p. 91.] There as she found him on that sofa, that Sunday, how pitifully she describes that scene, how completely was her brother in the power of that disease. This would be enough. We have here all that is necessary to convince. The characteristic signs are present. He that would ask more to dispel the hunger of his skepticism is indeed insatiate. But if more is demanded we can pile up mountain upon mountain.

Then there is the testimony of Mrs. Walter. You will recollect what she describes at night, the indications found next morning, the dirt scratched away from under the porch. Fit these circumstances with what Clara describes at the chicken coop, and what else can you say, than that it was the working of the same ferment of disease. [The counsel here alluded to and discussed the evidence of Mrs. Walter and Clara Laros, pages 87, 95.] You will thus see how the lines of testimony from different and various sources converge and centre in the one undisputable fact of epilepsy. Many of these witnesses do not go into a detailed and circumstantial account, always agreeing in every particular, but simply give one single fact some marked symptom, some single utterance, or perhaps the clenching of the hand, thus by a single touch bringing out some distinctive feature of the case.

We have thus far only heard the history of this young man prior to that fatal Wednesday evening. At different times during the last four years we have caught significant glimpses of the sad truth. If this were all, who could fail to understand this prisoner's case?

But we are able from what occurred in the prison to characterize and understand with absolute certainty the peculiar disease to which he has been long subject. We find him in the prison, and soon after the blind door of his cell is shut upon him. There was no opportunity for anyone to teach him or to suggest to him the trick of feigned insanity. No one sees him or converses with him but his jailor How could he have learned this elaborate deception in the jail, and if not learned there why should he have concocted it before that tragic supper scene? If fraud was his purpose he would have acted the most terrific and striking phase of insanity and not have resorted to the indirect means of feigning a nervous disease from which science draws but an inference of insanity. The tendency is to overact the part, and such is the usual experience. This is strongly put by Dr. Ray, who speaks from the experience and observation of a lifetime spent in the treatment of the insane. [The counsel here read

from Dr. Ray's Med. Jur. of Insanity, §421, as to impostors in their anxiety to produce an imitation, overdoing their part.] Now let us see what Daniel Reed, the Deputy Warden, says. Have you any doubt as to his truthfulness? Honesty is stamped upon his countenance and he tells his story in a simple, straightforward and convincing manner. He has no motive to deceive or exaggerate. [The testimony of Reed was referred to and the several occasions when he found the prisoner in his cell in the paroxysms and after he had had them during the night.] You see here the same distinctive features as testified to by Maggie Laros and the other witnesses, who tell of the prisoner's paroxysms before the poisoning. Reed tells you how on several occasions he found him pale, confused and scarcely conscious, with the bed clothing strangely twisted and on the floor. Did not Maggie Laros notice this very thing long before? You will remember that scene which she and her sister Clara describe on that Monday night before the tragepy, and how the next morning the bed clothes were scattered on the floor, and the cover stripped from the tick. Bear in mind, too, the close resemblance between the description by Reed and the other particulars mentioned by the brothers and sisters of the prisoner who saw these convulsions upon those different occasions to which they have testified.

Then, too, there is the testimony of Smith, who slept in the same cell with Laros. You have here the same peculiar exhibitions, the gritting of the teeth, the pallor of the face, the clenched hand and the thumb turned in, the apparent unconsciousness, and then between the paroxysms the broken utterances about fish and snakes, just as on the other occasions when Alvin saw him fishing and when the others who could distinguish his words, always heard his broken and disconnected mutterings about fish and snakes. The same idea always occurring and always uppermost. [The different occasions mentioned by this witness were referred to and commented upon.] James Smith was particularly instructed to observe him. Dr. Seip, physician of the prison, knowing the peculiar temptation to which a man, situated as was this prisoner, to adopt the most desperate devices to escape the doom impending over him, wanted to know the real truth, and left no means untried that his ingenuity and experience could suggest to penetrate the mystery of this case. He therefore selected this man, the most intelligent and reliable he could find, not a condemned criminal, but one who had been confined npon an unfounded and unjust accusation, and from which he was triumphantly vindicated by the grand jury before he appeared upon the witness stand. Above all we have the testimony of Dr. Seip and his son, who is also a physician. Doctor Seip is the physician of the jail, selected because of his experience and fitness for the trust. He is an officer of the county, an honored member of the medical profession and a man of character. He is no volunteer, no interloper, no mere tool in the interests of an unconscionable defence. He had no desire to figure in this case. He manifested no morbid curiosity as to the prisoner. When, however, something extraordinary had occurred, some singular condition had been observed suggesting the

necessity of a physician's presence, he was sent for. It was his duty to go, and he went. He tells you how he became interested; how cautiously he watched and studied his case; how suspicious he was at first of deception and fraud. He had doubts as to whether these strange exhibitions were real, and yet perhaps this youth might be the victim of insanity, a pitiful wreck in body and mind, unfit for and undeserving of legal punishment. When he arrived at the jail, on the 24th of July, he found the prisoner in the condition already so graphically described by Reed. He tells you of his wild and incoherent talk, the delusion about fishing ever dominant in his mind. He describes his appearance, his picking and snatching at bright objects and bits of paper, his staggering walk so often remarked by the witnesses on different occasions long before. [Mr. Kirkpatrick here reviewed particularly the testimony of Dr. Amos Seip and Dr. M. S. Seip as to the symptoms and appearance of the prisoner on the different occasions observed by them.]

Let me remind you, gentlemen, that Dr. Seip is a man whose professional character is above reproach. A physician of thirty years' experience and study, he is no novice in the diagnosis of disease. He is entitled to consideration and confidence. You cannot theorize and guess away the actual observations and conclusions of such a man, who saw and tested the patient by various physical appliances. Dr. Green never saw the young man in his spasms, nor did Dr. Curwen. Sitting at the Commonwealth's table, they have unconsciously imbibed the theories and prejudices generated there. They feel the dark inspiration of the hour. They are caught and borne along irresistibly on the strong tide of popular excitement, which surges around us. They are betrayed into extravagant theories and statements and when arrested by a cross-examination based upon the immutable facts of a science greater than they, they find themselves suddenly brought face to face with their own inconsistencies and contradictions, their theories routed and they themselves captured and forced unwillingly to serve the defendant's case.

Dr. Seip, however, at the call of duty went to this young man. He found him in the very grasp of a disease which rends both body and mind. Shall he shrink from the performance of stern duty? Shall he crush the dictates of humanity and leave the poor wretch to his fate, to be carried away on the swift torrent of the public wrath? On the contrary, in accordance with the promptings of a humane disposition and the teachings of the noblest examples in a noble profession, he stretches out a merciful hand to save. He will confront the conquering prejudices of the hour, and with the glow of a lofty courage on his face, he will reveal the blight on this boy's soul, he will drag his infirmity into the light of day and will rescue him from the blind rage which would rashly sacrifice him. Noble resolve! I see in it the same spirit which has ever ennobled and dignified that heroic profession. It is akin to the same feeling of humanity which, developed by contact with human infirmity and suffering makes the physician the friend of the poor, the helpless and the afflicted. It is the same devotion and moral bravery that enable the healer to move

calm and placid, through the infected wards of the hospital, in the heavy and tainted breath of the wasting pestilence, or amid the sickening horrors of the field. This witness, so competent to judge, so likely to observe with scientific accuracy. tells you that this disease is epilepsy. He has often treated this disease, and with favorable opportunities and means to decide upon the case, he is convinced that it is genuine. The experts called by the Commonwealth picture before you what they call the characteristic symytoms and features of epilepsy and undertake to test this case by the standard they themselves have erected. I appeal from their decision to the highest authorities in the profession. I appeal from Drs. Curwen, Green and Junkin on direct examination, to the same doctors on cross-examination. You will recollect, gentlemen, how, when probed by the doctrines laid down by the leading authorities, they shrank and hesitated and qualified; how they admitted their own tests to be fallacious and yielded unwilling assent to the unassailable findings of science.

The great mistake of the Commonwealth's witnesses is that in their direct examination they have adopted the typical case of epilepsy as the unvarying standard by which this disease is to be ascertained, and it is only when compelled by the straits of a cross-examination that they modify in some degree this position. The books all say that the symptoms of epilepsy are not invariable. There is every variety, from the simply vertiginous to the most demonstrative muscular and nervous spasms. The sufferer may be pallid or purple hued. The pupils may contract or dilate. The fingers may be clenched or extended. There may be foaming at the mouth or it may be absent. That some of the symptoms of the most decided and impressive type are not present is no proof that the disease is not epilepsy. [Mr. Kirkpatrick here quoted from the article in Appleton's American Cyclopædia on Epilepsy, written by Brown-Sequard; Aitkin's Science and Prac. of Medicine, vol. 2, pp. 348, 352, 357; Wood's Prac. of Med., vol. 2, p. 734; Echeverria on Epilepsy, p. 9, upon the frequency and variety of the attacks of epilepsy in the same and different persons. The same works were referred to as showing the presence of the different symptoms described by the witnesses in cases of epilepsy.] Thus you will see, gentlemen, that Dr. Seip is not only supported by his own experience and observation, but also by that of the highest authorities in medicine. Because the face of Laros was not flushed, or because he did not foam at the mouth, Dr. Curwen at once pronounces judgment against the case. He forgets that Aitkin, Echeverria, Hammond and other writers of approved authority speak of the want of uniformity in the different cases of epilepsy, that one or more of the various features mentioned as usually characteristic of epilepsy may be absent, Dr. Green himself says: "If during an apparent convulsion the hands were clinched and there was paleness but no lividity and distention of veins and no froth and there was actual unconsciousness, I should say the person was in an epileptic fit." In fact, in reply to the hypothetical question of the learned counsel for the Commonwealth, embracing the peculiar features of Laros' case as described by Dr. Seip, he replied that it was epilepsy and then, when collared and

held fast by science, he suggests simulation and stoicism on the part of this poor prisoner. He intimates that Dr. Seip, a physician of thirty years' experience and large and varied practice, was hoodwinked and deceived by this raw country lad. The utter absurdity of such a theory we have already shattered beyond the possibility of reconstruction.

There are only a few diseases with which epilepsy could be possibly confounded by even ordinary and unscientific observers. This disease could not have been hysteria, for that is known to be a female disease and the element of unconsciousness is never present. It could not have been catalepsy, for the convulsive and struggling movements, the contortions of the face, the gritting of the teeth, the powerful contraction of the muscles and the grip of the hand which Maggie Laros with all her strength could not open, distinguish this case at once from the death-like trance of catalepsy. [Mr. Kirkpatrick here read from Hammond on Nervous Diseases, Aitkin, Wood and other medical authorities on the subjects of catalepsy and hysteria and their peculiar symptoms and features.] There is one great characteristic which is peculiar to epilepsy as distinguished from hysteria. It is the element of total unconsciousness. This is always present, whether the attack be momentary and scarcely noticeable or shows itself in all its panophy of terror and distress. Dr. Seip directed all the enginery of his physical tests to unmask the lurking fraud, if any. If the prisoner was conscious, there was no epilepsy. All possible experiments were tried to ascertain if the defendant was conscious while in the spasms. The doctor stole upon him unawares. He could not have known of his presence. He did not know that the doctor had been sent for, and when he came he surveyed him from between the bars of the prison door. Every conceivable test was applied. The first time he visited his cell the doctor suddenly thrust the blade of a sharp knife into the prisoner's hand and no sensation was manifested, although if he had been conscious he must have felt sudden and excruciating pain. The heated key, made so hot as not to be bearable by those who were present, was next applied. Then the flame of a lighted lamp was held to the sole of his bare foot, and still not a quiver of sensation followed. All the time the doctor was watching and noting with the cool self possession of the impassive investigator after truth. Every symptom was caught and described with scientific accuracy. Still not satisfied, and afraid lest the limits of human endurance might not have been passed, he resolves to try again before he decides. He leaves orders that he be called again, and on a second occasion makes further trials. He ransacks the books for suggestions and carries his tests to the verge of downright cruelty. You remember his graphic description of the application of Scotch snuff, the thrusting of his thumb nail into the quick under the nail of the prisoner, the pretended application of hot water, the dropping of the melting sealing wax upon his bare skin, upon his limbs and face, with hissing splash and no indication of pain shown. The sealing wax burned into his flesh, and you can now see on his face the scars where it was applied. I have only imperfectly alluded to the experiments made. You will remem-

ber better than I can repeat them. Nothing that the experience of the doctor or the books could suggest was left untried. [The speaker referred to Aitkin's Science and Prac. of Med., vol. 2, p. 358; Wood's Prac., vol. 2, p. 744, and other works, where these tests are recommended as the most effectual for detecting imposture in cases of epilepsy.] What more can you wish in the way of demonstration as to the genuineness of this case? No man in the light of this testimony, and in the broad glare of science which these books now open before me have flashed upon this poor fellow's infirmity, will dare to say that it is anything but epilepsy. Even Dr. Curwen, confident and dogmatically positive in his direct examination that it was not this disease, when environed by these high authorities and held at bay, says: "The "disease as described by Dr. Seip was *epileptoid* in character. *Epilepsy* "and something else."

Fortunate indeed is it for this friendless and afflicted creature, that he has been able to call to his aid these silent witnesses. We have had no experts encircling this table, eager to prompt and assist, but star-eyed science herself has lent us her calm presence and rebuked with her clear and steady utterances the rash judgments of that company who have crowded about the Commonwealth during this long trial.

That epilepsy ultimately results in permanent insanity in the vast majority of cases is conceded by the best authorities on this subject. There is every reason to believe that this defendant's mind must be permanently affected. We know from the testimony that he has suffered a long time from epilepsy, and we know too that the almost certain result sooner or later of this disease, which storms the very citadel of the soul, is insanity. Day after day the foundations of the reason are sapped, the structure of the mind is being shaken, and finally the blackness of mental night closes in. From the authorities to which we have called the notice of the Commonwealth's witnesses, and who are recognized by them as entitled to great respect, we learn that this is the almost certain result. Of 339 epileptics Esquirol found 269 or four-fifths with some form of mental disorder, leaving only one-fifth in the enjoyment of their reason, and he exclaims, "What sort of reason?" The celebrated French alienist Falret says: "It is certain that very many cases of epilepsy are accompanied by some disorder of the intellect which has a decided analogy to that met with in a large number of the chronic diseases of the brain." Echeverria says that of 532 cases of epilepsy which he observed and analyzed 374 gave evidences of mental failure, making 70.3 per cent. Professor Wood says: "The course of epilepsy is generally one of deterioration. * * * The brain appears to be more and more deranged in its functions in the intervals of attack. The memory and intellectual powers in general become enfeebled. Sometimes positive mania ensues, ending at last in dementia. Sometimes the mental disorder has the character of debility from the commencement of the deterioration." The writers upon this subject also say that the lighter and more frequent attacks of epilepsy are more dangerous in this respect and more certain than the greater and more decided types. [Mr. Kirkprtrick referred to the article on "Epilepsy" in Appleton's Cyclop., Echeverria on Epi-

leptic Insanity, Pamph., p. 10, in support of this view.] I might multiply these citations beyond limit. The testimony of the books agree with that of Dr. Seip. The ultimate effect of epilepsy is to destroy the mind. We have had evidence of the presence of these convulsions in Laros during the last four years, and how long before we can only conjecture, and from our knowledge of recent events we may easily infer that they must have been numerous and occurring in rapid succession. The evidence also shows that, while these attacks were alarming and striking, they did not reach the full height of the perfect epileptic seizure, and in the light of the scientific testimony and the books, we may say that they were intermediate, between the worst and milder cases, appearing with greater or less intensity at different times. Taken in connection with the exceptional enormity and motivelessness of the crime, how can you believe otherwise than that it was the product of insanity? We are apt to demand as evidence of insanity violent and extraordinary exhibitions of eccentricity and folly, and ordinary people, if their senses are not impressed and astonished at the behavior and appearances of the person whose sanity is in dispute, will refuse to admit the presence of insanity. They look for the exaggerated fury and violence of the maniac, or the vacancy of the idiot. They forget that madness appears in a thousand shapes, that it may lurk beneath the most placid countenance or momentarily glare from the sweetest eye. Some of the neighbors and school children were called to the stand to testify to Laros' sanity, but how little reliance is to be placed upon such testimony. Unaccustomed to the sight of the insane, living amid the sparse population of the country, incompetent to detect the presence of the less demonstrative forms of lunacy and only occasionally seeing or talking with the prisoner, their opinions are entitled to very little, if any, consideration whatever; and the little girls who attended his school, what judgment could they have formed as to insane or eccentric behavior, by what standard were they able to test his deportment? It seems to me, gentlemen, from this prisoner's history and what you have learned as to the fearful havoc of the disease from which he suffered, that you must be convinced of his permanent derangement, that this unexampled horror, if the prisoner was indeed the perpetrator, was the emanation of a mind diseased, to which no physician could minister; that there were written troubles of that brain which even the companions and kindred of this boy could not fully decipher and which no healer's art could ever raze out.

But there is another phase of his case to which I have not yet alluded. If you are not satisfied that the epilepsy has wrought its final work, that the ultimate catastrophe has not yet overtaken its victim, we will show you that this defendant was irresponsible on that fatal evening and by reason of this same disease. This the evidence will demonstrate beyond the possibility of a doubt. I care not whether Allen C. Laros is permanently demented or not, as certain as he is an epileptic, so surely must you find that he was at least insane on the evening of the 31st of May last. As has already been said in your hearing, it is only necessary to prove the defendant insane at the time

of the commission of the alleged criminal act, and it is of no consequence so far as this defence is concerned how long that state continued. This is the law, and it will not be gainsaid by the Commonwealth. If there is any truth that experience and science have established it is that before and after each attack of this disease the mind is disturbed and deranged. This is the sworn testimony of Drs. Seip and Curwen.

