Med Journal

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TRIAL

OF

MEDAD M'KAY,

FOR THE

MURDER OF HIS WIFE,

BEFORE CHIEF JUSTICE SPENCER, 1820;

AND

BEFORE HIS HONOR WILLIAM W. VAN NESS, 1821;

AT ALLEGANY.

EMBRACING A BRIEF OUTLINE OF THE FORMER TRIAL, AND A DETAIL OF THE LATTER.

INCLUDING THE

TESTIMONY, AND SPEECHES OF MESSRS. COLLIER, HAIGHT, MATTHEWS AND HULBERT, WITH THE CHARGE OF THE JUDGE TO THE JURY.

BY M. T. C. GOULD, STENOGRAPHER.

ALBANY:

PRINTED BY WEBSTERS AND SKINNERS.

At their Bookstore, in the White House, corner of State and Pearl Streets.

1821.

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AN OUTLINE OF THE FIRST TRIAL.

Medad M'Kay was indicted at the general sessions in Allegany, for the murder of his wife, by administering arsenic. There being no resident district attorney in that county, the court appointed D. Cruger, Esq. of Steuben county, to perform that duty. Mr. Cruger prepared the cause for trial; but his clerk neglected to put a seal to the venire. The cause was brought to trial, at the oyer and terminer in Allegany, 1820, before chief justice Spencer; and after a long and solemn investigation of the subject the prisoner was convicted The following day he was called on to show cause, if any he had, why judgment should not pass upon him. V. Matthews, Esq. one of the prisoner's counsel suggested to the court the probability, that there might be some illegality in the proceedings; as the statute stated that the venire should be issued by the district attorney, and it appeared there was no resident, or special district attorney in the county He requested a few moments to look at the statute, and likewise to examine the venire; which was granted. On an examination of the venire, it was discovered that there was no return endorsed by the sheriff, and that it was destitute of a seal. These objections being raised, the chief justice suspended judgment, and "the prisoner was brought up from the county of Allegany, [before the supreme court] on a habeas corpus, and the indictment and proceedings against him in the court of oyer and terminer and gaol delivery, in that county, were returned in obedience to a writ of certiorari directed for that purpose." This cause was very ably argued, by Messrs. Oakley, (attorney general) and Collier for the people, and Hudson and Talcott for the prisoner; after which the opinion of the court was delivered by chief justice Spencer, as follows.

"It has properly been conceded by the attorney general, that the paper purporting to be a venire, is to be regarded as a nullity, it not having the seal of this court impressed upon it. The points which have been argued, and which the court is called upon to decide, are, 1. Whether the trial was regular without a venire returned and filed; 2. Whether the fact which appears on the return, that the prisoner peremptorily challenged several jurors, cured the defect of a venire?

It has not been controverted, and it certainly could not be, with effect, that at common law, a venire is essentially necessary to authorise the sheriff to summon a jury; and that an omission of that process would be a fatal defect. The trial of collateral issues, and a jury *de medietate linguæ*, form exceptions to the general rule of the common law. It has, however, been urged, that the provisions of the statute for regulating trials of issues, and for returning able and sufficient jurors, (1 R. L. 328) dispense with the necessity of a venire. The 11th section

of the act authorizes the clerks of counties to draw the names of jurors for the trial of issues, without any venire previously issued, fourteen days previous to the holding of the courts, after giving ten days notice; and after drawing the number required, and completing the panel, the clerk is to make out, and certify under his hand, a panel of the jurors so drawn, and deliver the same to the sheriff, "whose duty it shall be to summon the several persons whose names are contained in such panel, at least eight days previous to the sitting of such court, and to make return in what manner he has served such process."

The 16th section of the act concerning the circuit courts and sittings, and the courts of oyer and terminer and gaol delivery, (1 R. L. 139.) requires of the sheriffs of each of the counties, to cause to come before the courts of oyer and terminer and gaol delivery, to be held therein, twenty-four good and lawful men, as grand jurors, and likewise, so many good and lawful men of the same cities and counties respectively, duly qualified to serve as jurors therein, as the said courts of oyer and terminer and gaol delivery, or any justice thereof, shall, from time to time, direct; and it requires the district attorneys, as soon as conveniently may be, after every circuit court shall be appointed to be held, within their respective districts, *and at least fifteen days before the time of holding the same*, to issue precepts under the seal of the supreme court, directed to the respective sheriffs of the same cities and counties, *for the purposes aforesaid*, mentioning the day and place, when and where the said courts are to be held, and commanding the said sheriffs respectively, to do what is required of them. These two statutes being *in pari materia*, must both be taken into consideration, in deciding whether the venire was intended to be dispensed with by the first statute. If these are construed together, it is manifest the legislature did not intend to supercede the use of a venire. It cannot be admitted, that in requiring the panel to be delivered to the sheriff, and in requiring the sheriff to make return in what manner he has served such process, the legislature could be guilty of the absurdity of considering the panel, containing only the names of the jurors, their places of abode and addition, as a process. The process referred to must be the venire, under the seal of the supreme court. The only necessity now remaining for the issuing and placing a venire in the hand of the sheriff, regards the return to be made upon it. The sheriff's return of the manner in which he has performed his duty, must be made on this process, that the court may be officially informed, that the sheriff has duly obeyed its mandate. Inasmuch, then, as a venire was necessary at the common law, and as the statute yet requires it to be issued, the omission to issue it, we must consider an error apparent on the record; and in such a case, affecting life, we do not feel ourselves authorized to dispense with a process, required by the common law, and also by the statute, although we may not be able to perceive much use in continuing it.

We are not of the opinion, that the prisoner's peremptory challenge of jurors was a waiver of his right to object now to the want of a venire. It seems to be an admitted principle, that

a challenge to the polls, is a waiver of a challenge to the array; but the objection now taken is not to the array; a challenge to the array is an exception to the panel in which the jury are arrayed and set in order by the sheriff in his return; and it may be made on account of partiality, or of some default in the sheriff, who arrayed the panel. (Bl. Com. 359.) It is a humane principle, applicable to criminal cases, and especially when life is in question, to consider the prisoner as standing upon all his rights, and waiving nothing on the score of irregularity. We are, therefore, clearly of opinion, that the judgment must be arrested. His counsel has suggested a doubt, whether arresting the judgment does not entitle him to be discharged without being subjected to another trial. It will be observed that the judgment is arrested on the motion of the prisoner. An act done at the request, and for the benefit of a prisoner, we are clearly of opinion, cannot exonerate him from another trial. A case, analogous in principle, occurred in Ontario county, in 1814. A woman of colour was indicted, and tried for murder, and found guilty. The jury had separated, after agreeing on a verdict, and before they came into court; and on that ground a new trial was granted, and she was tried again. We know of no case which contains the doctrine, that where a new trial is awarded at the prayer, and in favor of a person who has been found guilty, that he shall not be subject to another trial.

Let the prisoner be remanded to the gaol of the county of Allegany, and let proceedings be sent down by *procedendo.*

TRIAL OF MEDAD M'KAY,

AT THE OYER AND TERMINER, IN ALLEGANY.

JUNE 19 and 20, 1821.

Court opened at 8 o'clock.

Present,

Honorable Wm. W. VAN NESS, one of the justices of the supreme court, of the state of New-York. ;

PHILIP CHURCH, THOMAS DOLE and JOHN GRIFFIN, } *Judges of Allegany common pleas.*

Counsel for the people, JOHN A. COLLIER, Esq.

Counsel for the prisoner, Messrs. SAMUEL S. HAIGHT, VINCENT MATTHEWS and JOHN W. HULBERT.

The prisoner being brought into court, was informed, that the jurors, about to be called, were to pass between the people of the state of New-York, and him upon his *life* and *death*, and if he had any objections to make, he must make them previous to their being sworn and he should be heard. The jurors present, (23 in number) were individually called, and all rejected except 9 : Upon which Mr. Collier prayed a tales. The sheriff proceeded to select from the bystanders, and after the rejection of a number, succeeded in completing a panel as follows.

1 Elijah Butterfield,	7 Stephen Smith,
2 Prosper Adams,	8 Henry M'Heney,
3 Tunis Freeman,	9 Thomas Pratt,
4 William Rose,	10 Richard N. Porter,
5 Daniel Raymond,	11 James M'Heney,
6 Titus Hulbert,	12 Reuben Weed, Jun.

The jury being formed and sworn,

Mr. Collier proceeded to open the cause on the part of the people, as follows.

If the court please,

GENTLEMEN OF THE JURY.

The solemn and painful duty has for the second time devolved upon me, of presenting the case of Medad M'Kay, the prisoner at the bar, to a jury of the county of Allegany. The prisoner stands charged with the murder of Lucy M'Kay his wife, to whom, as it is alledged in the indictment, he wilfully administered poison, in the month of August, 1819, by which her death was produced. You will see, from the very nature of the charge, that unless some fortuitous circumstance has exposed the prisoner, we must, on behalf of the

people, necessarily rely upon circumstantial testimony to prove his guilt. A man about to commit a crime, and particularly a crime of this magnitude, would neither call witnesses, nor commit it openly and in the face of day. He would, on the contrary, seek to veil this deed of darkness, in more than the darkness of midnight. The plan would be formed, matured and carried into execution in secrit—when he supposed no human eye could observe his conduct. But gentlemen, there is an eye which seeth in secret—there is a Superintending Providence, who, as if to manifest his displeasure at this horrid crime, will, sooner, or later, and in his own good time, even on this side the grave, bring the offence and the offender to the light and condemnation of the world.

I do not intend, gentlemen, in this stage of the enquiry, to give you the facts, upon which we rely in this case, in detail. The prisoner shall have no reason to complain that your minds have been prejudiced against him in the outset, by the partial or mistaken view of his case, presented by the counsel for the people. You shall have the unvarnished tale from the witnesses themselves. Your attention will be first directed to the enquiry, whether the death of the deceased was caused by poison, and if we are able to satisfy you upon this point, the next question for your consideration will be, whether that poison was administered by the prisoner at the bar. On the part of the people, I think we shall be able to produce satisfactory evidence upon both points—and shall present to you such a chain of facts and circumstances as will lead your minds irresistably to the conclusion that the alleged crime has been committed, and that the prisoner is the guilty perpetrator.

As I have already suggested, the prisoner has been once tried by a jury impannelled for that purpose in this county. We claim nothing, however, from the verdict of that jury—The law has indulgently given the prisoner the benefit of another trial, and in the verdict you are to pronounce, you are to decide and determine for yourselves uninfluenced by the result of the former trial. It may be proper, however, to observe, that the prisoner, whether he be innocent or guilty, comes before you at this time with many advantages. All the testimony on behalf of the prosecution has been spread before him and ample opportunity afforded to explain, as far as they are capable of explanation, every fact and circumstance which appeared and were urged against him on the former trial. If the prisoner had reason to fear any thing from the popular feeling or prejudice against him, he may now, after this lapse of time, safely conclude that such feeling and prejudice have subsided. With these remarks, I shall proceed directly to the examination of the witnesses on behalf of the people. I psesume it is hardly necessary for me to impress upon you the importance of giving your serious attention to every word which may fall from the mouths of these witnesses, as every word may be material and have a greater or less influence upon the verdict you are to pronounce. I hope there is no necessity of any appeal to you upon this subject. You, doubtless feel that the life of a fellow being is committed to your hands, and are suitably impressed with the vast

responsibility of your situation, holding, as you do, life and death in your hands, which you are bound to dispense under the solemn obligation of the oath you have taken. If it should turn out, gentlemen, that the facts are not sufficient clearly to establish the guilt of the prisoner—if he shall be able to explain satisfactorily the circumstances which shall be laid before you, so that you are either satisfied of his innocence, or have any reasonable doubt of his guilt, it will be your duty to acquit him. I sincerely hope he will be able to give us such an explanation as will satisfy us all, and will afford you the pleasure of saying, consistently with a scrupulous and conscientious discharge of your duty, that this man is not guilty of the crime with which he stands charged. But if, on the other hand, after a careful examination of his case, you cannot avoid the painful conclusion that he is guilty, then, fearless of all consequences, I trust that you will, and I know that you will, without favor or prejudice, pronounce your verdict accordingly, and deliver the criminal to the justice of that law which he has violated.

TESTIMONY ON THE PART OF THE PEOPLE.

ELIZABETH BARNARD was called and sworn.

Questions by the counsel for the people. Was Lucy M'Kay a relative of yours? Yes, she was a sister of mine. When did she die? In August, 1819. Did you call to visit her in her last sickness? Yes, I did.

Court. Relate the circumstances attending her sickness and death. I understood that she was taken sick about four o'clock on Sunday—I was called up about nine in the evening; and she died on Tuesday, about sun down.

People. Who called for you? Daniel M'Kay. What did he say was the matter? He said his mother was sick with the cholic. I started to go to the house, and heard her hollowing a good while before I reached there. I went in and asked if she was not very sick, and if she ever had the cholic as bad before. She said she never had. Who did you find in the house? Mr. M'Kay and his two sons, and son's wife; one of the sons and son's wife were up. Was your sister lying on the bed She was sometimes on the bed, and sometimes off; being in such agony that she could not keep still any where. Did she complain of great distress? She did—she said it was in the pit of her stomach. Was she sick at the stomach? She was—and said she had puked before I got there; and she puked twice or three times after I got there. Did she complain of being thirsty? She did; and after M'Kay gave her medicine she was very thirsty. I gave her an injection, and some pennyroyal tea—after which, she was some easier, and dropped to sleep. M'Kay went and took down a tumbler, put some warm water in it and stirred it up; observing, that he had given her some medicine, or physic, and it had operated upon her; but he did not know as there was enough: he afterwards said, there was a pretty good dose. He asked me to go with him to give it to her. I was uneasy—I thought it would make her worse—and one of the sons spoke

and said, he better not give it her. He said he would give it to her. Did she make any reply when he came to wake her up? She did—she said, why can't you let me alone; it makes me worse every time I take it. I think he had not more than got back to the fire, when she began to groan, and kept growing worse till she got screaming again, and began to puke. She called for drink, and he gave her cold water.

Court. Did she call for drink before she took this medicine? I believe she did not.

People. Did M'Kay give her water? He did. Did she drink plentifully? She did. M'Kay said he wished she had a quart in her. Did Mrs. M'Kay express any regret at having taken the medicine? She did—she said she wondered that he could not let her alone when she was easy—said every thing he gave her made her worse. I told her I would not take any thing more that he offered. She said if she did not, he would be angry. Describe how the medicine affected her. She was taken with puking and a violent pain in the stomach. He asked his son if he should not go after the doctor. I told him he must go, for she could not stand it so. He replied, No, she cannot. Did he start soon for the doctor? He did as soon as he could get his horse. What doctor did he go for? Doctor Luther. How far did he live from M'Kay's? Something like three miles. At what time did he leave the house? About 10 o'clock—I had been there about an hour, and I came at about 9. Did Dr. Luther return with M'Kay? Yes—they came together, a little before day-light. Was Mrs. M'Kay asleep when the doctor came? I think she was; she had been in dreadful distress till a little while before they came: we sent to Mr. Miller's and got some drops that Mrs. Miller had prepared for a child, and gave her part of a teaspoon full. What was it? I think it was laudanum. Did Dr. Luther leave any medicine? He did leave some in M'Kay's care to give her. After he had dealt out the medicine, he was about starting away—I told him he had best examine her pulse, &c. I asked him if cold water was good for her; he said a little would not hurt her. I asked what she should use for her steady drink—he said she might use water gruel while the physic was operating, which he left there. What time did you leave the house? It was after breakfast in the morning. Witness did not know whether the medicine was given or not; she was in the house all the time till after breakfast. Did you understand from Mr. M'Kay, that he had given her any thing before you got there? He said he had given her a portion of physic, but did not know that he had enough for another portion—when stirring up the water in the cup, he said he had enough for a good portion. When did you return to the house again? It was after dinner. In what situation did you find her? She was on the bed, and talking about her children. M'Kay was up stairs shoemaking—he came down, I think with one shoe on his foot. Did he offer her any more medicine? I think not. Did he speak to her about taking any more medicine while you were there? He did. Was she in bed? She was—I think she could not leave her bed. When did you call again? In the evening—I went in and M'Kay was walking across the floor. He said she was not so well as in the day time. What time was this? Day light was not gone. Did she complain of any pain? She did—she was in pain above her

knees and in her stomach. How long did you stay on Monday evening? Not very long. Did M'Kay offer her any thing in the evening? He did: she was trying to eat something; he came and wanted her to take medicine; she said she was eating, and did not want it then. He came again after she had done eating, and she appeared to take it—I could not say positively. I left her in bed—it does appear to me, however, that she got up whilst I was there. M'Kay was talking about making her a pair of shoes to go to quarterly meeting. The next morning before sun rise the boy came to my house; I was about getting up; he said his mother was worse. Myself and husband went up. The boy said that his mother could not live. Before I got to the house I met M'Kay—he said his wife was just gone. How far from the house was this? About five rods: he was walking from the house. When I went in she looked as if she was dying—I concluded she was gasping her last. He came in and concluded to go for the doctor. Did he start for the doctor? He did, a little after sun rise—he went on horseback—he said he would go for Doctor Shull, but he returned with Dr. Cook. What time? The sun about two hours high at night. What distance did these doctors live from M'Kay's? At Danville, about 12 miles. What was the situation of Mrs. M'Kay during his absence? Sometimes she was partly blind and speechless, at other times she was deaf; then she would seem to revive again. I told her I thought she might recover, but they had liked to have killed her. She said, who wants to kill me? I said it was M'Kay that gave her the drops.