In his work on Medical Jurisprudence of Insanity, page 476, Dr. Ray says: "The suspicion that the accused was deprived of his moral liberty when committing the criminal act would be strengthened if the paroxysms had been recently frequent and severe; if one had shortly preceded or succeeded the act; if he had been habitually subject to mental irritability or other symptoms of nervous disorder." Again, on page 477: "Zacchias contends that epileptics should not be responsible for any acts committed within *three days* of a fit before or after. The principle is undoubtedly sound, as it regards criminal acts;" and in §466, p. 478, he says: "The mental condition of epileptics just before and after the fit is very peculiar and for many years medical jurists have not been in the habit of considering an epileptic as deserving of punishment for any offence he might commit within three days before or after a fit." These very passages were read to Dr. Curwen, called from Harrisburg as the final arbiter of the prisoner's sanity, and he said: "That is correct. *I don't take exception to anything Dr. Ray may say.*"

In Wharton's Med. Jurisp., vol. 1, §470, I find the following: "Recent investigations, conducted by men of eminent sagacity and great opportunities of observation, have led to the conclusion that epilepsy produces not only general mental prostration, but anamolies in the entire moral and intellectual system. And although the malady sometimes coexists with great intelligeuce, yet the patient retains not only during the attack, but for an indefinite period afterwards, but an imperfect use of his faculties." [Mr. Kirkpatrick in this connection also referred to Echeverria on Epilepsy and Browne's Medical Jurisprudence of Insanity as bearing upon the same subject.] The authorities also say that the apparently lighter and more frequent attacks are more dangerous in that respect than the most violent convulsive forms. [Echeverria on Epileptic Insanity, Pamph., page 10, was read from in support of this view.] This is also the testimony of Dr. Amos Seip, who says: "Epileptic insanity is regarded as more frequently the result of the milder form of epileptic seizures, especially where the seizures are frequent in number." Dr. Curwen, who has been called here as the principal witness of the Commonwealth's case, utterly fails, notwithstanding the gingerly examination of Mr. Fox and his general unfavorable opinion of the prisoner's case, says: "If a person had epi-"lepsy for several years and then at a certain time he should have a "succession of fits and shortly after that committed a crime, I should "take the commission of the crime as of some weight in favor of in-"sanity in determining whether that person was responsible. The fact "that he had committed an unnatural crime would go a great way "with me in determining that he was insane at the time of the act pro-

"vided I knew and was certain that he had the epilepsy and the series "of attacks. If I knew undoubtedly that a person had epilepsy and "he committed a crime it would have some weight on my mind; I "would want to know all about the epilepsy. If I knew that a man "had an attack of epilepsy and two or three days after committed a "horrid crime and had an epileptic attack two or three days after that, "it would raise a suspicion in my mind that the deed had been com- "mitted under the influence of epilepsy."

Now let me call your attention to the uncontradicted facts. You have already arrived at the conviction that this defendant's disease is epilepsy and that he had been laboring under its effects for at least four years past. Erwin tells you of his attack on the Saturday preceding the tragedy. Maggie and Clara both saw him in the epileptic state and have described to you his conduct and behavior on the Monday night following. They occupied the same room and in their narration of the circumstances they tell you how he manifested all the peculiar features of his case as afterwards observed and repeated by Dr. Seip in the jail. On the following Tuesday morning the bed clothes were discovered in the state that indicated the presence of the seizures the night before On Tuesday neight Erwin, who slept in the same room with Allen, heard the mutterings of his brother in his bed and the next morning (Wednesday) he observed the same staggering walk and confused manner which he always exhibited after the nocturnal attacks. They were the same conditions observed and described by Dr. Seip afterwards in the prison. And then Alvin, at the supper table that very evening when the family partook of the deadly meal, noticed the pallor and the epileptic squint of his eyes. Thought it was one of his spells, which he had seen before. You will not forget, too, the repeated attacks described by Annie Laros, Mrs. Walter, Van Selan Walter and Dr. Seem, which the prisoner had on the Thursday morning following and on Friday. [The counsel here referred to the testimony of these witnesses.]

[The Court adjourned at this point, it being 12 o'clock. At 2 P. M. Judge Kirkpatrick resumed his remarks.] I know that my remarks have been unusually extended, but in view of the awful issues of life and death here presented I claim your indulgence, if I have trespassed too long. We stand here unaided and alone to struggle for the pittance of this poor fellow's life. Ours is no ordinary duty, no common responsibility. We have enlisted in the service of humanity, and we feel the pardonable enthusiasm of a just cause. We would interpose against the perpetration of a great judicial crime. We care not what may be the ruling sentiment of the hour. Clothed in the absolute confidence which the testimony in this case inspires, we do not plead for, we demand in the name of justice and law, the acquittal of our client. Let him be sent where he may receive attention and care, where he may be restrained from harm to himself and others.

I have called your attention to the proximity and frequency of the attacks before and after that Wednesday evening. They have been brought sufficiently near to answer the conditions laid down in the

authorities and by the scientific witnesses. We have discovered him at that very table passing through one of the lighter paroxysms, which have already been alluded to by Dr. Curwen and Dr. Seip, and which the books say may occur without attracting much notice. At any rate, we have had a succession of paroxysms from Saturday until within eighteen hours before the evening of the 31st of May and within twelve hours after on Thursday. Now, it is admitted by Dr. Curwen, and so the most reliable writers on this subject say, that mental perturbation is the result and constant attendant before and after the different attacks. There is present what is called epileptic insanity. Was that not the case with Laros? You cannot forget his appearance and manner for days after he was known to have had the spasms. How irritable and taciturn he appeared. How he staggered and reeled. Remember, too, the description given by the Deputy Warden and the two physicians who observed and studied him on the days after he had had an attack. They tell you of his stupidity, his confusion of mind and want of memory. They remarked that peculiar gait which indicated the internal perturbation and mental eclipse. Let me now refer you to the essential characteristics of this singular state of the mind so uniformly connected with the epileptic seizure for a longer or shorter time before and after, and as I read to you the passages which have already been submitted to the scientific witnesses and received their assent with little or no qualification, mark how the conditions agree with the case of this defendant. On page 12 of his tract on Epileptic Insanity Echeverria says: "This state," speaking of the effect of the lighter seizures, "is mainly disclosed by a great confusion of mind accompanied with instinctive impulses and acts of violence. No sooner has the stupor of the epileptic fit subsided than the patient laboring under this particular kind of delirium becomes sullen and deeply dejected, with great confusion of mind and irritability against everything surrounding him. The patient feels an utter inability to collect or fix his thoughts, and to master his will, which is variously displayed, &c. * * * In the midst of this confusion of mind they recall to their memory the painful past impressions which spring up in their imaginations, always the same at every new access. * * * After the fit of violence a crisis may take place, the patient either returns to himself, in a sort of instantaneous manner regaining his consciousness and rendering an imperfect account of his misdeed, or, on the contrary, he escapes, running away in a bewildered state of great agitation. In both cases the very confused recollection, if not the complete oblivion of what has happened, is almost always a striking essential symptom of this mental state, so much resembling the awakening from a dreadful dream." Again in the Monograph on Epilepsy, page 366, the same writer says: "Hospital records show the mental derangement chiefly connected with oft-repeated but not severe attacks, or with that state of relapsing convulsions similar to the *status epilepticus* of the French alienists." On page 371 he says: "I maintain it upon repeated observations that epileptic insanity sets in but never passes off suddenly and that it continues with intermittent exacervations for days or weeks in succession when not in a persistent

condition. The language and deportment of epileptics in this state of alienation bear a striking character of *irritability and quickness* or of sadness and dulness, which contrasts strongly with the automatic execution even of the most indifferent acts. The epileptic at this stage is not master of deliberating or choosing; he starts according to his most pressing feeling, completely powerlese to resist it, and thus may be unconsciously drawn to criminal deeds."

Dr. Clymer in his pamphlet on the Responsibility of Epileptics also says: "In most instances an uneasy depressed and irritable state of the mind immediately precedes an attack and there is constantly some disturbance of the affective and intellectual faculties manifest directly after it which may persist during the larger part or the whole of the interval between the fits. The affective faculties chiefly suffer." [Judge Kirkpatrick read from other works on the subject of epileptic insanity and commented upon the correspondence between the case of the prisoner and the descriptions there given.] Can you come to any other conclusion than that the prisoner was mentally irresponsible on that Wednesday night, that he was in the delirium of epilepsy, that, although he was not maniacal and furious, he was automatically obeying the impulses generated by the disease at work in his brain. Dr. Seip, who not only speaks from general experience, but also from actual knowledge of the prisoner, says that he believed him to be insane on that night, if the accounts given by the witnesses as to the epileptic attacks are true, and that they are true you cannot refuse to believe.

Then again an act of this character would be in perfect harmony with the ordinary conduct of the epileptically insane. The tendency is to outrageously criminal and depraved conduct. Their instincts and impulses are often homicidal and are consistent with deliberation and the existence of an apparent although inadequate motive. This is the testimony of Drs. Seip and Curwen. You will remember that the latter on cross-examination admitted that the chief danger in epileptics was the "insane impulse." He also says in another part of his cross-examination—"The presence of motive would not decide the question of irresponsibility. Insane people always have motives and make plans." Nothing, therefore, can be made to militate against the theory of insanity from the fact of the stolen money even if it discloses a motive for the act. It certainly was an entirely inadequate motive, or to use the words of Dr. Green a "false motive" for a man to successfully rob and conceal the fruits of his theft and then days afterwards commit a wholesale murder of his brothers, sisters, father and mother for the purpose of securing concealment, perpetrating a crime that would startle the whole country into horror, indignation and persistent hue and cry. You will remember, gentlemen, in this connection that Dr. Seip, when challenged by the Commonwealth's counsel, supported his views on this subject by reading case after case and authority after authority, showing the tendency of epilepsy to generate the insane impulse to crime. You will also keep in mind the cases which he gave of homicides committed by epileptically insane persons under every circumstance of apparent motive and design. [The counsel here re-

ferred to a number of the cases cited by the witness.] We have had in evidence a rapid succession of the spasms shortly before and after the Wednesday night on which this family were taken sick. They seem to have been noticed more particularly during the few months preceding the tragedy, and they occur with startling distinctness and frequency. I think I can understand this young man's case. We have heard that he had become a law student. He is possessed with the thought that he will gratify the aspiration awakened in his mind. Though there is a dark shadow lying over his mind which sometimes seems darker and broader than ever before, there are the glimmerings of ambition amid the gathering gloom, the sweet star of hope streams into his soul. He has thus far successfully hidden the secret whose exposure would blast his prospects and drive him from his companions. Perhaps they had occurred at rarer intervals or he may have deceived himself into the delusion that they were but horrid dreams that made night unwelcome and the bright and cheery morning longed for. There were times when the cloud that hovered and changed and rolled over his mind broke away, when his intellect was clear and the the traces of the disease were dispelled, when the buoyancy and vigor of youth bounded through his frame and his infirmity was forgotten. At such a time he formed the thought that he would become a lawyer. He buys his law books. This, you will remember, was last winter. The one thought now reigns. He thinks of it night and day. He reads and dwells upon the stories of those who have risen from obscurity and in spite of difficulties reaped the rewards of unremitting toil. He spends sleepless nights. He wanders from his bed and in the dead hour he is found poring over his books. Alas! the fell disease had not quitted its hold. It had only slumbered. Its dormant energies are awakened. It quells the revolt of ambition and hope in his shattered mind. Under the stress of anxiety and unaccustomed mental effort his epilepsy becomes intensified. The seizures again take hold of him with renewed power and frequency. The old disease is battering at the gates of his mind. How often have you heard from the witness stand "I can sleep no more?" It was not the wakefulness of guilt and remorse, but the herald and symptom of approaching insanity. The combat is unequal. He cannot extricate himself from the chains which this awakened epilepsy has flung around him. He soon becomes under the unwonted pressure a moral and physical wreck. You who are in the full enjoyment of your strength and your reason, you know what it is to have a ruling idea, a hope, an aim, a passion. It drives away slumber, it is your companion day and night, and then the bitter disappointment, the prostration, the utter paralysis that results from extinguished hopes and unrealized ambition! Poor fellow! How he wandered like a troubled ghost about that old house! How the darkness of despair closed in upon his mind! How he must have caught fearful glimpses of the insanity that was slowly crawling over his faculties! Do you wonder that his disease received new strength and activity, that his brain was kindled and that the epilepsy left in its track that dreadful moral and mental blight which always marks its presence?

If he poisoned that family, it was not the affectionate and quiet boy, the favorite of his father and brothers and sisters, the fond object of that mother's care and anxiety. It was the demon that slept and lived in him. It was the power of a disease that no skill could subdue, no medicine allay. It was a seated trouble of the brain that swayed its cruel sceptre over the will and the affections and impelled its helpless subject to deeds of horror and shame.

In addition to what has already been alluded to there is one more circumstance in this case, which, if corroboration were needed, makes assurance doubly sure. We have shown the presence of insanity in the ancestry and kindred of the prisoner. We have proven that the grandfather and grandmother and the maternal aunt of Laros were mentally affected. Knowing as we do from the inductions of science the transmissible quality of mental and nervous disease, we are impressed with the great probability of its presence in this case, we find the conditions favorable for its development upon any sufficient exciting cause, we see in the final tragical culmination of this boy's brief and troubled career but the legitimate fruitage of that poisonous seed which lay hid in the very core of his being. Let me read a passage or two from the book in my hand (Whart. Med. Jurisp.): "In a majority of cases, says Dr. G. B. Wood, insanity is produced by exciting causes acting upon a predisposition to the disease. *Inheritance* is the most frequent source of this predisposition—perhaps more frequent than all others put together." Again: "A considerable portion, to quote from an intelligent note to the pamphlet report of the trial by Andrews in Massachusetts in 1868, of those who have suddenly appeared to be insane, were of unsound cerebral constitution by inheritance, their parents or ancestors having been insane." Again: "Devergie says, If we examine the ancestral history of families in the paternal or the maternal side of these transitory maniacs, it is not rare that one or even many members of the family have been insane for longer or shorter periods. He quoted the case of one of these patients who had committed homicide in a transitory paroxysm, in whose family one maternal great uncle died insane, one paternal aunt killed herself and another relative on the mother's side was known to have been troubled with eccentricities all her life." I will read but one more passage and this is from that high authority, Taylor on Medical Jurisprudence, page 502. "In making a diagnosis of a case of insanity the first question put is commonly in reference to the present or past existence of the disorder in other members of the family. There can be no doubt from the current testimony of many writers on insanity that a disposition is frequently transmitted from parent to child through many generations. M. Esquirol has remarked that this hereditary taint is most common of all causes to which insanity can be referred." The relevancy and importance of this kind of evidence have been too long recognized by legal and medical authority to render it necessary for me to amplify the argument suggested by these citations.

Gentlemen, if you should be satisfied that the prisoner was the perpetrator of this wholesale murder, would not the very act itself beget not the suspicion merely, but almost absolute certainty in your minds that he

must have been bereft of reason and his moral nature hopelessly deranged? Where in all the dark and bloody annals of crime could you find a homicide so indiscriminate and extensive in the number of the victims, so revolting to the strongest and most constant of all human instincts, so motiveless in its conception and so terrific in its execution. As soon as the fatal story was told and inquiry was directed towards the prisoner men looked in one another's horror stricken faces and instinctively asked, Was he sane? The absence of adequate motive, the powerful restraints of affection, the resistless instincts of filial love and duty, are conditions too potent to be ignored in this inquiry, and when we find these barriers broken down, when we see men suddenly, unaccountably and pitilessly trampling them under foot there is a violence done to ordinary nature, a contradiction and an incongruity manifested, which at once suggest the operation of delusion and disease. I am not advocating the dangerous doctrine that every crime of exceptional enormity is necessarily an insane act. Far be it from me to insult your intelligence and consciences with such heresy. But I do say, that where a person of uniformly mild and tractable disposition, brought up amid the softening and restraining influences of a pious and affectionate family, away from demoralizing surroundings and vicious companions, suddenly breaks out into outrageous and enormous crime, we at once rush to the conclusion that the mind of the perpetrator is deranged. How is mental disorder detected but by outward extraordinary and incongruous behavior? The mind is a mysterious subtle essence which no human sense can follow or explore. Its airy chambers are inhabited by thoughts and motives and passions whose features and forms are invisible to mortal eye. It is only by external exhibitions that its states and operations are contemplated. We form our notions of character and disposition, of propensities and tastes from personal history and conduct. In this dreadful deed, and the circumstances under which it took place, we see an unexpected contrast with the previous character of this prisoner, a startling and terrible revolution in disposition and conduct. How could this mild-mannered lad, heretofore of exemplary behavior, uniformly kind and affectionate, reared amid the innocent surroundings of country life, away from the vice and depravity of a great city, have suddenly developed into a monster whose like the world has never seen? What power has wrought this miracle of crime? What devil has entered that mind, where a God might dwell, and unyoked the unholy passions of that soul? Ah! gentlemen, disease has cankered that brain, the dark eclipse of insanity has crept over its faculties, its aspirations and its ambitions have been chilled, and where once had been the radiance of hope and youth and innocence, now all is dark with the thickening fancies and trooping shadows of delirium and delusion.

We do not, however, expect to depend upon that presumption which you cannot help forming from the stupendous folly and unnatural character of the deed itself. We have already shown you by direct and positive testimony the presence of a dreadful disease, which attacks with peculiar virulence the moral faculties and tends to deprave and destroy the will. We have lifted the veil of night and revealed this

poor creature, without the power of sleep, his brain throbbing with the last flutterings of expiring reason. We have seen him day after day writhing and struggling in the victorious grasp of the epileptic paroxysm. On that very evening he was far within the shadow which precedes and follows the epileptic stroke. Above all, as if this accumulation of miseries were not enough, we find in him the hereditary predisposition, the germ of insanity planted at his birth.

Gentlemen, I have too long occupied your attention, and I will therefore close. Is it necessary for me to remind you that you hold in your hands the life of a fellow man? See to it that you do not rashly arrive at a verdict which may doom this stricken creature to the scaffold, a catastrophe perhaps of little moment to him, but fraught with indellible disgrace to that fated family and immortal shame to yourselves. I can believe that that poor mother who, in the tenderness and pity which only a mother can feel, so anxiously and industriously hid his infirmity and shame, if she could visit this scene, would even now be pleading for the blasted life of her miserable demented child. If, gentlemen, you should flinch from the verdict which this evidence demands, if in obedience to an imagined popular demand for conviction you should yield to an influence which ought never find a seat in a juror's breast, remember that when the passions of the hour shall subside, and calm reflection regain her throne, you can never undo the great mistake—justice has received a mortal stroke, from which there is no recovery. Keep your minds fixed upon the evidence alone; let yours be the spirit of that inflexible goddess who, clothed in immaculate garments, blind to persons and deaf to clamor, awaits with impassive countenance the decision of the balances which she holds in her steady hand. I am satisfied that, upon due consideration, your verdict will be in accordance with the dictates of humanity. Let it not be laid to your charge when the light of the last great day shall stream into your faces, that in this, the most solemn act of your lives, you recklessly sacrificed one of God's unfortunates to the momentary spirit of vengeance that then prevailed.

Edward J. Fox, Esq., then made the closing address on behalf of the Commonwealth.

(Mr. Fox occupied the remainder of Tuesday afternoon, about two hours. In justice to him it is proper to say that the Editor has not been able to secure a careful revision of the newspaper reports, from which this speech is compiled. That happened in consequence of the continued professional engagements of Mr. Fox, outside of this county, at a time when it became necessary to have the manuscript ready for the printer.—Ed.)

After addressing himself to the Court at considerable length upon the legal propositions submitted by counsel for the prisoner, Mr. Fox proceeded to the jury:

MAY IT PLEASE YOUR HONORS:—

Gentlemen of the Jury:—I trust that I appreciate the solemn responsibility that rests upon you, the District Attorney and myself, the counsel for the prisoner and the Court, in a trial of the importance and magnitude of this case. I know you will discharge your duty carefully. While we would have no previously formed opinions to sway you, we ask you also to perform your duty fearlessly. An additional responsibility devolves upon the counsel for the Commonwealth in this case. We are to see that the prisoner is not improperly convicted by incompetent evidence. The District Attorney and myself have carefully listened to the whole of the evidence, and have not presented any of doubtful propriety, yet we feel compelled to stand before you to ask the conviction of this young man. We ask you to do so because the law and testimony call for that result and no other. A great deal of testimony has been given here which bears remotely on the question at issue. We admit that there is a show of defense. There is something on which argument can be made. In thirty years of practice and observation, I have never seen a case conducted with such zeal and industry as the counsel for the defendant have manifested in this case. They were pleased to say many complimentary things about me, but I do not propose to make any exhibition of oratory. This case does not call for eloquence. I propose to satisfy you beyond a reasonable doubt, that the prisoner was sane the day he committed the deed, and is sane to-day, and that he did murder his father. There is one general remark that I will make to the jury at the outset. The opinions of experts are valuable as they bear upon the case, but their weight is determined by law. You are to determine, not according to Dr. Seip or Dr. Curwen, but according to the laws of the Commonwealth of Pennsylvania. We have the evidence of one witness, on which alone is based the defense of this prisoner; but against him are the fifteen Justices of England and eleven of our own judges. I think the opinion of twenty-six judges preponderates over that of Dr. Seip. Chief Justice Agnew says: [*Ortwein vs. Com'th.*] "Merely doubtful evidence of insanity would fill the land with acquitted criminals." "The more enormous and horrible the crime, the less evidence would there be to prove it." "It requires that the minds of the jurors should be satisfied of the facts of insanity." "The law of the State is that where the cause of the crime is insanity, it is the duty of the de-

fense to prove insanity by the weight of the evidence at the time of the act." The seven judges of the Supreme Court of Pennsylvania said that this ruling was right. One of the medical gentlemen was held up to ridicule because one of the witnesses, an aged gentleman, told the truth. So the chemists were called names because they told the truth concerning scientific tests. The first question to determine is, did Martin Laros die from the effects of arsenious acid? The second, was that poison administered by the prisoner? [Mr. Fox then detailed the history of the Laros family, and the scenes upon the night of the tragedy.]

They were all seized with violent illness, except the prisoner. The violence of the sickness was in proportion to the amount of coffee they drank. Had they cholera morbus, or gastritis, as the course of the examination of the defense would suggest? Dr. Seem determines it is poison. He administers emetics. He sends for Dr. Junkin, who stays day after day. Dr. Seem says, bring the antidote for arsenic. If this had been cholera morbus, or gastritis, the antidote would have been certain death. The weary night wanes, and the dawn finds the mother dead by her son's own hand. Then the father gives up; and he too is wrapped in the embrace of death; and soon Moses Schug lies beside them both. The two doctors are suspicious of this prisoner. He isn't sick. They examine him and ascertain his condition. They send for the coffee-pot. It would seem to be thought necessary that there should be some one there to seal it up. But it is not expected that these people are all lawyers; and that they could, amid that excitement, take the precaution, which these gentlemen now upon deliberate judgment, are able to suggest. The prisoner told Mrs. Sandt that's the coffee-pot. Dr. McIntyre analyzed the contents. He and Mr. Davidson analyzed this white powder, and they swore, after having applied all the seven most approved tests, that it is arsenic. Dr. Green says these tests were entirely reliable. He has been Professor of chemistry for thirty years. The quantity of arsenic was 30 grains to the fluid ounce. The stomach of Martin Laros was submitted to a chemical test. Dr. McIntyre shows arsenic in the stomach. Dr. Green examines the crystals and says they were arsenic. Martin Laros died. Those who took the most poison died. Those who took least came near losing their lives. It is an insult to your intelligence to stand up here after that and argue that the deceased died of arsenical poison.

Who poisoned him? [Here Mr. Fox related the facts of the prisoner's going to Easton, buying the poison, return home, &c.] The expert's estimate and Dr. Voorhis' testimony as to the amount bought by this man correspond. Where was it? If it wasn't in that coffee-pot, where is it? If it wasn't in the pot, why didn't he produce it now; here; upon this trial. The bottle of tooth powder the prisoner bought, and said he bought, was found in the house—and that was bought at the same time with the poison. He sat at the supper table. He alone escaped. He alone did not partake of the fatal draught. Did he do it? Why, we produced a witness on the stand, and he tells you what he said the next month. "I asked him what he meant by doing such

a deed. He answered, I don't know why I done it; my parents were always good to me."

He had the opportunity to poison that coffee, and he had the motive for compassing the destruction of that family. To ward suspicion from himself, he falsely pretends to Joseph Miller that he had taken some of that poisoned liquid, and yet to the practised eye and sense of the physician, he evinced none of the symptoms of attack, except in the simulation, Is this fancy, or is it fact? Scan the evidence in every line. Be not deceived by the ingenuity which is devised to "perplex and dash maturer counsel".

He took the pocket books which contained a large sum of money; he buried them in the earth from human sight, where they would be safe from investigation. He disclosed to the officers of the law the place where they lay concealed. In that spot they were found, and are produced as silent witnesses against him here. The hand which took that pocket book from the secretary of Martin Laros, poured the poison into that coffee which Martin Laros drank into his body and which caused his death. How could he, this prisoner, sick in bed, as they say, divine the exact place where the money was buried, and direct the officers to the spot. He took the money; he murdered his father; he feigned the sickness; he confessed the crime. [Mr. Fox discussed at length the evidence upon proof of the *corpus*.]

Now they claim that this man was of unsound mind. If they fail to establish, by the weight of the evidence, that he was of unsound mind at the time the crime was committed, they fail to establish their case. [Mr. Fox cited cases in support of the theory that the desperate wickedness of men compasses the worst crimes.] The case of Dr. Webster in Boston was cited. Why did he kill Parker? Because he wanted to be relieved from the payment of money. It is not whether this prisoner had a motive that you are to find. You are to find whether this man's mental faculties were so destroyed that he did not know that it was wrong to kill his father and mother. It's a singular thing that no one ever saw this man have one of these spasms except his own family. He had thirty school children. They never saw anything of it. He has been in this court house twelve days. If anything would try a man with epilepsy, these scenes would. He never had spasms when Dr. Green and Dr. Curwen were here. I say that nobody says he had epilepsy years ago. Dr. Curwen knows; Dr. Green knows. These men say it was not epilepsy. Nobody up in Plainfield saw him have anything like epilepsy. He hurt his leg. They carried him into the house. Annie Laros saw something like spasms last year. They give a few instances of spasms later than that. Dr. Seem says point blank that he didn't see anything like spasms. Dr. Junkin says the same thing. These doctors were in the house three consecutive days.

The prisoner's defense rests upon the proof of epileptic seizures, and that he was afflicted so long that the mind was impaired; or, that in consequence of the spasms, shortly before the deed was committed, his

mind was in that degree of temporary confusion, at the time, that he was not capable of understanding the nature and quality of the act. But what did he purchase the poison for? Was his mind confused then? He had taught school continually; he taught the day the poison was purchased; he taught the day it was administered, and the intervening day as well. His scholars noticed no change upon the day of the murder. Not an hour before the crime he talked with the neighbors, on his way from school. Nobody noticed any disturbance, and nobody heard or suspected before that, he had ever suffered from any kind of nervous disease.

Nor were the spasms which the prisoner had, epileptic seizures. The symptoms were not there. It is remarkable that except in prison no one ever saw it; nor near the time of the murder. Epilepsy is occasioned and superinduced by excitement, and yet this prisoner had been in Court for twelve days amid all the excitement and showed no indication of an attack; he didn't have any when Dr. Curwen and Dr. Green were present; that would have been a bad time for one of his attacks; he said the attack at Mann's was occasioned by the passage of a worm; the case at Plainfield township school house was a fall on the ice, a sprain, and a fainting fit following it, not an epileptic attack; this was three or four years ago; then no more are heard of until last April; since then *the family say* that he has had several more; the family say that he had several the days following the murder, and yet Drs. Seem and Junkin, in the house at the time, did not see or know anything of them.

Dr. Curwen has seen hundreds of such cases. He has never known a case in which the swelling of the veins of the neck and frothing at the mouth were absent. Laros was always pale, and not livid, and did not show the other symptoms.

All the evidence is that these incidents in the alleged disease occured within a few weeks of the murder. Men who have resolved to commit great crimes like this must have fearful dreams between the resolution and the consummation. What wonder that he could no longer sleep! He had horrid dreams by day and night, drawn upon his mind because of the awful crime which he was then intending to perpetrate. If Shakespeare's Clarence could have had such visions, how much more would he, as he contemplated the murder of the father who begot him, and the mother who bore him! So like Clarence might he think his dream was lengthened after life.

"O, I have pass'd a miserable night,
So full of fearful dreams, of ugly sights,
That as I am a Christian faithful man,
I would not spend another such a night,
Though 'twere to buy a world of happy days.
* * * And often did I strive
To yield the ghost; but still the envious flood
Kept in my soul, and would not let it forth

To seek the empty, vast, and wand'ring air;
But smothered it within my panting bulk,
Which almost burst to belch it in the sea.
I pass'd methought the melancholy flood,
With that grim ferryman which poets write of
Unto the kingdom of perpetual night.
* * * Then came wand'ring by
A shadow like an angel, with bright hair
Dabbled in blood; and he shrieked out aloud,—
Clarence is come,—false, fleeting, perjured Clarence,—
That stabbed me in the fields by Tewksbury;—
Seize on him, furies, take him to your torments!
With that, methought, a legion of foul fiends
Environ'd me, and howled in my ears
Such hideous cries, that, with the very noise,
I trembling wak'd, and for a season after,
Could not believe but that I was in hell;
Such terrible impression made my dream."

And, gentlemen, when he had committed this deed, and in the dim shadows of his cell at night, he contemplated this terrible crime, it is no wonder he had manifestations of some inward convulsion of his soul. As he remembered what he had done, and saw beside his bed the shrouded forms of his father and his mother sent unwarned to the great Hereafter, it was enough to make his rest disturbed—but it was the goadings of an awakened guilty conscience.

Had he epilepsy? It is possible—barely possible. But the motive for feigning was there. He knew that if he was proven guilty he must suffer all the terrible consequences. We know the great physical tortures the human form is capable of bearing. By sheer force of will he was able to endure the tests of the jail physician, because his endurance was to save his life. [Mr. Fox referred to cases where persons had suffered unmoved to test their faith or innocence.] You are not authorized to acquit because the prisoner had epileptic convulsions, but only when you find his mind was so impaired that he did not comprehend the consequences of his act. Dr. Seip says he has genuine epilepsy. I propose to contradict Dr. Seip by Dr. Seip. "Doctor, what is the shortest time in which epileptic cases are affected by insanity?" "Four years," said he. And yet he came into Court and said that this boy was not morally responsible, who had spasms only six or eight months. Dr. Curwen says he never knew any epileptic cases in which the mind was affected in less than five years. The law says unless a man's mind is deranged, unless he is insane, incapable of judging between right and wrong, if he commits such a crime, he is responsible for it. [Dr. Seip's testimony was reviewed at length, and Mr. Fox said if Monroe Smith's testimony was true, the Doctor was most egregiously humbugged.] If a man does not depend on facts, and goes into the domain of speculation he is apt to become ridiculous. Why did he not call in some other physician? When he was called to the prison to see the Defendent in his spasms, when he advised the priso-

ner's counsel that the disease was a genuine epileptic seizure, and the defense would be insanity, why were not other physicins of this place directed to examine his condition. If it was not simulation and if he successfully withstood the pain inflicted by the Doctor's devices, how much better that there should have been three or four expert witnesses instead of one; a word would have been sufficient to procure them. And if these spasms were not feigned epilepsy, then Dr. Seip might have been supported by evidence impossible to refute. As soon as the Jury was sworn, Laros had these fits every night, and yet during the whole trial until Smith's testimony, none of us, I am sure, suspected any irregularity in his daily life. Then they talk of holding his hands straight out, and yet Dr. Curwen says he never saw a case in which the hands were extended. Was his mind affected when he purchased the poison? They say he had the spasms that day and night. He stands at the counter and deliberates. He wants 10 cents worth, and then 25 cents worth, and as he meditated on the crime he was about to commit, he said Doctor, give me 50 cents worth. [Mr. Fox depicted the scene at the supper table.] They say the coffee tastes peppery—it looks white. What wonder that his look was wild as he contemplated the dreadful scene, that his hand trembles as he sees them all partaking of the fatal draught. But he was cool when they were seized. He helped to take care of the sick, and carry them in from the yard. Then he was told that his mother was dying. What wonder that his hands clenched and a momentary spasm passed over his face. And then next day Moses Shug died. Lying there amidst scenes of death and sickness, what wonder that he should show a pallid and wild expression of countenance. In the same room was the dead body of Moses Schug. In the next room was the cold dust of his father and his mother, murdered by his hand. Dr. Curwen's testimony as to his opinion of the time before and after spasms in which the mind was clouded, was read, "I think he was capable of distinguishing between right and wrong." "From the description of the attacks I heard here, and he committed a crime, I would not doubt his sanity." "I don't think a person could be affected with epilepsy that affected his mind and no one notice it." Dr. Seip has said that out of thirty or forty cases of epilepsy under his charge only four had become impaired in mind, and none had gone to the asylum.

Dr. Curwen says he has seen hundreds of cases and never knew the mind to be affected in less than five years; and Dr. Green, in a practtce of forty-two years, had had one or two cases of epilepsy each year, and never had one get insane.

We have called witnesses beginning in 1872, and they have told you that Allen Laros taught intelligently and saw nothing that made them think there was anything strange about him. And will you undertake to say that a man who never gave a sign of insanity, who acted rationally, attended to his business, passed a teacher's examination, whom witnesses testified was perfectly sane, shall escape the just punishment of the law upon the fanciful opinion of one man? You have nothing to do with the consequences. Did Martin Laros die

from poison? Did that man administer the poison? Do the circumstances point to him? Does the confession that he made to Wm. Schug connect him with the crime? The law infers that he meant to kill when he administered poison. Are you to say that he poisoned them and that he is guilty of murder, but only in the second degree because he didn't know that it would kill? If he was insane, say so; but it is impossible to find that he was sane enough to be guilty of murder in the second degree, and yet not sane enough to be guilty of murder in the first degree.

We brought Dr. Curwen here, because he has had a varied practice in cases of epilepsy for a long series of years. He came here as an expert, at our direction; he heard the whole of the case. He was not asked his opinion, until you heard his answer from this stand. If he had believed the prisoner to be of unsound mind, he was to say so. We brought Dr. Green and Dr. Junkin here to speak the truth in the name of God, without fear, and without favor. Their testimony was absolutely fatal to this man's pretensions of epileptic insanity, and they say that this man was in possession of his faculties. There have been cases cited which conflict with their opinions. But most of these authorities have been superintendents of asylums who get only the worst cases. So that these treatises are founded upon a theory which is not wide enough. But these physicians have attended epileptic cases; they say that in no case does epilepsy affect a patient more than two or three hours after the spasms. In their judgment he was not insane at the time of the commission of this murder.

The Commonwealth of Pennsylvania, whose minister I am, asks the conviction of no man upon doubtful or uncertain evidence. She is no avenger of blood; she is not swayed by the prejudice of ignorant rage, nor the turbulence of excited frenzy. If you have that necessary doubt to acquit, then I ask for no conviction. But if we have proven that Martin Laros died by poison; that this prisoner bought the poison; that he administered it; that he knew the nature and quality of his act then the law says, that being of sound mind and memory, he murdered, his father. And the laws of God, and the laws of man punish the murderer with death.

WEDNESDAY MORNING, August 30.

The Hon. OLIVER H. MEYERS, *Pres. Judge*, delivered the charge to the jury as follows:

Gentlemen of the Jury:—The counsel for the defendant have submitted certain legal propositions to the Court to be passed upon by us in our instructions to you. I have carefully examined the points, and before I give you my general charge I will read and explain them to you. Where we disagree with the points I will add the words "Not affirmed," and to those points with which we agree the word "Affirmed" will be added. The points submitted are as follows:

Northampton County.—In the Court of Oyer and Terminer, August Term, A. D. 1876.

COMMONWEALTH OF PENNSYLVANIA, } Sur indictment.
vs.
ALLEN C. LAROS. } Murder of Martin Laros.

Prayer of instructions to the jury on the part of the prisoner.

The Court are hereby respectfully requested to charge the jury:

First—That unless the fact of death of Martin Laros by arsenious acid, as well as the criminal agency of the defendant in such death, is proven or corroborated by other evidence, the admission alone of the the prisoner will not justify the jury in rendering a verdict of guilty.

Answer—Affirmed.

Second—That as the chemical analysis of the Commonwealth upon the stomach and intestines of the deceased has failed to discover arsenious acid in such quantity as to cause death; and as no analysis was made of the vomit and ejected matter, or of any other portion of the body of the deceased, the jury cannot convict the prisoner until satisfied to a moral certainty that death was caused by arsenious acid by the criminal agency of the defendant.

Answer—Not affirmed.

Third—That the case of the Commonwealth, being one of circumstantial testimony, it must to a moral certainty exclude every other hypothesis but the one of the death of deceased by arsenious acid through the criminal agency of the defendant.

Answer—Not affirmed.

Fourth—If the jury find, beyond a reasonable doubt, that Martin Laros was poisoned by the defendant, and further finds by the weight of the evidence that at the time the act was committed the prisoner was incapable of judging whether or not the particular act which occasioned death was criminal; [*] or if he knew it was criminal, but was impelled to the consequences which he saw and understood, but could not avoid, and was placed under a coercion from mental disease, which, while the results of the act were clearly perceived, he was incapable of resisting, the verdict must be "Not guilty by reason of insanity."

Answer—So much of the point ending with the word criminal [at the asterisk "*"] affirmed. The remaining part of the point is not affirmed, as the evidence submitted to the jury is not applicable to the legal principle (if true) contained in that part of the point.

Fifth—That murder by poison is only presumptively murder in the

first degree; and if upon the whole of the evidence the jury are not satisfied beyond a reasonable doubt that the mind of the prisoner at the time of the act was so free from mental disease as to allow him to deliberately premeditate the death of the deceased, and they are satisfied beyond a reasonable doubt of the fact of the poisoning of Martin Laros by the defendant, the verdict must be "Guilty of murder in the second degree," if they should not find him "Not guilty by reason of insanity."

Answer—Not affirmed.

Sixth—If the jury find, from the facts and circumstances of this case, that there was no specific intent to take life the jury may find a verdict of "Guilty of murder in the second degree," provided the fact of the poisoning of Martin Laros by the defendant has been proved beyond a reasonable doubt.