Court. Did you mean the drops that were got at Miller's? I did. She said she thought he gave her a great deal. Did she complain of pain that day? She did—she said it was at the pit of her stomach. When Doctor Cook came, he found her dying. I asked him if she was dying? he said he could not tell yet. I believe he gave her some medicine, and set us to rubbing her feet and hands, which had been cold all day, and never got warm till she died. With what did you rub them? With vinegar, pepper and salt. What time did she die? In the evening; day light was about gone. Were you there when she was laid out? I was. Did you discover any spots? I did—her legs were spotted. What colour? I should say they were dark red spots—there were some on her shoulders. When was she buried? Wednesday afternoon, the 11th of August. Have you lived much in the family? I have a great deal. Had they both been married before they married each other? They had, and both had children—she had one son just married. How long had M'Kay and your sister been married? Eight or nine years. On what terms did they live? They lived very unhappily—a very disagreeable life. Did you ever see any quarrels between them? I have, several. Did he ever offer violence to her in your presence? He did not. He said he could not, and would not live so. Did you ever hear M'Kay say any thing about a quarrel immediately preceding the illness and death of his wife? I heard him say since he was in gaol, that they had not slept together for more than a week before her death. He said she was a strange woman; she would not sleep with him. Did you hear him say he had struck at her twice with a chair? I did—he said he did it to stop her scolding. Did M'Kay keep medicine about the house? He did.

Cross examination by prisoner's counsel. How far do you live from M'Kay's? About half a mile. What time did they come after you? About 9 o'clock. When did he give the stuff in the cup? It was after I had given the injection. How long after you went there, was it, before she went to sleep? Perhaps half an hour. Did M'Kay give medicine more than once that evening? I think not. Did you know what it was? He said it was some hing that he kept there for physic. How came you to object to it? Because she had often said his medicines never did her any good Did you ever take any medicine out of that cup? I believe I have. Did it ever hurt you? I do not know that it did. Which of the sons was present? Daniel. And he objected to his giving it? He did—he said he had given her enough before. What time did M'Kay go for the doctor? About 10 o'clock? Why did you think it was about 10? Because I had been there about an hour. Was M'Kay there when she was in a doze? He was. Did he wake her up to give her the medicine? He did. What was the injection that you gave her? It was sweetened urine. Did she purge at any time while you were there? She did, but not till the injection worked. You told her that they had been trying to kill her? No, I said that they had like to have killed her; I did not think at that time that he intended to kill her, he said he had given her drops out of the same phial that came from Miller's. When did he tell you so? The next morning, which was Tuesday morning. Did he tell how many drops he had given her? He said about 15; I thought by the looks of the phial he had given twice 15. Why did you think so? Because she was so stupid. Was she not quite easy the next day when you went there? No, she never was quite easy. Did you see M'Kay give any medicine on Monday evening? He offered to give her something; she refused at first because she was eating; afterwards it appeared as if she took it. Was this the medicine that Luther left? I do not know what it was; I don't know whether Luther's medicine was taken or not. Did M'Kay give any reasons why he wished a quart of water down her? He did not at that time, since that I have heard him say, that his mother used to use it for the cholic. You have seen your sister have the cholic before? I have. Did not M'Kay give water in that case? I never knew him to. What time did M'Kay go after Shull? About sunrise. Had he not sent by his son? He said he had. When was it you had a conversation with M'Kay in the gaol? I can't tell exactly. Why did you go to the gaol to him? I went to see him about a house to live in. Did you go there to live? I did not, because we had a house of our own. Had not you and your sister had some difficulty? We had. Did you not complain to the church of your sister? I never did. When did you settle the dispute? It was on her death-bed. Was it at the time you came here as a witness against M'Kay, that you conversed with him in gaol? I never was here at any other time. How many times have you been here as a witness? Twice. Was it the first or last time? I believe the first. Were you called as a witness? No, I was bound over. Were you sworn before the coroner? No, I was sworn before three justices. Was M'Kay present? He was.

Betsey Leonard sworn.

People. Where did you live at the time of Mrs. M'Kay's death? At Mr. Miller's. Who came for you? Daniel M'Kay came over after a phial of laudanum; Mr. and Mrs. Miller, said they heard her hollowing, and could not lie there and hear her in such distress; they got up, and we went over about 12 o'clock—she was in great distress. How did she complain? I think she complained of pain in the stomach; she could not sit still or stand still? I put a chair on the bed and a pillow on it, but she could not lie on it; she tried to lie on her side but could not. We asked what they had been giving her, she said M'Kay had been doctoring her. I tried to lead her across the floor, she said she could not live; she would give the whole world that she could have one moment's ease. They gave her some of the drops that they got at Miller's. What did they called it? Laudanum; she complained of thirst and puked several times while I was there.

Court. Did she speak of being thirsty? She called for water. How long were you there before she got to sleep? About 2 hours. Did she toss herself about on the bed? She did; once she fell down on the floor and leaned her head on my lap, and lay perhaps a minute. We staid about 2 hours before we went away; she lay down on her face, in the bed, and got still; we then went home. We went again the next morning about sunrise; Mr. M'Kay was up stairs, he came down and made a stop at the foot of the stairs, by a table behind the door; so that I could not tell what he did—I was standing by the bed; he came to the bed with medicine in a table-spoon and gave it to her. It seemed to put her in great distress, she wanted me to raise her up, and I did so. How did it affect her afterwards? It put her in extreme pain and set her to puking, soon after I raised her up. How long did you remain this time? About an hour.

Court. Was Mrs. Barnard there? She was. Did you call again that day? I did; it was not quite sundown. Mrs. Barnard was not there. Where was Mrs. Barnard when M'Kay came down stairs? I believe she was out the door picking a chicken.

People. When did you go over again? Tuesday morning. M'Kay's son came along, and said his mother could not live but a short time. Mrs. Miller went over, but soon returned and brought the same news: I went over myself; she appeared to be very thirsty, and looked as if she was dying; her hands were cold, she looked out of her eyes very wildly, they observed that she could not hear unless I spoke loud. She asked for drink frequently, and as soon as it was taken, away, she would ask again; I staid there about an hour and a half, and then went home; I came over again at 10 o'clock, found her about as when I went away—we got some vinegar and rubbed her with it. Was her stomach swollen? I did not notice; we took a sprig of green sage and wet it, and laid it between her lips. M'Kay was gone; I staid this time about an hour—went home and came over again in the afternoon, I think about 1 or 2 o'clock; I went home once after that, but did not stay long. What time did M'Kay come home? The sun was one and a half or two hours high in the afternoon. Did Dr. Cook come with him? He did—M'Kay said he did not expect to find her alive. He went to

the bed and asked her where her distress was, if it was in her stomach. She said it was ; he went out the back door, and Dr. Cook followed him. When he came in, I asked him what Dr. Cook said, he said, he told him that she was failing fast ; he called for his dinner, and sat down to it—I went home, and when I came in again he was feeding her with some watermelon. Was any one in the room at that time ? There was William Merril's wife and Lucy Pilbert. Was it a whole watermellon ? No, it was a piece ; she grabbed it and put it in her mouth ; some one tried to get it out of her mouth Dr. Cook directed us to take a spoon and get it out. I continued there till she died, which was about dark. He sat down on the bed by her—she took hold of his shirt and pulled him down to her, and said, I want, I want. I asked him why he did not ask her what she wanted ; he did ask, and she answered that she wanted to get well. (Here witness said something that was not understood.) Did M'Kay pretend to be a kind of physican ? I believe he did. Did M'Kay tell what it was in the spoon ? He said it was peppermint drops—The spoon was about full, of some kind of liquid ; do not know whether it had any colour, and did not discover any smell of peppermint—I discovered spots on her on Tuesday afternoon ; when she turned in bed they could be discovered very plain upon her face and arms ; I think there were some upon her legs ; her knees were very blue.

Jury. Did she call for cold water or only drink ? The warm drink did not seem to satisfy her—she appeared to have a high fever.

Cross examination by the prisoner's counsel. Did she puke Sunday evening ? she did ; I do not remember whether she puked Monday afternoon or Tuesday ; I had no thoughts of his giving any thing to hurt her, and was not so particular to recollect about it. When did he give the medicine in the spoon ? It was Monday morning about sunrise. How large was that room ? It was not very large. Did he see you when he came down stairs ? It is possible he did ; although he could not very well, because the door stood open. Still you could see him ? I saw him come down. Did you see him take the medicine from the table ? I did not. Did you see any medicine on the table ? I did ; I do not know whether it was paregoric, or what it was. Did you see him give the medicine ? I did. Did she puke immediately after ? She did. Where were you ? I stood by the side of the bed near her. Was Mrs. Barnard in the house when you came on Monday morning ? She was, and M'Kay was up stairs—she stepped out, and while she was out, he came down and gave the medicine. What time did you come to M'Kay's Sunday evening ? About 12 o'clock. Mrs. Barnard had given her an injection she said ; and she observed further, that M'Kay had given her medicine twice, and it had made her worse.

Court. Did you think they were drops which came from Miller's ? I did not. Did you know, or hear the family say, that Dr. Luther had left medicine ? I did not. I asked the family what ailed her, and they said the cholic. Who was in the room when he gave her the medicine ? I think no one but myself and M'Kay. (Here witness described the room, &c.)

Lucy M'Kay sworn.

Stated that she married Casey M'Kay, a son to the prisoner—that she lived in the house, and was at home at the commencement, and

during the illness of the deceased—The first she discovered of her being ill was on Sunday about 4 o'clock, P. M. she saw her on her hands and knees upon a chest; she said she believed she was going to have a turn of the bilious cholic. Witness did not recollect that any one was there except Daniel, Casey, and the prisoner; did not know of her taking any thing previous to her being on the chest—Soon after which, prisoner came in and shaved off some kind of hard substance which he called castor, mixed it with water or liquor, and gave it to her—she continued to grow worse all the time, and complained of great pain and sickness at the stomach; does not recollect that he gave any more medicine that day except some butternut pills—In the evening he poured some warm water into the tin cup which had contained the physic, rinsed it round and gave it to her; this was after Mrs. Barnard came in. She observed soon after she took the stuff, that she thought it made her feel worse; witness does not recollect of her being thirsty that night; it was late when prisoner started for Dr. Luther, and he returned with him before daylight. Witness remained at the house till the death of Mrs. M'Kay, except going occasionally to the neighbors of an errand; and thinks the deceased was very thirsty through the day, Monday, and asked for drink frequently; prisoner and wife lived very unhappily together, and quarrelled frequently: they had a quarrel but a short time before, never saw him offer any violence—thinks a candle was burning in the room when the stuff was given from the cup—herself and Mrs. Barnard were present, did not set up much Monday night, but slept in the same room, and got up early Tuesday morning, found deceased very low, could not talk plain, and appeared to be in great pain—Husband, (Casey) got up early and started to Danville, for Dr. Shull—he did not come; sun half an hour high prisoner started to go himself, and returned sun one and a half or two hours high, at night—thinks prisoner eat some dinner—Discovered purple spots on neck of deceased on Wednesday, but none before; remembers prisoner's giving cold water to deceased, and observing it would not hurt her—2 or 3 days after her death prisoner said he was in hopes he should live better than he had done.

Cross examined. Deceased had been out on Sunday morning and returned about noon; appeared much fatigued and went up stairs; she was subject to the cholic. I supposed it was a turn of the cholic; she requested that prisoner should come in and give her something—I do not know that she was taken any worse than common, for she was always as bad as she could be—her pains were not constant, or she could not have lived as long as she did. Did not see any medicine given Monday morning—there was a phial standing on the window with laudanum—it was said that Dr. Luther left some peppermint; I did not see it, for I went up stairs and laid down, as soon as he came. The tin cup spoken of was used expressly for butternut physic.

Dr. Lyman N. Cook sworn.

Testified as follows: I reside at Danville, about twelve miles from the house of Mr. M'Kay. August 10, 1819, Mr. M'Kay called on me between one and two o'clock P. M., and said he wanted me to take a ride. I asked him if he was in haste—he said not in

great haste, but would like to get there as quick as we could conveniently. We started in about fifteen or twenty minutes. We rode past Dr. Shull's house a few rods, and then he rode back—I saw him conversing with Mrs. Shull. He then rode on and overtook me. He said he rode back to inform them that he had obtained a physician. We then rode on pretty fast for about a mile and a half—after that we rode slowly. I asked him if his wife was very sick—he said not very sick; he said she had a turn of the hysteric cholic, (as he called it) to which she was very subject. We continued to ride quite slow. The prisoner observed that he professed to be something of a doctor himself—they called him a root doctor. He said that he had given his wife such medicines as had relieved her generally; but you know if I were ever so good a doctor, I should not like to doctor my own wife, because, if she should happen to die, people would talk about it. He got off of his horse once or twice and got some roots, and brought some of them to me. I should say we were then not less than one, nor over three miles from his house. After giving me some, he said he would dig some more for his own use. He spoke of using them in cases of fever, and asked if I knew the root. I did not. I should say he was from ten to twenty minutes in getting them. We reached his house the sun about two hours high at night. When we first went into the house, prisoner went to the bed and had some conversation which I did not hear, and then passed out at the door. I sat down by the bed side—found that she was speechless—the extremities cold—the body covered with a cold sweat—the tongue swollen—a considerable degree of restlessness—a great prostration of muscular strength. She was throwing her hands about, and I think she turned over once in bed. I spoke to her a number of times—she attempted to answer, but I could not distinguish any articulate sounds. I observed that she was looking earnestly at some drink standing near the bed. I was told that she could not drink. I ordered her mouth to be wet. She continued looking wishfully and making motions, as I supposed, for drink—her countenance was very ghastly. I passed out, and found the prisoner leaning on the fence. I sat down on a log, and requested him to come and set down. I told him that his wife was sinking, or dying—it was not worth while to give her any thing. I inquired of him whether she had not altered considerable since he left home: he said he thought she had some. I inquired of him what he had given her: he avoided an answer at first; but on repeating the question, he said he had given her a pill of our own native ingredients. My impression at that time was, that butternut was the principal and most powerful part of the composition. I talked of returning: he said I had better stay till she died, and give some medicine which would be more satisfactory to the family. We then passed into the house. I told the women they might make some external applications of vinegar, pepper, &c. and give some little stimulants—I think some brandy sling was made. I do not recollect seeing any spots on the skin; there was a dark livid appearance, which is generally visible previous to dissolution. Prisoner asked me for some bilious pills—after the death of Mrs. M'Kay, he stated that he wanted them for himself. He told me that he had obtained from Dr. Luther some peppermint and castor.

Cross examination. Witness said the road from Danville to M'Kay's was very good, except three or four miles next M'Kay's. He said he dealt out camphor and opium, and believed they were not given, but were left on the table. He recollected saying to M'Kay "What the devil have you been giving her?" but thinks it was when they were sitting out the door While in the house, he discovered a watermelon seed in the mouth of the deceased, and requested the women to take a spoon and get it out. Recollects nothing more.

Dr. James Faulkner sworn.