Answer—Affirmed.

Seventh—Murder by poison may be murder in the second degree if there is no specific intent to take life.

Answer—Affirmed.

Eighth—If from the evidence in this case the jury should find beyond a reasonable doubt that Martin Laros died of poison administered by the defendant, but should have a reasonable doubt as to the sanity or insanity of the prisoner at the time of the commission of the alleged act of poisoning, it is their duty to convict of "murder in the second degree."

Answer—Not affirmed.

Ninth—The ability to distinguish between right and wrong as to the particular act is not the sole test of criminal responsibility; and if, the fact of poisoning having been found beyond a reasonable doubt, the jury are satisfied by the preponderance of the evidence in the case that the prisoner, although cognizant of the moral quality of the act at the time, was unable to resist the impulse, or to commit the act by reason of mental derangement, it is their duty to render a verdict of "Not guilty by reason of insanity."

Answer—Not affirmed.

Tenth—It is only necessary for the evidence on the part of the defendant as to insanity to preponderate in order to entitle the defendant to acquittal on the ground of insanity.

Answer—Affirmed.

Eleventh—If the jury are satisfied by the weight of the evidence that at the time of the commission of the alleged act of poisoning the prisoner was laboring under mental derangement, whether partial or general, of a degree sufficient to have controlled his will and to have taken from him freedom or moral action, the verdict of the jury should be "Not guilty by reason of insanity."

Answer—Not affirmed.

Twelfth—If, by reason of mental derangement existing at the time, the defendant had not the power to control the disposition to commit the particular act, he is not responsible therefor, and the verdict must be "Not guilty by reason of insanity."

Answer—Not affirmed.

GENTLEMEN OF THE JURY:—The issue which you have sworn to try is whether Allen C. Laros, the prisoner at the bar, is guilty or not guilty of the murder of Martin Laros. Murder at common law is where "a person of sound memory and discretion unlawfully kills any reasonable creature in being and in the peace of the Commonwealth with malice prepense or aforethought, either express or implied." The common law definition of murder has been modified in this State by express legislation. By the statute "all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing, or which shall be committed in the perpetration of or attempt to perpetrate any arson, rape, robbery or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder of the second degree." The indictment has been framed under the statute and charges that Allen C. Laros, on the 31st day of May, 1876, he did, by means of white arsenic, feloniously, wilfully and of his malice aforethought, kill and murder Martin Laros. Where a murder is perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate and premeditated killing and not committed in the perpetration of or attempt to perpetrate any arson, rape, robbery or burglary, the Commonwealth must prove that the person charged with the commission thereof had a specific intent to take life, and that the killing was wilful, deliberate and premeditated, with malice prepense or aforethought.

Where a person is on his trial for a crime the law presumes him innocent until the contrary is proved, and though the force of such presumption is neither increased nor diminished by reason of the nature of the crime, yet where the prisoner, as in this case, is charged with the commission of a most unnatural and atrocious crime, the jury should not be unmindful of this humane rule of law.

For the purpose of establishing the guilt of Allen C. Laros it is the duty of the Commonwealth, and the law so requires it, to prove beyond a reasonable doubt—

First—That Martin Laros, the person stated in the indictment, is dead.

Second—That white arsenic was introduced into the body of Martin Laros in his lifetime, and that said white arsenic was the sole and immediate cause of his death.

Third—That Allen C. Laros was the agent, by whose act the said white arsenic was either directly or indirectly introduced into the body of said Martin Laros, in the lifetime of the latter.

Fourth—That Allen C. Laros at the time of the commission of said act had the specific intent to take the life of a human being, and that the killing of said Martin Laros in consequence of said act was wilful, deliberate and premeditated, with malice aforethought on the part of the said Allen C. Laros.

There is no question that Martin Laros is dead. This brings us to the consideration of the second proposition, viz.: What was the cause of the death of Martin Laros? It is alleged by the Commonwealth that his death was caused by white arsenic; that some time before sup-

per of the evening of the 31st of May last about four and a half ounces of that poisonous substance were deposited in the coffee pot in daily use by the family; that Martin Laros drank some of the coffee prepared for supper and from the effects of the poison in the coffee died. It is an undisputed fact in the history of this case that Martin Laros and his family on the 31st of May last, and for some time previous, up to the time that they partook of their supper in the evening of that day, were in reasonable good health; that he and his wife, five of his children, viz.: Alice, Ciara, Alvin, Erwin and Allen, the prisoner, and Moses Schug, a member of the family, sat down to the supper table and in a short time thereafter, and before they had completed the meal, all of them, with probably one exception, became very sick, so that they were obliged to leave the table and retire in the yard; that this sudden attack of sickness was followed almost immediately with excessive vomiting and purging, griping pains in the stomach and bowels, cold and clammy skin, feeble pulse, excessive prostration as detailed by the witnesses who were present; and to such a degree was the prostration that within less than two hours after they had been seized with the sickness some of them had to be carried into the house; that two physicians were called in, one of whom, viz.: Dr. Seem, remained from about nine o'clock in the evening until one o'clock in the afternoon of the next day; that from the effects of this sudden and violent sickness Mary Ann Laros, the wife of Martin Laros, died at seven o'clock the following morning, Martin Laros died about one o'clock in the afternoon, and Moses Schug died on the following day in the afternoon. As bearing upon the question of the cause of the death of Martin Laros we refer you to the testimony of Alice and Clara Laros as to the peppery taste or sensation on their lips and tongues, and burning sensation in the throat, produced by drinking coffee that evening, and in connection therewith to the testimony of Drs. Green and McIntire as to a like peppery sensation on the tongue and lips experienced by them, resulting from actual experiment with white arsenic in solution, one of them testifying that in his case the solution was with coffee. To the testimony of Clara Laros as to the white or milky appearance of the coffee at the time she poured the hot water in the coffee pot. To the testimony of the witness who testified to the drinking of coffee by all who were at the table, with the exception of Allen, the defendant, and the probable quantity drank by each of them. To the testimony of one of the witnesses who heard Martin Laros make a remark at the table that he tasted something strange in the meat. To the testimony of the witness who detailed to you the manner in which Martin Laros was taken sick, how it affected him during that night and the next day, especially Martin Laros and his wife and Moses Schug, who died from the effect thereof. To the testimony of Drs. Seem and Junkin as to the symptoms exhibited in the sickness of all the sufferers, especially Martin Laros and his wife and Moses Schug, and their treatment of them, bearing in mind the length of time they were in attendance at their first visit, and their subsequent attendance on the sick. We further call your attention to the testimony of witnesses as to the fact whether or not the symptoms of the

persons afflicted were all of a like character, and to opinions of Drs. Seem and Junkin whether the disease and death of Martin Laros and his wife and Moses Schug were the result of natural cause or the presence of an irritant mineral poison in their stomachs. We also refer you to the testimony of Dr. Field, who made a post mortem examination of the body of Martin Laros on the 6th of June last, as to the appearance of the body when exhumed, the appearance of the stomach, intestines, heart, liver and lining membranes of the stomach and intestines, and his opinion based thereon as to the cause of the death of Martin Laros. To the testimony of Dr. McIntire as to the condition and appearance of the stomach and part of the intestines delivered to him by Henry S. Carey, and his opinion as to the probable cause that produced the same.

We direct your attention and careful consideration of the testimony relating to the contents of a coffee pot, alleged by the Commonwealth to be the one used by the Laros family at the supper on the evening of the 31st of May, where the same was found that night, and where kept; the examination thereof the next morning by Drs. Seem and Junkin; the finding of coffee, coffee grounds and a white sediment in it; what they did with the coffee and the white sediment; how and when a portion of said coffee and white sediment passed into the hands of D. D. Davidson for analysis, and a remaining portion thereof into the hands of Mr. Carey and ultimately into the hands of Dr. McIntire for a similar purpose. Whatever value as evidence in this case, the subsequent analysis and tests to which the coffee and white sediment were subjected to by D. D. Davidson and Dr. McIntire, the Commonwealth must satisfy you that the coffee pot from which the coffee and white sediment were taken by Drs. Seem and Junkin on the morning of the 1st of June was the same coffee pot from which coffee was obtained the evening before and drank by Martin Laros and his family. The Commonwealth must further satisfy you that the contents of the coffee pot, after Martin Laros and his family became sick up to the time that said contents were removed, had not been tampered with, and on this point you have a right to take into consideration the testimony of the two girls as to the peppery taste or sensation produced on the tongue and lips the evening before by drinking coffee, the white or milky appearance of the coffee when the hot water was poured into the coffee pot and the sudden and violent attack of sickness of the persons who drank of the same. You must also be satisfied that the coffee and white sediment had not been tampered with before the analysis and tests were made. We direct your attention to the testimony of Dr. McIntire and D. D. Davidson, who testified to the analysis and tests of these substances, and that such analysis and tests proved conclusively that the white sediment was arsenious acid or white arsenic, and that the coffee contained a large quantity of the same substance in solution. We also direct your attention to the testimony of Dr. McIntire as to his analysis of the stomach and contents and part of the intestines of Martin Laros. He testifies that the result of the analysis and tests indicated the presence of arsenious acid or white arsenic in the stomach and contents, and that he found a small portion of that

substance, not exceeding in quantity the five-thousandth part of a grain or less than the fifty-thousandth part of a grain. The Commonwealth must satisfy you that Dr. McIntire and D. D. Davidson, both by education and experience, were fully competent to make the analysis and tests and that they employed the most improved and most infallible tests known to science to ascertain the presence of arsenious acid. You have heard their testimony, how they made the analysis and applied the tests and their results. In making these tests they were obliged to use reagents, and the Commonwealth must satisfy you by evidence of actual tests of said reagents to show that they were free from arsenious acid. In endeavoring to ascertain the cause of Martin Laros' death you have a right to take into consideration the testimony of Dr. Voorhies as to the fact whether a person purchased white arsenic from his drug store on North Third street, either in the afternoon of the 29th or 30th of May last, and whether that was Allen C. Laros, who it is not denied was in the house of Martin Laros on the evening of the 31st of May and had, or may have had, the opportunity to deposit the white arsenic into the coffee pot. It is contended on the part of the defendant that inasmuch as it requires at least two grains of white arsenic to take the life of an adult person, and as not more than the five-thousandth part of a grain was found in the contents and stomach of Martin Laros and no evidence was given of the examination and analysis of the vomit ejected from the sick persons, the liver of Martin Laros and the stomach, intestines and liver of the wife of Martin Laros and Moses Schug, to show the presence, if that was the fact, of a larger quantity of white arsenic, either in the body of Martin Laros or the other persons; there is not that moral certainty of the fact that Martin Laros died of the effect of arsenical poison, where it was in the power of the Commonwealth to produce other and better evidence that might put this question beyond all possible doubt.

We say to you on that point that, though the poison was not found in the body of Martin Laros in sufficient quantity to produce death, it is competent for the jury to find the fact of death by poison from other facts in the case, taken in connection with evidence, that where arsenic is taken into the stomach in a hot solution the vomiting produced by the action of the poison and the antidotes may, and does, expel a large portion of the poison from the stomach, if such evidence satisfies you beyond a reasonable doubt.

We have thus, in a general way, directed you to the testimony on this point, but it will be your duty to examine it carefully and minutely in all its details, to subject it to all the tests known to the law and the rules of evidence; and where the Commonwealth seeks to establish the existence of a fact by circumstantial evidence the Commonwealth is required to establish each distinctive fact that goes to make up the chain of evidence beyond a reasonable doubt.

Has the Commonwealth satisfied you beyond a reasonable doubt that the death of Martin Laros was caused by white arsenic? If it has you will then proceed to the consideration of the third proposition, viz.: Was Allen C. Laros the guilty agent? On this point we refer you to the testimony of Dr. Voorhies, who testifies that on the after-

noon of the 29th or 30th of May he sold about four and a half ounces of white arsenic to the same person. That he sold to the same person at the same time a bottle of Brown's camphorated dentifrice and also prescribed some medicine for him for an eruption on the face. He testified that this person was Allen C. Laros. You will carefully examine his testimony, how he fixed the time of the purchase of the white arsenic and his identification of the person. On this point I refer you to the evidence relative to the finding in the house of Martin Laros on Saturday, the 4th of June, of a bottle of Brown's camphorated dentifrice, which Dr. Voorhies testified was precisely of the same character as the one which he sold to the person who purchased the white arsenic. In connection therewith we refer you to the testimony of witnesses as to the declarations made by Allen C. Laros on Saturday, the 4th of June, as to his purchase some day that week of a bottle of tooth powder in a drug store on North Third street, opposite the United States Hotel and above Jacob Sandt's, as bearing upon the question of identification. We also refer you to the fact of the actual presence of Allen C. Laros at the house on the evening in question and up to the time that the family of Martin Laros became sick, upon the question of fact that Allen C. Laros either had or may have had the opportunity to deposit the white arsenic in the coffee pot. To the testimony of witnesses as to the fact whether or not Allen C. Laros on said evening drank of the coffee and whether or not his sickness on Wednesday evening and night and the several succeeding days was the result of the poison in the coffee or feigned to ward off suspicion from him as the guilty agent. To the testimony of the witnesses as to the finding of the pocketbook and money of Martin Laros and Moses Schug buried in the ground between the privy and the sheep pen on Saturday, the 4th of June, and the declaration of Allen C. Laros on the same day which led to the finding of the same, as evidence of the fact that he had committed a larceny in the same house, upon the question of a motive on the part of the defendant to perpetrate the crime of murder. Also to the testimony of William Schug as to an alleged confession made by the defendant to him in jail, bearing in mind that the jury must be satisfied that the defendant at the time of the alleged confession was not laboring under the effect of mental disorder, that the witness perfectly understood what the defendant said, and that the same clearly referred to the commission of the crime with which he stands charged. You will examine all the testimony bearing on the criminal agency of Allen C. Laros in all its details and subject it to all the rigid tests of the law, and before you can say that Allen C. Laros administered the murderous poison to Martin Laros the evidence must satisfy you of that fact beyond a reasonable doubt.

This brings us to the consideration of the fourth proposition, viz.: Whether Allen C. Laros, at the time he committed this act, had the specific intent to take the life of a human being, and whether the killing of Martin Laros in pursuance of that intent was wilful, deliberate and premeditated, and with malice aforethought.

In a case of felonious homicide, where there is no evidence of express malice towards the deceased, founded on previous or contemporaneous

acts and declarations, and the killing was accidental, then not only malice, but also the intent to kill is to be presumed from the use of a deadly weapon, for the law adopts the common belief that a man intends the usual, immediate and natural consequence of his voluntary act. In the description of a deadly weapon it is reasonable to include a deadly poison, and it is immaterial whether the poison is administered directly from the hand of the poisoner or whether it is designedly mingled by him with some article of daily food which he knew would or probably might be partaken of by the deceased or some other person. This implied malice springs out of that wickedness of disposition, hardness of heart, cruelty, recklessness of disposition and a mind regardless of social duty. Therefore, if the intent to take life exists the killing is wilful; if this intention is accompanied by such circumstances as evince a mind fully conscious of its own purpose it is deliberate, and if sufficient time is afforded to frame the design to kill and select the instrument of death it is premeditated. If, therefore, you find the fact beyond a reasonable doubt that Allen C. Laros took the life of Martin Laros you will examine the evidence to which I have already referred to to determine whether he had, beyond a reasonable doubt, a specific intent to take the life of some human being, and whether the killing of Martin Laros was wilful, deliberate and premeditated.

This is the case on the part of the Commonwealth.

This brings us to the consideration of the defence, namely, that Allen C. Laros, at the time when he committed the act with which he is charged in the indictment, was insane and therefore not criminally responsible for the act. The 66th section of the act of March 31, 1860, provides "That in every case in which it is given in evidence upon the trial of any person charged with any crime or misdemeanor, that such person was insane at the time of the commission of such offence, and he shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence and to declare whether he was acquitted by them on the ground of such insanity"

Where a person is charged with a crime the law presumes such person to be sane and to possess a sufficient degree of reason to be responsible for his act until the contrary be shown to the satisfaction of the jury and by the preponderating weight of the evidence in the case.

Insanity or unsoundness of mind, whatever form it may assume, is a fact, and its existence must be proved. A reasonable doubt of insanity cannot, therefore, be the true basis of the finding of it as a fact and as a ground of acquittal. To doubt one's insanity is not necessarily to be convinced of his sanity, and the law of the State is that where the killing is admitted or proved, and insanity or want of legal responsibility is alleged by the defendant as an excuse, it is the duty of the defendant to satisfy the jury that insanity actually existed at the time of the act, and a doubt as to such insanity will not justify a jury in acquitting upon that ground.

Where a person on his trial for a crime interposes the plea of insanity as a defence the law of this State requires—

1. That it must be clearly proved that at the time of committing the act the party accused was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong.

2. Or that he was under the influence of an insane delusion or hallucination, controlling his will, making the commission of the act in his apprehension a duty of overruling necessity.

3. Or that he was under the influence of a moral or homicidal mania, consisting of an irresistible impulse to kill or commit some other particular offence; in consequence of some unknown cause influencing the mind, drawing it to consequences which it sees, but cannot avoid, and placing it under a coercion which, while its results are clearly perceived, is incapable of resistance.

There is no evidence in the case showing that even if Allen C. Laros was at any time laboring under a general or partial insanity that he was ever subject to delusions or to homicidal mania, or that in consequence of such delusion or homicidal mania he committed the act with which he is charged. The only remaining question is, Was Allen C. Laros at the time he committed the act laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing wrong?

We have already stated to you that the defendant is presumed to be sane, and the burden is on him to prove to your satisfaction that he was insane. You cannot, however infer insanity from the henious and atrocious character of the crime, or to constitute it as an element in the proof of actual insanity. The defendant alleges that from the year 1872 up to the present time he has been subject to the disease of epilepsy; that the nature of this disease is to impair the mind, and that in many cases it produces actual insanity; that in case of epilepsy there is, if not as a general rule, frequently both before and after each attack of the disease, an insane state or condition of the mind; that this condition varies in duration, depending more or less upon the severity of the disease. The defendant claims that on the 31st of May he was in that condition of temporary insanity, resulting from the epileptic convulsion which he alleges he had on Saturday in the day time, and on Monday and Tuesday night immediately preceding the said 31st. It is admitted by the Commonwealth that genuine epilepsy often results in insanity, but that it never occurs within four years before the first attack. The Commonwealth also admit that there is often that perturbed condition of the mind both before and after an attack of epilepsy, but that its duration rarely exceeds four hours and in many cases perceptible only for a short time. The first question of fact is whether Allen C. Laros prior to the 31st of May last was subject to epilepsy.

You will ascertain, in the first instance, from the evidence whether there are any distinctive characteristics and features in the symptoms of epilepsy.