People. Were you present at the time the body of Mrs. M'Kay was disinterred? I was not at the time the grave was opened. What time was she taken up? I think it was the 17th of August, 1819. Did you have any conversation with the prisoner, while they were taking up the body of his wife? When we arrived at Ossian, there were perhaps 70 people collected. It was thought advisable, before we proceeded to examine the body, to make some inquiry of M'Kay: we accordingly got together in a room, and asked him what the prescriptions were, which he made for his wife? He observed that he had some knowledge of medicine himself, and mentioned over the ingredients of which the pills were composed—I think butternut was the strongest and principal ingredient. I stated to M'Kay that suspicions were existing in the minds of the people, and the best method would be for him to request to have his wife taken up. We urged him considerably on that point He expressed a willingness that it should be done, but did not incline to make a request. Doctor Clark and some others thought best to suggest to him, that he should object to the raising of his wife. I rather discouraged the measure. Several persons went up for the purpose of opening the grave. Mr. M'Kay either sent or came to me, requesting an interview. We walked off four or five rods from any person: M'Kay said, I don't say that you will not find poison in her—but I say, if you do find poison there, I know I did not put it there: I blame her sister for it, as they were at variance. Now, said he, I have one request to make, and that is, that when the body is taken up, the sister and myself may both go up to the corpse and touch it; and if either of us is the murderer, a drop of fresh blood will follow the finger. I told him I would not make such a request. He asked if I had any objections, if the parties agreed to it. I told him I had none. Did M'Kay see the body? He did Was the body opened in your presence? It was: we took out the stomach—it was put into an earthen vessel, and given to the charge of Doctors Luther and Rich.

Dr. Philip P. Rich called and sworn.

Were you present at the time spoken of? I was—I took the stomach, part of the liver, and the membranous matter attached to the stomach, put them in a vessel, and kept them in my possession till the next day. Where did you get this substance that you speak of? It lay near the diaphragm, contiguous to the liver, and attached to the stomach. They were put into a chamber-pot, and given to myself and Dr. Luther. I carried it down to the house, put a cloth

over it, and tied a string round it. Dr. Luther and myself rode to Danville with it. It was not opened till in the presence of Doctors Patchin, Cook, Clark, Luther, Faulkner, and myself.

Cross examined. What was done with this pot, after you arrived at Danville? It was left under a barrel in the barn—a half bushel was set on the barrel, and the barn door locked. Which lobe of the liver did you take? I can't tell; because the operation was partly gone through with before it was suggested to take a part of the liver—so that it would be difficult to identify the particular portion of the liver.

Dr. Warren Patchin sworn.

Were you present at a time when some experiments were tried upon the contents of the stomach spoken of? I was. Did you examine the stomach yourself? I did. Describe what you know of it. What I saw of it was in an earthen vessel. The stomach externally was of a dark appearance, owing probably to the time that the subject had been dead. On opening the stomach, the lower part of the three internal coats, the bilious, muscular and nervous, or rather posterior part, was destroyed. In the superior, or upper part of the stomach, the coats were remaining, except the internal one. The outward coat of the lower part of the stomach, near where it leads into the intestines was perforated. There was one spot of a dark red colour, where there appeared to be sufficient substance to support it in the inferior part: and in the superior part I discovered a portion of a dark red countenance, and a streak of about three fourths of an inch in width, of the same colour.

I was not present during the first experiment, but was informed of the result by Dr. Clark. This experiment was by adding one grain of sal soda, to 4 ounces of water, with a portion of the suspected matter, and that submitted to boiling heat; after the boiling heat, it was permitted to stand for a few minutes, and then was introduced a portion of the nitrate of silver; the result was a yellow precipitate, very conspicuous. What is this test called? It is called Hume's test. Is it highly recommended by medical writers? It is. Did you try the same experiment upon real arsenic? I cannot say that we did the first time, but we did several times after that; and it produced the same result; the similarity was such, that we could not distinguish the difference. We tried one experiment upon the matter contained in the stomach, which produced a darker precipitate. Did these experiments satisfy you that the stomach contained arsenic? They did. Is there such a test as Bergman's test? There is; we tried that likewise, and the result went to confirm the result of the former experiments. We tried Bergman's test, as laid down in Thomas, and Hume's, as laid down in the New-England medical journal.

From these experiments were you satisfied beyond a doubt, that the stomach contained arsenic? I was satisfied, by the exact similarity which was exhibited between the results of the suspected matter, and the real arsenic. I have always thought there might be some mistakes in these tests; therefore, I was particular to use real arsenic, and set the vessels side by side, that I might not be deceived; in addition to which, we had the curiosity to shift the vessels,

in order to place the accuracy of the results beyond all doubt. Did you discover any substance in the stomach or on the liver, which resembled arsenic ? We discovered a white gritty substance opposite the holes through the stomach, which appeared to have drained through onto the liver, and adhered to it, making a conspicuous appearance—Knowing the relative position of the stomach and liver, we thought this a rational conclusion. Were you ever called to attend on a similar occasion ? I have been. I never saw the symptoms, but was called to the dissection of a person who had died with the effects of arsenic. (Here witness related the circumstances of that case)

From your experience in that case, do you think the appearances were similar ? I do ; although that subject had not been interred so long. From the knowledge you have gained by reading medical books, what should you consider the most common symptoms resulting from the effect of arsenic ? The common symptoms are puking, a burning sensation at the pit of the stomach, heat, thirst, parched tongue, purging most generally a watery mucous matter ; after a certain time, the bowels become inflated, very sensible to the touch, a ghastly appearance of the countenance, great restlessness, and in a majority of cases, coldness of the extremities—Some writers have spoken of loss of sight, and hearing, as common symptoms, and in the last stages, livid spots. There are, however, cases in which but few of these symptoms appear, and but few cases in which all appear. Sometimes nothing but nausia and faintness, at others vomiting and purging. Is arsenic a corroding substance ? I am of the opinion that it is, in a certain measure ; although I have been so strongly warned about the use of it, by medical writers, that I never have tried enough of it to determine satisfactorily ; still I believe it is considered corrosive. Have you heard the symptoms of Mrs. M'Kay ? I have. From these symptoms, with your experience, what is your opinion of the death of this woman ? I have no kind of doubt, that the woman came to her death by arsenic. Had there not been so perfect a resemblance, between the results of our experiments upon the suspected matter of the stomach, and the real arsenic, there would have been more room for doubts ; but as they appeared, I cannot think otherwise. Do you rely in this opinion upon your experiments alone, or in connection with the symptoms and circumstances of the case ? I have undoubtedly taken all into consideration ; still, I do not know, that it is possible, for my confidence to be increased, by the circumstances or symptoms, after seeing and feeling the substance, and finding in so many of the experiments, the result to correspond with real arsenic. Where did you procure the nitrate of silver ? I think it was at Dr. Clark's. How did you try to ascertain whether this substance was gritty ? I put it on a knife blade, and drawed my finger over it—I mashed some of it on a slate, and tried it in the same way. Did you find enough, suppose it had been arsenic, so produce death ? I think there was enough to have produced 2 or 3 deaths.

Cross examined. Were you present when the stomach was taken out of the body ? I was not ; the first I saw, was at Dr. Clark's store chamber. How long had the body been dead ? I believe about 8 days, from information. I think appearances are not so much to be relied on, so long after death. We are unable to deter-

mine in what manner the gastric juices operate after death. It is said by some medical writers, that the gastric juice frequently becomes so vitiated as to corrode the stomach; still there may be cases, in which the stomach is not corroded—I think there was nothing very extraordinary in the appearance of that spot, because spots have been seen in many subjects not brought to their death by arsenic. These vitiated substances commonly produce the greatest effect upon the lower part of the stomach.—Arsenic is heavy, and would be likely to find its way to the lower part of the stomach—I think it operates as a caustic upon living animal matter, although it is denied by some modern writers—I have known it to destroy dumb flesh. Please to give your opinion, as to the manner in which arsenic finds its way into the coats of the stomach. (Dr Patchen proceeded to explain his views of the subject; which, however, from some unavoidable omission, do not appear in our notes, and are probably not very material; as they served only to corroborate his previous assertions, that arsenic does indeed corrode the stomach.) Are not the symptoms resulting from arsenic extremely various? They are. Would not the symptoms of a person dying with arsenic, be similar to those of a person dying with the bilious cholic? I think the symptoms of the cholera morbus, would more nearly resemble those of arsenic. How soon after taken into the stomach, would arsenic probably produce vomiting? It would depend on the situation of the stomach, and the quantity taken—If the quantity was small, and the stomach contained much mucillaginous matter, it would not produce vomiting immediately. I do not know, that I have ever read of a case of arsenic, in which purging was not a consequence. Is it remarkable for a person to be thirsty in the bilious cholic? It is not common in the first stages of it, it might afterwards be a consequence. Was the water you used in the experiments distilled? It was not. What part of the liver was it that was taken out? It was the left lobe. I scraped the substance from the liver, and it appeared to be almost puse arsenic. Did you wait for the water to cool, before you introduced the nitrate of silver? We waited a number of minutes—it was nearly cool. In your first experiment, what was the colour of the precipitate? It was a bright yellow. There was a small quantity of matter in the stomach of about the consistency of molasses, on which we tried an experiment, and found the precipitate to be rather darker than that produced from real arsenic. You used sal soda and not ammonia? We did. Did you examine it to see that it was free from all impurities? Only by the eye—we did not test it. What was the colour of the suspected matter when prepared, and before receiving the nitrate of silver? The colour was not changed any more than we supposed was produced by the contents of the stomach; indeed it differed but little in appearance from water.—The suspected matter before diluted, was of a darkish colour. Do you not know that Dr. Marsett has determined that sal soda is not a perfect test? I have satisfied myself that Marsett's improvement was intended more particularly for detecting minute quantities. Why did you not try other ex-
nts? Because we were satisfied that it was arsenic, in so

much that there was not a doubt remained in our minds on the subject. Did the matter taken from the stomach and liver readily dissolve ? We could not tell, because when it was introduced into the phial, it was put into boiling water, and we did not look at it till after it was dissolved. Have you ever studied chymistry ? I never have, any further than was necessary to the composition and decomposition of medicines. Then you rely upon what you have read on the subject altogether ? I think we may rely upon what we read respecting chymistry, as well, as upon other subjects. Were you present at all the experiments ? I believe I was at all except with the water—There was a number tried in both ways ; with the real arsenic and the contents of the stomach in my presence. Should a similar case come under your inspection, would you not be disposed to carry your experiments further ? I might, the better to satisfy the world and the jury. Did I understand that you had any doubts in your mind, as to their being arsenic in that stomach ? Had I resorted to all the tests in the world, I could not have been better satisfied.

Dr. Cook called again.

Dr. Cook—where did you obtain the water, with which those experiments were tried ? It was taken from a large cistern sunk into the ground and covered over. Was the cistern full ? It was, or nearly so—We tested the purity of the water by dropping in the nitrate of silver ; it did not produce any visible colour—If to the water we added a little of the sal soda, it turned it a milky cast ; and that satisfied my mind that it was sufficiently pure to answer our purpose. We tried all the experiments after Dr. Patchen arrived, except that upon the water. You have heard what he has said, as to these experiments, do you concur with him in his opinion ? I do—I recollect, however, that in trying Hume's test, the first time it gave a bright yellow precipitate ; in trying it at other times, it did not always produce the same bright yellow precipitate. In trying Bergman's test we did not get so great a variety of shades of green. From the experiments tried were you not satisfied that the stomach contained arsenic ? I was satisfied that it did, and it was my strong belief that the woman came to her death by arsenic.

Court. On what do you found that belief ? I form it from the symptoms, the appearance of the stomach, and the tests upon the suspected matter.

Cross examined. Don't you know that it is advisable to have distilled water to perform these experiments ? I do know that it is recommended by chymists ; but in the tests from which we made our experiments, I believe there is nothing mentioned about distilled water ; still I think Hume insists on it. In speaking of Bergman's test did you mean that which produces Scheele's green ? I did. What was the colour of the solution into which you put the sulphate of copper ? I think it was nearly colourless. Did it produce a bright green ? It did. Would not 8 days be a sufficient time for putrefaction to make very material changes in the appearance of the stomach, at this hot sea-

son of the year? I think they would. Do you not know that putrefaction takes place in exact proportion to the quantity of fluids remaining in the body? I do not think it does always in exact proportion, it probably does to a certain degree. What is sulphate of copper? It is generally known by the name of blue vitriol.

WYLLIS CLARK sworn.

Testified that he was present at the dissection of the body, and at the time the experiments were made upon the contents of the stomach; and from the symptoms before death, the appearances after death, and the tests made upon the suspected matter, in his presence, he was of opinion, that the woman came to her death by poison, and that poison was arsenic.

Cross examination. Witness stated, that this was the first and last experiment of the kind that he had ever witnessed; but was very confident that he saw the same experiments tried, and same results produced, upon the suspected matter, and the real arsenic—which, to him, was satisfactory. He was not a chymist, but had studied chymistry some. On being asked if he had ever sold arsenic to the prisoner, he stated as follows: I cannot say positively that I have sold him arsenic, but I believe I have. He used to come and buy articles, and I am very confident that among others he bought arsenic. I recollect one time in particular, he spoke to me of curing cancers, and said he had a patient who had a black cancer, and that he made use of arsenic.

Court. Did you say you had sold him arsenic? I think I have sold him arsenic, two or three times. I am as strongly impressed with that belief, as I could be with the belief of any fact, which occurred so long ago.

People. At the time that Mrs. M'Kay was about to be disinterred, did M'Kay say any thing to you about poison? He said, "It may be, or it is possible you may find poison there, but somebody besides me put it there," and added something about Mrs. Barnard.

DR. JAMES FAULKNER called.

Stated that he was present during the experiments above spoken of, and agreed in opinion with Dr. Patchin, that the woman came to her death by arsenic. He formed his opinion upon the result of the tests—which were the same with the substance found in the stomach, and the pure arsenic. He relied with perfect confidence on the accuracy of the tests, being personally acquainted with the talents and experience of the gentlemen who had recommended the same. He did not know but the symptoms and appearances might have had some effect on his mind, but was well convinced from the tests alone. He said the lower part of the stomach, near the orifice which leads into the intestines, was corroded; it had the appearance of net-work; it was highly inflamed, exhibiting strong marks of putrefaction. The inner coat was totally destroyed; and on holding it to the light, twenty or thirty small holes could be discovered. On the liver and on the coats of the stomach, was a white substance, resem-

bling arsenic to the eye, and on rubbing it between the fingers, appeared to be quite gritty. Experiments were tried upon these particles, and again upon real arsenic, and the result was the same.

Cross examination. How long had this woman been dead? I was informed that she had been dead about eight days. Would arsenic be likely to remain in the stomach eight days, amidst all the decomposition of the parts, and the putrefaction which had already began? I think it might, when taken in a large quantity. How much do you imagine was taken by this woman? Perhaps from fifteen to thirty grains. What quantity would be sufficient to destroy life, if taken into the stomach? I think five or six grains; and it is probable that four might. Did you discover this substance upon the liver? I did: and I said likewise that the stomach, on holding it up, appeared like a riddle. Do you not know, that the gastric juice becomes vitiated immediately after death, and always destroys the lower part of the stomach? I do not. Do you not know, that after a person has been dead eight days, the appearances of the stomach are such as to render it impossible to determine whether it contained arsenic or not? No, I do not; nor do I think it is the case. Did you ever read Dr. Cooper on that subject? I never did. What is the composition of nitrate of silver? It is produced from nitric acid and silver. Do you practise physic? I do not. How long did you ever practise? About four years.

Dr. Rich called again.

Stated, that he was present when the before mentioned experiments were tried, and concurred in opinion with the other physicians. He had some conversation with M'Kay the day that his wife was disinterred: prisoner said something of arsenic, but denied that he knew it, or its use—thinks he said something about the probability of finding arsenic in the stomach, but is not positive of the fact.

Cross examination. Did you ever study chemistry? I never did, scientifically. You founded your opinion on the appearances of the stomach and the tests? I did. Do you not think it unsafe to pronounce an opinion from appearances so long after death? I think it would depend on the quantity of fluid in the stomach, and the quantity of arsenic taken. I think the appearance of the stomach, together with other corroborating circumstances in this case, sufficient to confirm the opinion which I have expressed. (Here a number of questions and answers passed between the counsel and witness, respecting the propriety of depending on the sight and touch, to determine the properties of a whitish spiculous substance, which witness said was found on the liver, and with which the experiments were tried.)

William Bailey sworn.

Witness said that he had a conversation with the prisoner, the day that his wife was taken up; in which prisoner stated the circumstances attending the illness of his wife. He said that she had been out hunting for her boy, and came in very

much fatigued. He kept the tincture of castor to give her in such cases, to prevent the cholic, as she was subject to it. He fixed a dose and gave her—she went up stairs and lay down. Lucy M'Kay got dinner ready, and called her to come down—but she would not come down. After dinner, he and some men from number 4, were conversing together out at the bars—a boy came to him and said his wife had the cholic; he went in, and sure enough she had got it. He said the stuff did not operate as it had usually done. He said he was not without his fears that there was poison in her; but it would be a query to find out who put it there. I asked him if it did not comfort him? He said it did.

Cross examination. Did he not say, that he did not put it there? I do not recollect. Were there people near by? There were people all round—I do not know whether they heard the conversation. Do you think your memory is so good as to remember the very words? I do. Did he say any one was in the room when he gave the castor? He did not: he said he gave her another dose after she was first taken. Did he say that was castor? He did not, in particular: I supposed, however, that it was.

Peter Gregory sworn.

Stated, that he was one of the keepers over M'Kay after he was taken, and had considerable conversation with him. He said he wished there might be a more skillful set of physicians called—that they were enemies to him. He said he never had seen any arsenic, and did not know what it was—unless he might have seen it when he was a boy, and lived with a merchant. He was put into my care the night after his wife was taken up, and remained with me about three days. I do not know that I had heard the subject of arsenic mentioned till M'Kay began the conversation. The first night that I had the care of him, we lay on the bed together; he turned over to me and said he was not without his doubts, that poison might be found in her; but it was not him that put it there—he had enemies who might have done it to injure him. He said, he wanted to go over to Miller's and get a phial, and try an experiment on a chicken. We went over to Miller's; he went in and took down a phial, and handed it to me; I put it in my pocket, and kept it till the doctors came from Danville, and gave it to one of them.

Cross examination. Witness thinks the prisoner referred to his neighbours, when he said, he had enemies who might have done it. Prisoner did not ask for the phial at Miller's, but went and took it down himself; they did not object to it.

John R. Gansevoort sworn.

I had a conversation with a man in prison, whom I suppose to be the present prisoner at the bar; at the time when he was indicted. He enquired of me, whether I was acquainted with Dr. Clark; and said he understood Dr. Clark was going to swear that he had bought arsenic from him more than three times; if

he did, he would perjure himself; for he never had bought it but three times. He said he had been twice himself, or sent his son twice, and been once himself.

Cross examination. Where do you live, Mr. Gansevoort? At Bath. How did you come to have this conversation with the prisoner? I was attending the court, and happened to be walking past the prison door, when the prisoner began this conversation, at the door. Did you go up and speak through the door? I did. Was M'Kay alone? I think there was one with him. Do you pretend to swear positively, to the very words which were used two years ago? I think I can—I am very positive he said arsenic. Is it not possible that you were talking about poison, and he said corrosive-sublimate? I think not. When the life of a fellow being is at stake, will you venture to think this or that, when you are not perfectly confident? I am very confident. As considerable was said in town about his poisoning his wife, might not this impression have arisen from that circumstance? I think it could not.

Court. Are you positive those were the words used by the prisoner? I am, I mentioned the circumstance at Mr. Cruger's, on my return home.

J. Wilson, Sheriff, sworn.

Said, that M'Kay and Partridge were both indicted, at the term of October, above alluded to. M'Kay has told me that he never saw any arsenic except when he was a small boy.

Augustus Partridge, (the person alluded to by Mr. Gansevoort, as being with M'Kay in prison, and who is still a prisoner,) called and sworn.

Said, that he never saw Dr. Clark to his knowledge, or knew him; that he never had any such conversation with Mr. Gansevoort at the prison door as had been related—he never had bought or dealt in arsenic at all.

Cross examination. Were you in prison with M'Kay? I was. Do you recollect M'Kay's talking through the diamond to any one on the subject of Dr. Clark swearing falsely? I do not recollect it. I have heard him say that he sent for corrosive-sublimate to cure a horse; but he did not know what arsenic was. Witness recollected M'Kay's counsel being at the door; but did not recollect seeing Mr. Gansevoort that day.

William Sharp sworn.

Stated, that on the day that Mrs. M'Kay was dug up, M'Kay said to him, I will not say that they won't find arsenic in her; but if they do I did not put it there; for I have enemies enough to put it there. M'Kay began the conversation himself—witness made no answer at all.

Gadd Sutliff sworn.

Was Mrs. M'Kay your sister? She was. Did you ever have a conversation with the prisoner respecting curing a horse of a

poll evil? Yes, we had a conversation in which he said he had made use of arsenic in a former time, for that purpose; but he found that it left the neck stiff, and he had discovered a better way. This was about the time that he cured Mr. Doty's horse.

Cross examination. Did you subpoena the witnesses at the last court? I did. Did you not make a declaration, that you had done all you could to get M'Kay hung? I never did.

Aaron Wickham sworn.

Did you ever hear M'Kay say any thing about using arsenic? I did. I asked him where he got the arsenic, that he poisoned his wife with—he said, he never had any but once, and that he got to cure a poll evil on a horse.

Cross examination. Where was this conversation? It was at the gaol door—I was at work at the gaol, and he was dancing inside, probably to keep himself warm. Was any one in with him? Yes, there was an Irishman.

Horace Morse sworn.

Stated, that he was a son to the deceased; that he had lived in the house with prisoner and her; that they lived very disagreeably together. He once saw the prisoner strike at his mother with a chair; he did not hit her, but struck above her head. Witness does not recollect what was said at the time. At another time they had a dispute—mother was near the back door; he catched hold of her throat, or mouth, as I supposed, and she fell down; his son went and got some water and threw in her face, and she came to. They used frequently to have hard quarrels, but I do not recollect the words that passed.

Cross examination. Witness said he had lived in the house with prisoner and his mother about 5 years, during which time he did not recollect that the prisoner used any violence, but twice; and that was about 3 years ago. Was she not scolding when he put his hand on her mouth; and did he not do it to stop her? I did not take it in that light.

Daniel Morse sworn.

Are you a son of the deceased? I am. Did you ever hear the prisoner threaten your mother? I have. I heard him say he would dash her brains out; but I thought he did not heed what he said.

OPENING SPEECH BY GEN. HAIGHT, FOR THE PRISONER.

May it please the court,

Gentlemen of the jury—You are now placed in the most important, as well as the most responsible situation which you ever occupied, or perhaps, ever will again occupy. You, gen-

tlemen, have been selected from the county to decide by your verdict whether the prisoner at the bar, whose life is in your hands, shall suffer an ignominious death upon the gallows, or be restored to his liberty, and the bosom of his family and friends. You, gentlemen, cannot but feel the solemnity of your situation, when you reflect upon the awful consequences which may result from your deliberations. Your situation is truly important and all interesting; both as it respects the public, and the unfortunate prisoner at the bar. Gentlemen, I need not tell you that this case requires your most serious and candid deliberations; although the situation you are now placed in, as jurors, to decide between the people and the prisoner, is neither enviable or desirable; still, the trial by jury is one of the greatest blessings and privileges of which our country can boast. No man can be convicted of a crime, unless by a jury of his country. The poor, the rich, the high, the low, all have an equal right to make this appeal, and it is a privilege of which they cannot be deprived. The wisdom of our laws has provided this mode of trial, in which, justice may be distributed with judgment and impartiality. Jurors are now selected in a way different from what they were formerly; a way in which they cannot be tampered with, or misled by intrigue, art, or deception. The names of such individuals, in each county, as are qualified to serve as jurors, are put in a box by the clerk of the county, who previous to the court draws a sufficient number of names to make out a panel of jurors, for the trial of all causes: these jurors are summoned by the sheriff—He has no choice in making a selection, from the number thus drawn—Twelve are again selected, who make the jury, to try any one cause. Gentlemen, although there is now no opportunity given for intrigue, in selecting a jury, who are partial to either of the parties; still, when I reflect upon the circumstance of my client, having been once tried, and found guilty, by a jury of this county; and that more than a year ago; all of which is well known to every individual in this court; I cannot but be apprehensive, that the most unfavorable impressions have been raised against him, by almost every individual in the county. Gentlemen, you have been already told, that you are to try this cause, without regard to any thing which might have taken place at the former trial. You, gentlemen, are to be governed by the testimony which shall now appear before you, wholly discarding every thing that relates to the former trial, or which may have come to your knowledge previous to the commencement of the present trial. From the particular attention which you have already paid during the investigation on the part of the people, I think I have a pledge, that you will continue to give that attention which the subject merits, until you shall have heard the whole of the testimony.

Gentlemen, we shall rely on two grounds for a verdict in favour of the prisoner. The first ground is this, we shall endeavour to show, that the tests made by the physicians upon the contents of the stomach of the deceased, were not such as ought to be relied on. Whether we shall make out this point or not I cannot tell. We shall introduce as a witness, Dr. Noyes, professor of chymistry, at Hamilton College, who is justly celebrated

as one of the most profound chymists in our country—He is present, and has heard the testimony of the country doctors who made the chymical experiments, upon the substance taken out of the stomach of the deceased, for the purpose of discovering arsenic. Should we be so fortunate as to have this learned professor's opinion, in our favor; we feel confident that it will have more influence on your minds, than the opinions of forty country physicians, whose opportunities have been limited, and who themselves acknowledge that they know nothing of chymistry. Dr. Noyes is not only a man of general science, but a man completely master of that branch of science to which this subject particularly belongs. On the other hand, should he agree with the physicians who made the experiments; and say, that the tests are satisfactory, and the stomach did in reality contain arsenic; we shall then, in the second place contend that it is necessary on the part of the prosecution, to make out clearly, and conclusively, beyond any reasonable doubt, that the prisoner was the person who administered the poison to the deceased.

Gentlemen, you must now be satisfied, that if you convict the prisoner on the testimony advanced by the people, you must convict him on presumptive testimony only. This kind of testimony is too dangerous to be relied on, when the life of a fellow mortal is at stake.

I shall now proceed briefly to state, what we shall expect to prove on the part of the prisoner, in order to repel the presumptive testimony which you have already heard on the part of the people. On Saturday, the day previous to Mrs. M'Kay's being taken ill, her son went into the woods to hunt for cows, and did not return; she was very much distressed on account of his absence. The next morning Mrs. M'Kay and young Daniel M'Kay went in pursuit of the boy, and rambled through the woods till about 12 o'clock, when Mrs. M'Kay returned to the house fatigued and almost exhausted. On their return they found M'Kay sitting in the house with two or three neighbouring men—Mrs. M'Kay remained in the room a short time and then retired to her chamber, in which were two of M'Kay's sons —M'Kay and these men with several of the family remained in the room below—Dinner was prepared and they sat down to eat. Mrs. M'Kay complained of being much fatigued, and declined coming down to dinner. Immediately after dinner M'Kay and his neighbours took a walk into the field, 15 or 20 rods; they had then been there but a short time when Mrs. M'Kay came out of the chamber, apparently in the greatest distress, and requested her husband to come in, for she was violently attacked with the bilious cholic, a complaint to which she was subject. He came in, and in presence of the family, gave her some butternut pills from a cup, which stood on a shelf, and was devoted to that use—This was the medicine which she was in a habit of taking, for the same disorder—He was seen to take the pills from the cup and give them to her. We shall show farther, that M'Kay went, or sent, for two or three physicians, and apparently showed as much anxiety for the recovery of his wife, as men generally do: We shall show that soon after Mrs. M'Kay was taken ill her neighbours came in, as well as physicians who were sent for by

M'Kay. If we make these facts appear, as I am instructed to inform you we shall, they will completely repel the presumptive testimony that has been given on the part of the people. If M'Kay poisoned his wife at all, it must have been immediately previous to her being taken ill; and no reasonable man can suppose, that, if he had given her medicine before she was taken ill, which had produced this illness, she would have remained silent on the occasion, and even requested him to give her more. And can you as men of sense, for one moment suppose, that he administered arsenic to her after she was so violently taken, and the neighbours had come in to see and attend her; and after the physicians had been sent for, who were to attend her to her death? If so, you must suppose him a complete idiot, first to give his wife a dose of arsenic, and then immediately apply for medical aid, which must inevitably lead to a detection, especially, if such a dose was administered as our learned physicians say they found in her stomach, enough to have killed a dozen men. No, gentlemen, this is altogether improbable.

The learned advocate for the people has observed, that acts like this are always done in secret: He says a person who is about to commit a crime like this, never calls in witnesses. If my statement is correct, it will appear, that if M'Kay did poison his wife, he not only called in witnesses, but he called physicians, who were capable of detecting him. This gentleman further says, there is a Providence that exposes the guilt of such offenders: I admit the fact, that there is a Providence which exposes the guilty; and that same Providence shields and protects the innocent. Have we not a striking example of the interposition of Providence in this case? Do we not find that this man has, by that same Providence been rescued from the hand of death? When he was found guilty of this offence, thrown into a gloomy prison, without money and without friends; when he was proclaimed through every part of the state, as a vile wretch who ought not to live: that he had poisoned his wife, the partner of his bosom, one whom he was bound to cherish and protect. When these learned physicians had taken arsenic enough from the stomach of his wife, to kill at least twenty persons, when this was proclaimed far and wide, when public prejudice was at its meridian, the prisoner was compelled to submit to a trial, which resulted as might be expected: He was found guilty! Here, I need not tell my learned friend, the advocate for the people, that the hand of Providence was visible, in rescuing this unfortunate man from the grasp of the executioner and the arms of death!

Gentlemen, we shall now proceed with the testimony on the part of the prisoner, relying with the utmost confidence in the belief, that you will continue to listen with the same patience, and apparent disinterestedness, that you have done, through the former part of the trial, till you shall have heard the whole. And when you retire, all we wish, is for you to give such a verdict as will satisfy your consciences, that you have done right, in the sight of that Being, whom you have invoked for the strict impartiality, and rectitude of the verdict you are to pronounce.

TESTIMONY ON THE PART OF THE PRISONER.

Daniel M'Kay, son of the prisoner, sworn.

Stated, that a son to the deceased went into the woods after cows, and did not return: deceased was very much alarmed about him, and said that the family cared nothing about it. We told her that he had probably gone to his brother's; but this did not satisfy her, she continued very uneasy, and refused to eat supper. In the morning she was about going after him; father told her she had better eat some breakfast; she sat down to the table and eat a mouthful or two, and started and said she would go after him. I was afraid she would get lost and went with her; she worried herself considerable, travelling and hollowing for him. It was a wet morning; we could not find him, she said, she did not think we should ever see him again. We went home and found that my father and oldest brother had been out in search, and had just returned. They had heard of the boy before we got home. We had been at home but a short time when three men came in. One of these men is at Batavia, and the other two have gone down the Allegany river. I and my brother went up stairs, and it was not many minutes before mother came up likewise. My brother had been buying a lot of land, and was going on to it. I talked of going on to it with him; but she told me not to go for she did not want to have me go. I believe she lay down on the bed for she was very much fatigued. I went down to dinner. Soon after dinner my father and these men went out, and were talking by the bars when mother came down, and got on to the chest. I believe I stood by the door, and mother said, she was going to have a turn of the bilious cholic, and wanted father to come in. He came in and got the castor—I did not see him give it to her. This castor had been in the house for many years; I believe ever since they had been married, and was generally given to her for the same complaint. It was usually kept in the till of a chest. She appeared to be in as great pain as a person could be in and live. This was before my father came in. I did not see him give her any medicine before these men went away. She continued very bad, and about 9 or 10 o'clock, I went after Mrs. Barnard. She got up and took some pennyroyal, which she said, she would take over. Soon after we came into the house, father took down the cup, and said he had given her some physic, but he did not know as there was enough; and he would rinse the cup and give her some more: he rinsed and scraped the cup; and I believe she took a part of it, but not all. I do not recollect objecting to his administering it, as was stated by Mrs. Barnard. I saw nothing more given to her that night, except some laudanum which was procured at Mr. Miller's. Father asked if he should not go after a doctor, and got up his horse for that purpose: Mrs. Barnard said he had better wait a while, perhaps she would get easier; as it was considered only the cholic. He probably waited half an hour, and then went for the doctor. I should suppose it was near 12 o'clock when he went. After he was gone I went to Mr. Miller's, and got some laudanum, she took some of it and got easier, so that she dropped to sleep.—I went to bed. In the morning I was up stairs at

work, shoemaking, and father came up and took down a runnet, and shaved some off, which he said he was going to give her. I think he went down stairs with it in his hand. I continued about my work up stairs through the day: Tuesday morning I got up about sunrise, and went to the bed where she lay. I concluded she was worse. Father said she was worse, and my brother had gone to Danville, after Dr. Shull. I do not know what time father started to go, but I know the women came in and concluded she was worse, and were fearful that Shull would not come, and he concluded he would go himself. I do not recollect seeing him give any medicine that morning, and I think I should have seen it, if he had given any. Witness related that he had lived with his father and the deceased, nearly all the time since they were married; that they frequently disputed pretty severely, and at one time when they were disputing, he told her to stop her mouth, and she would not; he put his hand on her mouth, and she stopped; she either sat down, or fell down on the floor, some water was got for her, and she come to. Witness being asked respecting the administering of the pills, thinks there was a candle burning in the room, and that there was three pills made, but he did not see them administered.