The witnesses agree that clenching of the hands, unconsciousness and excessive paleness immediately preceding the attack are symptoms of epilepsy. The Commonwealth, however, contends, and so Drs. Green and Curwen testify, that during the convulsions the face also assumes a livid or purplish appearance, that there is a swelling of the veins along the throat and frothing from the mouth. If these, in addition to the closing of the hands, unconsciousness and paleness in the face immediately preceding the attack, are the usual and ordinary symptoms, were they all present at the several attacks testified to by the several witnesses commencing in 1872 up to the 31st of May? Were all those symptoms present when it is alleged he had several attacks on Thursday and Friday succeeding the 31st of May, as well as on the several occasions in jail testified to by Dr. Seip and his son, Whitesell, Reed and Smith? Did Smith testify that on several occasions, when he had these convulsions, when he was in the cell alone with him, that he had no clenching of the hands? You will bear in mind that the only physicians who saw Allen C. Laros in these convulsions were Dr. Seem, in 1872, and Dr. Seip and son in the prison. That Dr. Seem is of the opinion that when he saw him in 1872 he did not have epilepsy. If you are satisfied from the evidence that all these convulsive attacks, these symptoms, testified to by Drs. Curwen and Green, were not present; that at times there was no clenching of the hands; that Dr. Seem did not believe it was epilepsy in 1872, and, though there was always unconsciousness, clenching of the hands, with few exceptions, and paleness of the face preceding the attack, it will be for you to say whether or not the defendant has satisfied you by the weight of the evidence that prior to the 31st of May, 1876, Allen C. Laros was affected with epilepsy. If he was not then it is difficult to see how he could have had epileptic insanity. In either event, whether you find that he had or had not epilepsy, it will be your duty to examine all the testimony carefully in all its details to ascertain the condition of Allen C. Laros' mind from 1872 up to the 31st of May, 1876. You will ascertain how many attacks of convulsions he had, their force, character and duration; whether he had any stupor or disorder of the mind immediately preceding and succeeding each convulsion, as well as their character and duration. You will ascertain what effect these convulsions had upon his mind, health, disposition and temper. You will examine into all his acts and conversations as detailed by the witnesses, whether in the school room, at home, in the highways or wherever the witnesses placed him up to the 31st of May last and immediately afterwards. You will compare the testimony of witnesses as to his sanity or insanity, carefully scrutinizing the facts upon which they were found, and after having exhausted all the evidence bearing on the question of sanity and insanity it will be for you to say whether or not Allen C. Laros has satisfied you by the weight of the evidence that on the evening of the 31st of May, as well as on the day it is alleged that he purchased the white arsenic, that he was insane and not criminally responsible for the commission of the crime charged against him.

Where a person is indicted for murder, and a jury shall find such

person guilty thereof, they shall ascertain in their verdict whether it be murder of the first degree or murder of the second degree.

If the Commonwealth fails to prove the death of Martin Laros by means of white arsenic and the criminal agency of Allen C. Laros, or either, then you will render a verdict of not guilty.

If the Commonwealth prove beyond a reasonable doubt that Martin Laros died by means of white arsenic and the criminal agency of Allen C. Laros, and that the said Allen C. Laros shall have satisfied you by the weight of the evidence that at the time of the commission of said act of poisoning he was insane in the manner indicated by my general charge, and morally irresponsible, you will render a verdict of not guilty and declare in your verdict that he is acquitted on the ground of insanity.

If the Commonwealth prove beyond a reasonable doubt that Martin Laros died by means of white arsenic and also the criminal agency of Allen C. Laros, and the defendant should fail to satisfy you that he was insane at the time of the commission of the act and the Commonwealth fail to prove beyond a reasonable doubt that the said Allen C. Laros had no specific intention to take the life of a human being, you will render a verdict of murder in the second degree.

If the Commonwealth should prove beyond a reasonable doubt that Martin Laros died by means of white arsenic, and also that the act of poisoning was done by the said Allen C Laros with the specific intent to take the life of a human being, and that the killing of Martin Laros was wilful, deliberate and premeditated, with malice aforethought, on the part of Allen C. Laros, you will render a verdict of murder of the first degree.

Tipstaves Ferguson and Purdy were sworn to take charge of the jury. The jury were then conducted by them to a private apartment in the Court House.

WEDNESDAY AFTERNOON, August 30.

[The jury came in at fifteen minutes past two o'clock, having been out about three hours.]

Judge Meyers said: I do not know, nor have I reason to expect, that upon an occasion like this, so full of sadness and solemnity, that any one in the audience will make any sort of demonstration when the verdict is announced. I say that I do not expect that, nor do I know that any one contemplates doing so; but, as a measure of caution, I say that I hope the audience will make no demonstration of any kind.

Mr. Snyder, take the verdict.

Clerk Snyder [after calling the names of the jury]—Gentlemen of the jury, have you agreed upon a verdict?

The Foreman—We have.

The Clerk—In the issue joined between the Commonwealth of Pennsylvania and Allen C. Laros, the prisoner at the bar, how do you find, guilty or not guilty?

The Foreman—Guilty.

The Clerk—Of what do you find the prisoner guilty?

The Foreman—Guilty of murder in the first degree.

Mr. Kirkpatrick—If your Honors please, it is the privilege of the defendant in a case of this character to have the jury polled. We ask that it be now done.

Judge Meyers— Let the jury be polled.

The Clerk [calling each juryman in turn by name]—Harken to the verdict as the Court have it recorded: In the issue joined between the Commonwealth of Pennsylvania and Allen C. Laros, the prisoner at the bar, you say that you find Allen C. Laros guilty of murder in the first degree. Is that your verdict?

[And each juryman answered] It is.

The Clerk asked the same question of the jury collectively.

The Jury responded, "Guilty of murder in the first degree."

Judge Meyers then said:

GENTLEMEN OF THE JURY:—I only intend to detain you one moment to express the thanks of this Court, and also of the members of the bar who were engaged in this very arduous and prolonged trial, for the attention and care that you have given to this case by the promptness of your attendance, and for your general demeanor and behavior through the whole course of this trial. It has been to you, no doubt, a matter of deep concern, and even distress, to be detained away from your families for a period of two weeks, separated from the society of your neighbors and friends, and it will no doubt be a source of great pleasure and comfort to you to be enabled to return to your homes at the earliest moment. With the thanks of the Court repeated for your faithfulness to your duties in this case, we discharge you from further attendance at this Court.

Mr. Scott—In behalf of Allen C. Laros, the prisoner at the bar, I now move, Your Honors, to grant a new trial. We shall file our reasons therefor in due form in the course of a few days.

The Court—Take your rule to show cause.

SEPTEMBER 18, 1876.

The counsel for the defendant filed the following reasons for a new trial:

In the Court of Oyer and Terminer of Northampton County.

COMMONWEALTH OF PENNSYLVANIA	Indictment for murder of
vs.	
ALLEN C. LAROS.	Martin Laros.

Reasons for a new trial:

1. That the jury empanelled during the continuance of the trial were permitted by the officers having them in charge to read newspapers

containing imperfect reports of the case and comments unfavorable to the prisoner.

2. That the refusal by the Court to grant a continuance to the prisoner on account of the absence of Dr. Ray, a material witness for him, who had been subpœnaed and was absent by reason of sickness, operated to his great disadvantage and prevented him from making a full and complete defence.

3. That the Court erred in refusing to quash the array for the reasons filed by the counsel for the defendant.

4. That the Court erred in refusing to quash the indictment for the reasons filed by the counsel for the defendant.

5. That the Court erred in refusing to sustain the defendant's challenge, for principal cause, to William Bachman, called as a juror.

6. That the Court erred in refusing to sustain the defendant's challenge to the favor of William Bachman, called as a juror.

7. The Court erred in permitting the Commonwealth to stand aside jurors called in the special *venire*, as *tales de circumstandibus*, to wit: Adam Meyers and Charles Sheets.

8. That the Court erred in sustaining the challenge for cause on the part of the Commonwealth to George Sandt, who was a distant relative of the mother of the prisoner.

9. The prisoner is entitled to a new trial because the District Attorney, in his opening to the jury, stated the precise words of an alleged confession, which was not admitted in evidence, and to which objection was taken at the time it was stated and the notice of the Court called thereto.

10. The Court erred in their manner of appointing Edward J. Fox, Esq., to assist the District Attorney on the part of the Commonwealth, as stated in the objections of the prisoner's counsel plea at the time.

11. The Court erred in permitting this question to be asked on the part of the Commonwealth of Dr. John M. Junkin, namely—"Were the symptoms alike in all who were suffering?"

12. The Court erred in permitting the following question to be asked by the Commonwealth of Dr. J. M. Junkin, namely—"From the symptoms of Martin Laros and your observations of those who were seized with illness at the same house with him, what, in your opinion, was the cause of his death?"

13. That the Court erred in permitting the Commonwealth to give in evidence the results of the chemical examination of the coffee pot, packages and vessels without sufficient identification or proof of custody and whereabouts of said coffee pot, packages and vessels.

14. The Court erred in permitting Dr. Green, on the part of the Commonwealth, to give his opinion as to the learning, skill and qualifications of D. D. Davidson and Dr. McIntire to make a chemical analysis.

15. The Court erred in permitting Dr. Voorhies to testify to the admission of the prisoner under oath before the Coroner while on suspicion, and the examination being conducted with direct reference to establishing the guilt of the witness.

16. The Court erred in permitting the coffee pot and pocket book

and Brown's camphorated dentifrice in evidence without sufficient identification.

17. The Court erred in refusing to permit defendant to prove by Clinton J. Laros that Eugene, the brother of the prisoner, up to his death was quiet, uncommunicative and retiring, and that he died by hanging himself without any apparent motive and cause.

18. The Court erred in refusing to permit the defendant to prove by William A. Horn that the daughter of Mrs. Berry, who is a granddaughter of Robert Levers, who was the uncle of the mother of the defendant, was and is insane and has been for years.

19. The Court erred in permitting the District Attorney and the private counsel for the Commonwealth to arrange the order of speaking, and in permitting Mr. Fox to close for the Commonwealth, as the record of the appointment stands.

20. The Court erred in their answers to the second, third, fourth, fifth, eighth, ninth, eleventh and twelfth points submitted by the defendant.

H. W. Scott.
W. S. Kirkpatrick.

Northampton County, ss.

Now, this 18th day of September, 1876, H. W. Scott, of counsel for defendant, being duly sworn according to law, deposeth and saith that the facts alleged in the above reasons for a new trial are correct and true, as he verily believes, and are not interposed for delay.

H. W. Scott.

Sworn and subscribed before me.

Josiah Cole, A. J.

September 28, 1876.

Testimony taken upon the rule to show cause why a new trial should not be granted.

John H. Purdy, sworn.

I was one of the constables who had charge of the jury in the Laros case, and was in attendance upon them for about two weeks. They occupied the front and back rooms of the second story [of the hotel opposite the Court House.] I believe I got two papers and carried them to the jury. One was *Frank Leslie's Weekly* and I don't recollect what the other was. I got the papers down at Finley's. The illustrated paper had the picture of the Laros trial. [The witness looks at a copy of *Days' Doings* of the date Sept. 2, 1876.] The paper had a cut of the Laros trial like this in it; the paper I gave to the jury. Frank Leslie's was one of the papers I brought, I don't recollect the name of the other. They told me at the time what papers they wanted. Only told me once. I saw them have papers at other times—*Frank Leslie's, Uncle Sam, Harper's Weekly.* Don't recollect that I saw them have the New York *Sun* or the Philadelphia *Times*, nor any of the Easton papers. I never got any for them. There were a lot of pictorial papers lying on the table which Breidinger's daughter

had. The jury had access to them. I don't recollect the date of the paper, that *Frank Leslie's*, that I got for the jury.

MATTHIAS FERGUSON, sworn.

I also was one of the constables who had charge of the jury. I saw the jury have newspapers. My impression is that I think I got the *Free Press* for them one evening; I know I did. And at another time I went for one, but did not succeed in getting one. At the time I succeeded in getting the papers it was the second week of the trial. Can't say whether it was late or early in the week. I saw them pass it around among themselves, and read it myself. I don't recollect what I read. I did not read the evidence. Not to my knowledge was there an article in that paper commenting on the case. They sent for the papers on both occasions. I believe so. I don't know that I saw them read the *Free Press* or *Express* at any other time. I saw the *Free Press* there, but only saw the *Express* there once.

Cross-examined.

My impression is that I saw the *Free Press* more than once there. Can't say how often I saw it. It was about the middle of the trial. They were anxious to get the papers to pass away the time and hear about the latest news.

Mr. Scott—The defendant offers in evidence the paper called *Days' Doings*, dated Sept. 2, 1876, published in New York, and particularly the article entitled "The Pennsylvania Parricide," on page 11.

Also offers in evidence the files of the Easton *Express* and Easton *Daily Free Press* from Aug. 16 to Aug. 29, 1876, inclusive. Also files of the New York *Sun* and the Philadelphia *Times* between the same dates.

EDWARD BREIDINGER, sworn.

I am the landlord of the hotel where the jury lodged during the progress of the trial of Allen C. Laros. The jury occupied three rooms on the second floor. During that time I subscribed for the New York *Sun*, the Philadelphia *Times*, the Harrisburg *Chronicle*, Easton *Argus*, Easton *Free Press* (*Daily*), and *Harper's Weekly*. I saw the jury have *Harper's Weekly* and the constables got the Philadelphia *Times* and the New York *Sun*. I did not see them passed around among the jury. Can't say how often I saw the constables get the papers. I did not have the *Daily Express* at that time. Did not see any paper on the table except *Harper's Weekly*.

Cross-examined.

I did not see the jury read the *Sun* or *Times*. I only know that the constables got them.

GEORGE FINLEY, sworn.

I am a newspaper dealer and take large numbers of papers. I take and sell *Frank Leslie's* and *Harper's Weekly*, illustrated newspapers. There is no other paper in which this sketch of the Laros trial appeared except in *Days' Doings*. I was asked whether it was in any other paper or in Frank Leslie's illustrated paper, and I looked. I don't know that I looked at more than one issue of Frank Leslie's illustrated paper. I did not see the entire edition of *Frank Leslie's*.

I looked at Frank Leslie's paper the same week when the *Days' Doings* containing that sketch appeared.

The reasons for a new trial were elaborately argued by Messrs. Scott and Kirkpatrick for the rule and Mr. Fox against it. The Court held the matter under advisement.

SATURDAY MORNING, October 21.

Judge Meyers said: In the case of Allen C. Laros, whose counsel have moved for a new trial, I will now read my opinion and give my decision as to the same:

Commonwealth vs. Allen C. Laros—Sur reasons for a new trial.

OPINION OF THE COURT.

The defendant filed twenty reasons for a new trial. The first reason is, that the jury empanelled during the continuance of the trial were permitted by the officers having them in charge to read newspapers containing imperfect reports of the case and comments unfavorable to the prisoner.

As this raised a question of fact the defendant examined in open Court several witnesses. The substance of their testimony is that John H. Purdy, one of the officers, on one occasion procured two newspapers and handed them to the jury. One paper he describes as Frank Leslie's paper and the other he does not recollect. Whether it was an illustrated paper does not appear. An illustrated paper called Days' Doings, dated September 2, 1876, containing a picture of the court-room scene of Laros' trial was shown to the witness Purdy, who states that the paper which he handed to the jury had in it such a picture. The paper called Days' Doings of the above date has sixteen pages when folded up and this picture is on one of the outside pages. On the eleventh page is an article entitled "The Pennsylvania Parricide," containing the following paragraph: "The young man who committed an unparalleled triple murder is about twenty-one years of age, bright, and of pleasing address. He finally acknowledged the deed and said that he was actuated by a desire to possess his father's money, to use in the prosecution of the study of law." There is no evidence that the jury read the paper. That on another occasion, during the second week of the trial, Matthias Ferguson, an officer, gave to the jury a copy of the Easton Daily Free Press, who, however, testifies that to the best of his knowledge there was no article in said paper commenting on the trial. From the testimony it appears that they occasionally saw other papers in the hands of the jury, viz.: Harper's Weekly, Uncle Sam, and on one occasion the Easton Express. The defendant gave in evidence files of the Easton Express, Easton Free Press, Philadelphia Times and New York Sun, from August 16 to August 29, 1876. If any of these papers contain objectionable articles, there is no evidence that the particular paper or papers containing said articles were in the possession of the jury or read by them. The only matter that requires notice is the foregoing article in Days' Doings of September 2, 1876. It transpired on the argument that this paper is published by Frank Leslie, who is also the publisher of Frank Leslie's illustrated paper.

It also appears by the testimony that Mr. Finley, a newspaper agent, examined only one issue, and not all the issues of the last mentioned paper, and that the said picture of the court-room scene of the Laros trial is not in that issue. The witness Purdy positively testifies that he handed to the jury the paper called Frank Leslie's. As Mr. Leslie is the publisher of both these illustrated papers it, nevertheless, is quite clear that so far as the *name* of the illustrated papers is concerned, the paper called Days' Doings was not handed to the jury by Mr. Purdy. On the other hand the evidence is not so clear and satisfactory but that this same picture might have been published in one of the issues of Frank Leslie's during the trial.

In the case of the United States vs. Gilbert [2 Sumner, rep., 19], while the reading of newspapers by the jury was declared an irregularity, it was in fact not condemned by the Court. The Court said "that they had no doubt that the indulgence had a tendency to tranquillize their minds and to keep them in a state of calmness and freedom from anxiety, highly favorable and useful to the prisoners themselves." In that case there was no evidence that the jury saw anything in any newspaper relating to the trial, and a new trial was refused.

In Farrer vs. The State [Wardens' Ohio Rep., 57], the proof was that the jury had a paper containing a large part of the charge as delivered by the Judge, and made use of it for several hours during their deliberations. For this reason a new trial was granted, the Court, however, saying "that the mere reading of newspapers disconnected with the trial would be little subject to animadversion on a motion for a new trial."

In Hilliard on New Trials, 175, sec. 21, the author, in discussing the subject of papers (not newspapers) not in evidence, says that such paper, "which either by design or accident gets in the possession of a jury, and which might influence them, *and it is not read*, it is the same thing as if it had not been delivered to them." "So, where a paper calculated to mislead the jury and influence their finding was found in their room on retiring *and read by them*, held sufficient for a new trial." [Walker vs. Hunter, 17 Geo., 304.]

In Vance vs. Commonwealth, 2 Va. Cas., 162, it was held in a case of murder that a new trial should not be granted on account of an article in a newspaper, written by the President Judge, respecting another crime imputed to the prisoner, and calling him an "unfeeling savage," there being no evidence that the jury had read the newspaper.

"If a newspaper contains a full and impartial report of the evidence as given upon the trial, it is but a repetition of what they have already heard, and can therefore have no effect whatever upon them." [2 Graham on New Trials, 484.]