On Monday witness was up stairs all day to work, and thinks his father worked in the harvest field; as they supposed his mother was getting better. On Tuesday morning his brother Casey started for Danville before he got up: he got up pretty early, but his father did not start till the neighbors had come in—the sun was probably an hour high. Witness stated that he had frequently seen her have turns of the cholic, but did not recollect that he ever saw her vomit on such occasions—her turns of cholic did not generally last more than a day, and then she would get well. He did not know that she appeared to be in any more pain, at this time, than had been common with the cholic before. Witness said the cup spoken of, held about half a pint, and was devoted exclusively to butternut physic—he thinks the physic was about out at the time his father rinsed the cup. He said his father was not in the habit of sending for a physician on such occasions. He thinks it was about a week before she was taken ill, that his father and she had a quarrel. It was about two years before this, that he put his hand on her mouth. Witness did not recollect their sleeping apart but one night, and then his mother slept with his brother's wife. He thinks they had had a quarrel the day before they slept apart.

Lucy M'Kay was called,

And testified, that she was not gone from home the day that the deceased was taken sick—she was in the house at the time she arrived from the search after the boy. She did not see or hear any thing said about medicine, previous to Mrs. M'Kay's going up stairs. She thinks deceased did not eat any supper, and in the morning did not eat much breakfast, but drank a cup of tea. She says that the prisoner was out of the door four or five rods from the house, when deceased came down stairs. She got on to the chest and appeared to be in distress, and said she believed she was going to have the cholic, and sent for prisoner to come in and give her something. Her turns of cholic did not generally last her more than one night. They

used to leave her very weak; but I do not know that I ever saw her vomit with one of those turns. Witness heard something said in the evening about giving her water—prisoner said it would not hurt her. She said the deceased had a turn of the cholic about three or four weeks previous to her last illness; and two turns within three months. Deceased vomited frequently in her last sickness. Witness recollects that Mrs. Barnard went out the back door to pick a chicken, Monday morning, but does not know who was in the house at the time. She said that the deceased used to sleep with her some times—but not more than two nights at a time. It had been the case about a week before. She said Casey M'Kay, who went to Danville, was her husband, and at that time was living at Danville, and did not expect to return immediately. They were fearful that Dr. Shull would not come, and it was thought advisable for the prisoner to go himself. He started pretty early in the morning—Casey had probably arrived there. She heard prisoner tell her husband to send Dr. Shull immediately.

Casey M'Kay sworn.

Said he returned home on Sunday morning from Danville, and learnt that the boy had been gone all night. The deceased was very uneasy about him, and supposed he had lain in the woods all the time. The family tried to pacify her, and told her that he was probably at his brother's: but nothing would do—she started off in pursuit, and one of my brothers went with her. About meeting time, some one came along and told us that he had not been to his brother's. My father and I then started off ourselves in pursuit, and continued searching till about 12 o'clock, and then returned home: on our way home we learnt that he was at Mr. Carpenter's, with his boys. Soon after we got home, two men came in; after that, Mr. Leonard came in—we sat talking when mother came home. Father told her she had better eat something, as she had eaten no supper the night before, and no breakfast in the morning. My wife went to getting dinner, and I went up stairs. Soon after this, my oldest brothèr came up; and in a short time mother came up, and told us we must go down to dinner. We went down, and mother remained up stairs. About this time there was a shower; and after that was over, the men concluded to start. It was then about four o'clock. They went out with my father, and stood by the bars: I was standing in the door. At this time mother came down, and was very sick; she requested father should come in and give her something. I did the errand to him myself—he came in, and after considerable search for the castor, found it in the till of a chest. Witness did not see him prepare the medicine, but saw it after it was prepared, and thinks it was given. She continued to grow worse, and appeared to be in great pain—constantly rolling and tumbling in the bed. Witness said he never had seen her have a turn of the cholic, as he had always lived from home. Witness said he and his father came home about noon, and he remained in the room till after the men came in. When witness went up stairs, two of the men sat near the bed, and his father against the door: when he came down, they were in the same position. Two of these men had gone down the Ohio, and the other was in prison at Ba-

tavia the last he heard of him. Witness remained at home all day on Monday, and his brother was with him the greatest part of the day, in the chamber. He said his father took down a runnet that was hanging in the chamber, and shaved off some, and put the runnet back again where he found it. Sunday night about twelve o'clock, witness went to bed below, and after his father had started for Dr. Luther, he was called up to go to bed in the chamber, as they were about to administer an injection. He got up between day light and sun rise on Monday morning—deceased was pretty easy all day Monday, but was taken worse in the evening, and complained of a severe pain in her legs. Tuesday morning he got up as soon as he could see any light, and his father requested him to go to Danville as quick as possible, and send Dr. Shull; for his mother was worse. Dr. Shull was considered a very skilful man, but was apt to drink too much. Witness went to the house of Dr. Shull, but he was gone from home about seven miles to visit a patient. It was then about eight o'clock, and he was not expected to return till noon. Witness went to his shop, but had not been long there, when his father came and inquired if he had seen Dr. Shull. On being informed that he was gone from home, prisoner said he would go and see his wife, and went away—which was the last witness saw of him till about two o'clock; when he saw him and Dr. Cook ride past his shop pretty fast. Witness heard no more, till Dr. Cook returned and informed him that his mother was dead. He thinks it would take about three hours to ride from his father's to Danville—he was about four hours walking it. He says he was in the house the whole of Sunday evening, but did not see any medicine given from the cup—thinks he should have seen it, if any had been given. Father said he had given some butternut pills, but concluded he had not given enough, and would give her some more. Witness saw deceased vomit on Sunday evening, for the first time.

Blacksmith, at Danville, sworn.

Stated, that prisoner came to his shop on Tuesday, the day that his wife died, and requested him to shoe his horse. He said his case was very urgent—he had left his wife very sick, and was waiting for a doctor. I told him if he was a customer I would try to wait on him; but as he was not, I could not leave my other work. He went away from the shop and was gone about half an hour, and then returned and urged me again: he said the shoes that were on would not do. I kept to my work: he was gone a short time and returned again—I finally told him if he would help me turn the shoes. I would try to do his work. I inquired of him what the matter was with his wife—he said she had the hysteric cholic, and puked constantly. He said she was taken the night before, about midnight, and continued to vomit till he left home. I told him if his wife was so bad, he had better call on Dr. Cook, Faulkner or Clark, as she could not stand it long in that way. I mentioned to him, likewise, that Dr. Shull was a drinking man. He said he did not like Clark very well, from what he had heard of him, although he had never employed him. He said the people generally did not like him very well. He was unacquainted with Dr. Cook, and wanted to know what for a man he was. He remarked that Faulkner did not practice. I showed him the house of Dr. Cook, and he went up there—

when he came back, his horse was shod and he started away. This was about one o'clock P. M. He came to my shop between nine and ten He appeared to express considerable anxiety to get his horse shod, so that he could return.

Orange M'Kay sworn.

Stated every circumstance so nearly like his brother's, that it is thought unnecessary to give it in detail. He thinks he saw the castor administered; and with respect to the butternut pills, he saw them scraped from the cup—something was said respecting the best way of taking them, and he said he had as lieve take them in cold water as any way—but he thinks they were given in cream or pudding.

Cross examination. Witness said he had seen his father and mother quarrel some: at one time when they were scolding, he told her to hold her tongue—she said she would say what she was a mind to—his father stepped up and put his hand on her mouth, and said he would stop it, &c. At another time she was sitting by the chimney, and he told her to hold her tongue; but she would not, and he took a chair and struck over her head twice, against the boards. He did not recollect that they had quarrelled any the week before she was taken ill. His father remarked on Sunday evening, that he had done all he could for her—he had given all that he had been accustomed to give on such occasions. Witness said his father had sent him to Messrs. Clark and Brockway's, at Danville, to buy corrosive-sublimate, to cure a horse of a poll-evil—and he says the stuff used about Mr. Doty's house was the same to appearance.

Dr. Noyes sworn and questioned by Mr. Hulbert.

Have you examined the experiments made by the physicians to detect the presence of arsenic in the stomach of Mrs. M'Kay, after her death? I have. Will you please to relate what you know of this subject? I have seen a statement of the experiments, but have not repeated them with the same materials As to the first experiment made with the nitrate of silver, what is your opinion with regard to its accuracy, and as to its proving the certainty of arsenic in the stomach? When used with particular attention, and by those who are experienced in chemical experiments, it has, till lately, been considered as a very delicate test, provided the materials be pure; but it is not at present considered an infallible one, by some of the best chemical writers The principal objections to those experiments consist in a want of a knowledge of the purity of the water, of the purity of the nitrate of silver, of the colour of the solution of the suspected matter to which the tests were added; besides, the sal soda is not the alkali recommended—ammonia being considered better.

There was no evidence of the purity of the sal soda. But had all these substances been pure, still the experiment could not be considered as conclusive, as other substances, besides arsenic, might be found in the stomach, which are said to produce nearly the same colour; for instance, phosphoric acid, phosphate of soda, and probably most of the alkaline and earthy phosphates. The phosphate of soda is a constituent of the bile, and probably of the gastric juice. With this the nitrate of silver would produce the phosphate of silver,

which exhibits a yellowish appearance, similar to that produced by arsenic; and as it is difficult to define the colour of a precipitate, there being an indefinite number of shades, which by different persons might be called yellow, or bright yellow, I should be unwilling to place much confidence in that experiment. One of the reasons which influence me in forming this opinion arises from the nature of the gastric juice. This fluid is secreted by the stomach for the purpose of promoting digestion. When it is taken from an empty and healthy stomach and separated from all other substances, it is said to precipitate the nitrate of silver; and although of a lighter colour than yellow, yet in the stomach of a person labouring under disease, this juice must always be impure in itself, besides being mixed with the contents of the stomach. Suppose butternut pills and castor to be in the stomach, what colour would they produce? The colour would probably be an olive brown; it might be rather deeper, or, if the pills were properly made, there might be a tinge of yellow. Iron has a tendency to produce a black. Would it be safe to pronounce upon the appearance of the stomach eight days after death? It is stated by good authority, that no reliance ought to be placed on appearances of the stomach so long after death. It is possible there may be cases in which they ought to be considered as circumstances. Has it not been proved that at this warm season of the year the gastric juice, whether vitiated or not, does commence the dissolution of the stomach immediately after death? It has. The stomach after death, becomes liable to the same action with the other dead animal matter. It is the living principle in the stomach that prevents this action before death. Cases, however, are recorded in which it becomes sensible even before death, as in extreme hunger, &c. Would it not naturally destroy the lower parts of the stomach first? That might depend on the position of the body. I think, however, the gastric juice would be accumulated in the lower part. Dr. Hunter was one of the greatest anatomists of his age. Do you know his opinion about pronouncing upon appearances after death? I do not recollect precisely his observations, but am confident that he says the stomach is not corroded by mineral poisons. It is agreed that arsenic operates by inflaming the internal coats of the stomach, is it not? I do not think it would corrode the stomach of a living person, at all. My experience, however, on this point is small. I have seen it applied to cancers, and to tumors on horses, and although it appears to possess some corrosive powers on diseased or fungous flesh, yet I never knew it operate as a caustic on healthy parts. I cannot say what particular cause produced the appearance on the stomach. It might have been gangrene. Have you heard the physicians testify respecting the purple appearances? I have. Would those be extraordinary in a common case? I would not say it would be common in ordinary cases of death; but in many cases it might arise from the duplicature, or folds of the stomach, after death. When inflammation rises very high, gangrene frequently succeeds. Indeed I consider it as generally following excessive inflammation of the stomach. What do you mean by gangrene? The death of the part affected. Has it not been laid down by some authors that the whole alimentary canal ought to be examined? When a small quantity only is taken, and the disease is attended with puking, and large quantities of liquids have been administered, I do not

think it would be useful, as the arsenic would undoubtedly be dissolved. Is it not necessary to discover the morbid appearances? It might be in some instances, but I do not think it useful in general, so long after death; as the changes might be produced without arsenic. In the case of this woman, putrifaction would probably take place about as soon, as in a case of sudden death; as the body was not emaciated by disease. Do you think the appearances, as stated by the physicians, ought to be relied on? I do not think any confidence ought to be placed in the diseased appearances, so long after death. Is it not considered that Marcet's improvement of the silver test is an important one? Would Hume's test, if properly applied, determine whether there was arsenic in the stomach or not? I think it would not, because there might be other substances in the stomach, which would produce nearly the same appearances. Marcet's improvement renders the test more delicate. It might make a little difference, but it has been lately asserted by very high authority that both are imperfect, as the phosphoric acid, and phosphate of soda, will produce the same colour. Philips says, that the difference of colour cannot be distinguished, except by an experienced eye. Have you made any experiments to produce the same appearances, without the presence of arsenic? I have made one, by which a colour resembling Scheele's green was produced. I am satisfied that a colour may be produced, which could not be distinguished from it, except by one of considerable experience. Did you make any experiment with the silver test, and was you satisfied with the result? I did, and was perfectly satisfied that a yellow colour may be found without arsenic, differing so little from that produced by arsenic, that one might be mistaken for the other, by those who are not familiar with such experiments. I cannot, however, vouch for the purity of the materials which I used, but have no doubt they were pure. In all such experiments, the water ought to be known to be pure. The water might contain earthy substances—it might contain phosphate of lime, or even arsenic. Rain water is considered to be very pure; still it ought not to be relied on, till it has been properly examined, and known to be so. Would not the substance taken from the stomach affect the colour of the solution? May not two colours be so mixed, as to produce an intermediate one? A blue and yellow mixed in proper proportions, will produce a green. Indeed, almost any two colours may be so combined, as to produce an intermediate shade, where no chemical effect takes place. I do not consider it impossible that the colour described in this case might be produced in this way. I have had an instance, in which I added the sulphate of copper to some of the contents of the stomach of a man known to be poisoned by arsenic, but was unable to discover the least appearance of Scheele's green, on account, probably, of the colour of the solution; although great care had been taken in filtering it, so as to deprive it as far as possible of colouring matter; and on using the nitrate of silver, with all the precautions recommended, no yellow precipitate could be discovered. Is it not necessary that the nitrate of silver be very pure? and how do you know when it is pure? I always prepare it myself, from materials which I know to be pure. Why is it necessary to be so particular? It is necessary on account of the practice of some who prepare it and make use of common coin, or silver plate, which contains generally

$\frac{1}{12}$th of copper. How do you prepare Scheele's green? The process which I have generally used, and consider sufficiently accurate, consists in boiling 64 grains of arseneous acid, or common white arsenic with the same quantity of sub-carbonate of potash, in a pint of distilled water; to which, while warm, I add a warm solution of sulphate of copper as long as any precipitate appears. What is sulphate of copper? It is a neutral combination of the sulphuric acid and copper. Would not the shades of green depend on the quantities of materials used? The colour of the solution would be affected by the quantity of sulphate of copper, but probably not the precipitate after washing and drying. Do you not know that Scheele's green is considered to be an unsafe test? I have considered it so, except in the hands of those who are acquainted with chemical experiments. It is an indication of the presence of arsenic, but not conclusive evidence of it. Are there not various matters, which might produce the sameres ult? As I have already stated, the sulphate of copper added to a solution of phosphate of soda produced a colour, which might be mistaken for Scheele's green, by those who are unacquainted with that substance. On adding a little laudanum the resemblance was much increased. You say you tried phosphate of soda; now, is not the phosphate of soda a matter naturely found in the stomach? I do not recollect the exact analysis of the gastric juice. I think, however, it must contain phosphate of soda, as it is found in the bile, which is often found in the stomach, especially in bilious complaints. The phosphoric acid combined with lime is found in the bones of all land animals. The phosphate of lime exists in the porportion of nearly 43 per cent of the dryed bones. Most animal fluids, which have been examined, contain phosphoric acid, either in a free or combined state. In Scheele's green, do you not know that it is necessary before you can determine the shade of colour, that the materials be nicely weighed? I think Doctor Henry, who has given a good process for obtaining Scheele's green recommends weighing. From the knowledge which you have of chemistry, would you dare to pronounce a positive opinion in this case, without going farther with the experiments? I should like to be excused from answering that question. Would you dare, from the account of the experiments which you have heard, pronounce a confident opinion? I should not place perfect confidence in such experiments, unless I new the purity of the water, the purity of the tests, and the colour of the solution to which the tests were added. As a reason for this opinion I would observe, that these tests have not been tryed on all known substances; and we do not know but that there may be substances formed in the stomach, which would produce the same colour. To demonstrate the presence of arsenic, I consider it necessary to revive the metal. I would not say that in all cases it is impossible to pronounce a confident opinion without obtaining the metal. How should the experiments be made, to detect arsenic in the stomach? The contents of the stomach should be carefully examined, and if any parts appear more like arsenic than others, they should be separated, and examined by themselves. Whether the matter be in a solid or liquid form, distilled water should be added, and a quantity of potash, equal to the supposed quantity of arsenic, and the whole boiled for a few minutes. It should then be filtered, and suffered to stand till it becomes as clear as possible. To a small quantity at a time the test

should then be added whether the precipitate be yellow or green. To be fully convinced of the presence of arsenic, it should be collected, washed and dryed at a temperature not exceeding boiling water. After this it should be mixed with a little finely pulverized charcoal, and a small quantity of potash may be added, and passed gently into the bottom of a small glass tube hermetically sealed at the lower end. That part of the tube containing the materials should be exposed to nearly a red heat, while the top of it should be kept cold. In a short time the arsenic will be sublimed in its metalic state, which requires a temperature only of about 360 of F. thermometer, and will be found lining the tube in a chrystaline form, exhibiting a metalic lustre nearly of a silvery whiteness. No other known substance can be made to exhibit the same phenomena by the same process. But for still farther satisfaction, a little of the white substance from the tube should be placed on a burning coal, by which it will be immediately invested into a dense white smoke exhibiting a strong garlic smell. No other evidence can be required, to prove the presence of arsenic. May not puking be occasioned by great anxiety of mind, or great extortion of body? Puking arises from almost an infinite variety of causes. It may arise from fear, from substances taken into the stomach, and it frequently takes place without any known cause Is it not the case, with persons labouring under the cholic vomit? I have had cases of cholic, in which vomiting was one of the most troublesome symptoms. It frequently happens, but not always. How does corrosive sublimate appear? It generally appears in the form of a white powder mixed with large and small lumps. You say it consists of lumps, and fine powder? I have been in the habit of making it, and of selling it in that form, and have always seen it in that form in the shops. It is necessarily so from the manner of manufacturing it, it being sublimed generally in glass vessels, which are afterwards broken, by which some of it is ground to a fine powder, while the remainder is only broken into large and small pieces.

Cross examined. What are the symptoms of poison by arsenic? My knowledge on this point is derived from the authority of others, except a single instance. The information which I most rely on, except this single case, is obtained from the testimony of living witnesses There is a great variety in the symptoms. But constant and violent puking, severe pain in the stomach and bowels, swelling of the face and extremities, and a difficulty of keeping any thing on the stomach I consider as strong symptoms, although they are common to this and some other diseases. Cases, however, are recorded, in which these symptoms have not occurred. Many other symptoms might be enumerated, but I consider these the most striking. Is a ghastly appearance a symptom of arsenic? I do not recollect its being mentioned as generally occurring, except at the close of life. I think other causes capable of producing it, as well as arsenic. It is said by some, that the tongue and face are always swollen, the body and extremities frequently—the bowels and stomach very painful, and that cathartic effects frequently take place. Is deafness a symptom? I think it may be, but not necessarily; neither is blindness or delirium a peculiar symptom of arsenic, as they frequently attend other violent diseases, near the close of life. Is the power of articulation affected by it? It must be by this, as well as

by many other causes, just before the person expires. Is there not a perceptable difference between the experiments where arsenic is used and where it is not? In a careful examination, a difference in the form of the precipitate may be perceived; but were the experiments made in two phials placed near each other, I think it would be difficult for those not much experienced to distinguish them, merely by the color. Suppose there had been a sufficient quantity of the substance on the liver, and the experiments had been properly made, what would you say? From the account of it which I have heard, I should not think it could be safely asserted that it was arsenic: because I cannot conceive how it could get there, or how it could be separated, without some coloring matter. Might it not be concluded that the substance scraped from the liver was arsenic, if it was free from color, and the same experiments were tried, as on real arsenic? If the solution of suspected matter was free from color, I should consider it as a strong circumstance; but, for the reasons already given, I do not consider the tests as infallable. Do you know of any other white powder which would, with the same tests, produce the same result? I do not know of any such as has been described. Not knowing of any other, and not having ever heard of any other, would not that experiment be sufficient to satisfy your mind? It would have some influence, if I were certain that the white powder was unmixed with any other substance; as the phosphate of soda would not be likely to be found in that state, although, possibly, the phosphate of lime, which might be in the form of a white powder, might. You speak of the necessity of testing the purity of the water—how do you test its purity? By distillation. Are there no other ways of testing it? what would you recommend in order to test its purity? There are various ways of testing its purity, but when rain water is carefully distilled in glass vessels, it has been found to be sufficiently pure. By using real arsenic, would not that prove that both the water and nitrate of silver were pure? It would not amount to demonstration, because both might be impure, and still produce the yellow precipitate. The nitrate of silver might contain arsenic, and produce no effect on pure or impure water. But judging from such evidence as men generally rely on, from every thing you have heard, what is your opinion, was there arsenic or not? I should hesitate in saying it is proved by the experiments which have been described. What is your opinion, adding to the tests the symptoms beginning on Sunday, and the appearances of the stomach after death, what should you conclude from the state of facts exhibited? I cannot conceive that the stomach was perforated before the subject was buried. I do not know how much of the white substance was found on the liver—whether it was dry or humid.

Dr. Noyes requested to question Dr. Patchin, who answered as follows:

We scraped up what would lie upon the point of a knife—it was no more moist than the substance of the liver. There was a sufficient quantity of moisture to keep it from blowing away. Its color was not sufficient to alter it from what we call white. Did it appear in the form of small grains or particles? There appeared to be a number of them, which we put into a phial and that into a vessel. I think there was no color.

To Dr. Noyes.

What do you think of this circumstance? I think it might be evidence of arsenic, or of some phosphate. It might be arsenic, but it is not very probable that it would get on the surface of the liver, so as to appear in that form, unless an immense quantity had been taken. It has been stated by Le Grange and some others, that arsenic is much more soluble than has been generally supposed—a pint of water being sufficient to dissolve nearly an ounce. Arsenic is generally obtained from the shops in a fine powder, and when small quantities only are taken, I cannot conceive that it would remain long undissolved in the stomach, especially when much water had been given, and the stomach much agitated by puking. But still this gentleman swears, and all the physicians concur in stating, that on the liver there was a white substance—taking all this into view, how far should you suppose this evidence of arsenic? I should not feel myself warranted in saying that it was arsenic. It might possibly be some phosphate, or some other substance produced there. Do you suppose there are any grounds of doubt on the subject? I consider it as circumstantial evidence, and were there other strong circumstances, I should consider this as corroborating them considerably, because, setting all other things aside, arsenic would be more likely to produce such effects, than any other known substance. The physicians stated that they tried the substances both from the stomach and liver, as well as real arsenic. Had potash been used instead of soda, and all the materials been pure, it would have been a strong indication of arsenic. I do not know that soda would produce a different result from potash, nor do I know but it might contain some substance which would produce the effect described; but potash is the alkali recommended in making Scheele's green. Taking the symptoms as represented, were they such as should be expected from the effects of arsenic? They are common to the effects of arsenic, and several other diseases. This woman was well on Saturday and on Sunday afternoon, and taking for granted what has been said of the symptoms and on the examination of the stomach, would you pay no attention to the symptoms of this woman? The swelling of the face, which is represented as generally a symptom in this case, was absent, and the pain was too much confined to the stomach. I should think the bowels, and indeed the whole course of the intestines, would have been affected, as well as the stomach. The nitrate of silver might have been pure or impure, and yet not have changed the color of the water. If there had been much undissolved arsenic, it would have been found in the stomach, rather than on the liver. It might, however, have got out of the stomach on some part of the liver, had there been holes through it, and had the parts been so agitated as to have thrown them out of their place; but that part of the liver where it was found, generally laps on the surface of the stomach. Are any of the symptoms in this case common to cholera morbus? It is stated by some medical writers, that the symptoms are similar, and that even a swelled face accompanies the other symptoms near the close of life. [*See extract from Professor Silliman's Journal, in the Appendix*]

[Note.—The testimony of Levi Doty, Elisha W. Brockway, and Daniel M'Kay, together with some additional testimony by Dr. Cook, will be found in the Appendix—having been omitted in their order by mistake.]

SPEECH OF VINCENT MATTHEWS.

Wednesday, 2 o'clock P. M. the testimony being closed on both sides, Mr. Matthews rose and addressed the jury as follows :

Gentlemen of the jury—I rise to address you on this subject, not so much with the expectation of casting any great light on it, or of occupying any ground which will not be explored by the gentleman who is about to follow me, as of giving him an opportunity of looking over his notes and being the better prepared to address you. It is possible, however, that I may advance some ideas, which would not occur to him ; you will therefore, have the goodness to hear me with patience. It has been stated to you by both the opening counsel, that this is a case of vast importance ; it is truly so ; it cannot be too frequently repeated, that you have the life of a fellow being in your hands—It is a case, therefore, that requires your most candid and serious attention and deliberation. In the investigation of the testimony which has been given in, you will give due weight to the arguments of counsel on both sides, as well as the charge which you will receive from this honorable court.

I am well aware, that the prisoner appears before you under disadvantagous circumstances—In the first place, he is accused of a crime of the deepest die : He is accused of a crime, which if true, is exceeded by none in enormity : He is accused of the murder of his wife ; one whom he was bound by the laws of God and man to protect.—I am persuaded from that circumstance alone, many prejudices have been created against him. Every feeling and innocent man in community, when he hears of a crime of this kind ; naturally and unavoidably, receives a bias against the perpetrator of a deed so enormous. There are other grounds upon which the prisoner comes before you under embarrassing circumstances—It is a long time, since the sad tale of the prisoner's supposed guilt, first began to ring in the ears of community ; and having once gained currency, it has very probably, like other stories, accumulated by exaggeration.

Every faculty has been put into operation, to prejudice the public mind against this man : But another circumstance of greater importance, is the fact of his having been once tried by a jury of his country, for the same charge, and found guilty—There is no gentleman on this jury, who does not know this fact ; but if any impression has been made on your minds in consequence of this fact I beg that you will discard it. It has been justly said, that jurors ought to come into their boxes, with their minds as

free from previous impressions, as a piece of white paper—they ought to know no facts belonging to the case, except such as they are enabled to deduce from the testimony as it flows from the lips of the witnesses. Although this man may have been tried by a jury of this county, and convicted by them, it is no reason that you should convict him ; the testimony may be different now from what it was then—besides, you are not to try him by the consciences of others, but by your own, and by the testimony which has now been given. Gentlemen, I do not stand here to prove the innocence of the prisoner : It is not my business--It is the business on the side, of the prosecutor, to make out a clear case of the prisoner's guilt—*It is your duty to make out a clear case* divested of all doubt on the subject. If the public prosecutor does not succeed in establishing his charges, so far as to banish every reasonable doubt from your minds, it will be your duty to acquit him. This is the law on the subject ; it is a maxim as old as the law itself, that it is better that ninety-nine guilty ones should escape, than that one innocent man should suffer. In order that this may not rest on my dictum, I will read a case or two on the subject.

"The impression on the mind of the jury, in a criminal case, must be, not that the prisoner is probably guilty, but that he really and absolutely is so ;—where they doubt, they are to acquit."

Now, gentlemen, from what I have read to you, you can see what is your duty in this case—You must have evidence which is clear and satisfactory ; such as will not leave a doubt, of the prisoner's guilt, before you can convict him. I beg that you will remember this maxim throughout the investigation of this case. There is another circumstance to which I would call your attention ; and that is, if you convict this man at all, you must convict him upon circumstantial testimony ; for there is no positive testimony whatever. It has been said that circumstantial testimony is the best, for it cannot lie ; I think however, that Philips in his treaties on evidence has shown very clearly, that it can and does lie. I will read two or three examples to show, that *many* innocent men have been brought to the gallows by such testimony.

Jonathan Bradford, who was executed at Oxford, for the murder of Christopher Hayes, Esq. in the year 1736.

"Jonathan Bradford kept an inn, in Oxfordshire, on the London road to Oxford. He bore a very unexceptionable character.

Mr. Hayes, a gentleman of fortune, being on his way to Oxford, on a visit to a relation, put up at Bradford's. He there joined company with two gentlemen, with whom he supped, and, in conversation, unguardedly mentioned that he had then about him a sum of money. In due time they retired to their respective chambers; the gentlemen to a two-bedded room, leaving, as is customary with many, a candle burning in the chimney corner. Some hours after they were in bed, one of the gentlemen, being awake, thought he heard a deep groan in an adjoining chamber; and this being repeated, he softly awaked his friend. They listened together, and the groans increasing, as of one dying and in pain, they both instantly arose, and proceeded silently to the door of the next chamber, from whence they had heard the groans, and, the door being a-jar, saw a light in the room. They entered, but it is impossible to paint their consternation, on perceiving a person weltering in his blood in the bed, and a man standing over him, with a dark lanthern in one hand, and a knife in the other! The man seemed as petrified as themselves, but his terror carried with it all the terror of guilt. The gentlemen soon discovered that the murdered person was the stranger with whom they had that night supped, and that the man who was standing over him was their host. They seized Bradford directly, disarmed him of his knife, and charged him with being the murderer. He assumed, by this time, the air of innocence, positively denied the crime, and asserted, that he came there with the same humane intentions as themselves; for that hearing a noise, which was succeeded by a groaning, he got out of bed, struck a light, armed himself with a knife for his defence, and was but that minute entered the room before them. These assertions were of little avail; he was kept in close custody till the morning, and then taken before a neighbouring justice of the peace. Bradford still denied the murder, but, nevertheless, with such apparent indications of guilt, that the justice hesitated not to make use of this most extraordinary expression, on writing out his mittimus—"Mr. Bradford, either you or myself committed this murder."

"This extraordinary affair was the conversation of the whole country. Bradford was tried and condemned, over and over again in every company. In the midst of all this predetermination, came on the assizes at Oxford. Bradford was brought to trial; he pleaded—not guilty. Nothing could be stronger than the evidence of the two gentlemen. They testified to the finding Mr. Hayes murdered in his bed; Bradford at the side

of the body with a light and a knife; that knife, and the hand which held it, bloody; that on their entering the room, he betrayed all the signs of a guilty man; and that, but a few moments preceding, that they had heard the groans of the deceased.

"Bradford's defence on his trial was the same as before the gentlemen: he had heard a noise; he suspected some villany was transacting; he struck a light; he snatched the knife, the only weapon near him, to defend himself; and the terrors he discovered, were merely the terrors of humanity, the natural effects of innocence as well as guilt, on beholding such a horrid scene.

"This defence, however, could be considered but as weak, contrasted with the several powerful circumstances against him. Never was circumstantial evidence more strong! There was little need of the prejudice of the county against the murderer to strengthen it; there was little need left of comment from the judge, in summing up of the evidence; no room appeared for extenuation; and the jury brought in the prisoner guilty, even without going out of their box.

"Bradford was executed shortly after, still declaring that he was not the murderer, nor privy to the murder of Mr. Hayes; but he died disbelieved by all.