This reason contains a grave and serious charge against the jury. Every presumption is in their favor that they have not violated their oaths. The authorities are that such misconduct must be stated positively and specifically (which was not done in this case) and must be sustained by oath. [Hilliard on New Trials, 202.] The defendant is required to satisfy the Court that in this case the particular paper con-

taining the objectionable article was in the possession of the jury. This we think has not been proved clearly and distinctly. Moreover, the authorities are quite uniform that it is the actual reading of the objectionable article that legally constitutes the misconduct. On this point there is no evidence that the newspaper was in fact ever read, much less the article in question. The reading of said article is a fact, and while it might be inferred from evidence of the reading of the newspaper containing it, no rule of evidence would warrant the Court to infer it from the mere possession of the paper. But, independent of that, "the Court must clearly see that, if the misconduct is established, it goes to the merits of the trial, or justly leads to the suspicion of improper influence or effect on the conduct of the jury." [2 Graham on New Trials, 486.]

The paragraph in this article refers to an alleged confession of the prisoner. This very confession, published in full in all the newspapers in the county and in pamphlets, as part of the evidence before the Coroner's jury, had been read by many if not all the jurors empanelled in this case, as stated by them when sworn on their *voir dire*, against many of whom there was no challenge by the defendant for principal cause or to the favor. To say, therefore, assuming that some of the jurors may have read the article, that a mere reference in said article to said alleged confession in a paragraph of a half dozen lines, in view of their previous knowledge of said alleged confession, entitles the defendant to a new trial we are unable to comprehend. The first reason is therefore overruled.

The *second* reason is the refusal by the Court to grant a continuance to the prisoner on account of the absence of Dr. Ray, alleged to be a material witness for him, who had been subpœnaed and was absent by reason of sickness. At the time of the application it was stated in writing, the substance of which is that Dr. Ray was expected to testify on the question of the sanity or insanity of the defendant as a medical and scientific expert. It appeared that Dr. Ray had not seen the defendant up to the time of the application. It also appeared that at the time the witness was seen by defendant's counsel he was just recovering from an attack of sickness, though that fact was not known to the counsel at the time; it nevertheless was the duty of the defendant, inasmuch as the witness was only to be used as an expert, not to have relied on a single witness. It was not the case of a witness who was expected to prove an independent fact, the knowledge of which may have been only in the breast of one or few witnesses. If Dr. Ray was the only medical and scientific expert on the question, sanity or insanity, within a reasonable distance from this place the application might have had some weight. For these reasons we refused the application at the time, and for the same reason overrule the second reason.

The *third* and *fourth* reasons are for alleged error by the Court in refusing to quash the array and to quash the indictment. These reasons are overruled without comment.

The *fifth* and *sixth* reasons are for alleged error by the Court in refusing to sustain the defendant's challenge for principal cause to Wil-

liam Bachman, and in refusing to sustain defendant's challenge to the favor of William Bachman, called as a juror. These reasons are overruled on the authority of O'Mara vs. Commonwealth. [25 P. F. S., 424, and Staup vs. Commonwealth, 24 P. F. S., 458.]

The *seventh* reason is for alleged error by the Court in permitting the Commonwealth to stand aside jurors called on the special *venire* as *tales de circumstantibus*, to wit: Adam Meyers and Charles Sheets. By the 41st section of the act of March 31, 1860, relative to criminal procedure [Brightly, 885], "All Courts of criminal jurisdiction of this Commonwealth shall be and are hereby authorized and required when occasion shall render the same necessary to order a *tales de circumstantibus*, either for the grand or petit jury, and all *talesmen* shall be liable to the same challenge, fines and penalties as the principal jurors." The regular panel having been exhausted, the Court by virtue of the 144th section of the act of April 14, 1834 [Brightly, 836], made an order for summoning and returning from the bystanders or county at large thirty-six competent and qualified persons to fill up the jury. In pursuance of said order a special *venire* was issued and directed to the Sheriff of the county, who executed the same and made return accordingly. This course was sanctioned in the case of Brown vs. Commonwealth [26 P. F. S., 319], where a special *venire* was issued for one hundred *talesmen*, and where it was held that the 144th to the 148th section, inclusive, of the last mentioned act was not repealed by the 41st section of the act of March 31, 1860.

The 37th section of the last mentioned act, which gives the Commonwealth the right to challenge peremptorily four persons, does not take away the common law right of the Commonwealth of standing aside jurors without immediately showing cause of challenge, and so held in Warren vs. Com. [1 Wright, 54]. But it is contended that the right of the Commonwealth in standing aside jurors is limited to the regular panel and does not extend to *talesmen*. The right to call *talesmen* is not a mere statutory right, but exists at common law [Bacon, Abr., Jury C]. The right of the Commonwealth of standing aside jurors is founded on the right of challenge for principal cause by the Commonwealth, and as the 41st section of the act of March 30, 1860, makes *talesmen* liable to the same challenges as the principal jurors, it would be a mockery of justice to limit a right which is incident to the right of challenge for principal cause to a portion of the jurors called and not to the remainder.

In the case of Com. vs. Joliffe [7 Watts, 58], where it is held that the Commonwealth, though precluded by the act of 1834 from challenging peremptorily, Gibson, C. J., says "that the Commonwealth is not bound to assign cause of challenge before the panel has been exhausted." He states, as one of the reasons of the rule, "that the juror may be notoriously bound to the prisoner by the most absolute ties of feeling; he may even be notoriously confederated with him in guilt, and yet there may be no specific proof of it to ground a challenge to the favor. Except to add the prisoner himself to the panel, I know of no other effectual way to screen guilt from punishment than to give the prisoner the choice of the panel." Why these observations do not

with equal force apply to *talesmen* we cannot comprehend, and in the absence of an express statutory prohibition the Commonwealth ought not to be deprived of this right, the exercise of which can work no injustice to the defendant. It is contended that this would effectually give to the Commonwealth more than four peremptory challenges in the event that the panel as *talesmen* was not exhausted by the challenge. But this result might also happen in a panel of principal jurors. We are clear that there was no error in this, and therefore the seventh reason is overruled.

The *eighth* reason is for alleged error by the Court in sustaining the Commonwealth challenge for principal cause to George Sandt, called as a juror, and who was a distant relative of the mother of the prisoner. The evidence before the Court disclosed the fact that the juror was second cousin of the prisoner. This was clearly good ground for challenge for principal cause, as he fell within the degree of kin by blood to the prisoner, which excluded him by law to serve as a juror on his case. [17 S. & R., 156; 3 Blackstone, 362; 3 Wh. Cr. Law, sec. 3112.] The reason is therefore overruled.

The *ninth* reason alleges that the District Attorney, in his opening to the jury, stated the precise words of an alleged confession by the prisoner which was not admitted in evidence, and to which objection was taken at the time it was stated and the notice of the Court called thereto.

Is the prisoner entitled to a new trial for this reason? It is so contended, and the right is sought to be supported upon the authority of Wharton in his work on Criminal Law. In sec. 3008 it is stated "that, while the prosecuting attorney must open declarations as well as facts, it is indecorous for him to open confessions, evidence which is for the Court first to weigh before it is admitted, and which only in strong cases can be made the basis of conviction. If he violates these rules the Court may order a juror to be withdrawn, or in case of conviction a new trial shall be granted." The cases referred to by the author are Rex vs. Deering, 5 C. &. P., 165; Rex vs. Hartil, 7 C. & P., 773, and Rex vs. Davis, ibid, 785. The case of Rex vs. Deering is no authority on this point. In that case upon objection made by the counsel for the defendant against the prosecuting officer in his opening proceeding to state a conversation of the prisoner and a witness, on the ground that many circumstances might arise in the progress of the case rendering the conversation inadmissible. Garrow, B., in reply said: "If the counsel for the prosecution think fit to open to the evidence I cannot control him." In a note to that case it is stated that in another case a similar objection was made, and a like decision by Alderson, J., but that in Rex vs. Swatkins, vol. 4, 458, two other justices were of the opinion that the correct practice was only to state the general effect of the conversation. In Rex vs. Hartil the prosecuting officer said: "I now come to a most important part of my case, the *declarations* of the prisoner, but I think it better to leave you to hear them from the witnesses;" to which Parker, B., said: "I think you should state what the declarations are in opening the case, as any discrepancy between your opening and your witness' testimony might

operate favorably for the prisoner in the hands of the jury," stating that Alderson and himself had ruled the point in the same way in Rex vs. Orrell. In Rex vs. Davis it was objected that it was unusual to open conversations, to which Parker, B., replied: "Where it is a confession I agree with your objection." Section 3011 (*a*), of Wh. C. L. is also referred to, and the only authority there cited bearing on the question is Com. vs. Hanlon, 3 Brews., 496. Hanlon was indicted for murder. One of the reasons for a new trial in that case was, that the District Attorney in his opening the case of the Commonwealth and the District Attorney in concluding it stated to the jury, in prejudice of the prisoner's case, "that he, the prisoner, was then a convict on a charge similar to the one on trial." While Ludlow, J., was of the opinion that such a statement as a fact was not made, yet on this point says: "If the District Attorney had formally offered in evidence the record of Hanlon's former conviction and thus expressed to the jury the true state of the facts, would any tribunal (much as it might desire the offer to be made in writing) for this reason alone either discharge the jury and thus release a prisoner charged with murder, or after weeks spent in the investigation of the case annul the verdict and retry the prisoner? Such a case cannot be found in the books, and upon the reason of the thing cannot be sustained." No case has been referred to where a new trial was granted on these grounds. The very authorities referred to in Wharton confine the rule (if a sound one) to cases where objection is made at the time. In this case it is true objection was made after the statement was made by the District Attorney, but it transpired at the trial before it reached that stage of the District Attorney's opening that the defendant and his counsel knew that this very alleged confession, in all its details, was used at the Coroner's inquest, that it was published in many papers and by that means, as well as in pamphlets, was circulated far and wide; that the general statement made by the District Attorney immediately preceding the objectionable words imputed to the prisoner, viz.: "*I did it*," clearly indicated that he might state them to the jury. It seems, therefore, upon the authority of the English cases relied on, that then was the time that the objection should have been made. Be that as it may; whatever force the principle may have that should move the Court to increase the extraordinary power of withdrawing a juror or grant a new trial, it is clear that it ought not to be applied to this case. The reason of the rule (if a sound one) is that the jury should have no knowledge of the details of an alleged confession by the prisoner, as its admissibility must first be passed upon by the Court. In this case the fact is that nearly all, if not all, the jurors empanelled in this case, when sworn on their *voir dire*, had read this very alleged confession in the newspapers or pamphlets, as stated in all its details before the Coroner's inquest. While many of the jurors called were challenged by the defendant for principal cause, to the favor and peremptorily, others were sworn without challenging, though they had read this very alleged confession. Without seriously questioning the soundness of the rule in exceptional cases, we are most decidedly of the opinion that it is not applicable to the statement made by the Dis-

trict Attorney under the particular circumstances of the case. The ninth reason is therefore overruled.

The *tenth* reason refers to the manner of the appointment of E. J. Fox, Esq., by the Court to assist the District Attorney, is overruled without comment.

The *eleventh* and *twelfth* reasons is for alleged errors by the Court in permitting the Commonwealth to ask two certain questions of Dr. J. M. Junkin, viz.:

1. Were the symptoms alike in all those who were suffering?

2. From the symptoms of Martin Laros and your observation of those who were seized with illness at the same house with him, what in your opinion was the cause of his death?

These reasons are overruled without comment.

The *thirteenth* reason is for alleged error by the Court in permitting the Commonwealth to give in evidence the result of the chemical examination of the coffee pot, packages and vessels without sufficient identification or proof of custody and whereabouts of said coffee pot, packages and vessels. This reason is overruled without comment.

The *fourteenth* reason is for alleged error by the Court in permitting Dr. Traill Green, on the part of the Commonwealth, to give his opinion as to the learning, skill and qualifications of Dr. McIntire and D. D. Davidson to make a chemical analysis.

The questions propounded to Dr. Green and referred to in the foregoing reason are as follows:

Q. Is Dr. McIntire to your knowledge learned in the science of chemistry and qualified to make an analysis of quantity and quality?

The question was objected to on three grounds.

1. Because it calls for an opinion or statement of the witness as to the claims of another witness to credibility.

2. That it calls for an opinion from a witness which is not properly of an expert, but which belongs to the jury.

3. Incompetent and irrelevant.

To which the witness answered: "Highly competent by education and practice for several years. I heard the testimony of Dr. McIntire in court in this case and saw the results of his analysis which he produced. I think that the methods which he used to ascertain the presence of arsenic in other substances were correct."

Q. Were the tests which he stated that he had adopted to prove the correctness of the result of his experiments correct tests?

Objected to as incompetent and irrelevant

A. They were. There are some substances which produce the same result as arsenic. Where the secondary tests are applied to them to verify the presence of arsenic they must infallibly demonstrate the presence of arsenic if it is there. I heard the testimony of D. D. Davidson. I saw the results of his experiments.

Q. State whether or not the methods which he stated that he had adopted to ascertain the existence of arsenic and the tests which he stated he applied are scientifically correct?

Objected to as incompetent and irrelevant.

A. Scientific and correct.

All these objections were overruled and the witness allowed to answer the questions. The alleged error of the Court in the fourteenth reason really applies only to the first question, but the other questions are grouped with it so as to understand clearly the force and effect of the first question.

The Court has been referred to section 277 (*a*), 1 Wharton & Stille, Med. Jur., on this point. The author says that "After a witness has been admitted to testify as an expert evidence cannot be given to the jury of the opinion of other experts in the same science as to whether the witness was qualified to draw correct conclusions in the science in which he had been examined, though such testimony might have been properly offered to the Court to show the competency of the witness before he was admitted to testify." [Citing Tullis & Kidd, 12 Ala., 548.] Whatever force this authority may have it is not strictly applicable to the question to Dr. Green respecting D. D. Davidson. Does it apply to the question respecting Dr. McIntire? Dr. McIntire was called as an expert, not, however, to give an opinion or to draw conclusions on some scientific subject, either upon facts within his own knowledge or hypothetically stated to him, but to state actual facts, to wit: The method which he adopted and the chemical tests he applied to certain substances to ascertain the presence of a mineral poison and what he found. His testimony was not a theoretical opinion or conclusion, but a demonstration. There is no doubt that it was perfectly competent for the Commonwealth to ascertain from the witness himself such facts as a basis of his competency to testify as an expert. This was done, but is the Commonwealth, after the witness has testified, not to question a chemist of forty years' experience, whether from his actual knowledge and observation the witness understands the principles of chemistry and knows how to apply them? The witness who testifies as an expert is assailable on two grounds, incompetency and untruthfulness. He might be most profoundly learned and skilled in the mysteries of a laboratory, yet a wilful and corrupt perjurer; or he might be the veriest ignoramus and yet a paragon of truth and virtue. It is said that it is for the jury to say whether the witness is learned and skilled in the science of chemistry and qualified to make an analysis of quantity and quality. While the Court must determine the question of the admissibility of the witness as an expert in the first instance there is no doubt that the jury must ultimately determine for themselves the question of fact of the qualifications of the witness as an expert. If so, it is a fact and can only be determined upon evidence. What was there to prevent the defendant to call witnesses to show that Dr. McIntire was utterly incompetent to make the analysis? If he did would not the Commonwealth have a right to rebut it? If so why should not the Commonwealth have the right to show that in the first instance? Is the witness himself to be constituted judge of his competency and fitness? And in the event that the defendant should call no witnesses to open the door of the Commonwealth to introduce rebutting testimony, is his sole testimony, after an ingenious cross-examination, to be the basis on which the jury are to determine the fact of his learning, skill and ability to make a

chemical analysis of quality and quantity? The rule that should exclude the opinion of one expert as to the qualifications of another expert to form a correct opinion or draw a sound conclusion on an abstract scientific question is no doubt correct, but to apply it to a question under consideration would operate to shut out all light and knowledge from the jury. That the question and answer done the prisoner any injury cannot for a moment be apprehended. The ability and capacity of Dr. McIntire was not questioned by any witness called by the defendant, in fact he did not call any. To say that the jury might have had no faith in him without his own evidence being supplemented by the opinion of Dr. Green only shows the danger of applying the rule to a case of this kind. We are clear that this reason should be overruled.

The *fifteenth* reason is for alleged error by the Court in permitting Dr. Voorhies to testify to an admission made by the prisoner under oath before the Coroner while under suspicion, and the examination being conducted with direct reference to establish the guilt of the witness. To fully understand the circumstances under which the Court allowed the witness to testify to said admission or declaration it will be necessary to state that at the Coroner's inquest the defendant was examined as a witness, and in answer to a question stated that during that week he had purchased a bottle of tooth powder at a drug store in the borough of Easton, on North Third street, nearly opposite the United States Hotel and above Jacob Sandt's. This statement led to the discovery of a bottle of Brown's camphorated dentifrice in the house of Martin Laros, the deceased, where the prisoner then lived. Dr. Voorhies' drug store is at the place designated by the prisoner, and upon the bottle being shown to him identified it as precisely of the same character and description which, either on Monday or Tuesday, or probably Wednesday afternoon of the same week, he had sold to a person who at the same time purchased four and a half ounces of white arsenic.

Whatever rule of law may have excluded the rest of the statement made by the defendant, under oath, before the Coroner's inquest, while under suspicion, does not apply to this statement, which led to the discovery of the bottle. The rule in such cases being that so much of any statement made either under oath or by reason of threats or promises from one in authority, as relates strictly to the fact discovered by it, may be given in evidence for the reason for rejecting evidence of this character generally, is because it is not voluntary, and the apprehension that the party would say that which is false; but the fact discovered shows that so much of the admission as immediately relates to it is true. [Rex vs. Butcher, 1 Leach, 265; Warickshall's case, 2 East P. C., 628, note; Rex vs. Gould, 9 C. & P., 364; Hudson vs. State, 9 Yerger, 408; 1 Greenleaf Ev., sec. 231.] This reason is, therefore, overruled.

The *sixteenth* reason is for alleged error by the Court in admitting the coffee pot, pocketbook and the bottle of Brown's camphorated dentifrice in evidence without sufficient identification, and is overruled without comment.

The *seventeenth* reason is for alleged error by the Court in refusing the defendant to prove by Clinton J. Laros that Eugene, the brother of the prisoner, up to his death was quiet, uncommunicative and retiring, and that he died by hanging himself without apparent motive or cause. This reason is overruled.

The *eighteenth* reason is for alleged error by the Court in refusing to permit the defendant to prove by William A. Horn that the daughter of Mrs. Berry, who is a granddaughter of Robert Levers, who was the uncle of the mother of the deceased, was and is insane, and has been for years. The maiden name of the mother of the defendant was Levers, and the relationship by blood of the person alleged to have been insane to the prisoner was collateral and in the fourth degree. In this case no evidence was given of insanity in any of the maternal ancestors of the defendant, however remote, and in the absence of such evidence it is sought to introduce evidence of such insanity in a collateral line. Of the relavency of evidence of hereditary taint, as corroborative proof of direct evidence, there can be no question. [Smith vs. Cramer, 1 Am. L. Reg., 353.] Andrews' case, decided in Mass. in 1868, referred to in Wh. & St. Med. Jur., sec. 375, is cited as authority. There the Court admitted evidence of the insanity of the collateral issue of the common ancestor of the defendant three generations back. In Baker vs. Abbott, 7 Gray, 81, the insanity of uncles was allowed to be shown. In this case Judge Thomas says "That among the first questions which would be put would be whether the *parents* were or had been insane. With the fact that the father or mother had been insane, that the insanity had appeared in them at about the same age and in the same form, its existence in the child is more probable and believed on less perfect evidence."

In People vs. Garbult, 17 Mich., 9, it was held "that evidence of mental unsoundness on the part of a brother or sister of the person whose competency is in question is admissible."

In Smith vs. Kramer, already cited, the admissibility of hereditary insanity was strongly resisted and admitted as corroborative proof only. The case shows that while evidence of insanity among collaterals was admitted, there was also evidence "that the father of the testator was insane towards the close of his life; that one of two uncles on the father's side was insane and the other imbecile; that his two aunts on the same side and their children were insane; that a son of one of them was in the mad house, and that the brother of the testator was mentally disqualified before his death." I have not the full report of Andrews' case, and we have no knowledge whether the evidence of insanity was confined to collateral issue. We can well understand how insanity in the ancestor, however remote, and even in uncles, aunts, brothers and sisters, would be evidence, but why insanity in one who is of kin collaterally in the fourth degree should be proof at all in the absence of evidence of insanity in the common ancestor, however remote. In the first place the jury would have to presume that the insanity of Mrs. Berry's daughter had its origin through the blood of Levers, though it had been intermingled with the blood of others by three successive marriages from George Levers in the de-

scending line. To what uncertainty such a principle must necessarily lead can best be illustrated upon the supposition that if one of kin collaterally in the fourth degree to Mrs. Berry's daughter and of the blood of Berry should allege insanity, and though such person was not of the blood of Levers, he could for the same reason give in evidence the same fact as corroborative evidence of his insanity through the blood of the Berrys. It seems, therefore, that such evidence, instead of proving anything, has no other efficacy than to bewilder and mislead. If you can give evidence of this kind then there is no limit at all in that direction We are therefore not inclined to adopt the rule in Andrews' case, if it goes as far as claimed by the defendant, as the law in Pennsylvania. The reason is, therefore, overruled.

The *nineteenth* reason is for alleged error by the Court in permitting the District Attorney and the private counsel to arrange the order of speaking, and in permitting Mr. Fox to close for the Commonwealth as the record of the appointment stands. This reason is overruled without comment.

The *twentieth* reason is for alleged error by the Court in their answers to a number of points submitted by the defendant.

The substance and legal effect of the second point is that as there was a chemical analysis only of the intestines and stomach of Martin Laros, and not of the vomit or ejected matter, or of any other part of the body of the deceased, there was not sufficient evidence in the case to satisfy the jury to a moral certainty that the death of Martin Laros was caused by arsenious acid, because the quantity of poison actually discovered in the intestines and stomach was insufficient to cause death. To have affirmed this point would in effect have taken the case from the jury. In other words, though the jury were satisfied to a moral certainty, beyond all reasonable doubt, that four and a half ounces of arsenious acid had been placed in the coffee pot by the prisoner; that Martin Laros and the rest of the family except the prisoner had drank of the coffee; that all got sick and three of them died within forty-eight hours, yet that this evidence in connection with the discovery of a small quantity of arsenious acid in the body of Martin Laros was not sufficient to establish the guilt of the defendant, because the analysis was limited to a portion of the body of the deceased. This the Court could not say to the jury, yet to have affirmed the point would in legal effect have been the same. For this reason there was no error in refusing to affirm the second point.

The third point assumes as a fact that the Commonwealth's case was one of circumstantial testimony. The propositions of fact for the Commonwealth to establish and prove were the death of Martin Laros, his death by arsenious acid, and the criminal agency of the defendant. The first was established by direct evidence, and the testimony bearing on the two other propositions was both direct and circumstantial. The assumption of this fact, that all the evidence on the part of the Commonwealth was circumstantial was sufficient reason in itself why this point should not be affirmed. Whether the evidence was either direct or circumstantial, or both, would probably not vary the legal proposition in the point and probably was not so intended. The prin-

cipal reasons why the point was not affirmed were, first, the supposition that the defendant intended by this point in a more general way to express the same proposition contained in the second point; and secondly, the use of the words "moral certainty," without the qualifying words as expressed by Parke, B, in Rex vs. Sterne, Best on Ev., sec. 90, 3 Greenleaf Ev., 29, viz.: "Such a moral certainty as convinces the minds of the tribunal as reasonable men *beyond all reasonable doubt.*" As this form of expression does, however, not vary the meaning and effect of said words standing alone, the Court were in error in this respect as well as the purpose of the point. These points were, however, answered before the general charge was delivered to the jury, in which we expressly stated that before they could convict the defendant the Commonwealth must establish and prove beyond all reasonable doubt that Martin Laros was dead; that the sole and immediate cause of the death of Martin Laros was arsenious acid, and that the defendant was the criminal agent. We further charged the jury that where the Commonwealth sought to establish the existence of a fact by circumstantial evidence it was required to prove each separate and distinct fact that goes to make up the chain of evidence beyond a reasonable doubt. If in this respect the Court inadvertently erred in their answer to the third point the error was fully, clearly and distinctly corrected in the general charge.

The fifth, sixth, seventh and eighth points present for our consideration the questions whether certain conditions or facts, if found by the jury, as therein alleged, the verdict must be for murder of the second degree. There is no doubt that under our statute, if a person is charged with murder, though perpetrated by means of poison, the Commonwealth are nevertheless required to prove that the killing was wilful, deliberate and premeditated; and if the jury should find such person guilty of murder they must determine whether it be murder of the first or second degree. [Rhodes vs. Com., 12 Wr., 386; Lane vs. Com., 9 P. F. S., 371.] The defence in this case was insanity. The substance of the legal proposition in the fifth point is that if upon the whole evidence in the case on the question of insanity the jury are not satisfied beyond a reasonable doubt that the mind of the prisoner at the time of the act was so free from mental disease as to allow him to deliberately premeditate the death of the deceased the verdict must be guilty of murder of the second degree. In other words, if the defendant failed by the preponderance of the evidence to prove that he was insane, so as not to entitle him to a verdict of not guilty on the ground of insanity, his mental condition as stated in the point would reduce the offence from murder of the first degree to murder of the second degree. Murder of the first degree under the statute is where a felonious and malicious homicide has been committed *with a specific intent to take life.* Murder of the second degree is where a felonious and malicious homicide has been committed, but *without a specific intent to take life.* In Keenan vs. Com., 8 Wr., 55, the Supreme Court says "That the true criterion of the first degree in murder is the intent to take life. The deliberation and premeditation required by the statute are not upon the intent to take life, but upon the killing."

The point made by the defendant is somewhat obscure, as it is difficult to say whether the words "to allow him to deliberately premeditate the death of the deceased" have reference to the specific intent to take life or to the killing. It would seem that they refer to the killing, judging from the character of the sixth and seventh points, where the failure to prove a specific intent to take life is alleged to justify a verdict only of murder of the second degree. This point is sought to be sustained by analogy with the case of a felonious and malicious homicide by a person in a state of intoxication. In Keenan vs. Com. the Supreme Court says "That the degree of intoxication that will palliate the offence of murder must be so great as to render him unable to form a wilful, deliberate and premeditated design to kill, or incapable of judging of his acts and their legitimate consequences." In Com. vs. Haggerty, Lewis Cr. L., 404, Lewis, P. J., says: "But there is a species of *madness* produced by the immoderate influence of intoxicating liquors. It is a rule of the common law that *madness* occasioned by voluntary intoxication is no excuse for crime committed during its existence and while under its influence. If the jury believe that the person committed the act in a fit of *insanity* produced by voluntary intoxication and while under the immediate influence of spirituous liquor, he is nevertheless guilty of murder. The voluntary conversion of himself into a demon was an unlawful act, for all the immediate consequences of which the law holds him accountable; and, though there was no intent to kill, the law, by construction, holds him guilty of malicious aforethought; but the benevolent provisions of the act of 1794 (re-enacted in 1860), in dividing this crime into degr[illegible], have thrown this offence, when thus characterized, within the definition of murder of the second degree."

Now this very *madness* or *insanity* in a person, caused while under the influence of voluntary intoxication, and which renders him unable to form a wilful, deliberate and premeditated design to kill, or incapable of judging of his acts and their legitimate consequences; if it existed in a person, and produced by causes other than that of voluntary intoxication, would entitle the latter to an acquittal on the ground of insanity, while the former would nevertheless be guilty of murder of the second degree. The proposition is therefore not sound in a case of felonious and malicious homicide where the defence is insanity, not by reason of intoxication, and the defendant fails to establish that fact, that the offence is reduced to murder of the second degree by reason of a state or condition of mind short of actual insanity. The sixth and seventh points were affirmed and as the eighth is substantially the same as the fifth the observations made to it equally apply to this one. There are other reasons on the face of it why the point could not be affirmed.

The fourth, ninth, eleventh and twelfth points relate to the defence of insanity.

The first proposition of the fourth point was affirmed, and so in effect was the second proposition in said point, and expressly so in our general charge to the jury. The latter was in reference to that kind of insanity which, in cases of murder, is termed *homicidal mania*, the

existence of which the Court admitted, but expressly stated in our charge and answer that there was no evidence in this case that the defendant was ever subject to *homicidal mania*, or that in consequence of such *homicidal mania* he committed the act.

While the first part of the ninth point was correct, and so charged the jury in our general charge, as to the three distinctive tests of insanity that relieves a person from criminal responsibility; but inasmuch as the latter part of said point asserts the existence of a species of insanity commonly termed "moral insanity," the point could not be affirmed, as that kind of insanity is not recognized by the law of this State. Homicidal mania is sometimes called moral insanity, but that species of mania was evidently not intended by the point.

The eleventh point was moulded after a paragraph in the opinion of Gibson, C. J., in the case of Com vs. Mosler, 4 Barr, 257. The learned Judge, after discussing the subject of *general and partial insanity*, thus summarily states the law: "The law is, that whether *the insanity* be general or partial the degree of it must be so great as to have controlled the will of its subject and to have taken from him the freedom of moral action." The general insanity of which Gibson, C. J., speaks of and so defined by him in the same opinion is, "Where a man is mad on all subjects and then, though he may have a glimmering of reason, he is not a responsible agent. But if it be not so great in its extent or degree as to blind him to the nature and consequence of his moral duty it is no defence to an accusation of crime. It must be so great as to entirely destroy his perceptions of right and wrong, and it is not until that perception is thus destroyed that he ceases to be responsible. It must amount to delusion or hallucination, controlling his will and making the commission of the act in his apprehension a duty of overruling necessity. *Partial insanity* is confined to a particular subject, the man being sane on every other. In that species of madness it is plain that he is a responsible agent if he were not instigated by his madness to perpetrate the act."

In this point the words "mental derangement, whether general or partial," are substituted for the words "*insanity, general or partial.*" The legal proposition in the point is predicated on simple mental derangement, general or partial, no where defined and affording no guide to the jury what particular state or conditions of *general or partial mental derangement* would control the will and take away the freedom of moral action. The legal proposition laid down by Gibson, C. J., is not only predicated on *actual insanity*, but of the very elements which constitutes such insanity as defined by him, as a guide board to point the way for the jury. As the twelfth point is substantially the same as the eleventh, for the consideration above stated these two points could not be affirmed.

Many of the legal propositions in the several points on the question of insanity have little or no application to this case. The case of the Commonwealth is that either one or two days before the 31st of May, 1876, the defendant purchased four and a half ounces of arsenious acid, and on the evening of the 31st put it in the coffee pot, of which coffee Martin Laros drank and died. There is no pretence that the

defendant was totally insane, or that he was a lunatic with lucid intervals, or that he was subject to delusions or homicidal mania. The allegation was that the defendant was subject to fits of epilepsy since 1872, occurring only at long intervals in the early stages. During all this time the defendant followed the various avocations of his life, teaching school during the last three years, up to and on the very day that the alleged offence was committed. The question of his insanity prior to that day had never been discussed by the family, relatives, neighbors and acquaintances. The particular form of insanity contended for was the disturbed condition of his mind before and after such fits. The case, therefore, presented no features of mania, delusion, or killing by sudden and irresistible impulse.

For these considerations the rule for a new trial is discharged and a new trial refused.

By the Court. O. H. Meyers, *President Judge.*

October 21, A. D. 1876.

Mr. Scott, for the defendant, arose and said: "If the Court please, it is not quite certain under the practice of our Courts, since the passage of the act of 1870, whether in a clear case we are not entitled to have a review by the Supreme Court of the evidence presented upon the question for a new trial. Such also seems to be the practice in several of the other States. In order, therefore, that we may preserve our right we ask Your Honor to give us the benefit of an exception, to use hereafter if we see proper upon a fuller examination of the law."

Judge Meyers—I will note the exception.

District Attorney Merrill then said: "May it please Your Honors, as the officer of the Commonwealth, whose solemn duty it becomes, I now move that the judgment of the law be pronounced upon Allen C. Laros. Whilst I feel the natural regret which I know is shared by us all that one so young and to whom the world opened with so much of promise should meet so untimely a fate, yet his was a crime which outraged every sense of human justice, and the inexorable law of justice demands that the sentence of the law must be executed upon him if the dearest and happiest associations of life shall be preserved and protected, if the terror of the law shall restrain evil-doers and add a sanctity to the safeguards which are thrown around human life. In thus moving for judgment I can but add my tribute of praise and admiration for the zeal and devotion with which my learned friends and brethren of the bar, Messrs. Scott and Kirkpatrick, have presented in behalf of this most unfortunate man, every shield and protection offered him by the humanity of the law. The patient care with which Your Honors have listened to the evidence adduced on the trial and the exhaustive examination of the intricacies of the law involved have illustrated and made manifest that judicial fairness and tenderness which happily adorns our bench. He has had an impartial trial. It remains only now to pronounce the sentence of the law. May Infinite Wisdom extend that mercy which human law cannot give."

Judge Meyers called the prisoner before him and said:

"What is your name?"

Prisoner—Allen C. Laros.

Judge Meyers—Allen C. Laros, you have been indicted for the murder of Martin Laros and by a jury of your countrymen convicted of murder of the first degree, for which the judgment of the law is death. What have you to say why the judgment of the law shall not be passed upon you?

Mr. Scott [interrupting] read the following plea in bar of sentence:

In the Court of Oyer and Terminer of Northampton County.

COMMONWEALTH OF PENNSYLVANIA
vs. } Sur judgment for murder.
ALLEN C. LAROS.

Plea in bar of sentence.

And now, the 21st day of October, A. D. 1876, the defendant being present in court, and being now asked here what he hath to say for himself why the Court should not proceed to award execution upon his conviction for murder in the first degree, he by his counsel, W. S. Kirkpatrick and Henry W. Scott, for plea in bar to the sentence of the Court saith, that since the commission of the offence for which the defendant was indicted, and since his conviction for said offence, he has become insane, and is now insane, and this he is ready to verify and prove, and of this the said defendant puts himself upon the country.

HENRY W. SCOTT,
W. S. KIRKPATRICK,
Attorneys for Allen C. Laros.

Northampton county, ss.

Now, this 21st day of October, 1876, Henry W. Scott, of counsel for defendant, being duly sworn, deposeth and saith that the facts alleged in the above plea in bar to the sentence of the Court are true as he verily believes, and that said plea is not interposed solely for the purpose of delay HENRY W. SCOTT.

Sworn and described before me October 21, 1876.

A. J. SNYDER, Clerk.

Mr. Merrill—I am not now prepared to say whether the Commonwealth will reply or demur. This is a novel question and unless Your Honor is well satisfied that the plea of the defendant cannot be entertained it would probably be better to defer the sentencing of the prisoner for a few days.

The Court—We will entertain the plea and will not at this time sentence the prisoner.

MONDAY, October 30, 1876.

Nine o'clock A. M.

Judge Meyers asked the counsel for the Commonwealth if they had anything to say regarding the plea in bar of sentence recently filed by the defendant's counsel.

Mr. Fox said that the matter was entirely within discretion of the Court, and that he would not reply or demur unless the Court desired

it or were in doubt; it was not a matter for the counsel to decide. They have no power to act only upon the suggestions of the Court. "If," said Mr. Fox, "a prisoner commits a crime and then becomes insane he should not be tried; if after conviction he becomes insane he should not be sentenced, and after sentence if he becomes insane there should be no execution until he would again become sane." Mr. Fox spoke for some time in reference to the plea, and said they would leave the matter to the disposition of the Court, and that they had no feeling or wishes in the matter.

Messrs. Scott and *Kirkpatrick*, counsel for the prisoner, both replied, contending that they alleged a matter of fact, and had put themselves upon the country and were entitled to an answer in which the counsel for the Commonwealth must either join issue or demur. We are entitled to a replication or a demurrer.

Judge Meyers said that the defendant had been called up for sentence a week ago Saturday last and that the plea in bar alleged that the prisoner was insane at that time. Now, should a jury, if called, determine whether he was insane at that time or is insane now? and might they also inquire in regard to the intervening time? However that may be, we now purpose to call the prisoner before the Court again.

[The prisoner was then called up. Mr. Scott stood by his side and said something to him in a low voice.]

Judge Meyers [to the prisoner]—What is your name? [then to Mr. Scott] Mr. Scott, you must not talk to the prisoner at this time.

Mr. Scott—I have the right to talk to him, advise him and stand by his side until the last act of the law.

Judge Meyers [to the prisoner]—What is your name?

Prisoner—Allen C. Laros.

Judge Meyers—Allen C. Laros, you have been indicted for the murder of Martin Laros, and by a jury of your own countrymen convicted of murder of the first degree, for which the judgment of the law is death. What have you to say why the judgment of the law shall not be passed upon you?

Mr. Scott interposed the following plea:

In the Court of Oyer and Terminer of Northampton county.

COMMONWEALTH OF PENNSYLVANIA
vs.
ALLEN C. LAROS.
} Sur indictment for murder.

Plea in bar.

Now, this 30th day of October, A. D. 1876, the defendant being present in court, and being now asked here what he hath to say for himself why the Court should not proceed to judgment and sentence upon the verdict of the jury for murder in the first degree, he, by his counsel for plea in bar to the sentence of the Court, saith that since the commission of the offence for which the defendant was indicted, and since the verdict aforesaid, he has become insane, and is now in-

sane, and this he is ready to verify and prove, whereupon he prays judgment, &c.