"Yet were these assertions not untrue! The murder was actually committed by Mr. Hayes's footman: who immediately on stabbing his master, rifled his breeches of his money, gold watch, and snuff-box, and escaped back to his own room; which could have been, from the after circumstances, scarcely two seconds before Bradford's entering the unfortunate gentleman's chamber. The world owes this knowledge to a remorse of conscience in the footman, (eighteen months after the execution of Bradford,) on a bed of sickness. It was a death-bed repentance, and by that death the law lost its victim.

"It is much to be wished that this account could close here, but it cannot! Bradford, though innocent, and not privy to the murder, was nevertheless, the murderer in design: he had heard, as well as the footman, what Mr. Hayes declared at supper, as to the having a sum of money about him; and he went to the chamber of the deceased with the same diabolical intentions as the servant. He was struck with amazement! he could not believe his senses! and, in turning back the bed-clothes, to assure himself of the fact, he, in his agitation, dropped his knife on the bleeding body, by which both his hands and the knife be-

came bloody. These circumstances Bradford acknowledged to the clergyman who attended him after his sentence."

There are, gentlemen, a variety of other cases in this book which show that men have been condemned and actually executed on circumstantial testimony, when afterwards it has been clearly shown, that they were innocent. Now, gentlemen, as I remarked to you before, all the evidence in this case, is circumstantial; and while I admit that circumstantial evidence is sufficient to convict; yet I insist that it should be connected, and all tending to establish one point. If the circumstances of this case do not all concur, in establishing the same point, I think it will be your duty to acquit.

I shall now take up the testimony in this case; in doing which I shall make two points of enquiry—first, whether the woman has been poisoned—secondly, whether the prisoner poisoned her. As to the first point; if you convict this man, it must be on the opinions of the doctors, who have been examined as witnesses—While I admit that under certain circumstances such evidence is competent, I am not willing to admit it good in all cases. In mechanics it is good evidence—as if a question should arise respecting the machinery of a mill, you would readily say this is not to be determined by farmers, it must be submitted to men skilled in this branch of mechanics; it would appear absurd to submit it to a house carpenter, it must therefore be decided by those, whose particular profession renders the subject familiar. In the case before you, the circumstances are such as to involve questions belonging to a particular science; and without the opinion of men skilled in that science, you cannot determine, with safety, the accuracy of experiments made by those not skilled in it. You are here called to decide on the opinions of the doctors who examined the deceased and the contents of the stomach. In this case, what ought you to require? You ought to require that the persons, whose testimony is to be relied on, should be men acquainted with the science to which this question particularly belongs, and men of experience. This is laid down also, by Philips, and it is a dictate of common sense.

"In questions of science, and above all in those of medical science, the faith to be reposed in any opinion, will be regulated by the professional eminence of the person giving it. One man's sight being generally as good as that of another, as to a mere matter of fact; as whether he saw, or did not see such a thing, the learned and the ignorant are upon a par, and one witness to

a fact is just as good as another. But the case is very different as to a matter of science; for one man's judgment will outweigh that of many. Upon a point of law or equity, we would not put the opinion of a country attorney, or of four country attornies, against that of a chief justice. Doctor John Hunter stood at that time, at the very head of his profession; his opionion gave the law to that profession, both in England and in every country in Europe. Had the profession been to estimate his opinion, and not the jury, a very different verdict would have been given. The case referred peculiarly to Doctor Hunter's line of study, that of dissection, and the appearances incident to a body on sudden and convulsive death. He pronounced, that the dissection had been irregularly made, and in a way not to afford the true criterion to judge by. And, where the process is irregular, when the experiment is defective, the conclusion must always be vague and doubtful.

"The gentlemen composing the jury, did not perhaps know the eminence of Mr. Hunter's character; nor, consequently, the weight due to his opinion. But the judge, on the bench, no doubt knew this; and in balancing the evidence, and in summing up, it was clearly his duty to have stated the great weight to be attached to Mr. Hunter's observations. He stated nothing of all this; but took them numerically, "four medical men to one."

"Thus, from an irregular dissection, a positive conclusion was admitted."

"It is a rule of law, and above all in cases of life and death, that the want of any one circumstance will prevent the effect of the whole. Thus, if the dissection was irregular, the opinion formed in reference to that dissection was a mere nothing."

I repeat it, you are now called on to decide upon the opinions of the doctors who have been brought before you—The experiments tried by them, depend in a great measure, and I think altogether, upon a knowledge of the science of chymistry; and that is a science by itself, and is an abstruce one, and one which requires not only a theoretical knowledge, but practical experience, to render it familiar. How then stand these doctors before you? Some of them I am personally acquainted with—Dr. Patchen and Dr. Cook, are gentlemen whom, from my personal knowledge, I should be willing to trust for my family physicians—Dr. Faulkner is not a physician, he tells you he never practised but 4 years, and has long since quit it—The others tell you they are not acquainted with the science of chymistry—They all say they never made it their study at all; at the time

the tests were made, they looked over some books to be sure; but they did not conduct these experiments from a previous knowledge of the subject. They took up a book upon the spur of the occasion, and read and went out to try the experiments. If you are bound to decide this case by the opinions of others, I ask whether they stand before you under such circumstances, as will authorise you, in taking away the life of a fellow being, without more positive proofs. Dr. Patchen says, that since these experiments were tried, he has learned that there are other tests more accurate and satisfactory than those which were tried. If that be the case, they did not get the best evidence, which the nature of the case would admit of; and which if obtained might have demonstrated the truth of this important point. The rule of law, is, that the best testimony which the nature of the case admits of shall be produced; if so, I ask whether, under these circumstances, you will convict this man or not—I trust you will not. There are other circumstances, to which I will here call your attention. Dr. Patchen, as before remarked, tells you, that since these experiments were made, he has discovered another test—This shows that he is not familiar with the subject, because this test has been long known, and frequently tried. I repeat it again, there are circumstances attending these experiments, which ought to deter you from convicting this man; for in cases of this discription when men are called on to make such tests, and know that they must appear in court and by their testimony acquit, or condemn a fellow being; they ought to use every possible means to ascertain the truth of the case. These physicians say they tried two or three experiments, and were prepared to try one other, which was then and is now, considered an important test; yet they were so well satisfied with the others that they discarded it. As they were the ones who were to acquit, or convict this man, they should have used every means in their power. If they had tried a number of experiments, and another still remained, they should have tried that also: But they lay it aside, leaving this man to be thus jeopardised, because they did not think proper to try the experiments which were within their power. The only reason which they give is, that they were so well satisfied, they did not think best to try it. I will read what Dr. White says, on a similar occasion; who ranks among the most eminent physicians and surgeons in the northern part of the state.

"Witness does not consider himself a chymist, not having been bred one; he therefore does not like to give an opinion."

He knew himself so well, that he considered himself not competent to give an opinion—Contrast the conduct of this man with the physicians before you : he soars above them vastly, in years, in experience, and in reputation ; and still he thinks himself not qualified to judge in such cases. These gentlemen tell you they have not studied chymistry ; and I have strong reasons to believe, they went to the trial of these experiments under prepossessions against the prisoner at the bar ; for Dr. Cook tells you, that he thought the woman was poisoned from symptoms which he discovered before her death. Dr. Faulkner says he is of the same opinion, from the circumstances attending her illnes and death, together with some conversation which he had with the prisoner, on the day that his wife was disinterred. Dr. Rich tells nearly the same story—Dr. Patchen tells you that he was not present when the experiments commenced, but their result was communicated to him by Dr Faulkner and others. Dr. Clark says, he does not know whether he saw them all or not—He is willing, however, to express an opinion, that these tests are infallible, and that the experiments were perfectly satisfactory. Now I ask, whether, there is in this testimony that clear and conclusive evidence which admits not a rational doubt in your minds on the subject. You have heard the testimony of one of the most able chymists which our country has produced ; which goes to show clearly, that the tests made by these physicians, were not satisfactory, or conclusive, as to the presence of arsenic in the stomach. I shall now proceed to another part of the subject, and that is, whether the prisoner at the bar administered the poison, if any was found in the stomach. A great part of the evidence on this point, consists in the declarations of the prisoner himself ; which have been hunted up from all quarters : and which in my opinion, are the most uncertain testimony that can be admitted in courts of justice—testimony from which a jury cannot safely draw any certain conclusion. Judge Blackstone lays it down so—He says,

" But hasty unguarded confessions, made to persons having no such authority, ought not to be admitted as evidence under this statute. And indeed, even in cases of felony at the common law, they are the weakest and most suspicious of all testimony ; ever liable to be obtained by artifice, false hopes, promises of favor, or menaces ; seldom remembered accurately, or reported with due precision ; and incapable in their nature of being disproved by other negative evidence."

I recollect hearing the same opinion expressed by the chief

justice, at the Steuben circuit of the last year; and I presume from what I have heard fall from his honor, now upon the bench, that he concurs in the same opinion.

Gentlemen, the reason is obvious; the same words may communicate different ideas; and this is not all: a man may hear but a part of a conversation, which would convey different ideas from the whole. The human memory is very fallible; a man may not recollect the very words which he heard a long time before. There are instances of this kind, in the present case. Dr. Faulkner and Dr. Clark do not agree in the language which they heard at the same time. In the first place, much has been said as to the symptoms of this woman, before her death. You have heard what Dr. Noyes says on this subject: he says, that the symptoms in this case are common in other diseases, and that no conclusion can be drawn from them. If this is a fact, they will not have much weight with you. You will observe, that in the first stage of this business, the woman had lost her son; she went early in the morning, while the ground was wet, into the woods, and spent the forenoon in rambling and hallooing up and down, until she was completely exhausted with fatigue. Now the question is, whether the prisoner at the bar administered any medicine at all, before the woman was seen in the greatest distress which could be imagined. Now the time, place, and circumstances, are very unpropitious to such an act. The gentleman on the part of the prosecution has said, that such acts are generally done in secret, or in the night, when no human eye can behold them. But how is it here? why, if medicine was given at all, it must have been given on the Sabbath, when the family of this man were about the house. Is it reasonable to suppose, if he had formed a resolution to commit this diabolical act, that he would have taken this time, when he was surrounded by his family, and when, in fact, there were strangers in and about the house? There is one witness who says, M'Kay told him, that he prepared a dose and gave it before she went up stairs. If he did, it must have been done when no one saw him, and he must have done it intentionally, in secret: if so, why should he have disclosed it to Bailey, the witness? He would have avoided it, as he does the fate that now threatens him. I apprehend that this witness must be mistaken; the dose that he speaks of must be the dose which was given after she came down stairs. If you believe the testimony of the young M'Kays, and Lucy M'Kay, you cannot conclude otherwise; and it does appear to

me, you will give these witnesses full credit; for I must confess, I never saw witnesses in similar circumstances, conduct with more candor and discretion. These witnesses tell you they were in the house all the time, till the three men came in; and that the medicine could not have been given without their notice: so it is not possible that it was given before they came in; and is it probable it was given after they came in? If you can imagine this, you must conclude that he is the most foolish man in the world; to take this opportunity when these men were in his house—such a course would appear to me very extraordinary. In such cases, where a point depends upon a mere probability, it is a dictate of mercy, and it is laid down as a dictate of law, to be in favor, rather than against the prisoner. Now, if it was not administered before she went up stairs, when was it administered? She went up while these men were in the house, and came down after they went out with her husband, and he had not been up stairs at all—it does appear to me from the circumstances, that you cannot conclude he gave the medicine before she went up stairs. It is in testimony that she was taken sick up stairs, whilst her husband was out the door, and that she came down in great agony and placed herself on a chest, and sent out for her husband to come in and give her some medicine, for she said she had got the cholic. She sends for her husband to come and give her medicine—is it probable that she would have done this, if he had administered any thing before she went up stairs, which had produced this illness? No, she would have said, I will have no more of your medicines. This, gentlemen, is the origin of this business; and I have the most perfect confidence to believe you will never conclude, that any medicine was given, before this woman was taken sick. It appears that three pills were given to the woman, by the prisoner's own acknowledgment; but is it probable that he administered poison in these pills, taken from a cup, which he kept always exposed to every body about the house? There was some castor given, and that was the first thing given her after she came down: it was a hard substance; he shaved it off and gave it to her—we have no evidence that this contained poison. With respect to the pills—there is nothing attending the administering these pills, which would render it probable that they contained poison. Well, if there is nothing in these circumstances to induce you to believe the woman's sickness was produced by the medicines she had taken, we will proceed to see how the facts stand afterwards. You are told that this woman

continued in great pain, with but little abatement except at short intervals; and Mrs. Lucy M'Kay says that she discovered no difference in the symptoms of this case, and the turns of cholic to which she had been accustomed; only in their continuance. On Monday morning it appears that some medicine was given; the circumstances of which have been related by Miss Leonard —but there is something in her testimony, which appears to carry a kind of coloring with it. She says that he was partly behind the door, so that she could not see him distinctly when he was preparing the medicine. I think there is another circumstance which goes to reduce the validity of her testimony; and that is, with respect to the water-melon which she says was taken from the mouth of Mrs. M'Kay; in which point she differs materially from Dr. Cook. She says her mouth was crowded full of it, and that he took it out—he says that he took but a single seed from it. This shows that her testimony ought not to be fully relied on. It is probable her recollection has failed her; for she appeared to testify with a good deal of candor. There is one fact, which I think very favorable to the prisoner; and that is, that the woman, after taking the medicine on Monday morning, continued to be better all day; which could not have been the case if it had contained poison—instead of growing better, she would have grown worse. I think from these circumstances, we have great reason to believe that if poison was given at all, it was given in the laudanum.

Mrs. Barnard has been examined—the witness on whom the people place their main reliance—her testimony, however, I think ought not to be relied on: there is something attending the manner of her testifying, which has given, in my mind, an unfavorable impression to the whole of her testimony. She states that she went into the house and spoke to her sister immediately, and said, you have got the cholic worse than common—a mere fabrication, to show that from the commencement, she was worse than was common with the cholic. She says M'Kay was about giving some medicine out of a cup, and that she had herself taken medicine from the same cup, without injury; yet you hear this woman telling him not to give it, because it would injure her. Why should she suppose this medicine would injure her sister, when it had not injured herself? She says, that one of the young M'Kays urged his father not to give it; but he does not recollect it. And, gentlemen, she is particular to tell you, that this woman, after taking this butternut physic, went immediately into convulsions; meaning by

this, that you should infer, that it was poison—and she goes so far as to tell you, that she advised her sister not to take any medicines from her husband. Another circumstance goes to show, that she was determined to give a colour to this business, which was not warranted by the true state of facts. She says she went over about nine o'clock—that she staid about an hour, and then M'Kay started for Dr. Luther—this she insists on; although the other witnesses tell you that he started about twelve o'clock, and came back about day. She does not deny that he was willing to go for the doctor, which would not be a very natural course if he had been giving poison. In the very outset, there are some circumstances which I think very material in favor of the prisoner. Soon after she was taken sick, he sends Daniel, his son, after Mrs. Barnard, a sister to his wife, and the same night sends for a doctor; and all this in the first stages of her illness.

If he had been guilty, he must have known that they would endeavor to investigate the subject. We find on Tuesday morning he directs his son to go for Doctor Shull; knowing him to be a skilful man, he wanted him to attend his wife. They have endeavored to show on the part of the prosecution, that instead of trying to procure a physician, he used every subterfuge to avoid it. The son tells us, that his father directed him to call on Doctor Shull, and get him to come as quick as possible. Doctor Shull does not come—M'Kay starts himself, and on the road meets Mr. Doty, and tells him that he is in a great hurry, that he expects to meet Doctor Shull on the road, &c.

Now, is there any thing in all these circumstances, which militates in the least against the prisoner? He goes on to Dansville and sees his son, who tells him that Dr. Shull was gone, and would not return till noon. He then goes to the blacksmith to get his horse shod: while waiting for his horse to be shod, he is informed of Doctor Cook—he engages Doctor Cook, and the moment his horse is shod he starts with him for home. Doctor Cook tells you that they started pretty fast at first, and rode tolerable fast three or four miles, and then M'Kay fell back. He says further, that M'Kay got off and went into the woods to get some roots, or herbs, which he said were useful medicines. He was probably gone fifteen or twenty minutes. These are, in my opinion, very faint circumstances towards convicting this man.