HENRY W. SCOTT,
W. S. KIRKPATRICK,
Attorneys for Allen C. Laros.

Judge Meyers [to the prisoner]—What is your age?

The prisoner stood mute, and *Mr. Scott* said: "Your Honor, we object to these proceedings. The counsel for the Commonwealth have not made replication to the plea in bar, and the questioning of the prisoner is not proper. We demand an answer from the Commonwealth to our plea."

Mr. Fox said the Commonwealth would plead and read the following replication:

Commonwealth of Pennsylvania vs. Allen C. Laros.

And now, October 30, 1876, the Commonwealth by John C. Merrill, District Attorney, for answer to the plea of the defendant why sentence should not be pronounced upon him, says that the said defendant has not become and is not now insane, and the said Commonwealth therefore prays that the judgment of the law be pronounced by the Court upon said defendant.

J. C. MERRILL, District Attorney.

Judge Meyers [continued, to the prisoner]—What is your age?

Mr. Kirkpatrick [interrupting]—One moment, Your Honor, we shall demur to the answer of the Commonwealth [which was then done as follows]:

IN THE COURT OF OYER AND TERMINER OF NORTHAMPTON CO. } *Commonwealth of Pennsylvania vs. Allen C. Laros.*

Demurrer to Replication.

Now, to wit, this 30th day of October, A. D. 1876, defendant, by his counsel, saith for cause of demurrer to replication of the District Attorney to the plea of the prisoner in bar of sentence of the Court—

First—That the District Attorney tenders no issue by his replication and no mode of trial.

Second—That the replication should tender a trial by the country, being a traverse of matter of fact.

Third—That it prays judgment of the Court upon the question as a matter of law.

Fourth—That the said replication is, in other respects, uncertain, informal and insufficient.

HENRY W. SCOTT,
W. S. KIRKPATRICK,
Attorneys for Allen C. Laros.

The demurrer and replication were now open to argument.

Brief of argument upon the demurrer to replication of the District Attorney to the plea of prisoner in bar of sentence:

Mr. Scott, for defendant.

I. Record must show that defendant was asked by the Court, before sentence, what he hath to say why sentence should not be passed. He must have the opportunity to plead in bar any matter to suspend sentence. He may plead an illegal trial, pardon, or supervening insanity. [McCue vs. Com., 28 P. F. Sm., 118; Dougherty vs. Com., 19 P. F. Sm., 291; Prime vs. Com., 6 Harris, 104; Hamilton vs. Com., 4 Harris, 129; Dunn vs. Com., 6 Barr, 384; Archbold Crim. Law, vol 1, page 676, note; Hale P. C., vol. 1, pages 369–70; Rex vs. Speke, 3 Salk., 358; Rex vs. Geary, 2 Salk., 630; Rex vs. Harris, 1 Lord Raymond, 267; Rex vs. Perin, 3 Saund., 392; Chitty Crim. Law, vol. 1, page 701.]

II. By section VI., act May 31, 1718 (repealed by Revised Code, 1860), it was provided that the practice in trials of felonies punishable by death, and the judgment and execution thereon, should be according to the laws of England. [1 Smith's Laws; Dunlop's Laws, vol. 1700–1849, page 68.] This section was declared to be in force and was commented upon in Dunn vs. Com., 6 Barr, 384. The repeal of the section in the act does not repeal the practice under the law, which before its repeal was compulsory, nor does it repeal the constitutional provision that "the right of trial by jury shall be as heretofore."

III. Where a matter of fact was pleaded in bar to sentence of death the English practice prior to 1718 and subsequent thereto was for the Attorney General to reply to the plea and tender a trial of the issue by the country, whereupon issue was joined by the prisoner, a venire was issued, returnable *instanter*, and a jury was empanelled. [Blackstone Com., vol. 4, pages 24, 25, 395, 396; Foster's Crown Law, pages 41, 42, 46; Hale's P. C., vol. 2, pages 401, 407, 408; Geary vs. King, 1 Show., 127; 1 Siderfin, 72; 1 Levintz, 61; Sir John Kelying's Rep., 13; Roger Johnson's case, Strange's Rep., page 824; Barkstead's case, Foster's Cr. Law, page 111; Archbold Cr. Law, vol. 1, page 26, notes.]

IV. Trial by jury to be as heretofore and the right thereof remain inviolate. [Consts of Penna., 1873, 1838, 1790, 1776.]

V. [Foster Cr. Law, page 41.] This issue not to be tried *instanter* if any cause for postponement exists.

VI. Peremptory challenges to be allowed upon this plea when the indictment charged a felony punishable by death. [Coke Litt., page 157; Staundforde's Pleas and Prerog., page 163; Hall, Sum., page 259; Blackstone, vol. 4, page 396.]

VII. [Crabb's Hist. Eng. Law, page 548: Modes of Trial.] By record; by certificate; by inspection; by witnesses; by battle; by law wager; by jury. Trial by inspection was only upon a matter which was patent to the senses, as infancy or idiocy; but there could be no such trial upon a question of lunacy [Viner's Abridg., vol. 21, "Trial," marg. page 6]; and in Glanville's time these issues were disposed of by an assize of eight jurymen: vide Crabb, page 119.

Mr. Fox, in reply:

"If after conviction a person alleges by his counsel he is insane, and

"the Court doubts on this point, it will ordinarily submit the case to a "jury. But if, on inspection, the Judge is fully satisfied the allegation "is false he will without further inquiry proceed to sentence." [Bonds vs. State, Mart. & Yerg., 142.]

The Court may adopt any mode of trial upon the question of insanity subsequent to conviction. The Pennsylvania statute does not extend to such a case. In Massachusetts and New York the Courts have referred to the English practice as being different from that contended for on the other side. [Mr. Fox refers to Com. vs. Braley, 1 Mass., 103; Freeman's case, 4 Denio, 9; Morgan's case, 7 Paige Reports, 296; 3 Rob. Pr., 115; 2 Va. Cases, 266; Queen vs. Goode, 7 A. & E., 536; Reg. vs. Dietz, 7 C. & P.; Revised Code, 1860; Repealing Act, 31st May, 1718.]

Mr. Fox, in his remarks denied that the prisoner was insane and said that the Commonwealth were not compelled by law to join issue.

Mr. Kirkpatrick in conclusion said that defendant alleged a matter of fact, which is contained in his plea. That must be tried by either a jury, or by inspection. The nature of the case forbids the latter method. He spoke at some length, and closed his remarks by urging the Court to sustain the demurrer.

Judge Meyers overruled the demurrer and calling the prisoner before him began questioning him.

Q. What is your age?

A. Twenty-one years.

Q. In what county were you born?

A. I think in Northampton county.

Mr. Scott objected to the prisoner being interrogated.

Judge Meyers—We intend to question the prisoner now, and do not wish counsel to interrupt.

Mr. Scott then said: Your Honor, I don't know under what conditions you overruled the demurrer. If you intend to make a personal inspection as to the prisoner's sanity you certainly cannot make him testify against himself. This matter is as much a trial as the one which has lately closed. The defendant cannot be called upon to convict himself, by satisfying the mind of the Court, in answering these questions, to solve the issue now presented. Just as well might he have been called to answer the issue upon the indictment itself. I most respectfully ask that our objection be noted to the answers that may be made by the prisoner.

Judge Meyers noted the exception, and said he would not put questions which would criminate the prisoner.

Q. In what State is Northampton county?

A. [Hesitating, he said] Pennsylvania.

Q. In what township were you born?

A. I don't know.

Q. Where did you come from this morning?

A. Where from this morning?

Q. Yes, this morning?

A. From jail.

Q. What is your father's name?

A. Martin Laros.
Q. What is your mother's name?
A. Mary.
Q. Have you any brothers living?
A. Yes, sir.
Q. How many?
A. I think six.
Q. Name them.
A. John, Clinton, Uriah, Charles, Erwin, Alvin. [The first three were said slowly and deliberately, the last three very rapidly.]
Q. Is your father living?
A. [Promptly] Yes, sir.
Judge Meyers repeated: *Your* father?
A. [Again] Yes, sir.
Q. Is your mother living?
A. Yes, sir.
Q. Are your brothers living?
A. Yes, sir.
Q. How long have you been in jail?
A. [Prisoner repeated]: How long? Not long; don't know how long; not very long.
Q. What do you mean by not very long?
A. I mean I wasn't there long.
Q. How long—two months, six months?
A. Six weeks, may be seven; may be not so long.
Q. When did you see your father last?
A. When I left home, six or seven weeks ago, I guess.
Q. Where did you see him?
A. In the shop.
Q. When did you see your mother last?
A. I saw her then, too.
Q. Do you know what day of the month you came to jail?
A. No, sir. [After a long pause] I think it was July. [Then he said] June or July.
Q. This year or last year?
A. [Repeating the question.] This year.
Q. Who did you come in with?
A. Brother.
Q. Which brother?
A. Clinton fetched me in.
[Prisoner stood with his arm upon the clerk's desk and his head in his hand, only occasionally looking up at the Judge.]
Q. In what township did your father live when you saw him last?
A. Forks township.
Q. Did you ever teach school?
A. Yes, sir.
Q. How many years did you teach school?
A. Three or four. [Last he said] Four.
Q. Where did you teach school last?
A. Up the Delaware River, up at Schirnertown, at the big rock.

Q. When did you stop teaching school?
A. About six or seven weeks ago already, I reckon.
Q. How long before you came to jail did you stop teaching?
A. They fetched me from there.
Q. From where?
A. From the school-house.
Q. Have you any sisters?
A. Yes, sir.
Q. How many?
A. Six.
Q. What are their names?
A. Sally, Maggie, Annie, Mary, Clara and Alice.
Q. Do you know what month we are in now?
A. What month? [he replied; then said] October.
Q. What day?
A. Mr. Scott said a little bit ago it was the 30th.
Q. Do you know what building this is?
A. The Court House.
Q. Do you know Mr. Fox?
A. Who? Mr Fox?
Q. Yes, Mr. Fox, the attorney, the lawyer?
A. Yes, sir.
Q. Do you see him in the court-room?
A. [Looking around.] I don't see him.
Q. Who is that person standing over there? Is that he?
A. Yes, that's him.
Q. Do you know Judge Cole?
A. Who? Judge Cole?
Q. Yes, Judge Cole, editor of the *Argus?*
A. No, sir; but I know Pete Correll [reporter for the *Argus*].
Q. What was your mother's maiden name?
A. Her maiden name?
Q. Yes, her name before she was married?
[Hesitating as if he did not understand the question.]
Q. What was her father's name?
A. His first name I don't know; his last name was Levers.
Q. What was your father doing in the shop when you left?
A. Making a door.
Q. What was your mother doing?
A. Doing something [hesitatingly]. I don't know what.
Q. Did you see them since you were in jail?
A. No, sir.
Q. Did you send for them?
A. Yes, sir.

MONDAY AFTERNOON, October 30, 1876.

Mr. Scott offered another plea:

COMMONWEALTH OF PENNSYLVANIA
vs.
ALLEN C. LAROS.
} Indictment for murder.

Plea in bar of sentence.

And now, the 30th day of October, A. D. 1876, the defendant being present in court, and being now asked here what he hath to say further for himself why the Court should not proceed to pass sentence of death upon his conviction for murder in the first degree, he by his counsel, H. W. Scott and W. S. Kirkpatrick, Esqs., for plea in bar of the sentence of the Court saith, that at the time of the charge of the Court to the jury, and at the time of the delivery of the verdict, the said defendant was laboring under a temporary insanity, produced by epilepsy, or some other nervous disease, and was totally incapable of understanding, and was actually unconscious of the proceedings attending the charge of the Court and the rendition of the verdict; and this he is ready to verify and prove, wherefore he prays judgment, &c.

HENRY W. SCOTT,
W. S. KIRKPATRICK,
Attorneys for Allen C. Laros.

Mr. Fox read the following:

COMMONWEALTH OF PENNSYLVANIA
vs.
ALLEN C. LAROS. } Murder.

And now, Oct. 30, 1876, the Com'th, by John C. Merrill, District Attorney, for answer to the further plea of the defendant why sentence should not be pronounced upon him, moves that the said plea, "that the said defendant, at the time of the charge of the Court to the jury, and at the time of the delivery of the verdict, was laboring under insanity produced by epilepsy, or some other disease, and that the defendant was incapable of understanding and unconscious of the proceedings attending the charge of the Court and the rendition of the verdict," be stricken off, for the reason that the matters therein alleged cannot now be tried, as they are without the jurisdiction of the Court.

JOHN C. MERRILL, District Attorney.

Mr. Kirkpatrick then said: That raises the question in point of law and is in reality a demurrer to our plea.

Judge Meyers asked Mr. Merrill if he had made this answer as a motion.

Mr. Merrill—Yes.

Judge Meyers—The motion is sustained.

Mr. Scott—Your Honor will note our exception.

Judge Meyers—We will now make the following order to be entered on the record:

And now, October 30, A. D. 1876, the demurrer of the defendant to the replication of the Commonwealth to the said plea of the defendant is overruled, and the Court, upon inspection and examination of the prisoner, being clearly of the opinion that the prisoner is this day, to wit, the 30th day of October, A. D. 1876, when called upon if he had anything to say why the judgment of the law should not be passed upon him on his conviction of murder of the first degree, on an indictment for the murder of Martin Laros, of sane mind, memory and understanding, and not insane as alleged in said plea, and the Court,

therefore, proceed to pronounce the judgment and sentence of the law, made and provided.

Mr. Scott—Your Honor will note our exception.

Judge Meyers, ordering the prisoner to stand before him, then proceeded to sentence the prisoner as follows:

Sentence.

Allen C. Laros, before performing the painful duty which your crime and the law imposes on me I desire to say a few words. You stand convicted of murder of the first degree, the highest crime known to the law. For that crime and by that law you forfeit your life. On the evening of the 31st of May last the immediate neighbors of your father, Martin Laros, were suddenly summoned to his house only to witness a scene of anguish and bodily suffering of the entire household except yourself. The tidings of the tragedy of that dreadful night, which reached this town and the surrounding country on the morning of the 1st of June, carried with it the intelligence of the death of your mother as the first victim of some fell disease or terrible crime. Within thirty hours after the death of your mother your father and Moses Schug were dead. For a week a distressed community were waiting with deep anxiety the fate of your two younger brothers and sisters, whose lives hung trembling on the brink of the grave. Four days afterward the Coroner's jury charged you with the murder, by means of poison, of your father, your mother and Moses Schug, and from thenceforth from day to day by telegraph and the press the terrible tragedy was heralded far and wide, and your name indissolubly linked with one of the blackest and most atrocious crimes of the age. For this crime you stand convicted by a jury of your county, almost entirely of your own choice, under humane and benign laws, which throw around the unfortunate charged with crime every protecting shield and barrier consistent with the safety of society and the public good. You have been defended by counsel of your own choice, who have brought to your behalf such evidences of industry and learning, zeal and eloquence to save you from the fate that now confronts you, as has been seldom witnessed in the history of criminal jurisprudence of this Commonwealth. For fifteen days they struggled to save you. They failed only because the evidence against you was too overwhelming and the evidence in your defence lacked that inherent force and power that produces conviction. Allen C. Laros, you may be innocent. Your hand may not have mingled the poison with the food that carried death to your father. By some mysterious visitation of Providence you may have been so afflicted in body and mind, unseen to mortal eyes, as to have rendered you unconscious that you committed a crime. But, judging the verdict by the law and the evidence, which was the only guide and rule for the jury, our judgment as to your guilt is clear. Guilty you have, by taking the life of your father, violated the law of God, of man and of nature. You have not only committed the greatest possible injury to the dead when living, but also to society, to the State and to humanity. The hand of the murderer, in whatever manner it may be raised against the life of his fellow man, may possi-

bly be guarded against, but who can guard against the hand of the poisoner and the parricide at the very fireside and altar of our homes? I speak these words in the spirit of compassion and profound sympathy for you by reason of the terrible calamity which you by your crime have brought upon yourself. With little or no hope to avail the pending doom, there may yet be hope beyond the grave. If the consciousness of the awful crime which you have committed cannot awaken your soul to a sense of your peril, no poor and feeble words of mine can avail you much; nevertheless, I conjure you, as you hope for pardon from a just but merciful God, to humble yourself in the very dust and ashes of a true and sincere repentance and beseech Him, through His abundant grace and mercy, to save your immortal soul. I can say no more. It only remains for me to declare the judgment of the law. Allen C. Laros, the sentence and judgment of the law is that you, the said Allen C. Laros, be taken from hence to the Northampton County Prison, from whence you came, and from thence to the place of execution designated by law, and there be hanged by the neck until you are dead. And may God have mercy on your soul.

The Death Warrant.

PENNSYLVANIA, ss. }
J. F. HARTRANFT. }

In the name and by the authority of the Commonwealth of Pennsylvania.

John F. Hartranft, Governor of the said Commonwealth, to Birge Pearson, Esq., High Sheriff of the county of Northampton, sends greeting:

Whereas, at a Court of Oyer and Terminer, held at Easton, in and for the county of Northampton, at August term, A. D. 1876, a certain Allen C. Laros was tried upon an indictment for the crime of murder, and on the 30th day of August, A. D. 1876, was found guilty of murder in the first degree, and was thereupon, to wit, on the 30th day of October, A. D. 1876, sentenced by the said Court, that he be taken from hence to the Northampton County Prison, from whence he came, and from thence to the place of execution designated by law, and there be hanged by the neck until he be dead.

Now, therefore, this is to authorize and require you, the said Birge Pearson, Esq., High Sheriff of the county of Northampton, to cause the sentence of the said Court of Oyer and Terminer to be executed upon the said Allen C. Laros between the hours of ten A. M. and three P. M. of Saturday, the thirteenth day of January, A. D. 1877, in the

manner directed by the seventy-sixth section of the act of the General Assembly of this Commonwealth, approved the thirty-first day of March, A. D.,1860, entitled, "An act to consolidate, revise and amend the laws of this Commonwealth relating to penal proceedings aud pleadings," and for so doing this shall be your sufficient warrant.

Given under my hand and the great seal of the State at Harrisburg the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Commonwealth the one one hundred and first.

By the Governor.

M. S. QUAY, Secretary of Commonwealth.

In December the defendant's counsel sued out a writ of error in the Supreme Court of Pennsylvania for the Eastern District, returnable the fourth Monday of March, 1877. This operated as a supersedeas, and the Governor recalled the warrant.

This case was argued before the Supreme Court at Philadelphia on Tuesday and Wednesday, March 27 and 28, 1877.

Decision was reserved.

W 600 L331t 1877

28420580R

NLM 05116202 5

NATIONAL LIBRARY OF MEDICINE