I will now call your attention to the motives, which induced this man to murder his wife. You will be told by the counsel

for the people, that M'Kay and his wife did not live agreeably together. I believe it is not an uncommon thing for some husbands and wives to spar a little occasionally. I think it does appear that she was a turbulent, scolding woman: but what are his acts of violence towards her? You are told that two years before her death, he caught her by the mouth—she was enraged—he ordered her to hold her tongue, and she would not, and he probably thought he would hold it for her. This was two years before her death; and still this is set up as a motive for a man to murder his wife. At another time, it is said, she was sitting near the chimney place—he took up a chair and struck against the mantle-piece twice; he said afterwards he meant to scare her. It is not probable he would strike the second time against the mantle-piece, if he intended to hit her: if he had intended it, he would undoubtedly have succeeded. There are, then, no motives set before you to show, why this man should murder his wife. A great variety of declarations are given against this man—though all trifling in themselves, they are to be combined to make out his criminality. One is, that he said, there might be arsenic in the stomach; but if it was there, he did not put it there. One witness states, that he said, if it was there, it was a query who put it there. Witness asked him if it was not a comfort to him—he said it was: but he did not say it was a comfort to him that the fact could not be found out; nor does that follow from the nature of the expression. And I apprehend you will not give to his words, so equivocal in themselves, an unfavorable construction; so long as he does not make a declaration directly to criminate himself. Now, what inference is to be drawn from this—that there might be poison in the woman; but if there was, he did not put it there? He knew that they were about to dissect his wife, for the purpose of finding poison there; and it was perfectly natural for him to say, that these doctors in their great wisdom may find it there; but if they do, I did not put it there: and yet, you will be called on by the counsel for the people, to believe that he did put it there. I will read to you a passage of law on this subject. I read it to show, that men under suspicions of this kind, when they are accused of a crime, and when every eye is upon them, will say and do things foolishly; and that unless their acts are decidedly against them, no attention ought to be paid to them.

"We readily recognise all the general truisms, and commonplace observations, as to the confidence of innocence, and the consciousness of guilt; but we find, from history, that inno-

cence loses its confidence, when oppressed with prejudice ; and that men have been convicted of crimes, which they never committed, from the very means which they have taken to clear themselves.

" An uncle who had the bringing up of his niece, to whom he was heir at law, correcting her for some offence, she was heard to say, ' good uncle, do not kill me ;' after which time the child could not be found ; whereupon the uncle was committed upon suspicion of murder, and admonished, by the justices of the assize, to find out the child by the next assizes ; against which time he could not find her, but brought another child, as like her in person and years as he could find, and apparelled her like the true child ; but on examination she was found not to be the true child. Upon these presumptions, (which were considered to be as strong as facts that appear in the broad face of day,) he was found guilty and executed : but the truth was, the child, being beaten, ran away, and was received by a stranger ; and afterwards, when she came of age to have her land, came and demanded it, and was directly proved to be the true child."

The above case was referred to by Lord Mansfield, in his speech in the Douglas cause, as an illustration that forgery, and falsehood itself, has been sometimes used to defend even an innocent cause. " It was no uncommon thing," he observed, " for a man to defend a good cause by foul means, or false pretences."

Now, whether the fact was, that he supposed there were persons prejudiced against him, or not, I think his conduct is very easily accounted for. Now, gentlemen, if this be so, these declarations made by M'Kay respecting the probability of their finding arsenic in the stomach, at a time when he was agitated by the nature of his situation, when his wife was about to be disinterred, the doctors standing round with their knives, the suspicions of the world fixed on him, were such as might reasonably be expected from the most innocent man in the world. It would be unreasonable to expect a man, at such a time, to conduct with that calmness and correctness which he would on other occasions. These, gentlemen, are all the observations which I feel it my duty to make on this occasion; I therefore submit it to the counsel associated with me. But I beg you to remember the maxim that I have repeated to you, that it is better for ninety-nine guilty persons to escape, than for one innocent man to suffer. And also the maxim, that when the penalty is so severe, when the life of a fellow citizen is at stake, and from

which, if you give a verdict against him, the prisoner cannot escape, that you demand proof the most positive and decisive—such proof as leaves in your minds not a doubt of the prisoner's guilt.

After Mr. Matthews closed his address, Mr. Hulbert read to the jury the following passages from the first volume of M'Nally on evidence.

It may at this day be considered a rule of law, that if a jury entertain a reasonable doubt upon the truth of the testimony of witnesses, given upon the issue, they are sworn well and truly to try, they are bound in conscience to deliver the prisoner from the charge found against him in the indictment by giving a verdict of not guilty.

Sir Edward Coke, in favor of life, exhorts juries not to give their verdict against a prisoner, without plain, direct and manifest proof of his guilt, which implies, that where there is a doubt, the consequence should be acquittal of the party on trial.—Page 2.

Therefore, whenever the evidence warrants the observation, the judges consider it an indispensable duty in charging the jury, to remind them, that as they are entrusted with the administration of public justice on the one hand, and with the life, the honor and the property of the prisoner on the other, their duty calls on them, before they pronounce a verdict of condemnation, to ask themselves whether they are satisfied, beyond the probability of doubt, that he is guilty of the charge alledged against him in the indictment.—Page 3.

Mr. Hulbert also read the following passages from Cooper's Medical Jurisprudence.

There is no situations in which the general malignity of popular clamor is more conspicuous than in those of supposed murder; no sooner is a person suspected, than the rumor of it rapidly spreads, and as it flies exaggerates every circumstance that may tend to criminate the unhappy culprit. To young practitioners those are esteemed favorable occasions for displaying their medical discrimination, and attracting public attention; opinions are hastily promulgated, generally contradictory, often absurd, and frequently grounded on suppositious facts. The consequence is, that the accused is publicly condemned before he is judicially tried, and falls at last, perhaps an innocent victim to popular prejudice.

There is not, I will affirm, on record a more melancholy and striking instance of the unhappy effects of popular prejudice, and the fatal consequences of medical ignorance, than the case of Capt. Donnellan, who was executed in England, about ten years ago, for the murder of Sir Theodosius Boughton. It appears that eight or nine days after Theodosius was buried, a surgeon had the body raised, although it was in the month of June, and proceeded to the dis-

section, notwithstanding a physician and another surgeon present declared that, from the putrid state of the body, no information could be obtained on which any opinion could be grounded, respecting the cause of death ; that such an investigation was even attended with much personal danger. Yet, regardless of this joint opinion and advice, the first surgeon proceeded in the dissection, saying, that to him such a subject was rather a *posy ;* and decidedly gave his opinion, that Sir Theodosius died of poison ; nor could the testimony of the celebrated John Hunter, who swore it was impossible to investigate the cause of death in such a state of general putrefaction, do away the impression of the first evidence, on either the mind of the judge* or jury ; for the first, in his charge, opposes to the opinion of Hunter, which he says he can call but a doubt, the positive declaration of the first surgeon who opened the body, and of some physicians, that the deceased died of poison. Now Hunter's opinion was positive as to the physical impossibility of deciding on the cause of death, and only doubtful, when interrogated as to the administration of poison. In this country a case not long since happened, where the medical men concerned, decided that a man died of poison ; and I have very good reason to believe his death happened in consequence of a rupture.—The unfortunate accused in both cases were convicted, and suffered an ignominious death, for crimes they both at their dying moments, in the most solemn manner, denied.

No stronger instances can be adduced of the fatal and melancholy effects of popular prejudice, when joined with medical ignorance. From this it appears how necessary it is for surgeons to avail themselves of every opportunity that may tend to improve them in practical anatomy, by which they will acquire a knowledge of the natural appearances of the contents of the different cavities, and when called on, be able to discriminate with accuracy between a sound and diseased state of the parts, and not mistake those changes which take place after death for morbid appearances, a circumstance that I have known sometimes happen to experienced surgeons not used to dissection.—Pages 86, 87, 88.

We should distinguish between those bloody suffusions and putrid distentions which always rapidly take place after sudden death, in full habits, from those that may arise from contusion or disease. Those are circumstances that require the utmost caution in the surgeon, for people not used to inspect dead bodies are very apt to be struck by such appearances, and instantly decide that the person's death was caused by some injury.—Page 89.

As to the appearances of inflammation and gangrene, all who are conversant in dissections, know that they indicate the commencement of putrefaction as frequently as the effects of disease. There is hardly a stomach of those who die of short illness, that does not present suffused spots ; the gastric juice often acts on the stomach as a solvent, after death, and from this cause the stomach has been found eroded in different parts, as if acted upon by some of the mineral poisons, which by the ignorant may be taken for morbid

* The judge is always considered as the advocate of the prisoner ; in Capt. Donnellan's case, he seems to have acted as lawyer for the crown. The bar was of this opinion. The judge was Buller. T. C.

appearances ; I therefore am decidedly of opinion, that unless arsenic is found actually in the stomach, all the other marks of its having been administered, are extremely equivocal, and should be of no weight in determining on a point of so much consequence, and where, should any mistake arise, the accused person may suffer an ignominious death.

Juries, therefore, in all cases of suspected poison, in forming their opinion, should attend more to the other circumstances that may occur in the course of the trial, than to the report of the surgeon ; all medical opinions in those cases being more frequently founded on mere conjectures, than real facts, are little to be relied on.*—Page 99, 100.

The body should be inspected in the presence of other surgeons, and the appearances noted down on the spot ; and however suspicious they may be, we should bear in mind the possibility that the same effects being produced by very different causes, and where there is the least doubt, be careful that our evidence does not tend to attach suspicion to an innocent person. We ought to bear in our minds the maxim, that it is better that many guilty escape, than one innocent man suffer ; and where the evidence is not satisfactory and conclusive, we should deliver our testimony in favor of the suspected person. A medical man should found his evidence only on *demonstrative* proof ; for his declaration, whether founded on experiment or not. is assumed by the jury as a fact, merely on his authority as a professional man.—Page 119, 120.

Unless all the different viscera are examined, it is doubtful how far surgical evidence is admissible in a court of justice. We should be careful not to give an opinion that a person has been poisoned, without being able to produce irrefragable evidence of the fact.—Page 128.

Arsenic does not act chemically, as a caustic, either on living or dead animal matter.—Page 151.

Erosion of the stomach from this cause (arsenic) is seldom seen ; but "there are few stomachs," says Mr. J. Hunter, "which are not at the great end, in some degree, digested after death ;" but these instances have occurred almost only in those persons, who, while in good health, have died suddenly from accident, apoplexy, hanging, or the like. It is possible a case of this kind might be mistaken for the effect of poison.

I have been present at the dissection of a woman, who took a quarter of a pound of arsenic in coarse powder, which killed her in four hours ; but there was no erosion ; nor should erosion alone, if discovered, be deemed a proof of poison having been taken ; it may be the effect of suppuration.—Page 158.

In a capital case I should not like to convict on a shade of color.—Page 423.

The public journals acquaint us with the opinion of Dr. Brande, of the royal institution of London. occasioned by a trial in Cornwall. He says that the yellow precipitate, which white arsenic produces in a solution of nitrate of silver, exactly resembled that which *phosphho-*

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* No appearances whatever amount to proof of poison, but the exhibition of it in substance, or the *decided* appearances produced by chemical tests, a physician, who is not a chemist, deserves to be reprimanded for ignorance. T. C.

ric acid occasions, and that both are soluble in ammonia. Mr. Brande concludes, that in any case of importance no reliance should be placed on the above test.—Page 425.

The only thing to be relied on in the opinion of the best chemists, is the *exhibition of the metal itself in its metallic lustre and state.*

A given quantity of the white powders is to be mixed with three times its weight of black flux, and carefully put into a tube of thin glass, eight or nine inches long, a quarter of an inch wide, and coated at its lower end, which should be hermetically closed, for one or two inches. The upper end should be loosely stopped, and the coated end placed upright in a chaffing-dish of red hot coals. In a little time, if there be arsenic in the tube, it rises with its metallic lustre; and adheres to the side of the tube. The tube should be broken as soon as cool; and the reduced metal laid on a hot iron; a dense smoke then arises, and a smell of garlic is perceived.

The arsenic might next be further identified by putting a small quantity between two polished plates of copper, surrounded by powdered charcoal, and exposing them to a low red heat. If the included substance be arsenic, a white stain will be left on the copper. In this way every part supports another, and there is no possible ambiguity.—Page 426, 427.

Beside the above processes of ancient date among chemists, endeavors have been used to detect arsenic, by forming Scheele's green arseniate of copper, but the juice of onions added to sulphate of copper, will produce a green color, hardly distinguishable from some of the usual shades of Scheele's green —Page 432.

In the month of May, 1809, Mr. Hume, of Longacre, announced in the Philosophical Magazine of that month, the nitrate of silver as a test of arsenic. Recommending a solution of lunar caustic in distilled water, and a solution of the arsenic in sub-carbonate of soda. In a paper of May 14, and of July 13, 1810, inserted in the London Medical and Physical Journal, he proposes converting the arsenic into an arseniate of potash. He published experiments on these his proposed tests. in the Philosophical Magazine, Oct. 14, 1812. Afterwards Doctor Marcet, an excellent chemist, proposed joining the alkalies of potash or ammonia, to the nitrate of silver. Thus, to a solution of white arsenic in distilled water, add a few drops of sub-carbonate of potash, and then a small portion of nitrate of silver; or to such a solution of white arsenic in distilled water, add by means of a glass rod, a drop or two of a solution of nitrate of silver, and then a drop of common carbonate of ammonia; in either mode of performing the experiment, a bright yellow precipitate will be formed. After this, Mr. Hume, in the Medical and Physical Journal, and in the Philosophical Magazine, August 9 and 10, 1812, published experiments on the utility of this combined test.

In the annals of Philosophy, however, vol. 7, p. 236, and vol. 8, p. 153, the accuracy of this test is brough into doubt. Mr. W. Philips, in a letter to Doctor Thompson, in the book and page last cited, speaks as follows:

"In the annals of Philosophy, vol. 7, p. 236, you also mention that the experiment of a student at Guy's hospital. had occasioned a doubt whether the yellow color of arseniate of silver is sufficiently characteristic of that substance, to prevent it being confounded with phosphate of silver."

"I have made many comparative experiments on the subject, and I am warranted by the results, in asserting that it is impossible, in many cases, to distinguish arseniate from phosphate of silver. I do not mean to deny, that by special management, those who are previously acquainted with the nature of the substances on which they are experimenting, may produce slight shades of difference; but whilst engaged in investigating the subject, I repeatedly obtained without any care as to proportion in either case, precipitates of arseniate of silver and phosphate of silver, which so perfectly resembled each other, that to distinguish them was impracticable; consequently it seems to me, that silver can no longer be admitted as a test of the presence of arsenious acid, without the corroboration of additional evidence. I ramain, &c."

R. PHILIPS. *Pages* 432, 433.

I consider (says Dr. Cooper,) Mr. Hume's test, expecially as improved by that judicious and very able chemist, Dr. Marcet, as a very valuable mean among others, to detect the presence of arsenic. Still, however, great doubt hangs over this and every other test, the sublimed metal excepted.—Page 439.

Under these circumstances of doubt and difficulty, as to the exhibition of arsenic, and the evidence of its presence, the jury ought to require either the actual production of metallic arsenic sublimed in a glass tube, or some satisfactory reason why that test is not exhibited. Such a reason may be the smallnes of the quantity, and its entanglement in the coats or contents of the stomach. But where death arises from the exhibition of arsenic, many grains have probably been taken.—Page 442.

After reading the foregoing extracts, Mr. Hulbert proceeded to address the jury in substance as follows.

Gentlemen of the Jury.

Life and death are now in your hands. The verdict, which you shall this day give, will restore to liberty and light, or will consign to an ignominious grave, one of your fellow beings.—Could I for a moment believe that the evidence in this case would require you to condemn this long suffering and unhappy man, I should consider your condition painful and distressing in the extreme; for surely nothing could be more afflicting to men of feeling and benevolent hearts, than to be obliged to perform even the sacred duty, which, under such circumstances, the laws of their country, and their oaths, would enjoin. But when I reflect that this important and interesting case will afford you a just and proper opportunity to indulge the best feelings of your nature; that you will now have the delightful privilege of wiping away the tears and terminating the sufferings of a miserable man, I cannot but think your situation most enviable and happy. For where can felicity be found on earth, equal to that, which must spring from the blessed employment of giving joy to the wretched? It has been said, that the most glorious and desirable attribute, even of the Deity himself, is the power of wiping away all tears from all eyes.

Gentlemen, the prisoner stands charged with one of the blackest and most attrocious crimes. that ever stained the history of human guilt. He is charged with murder ; yes, with the murder of his own wife ! I know you must be struck with horror at the very mention of this accusation ; but while you shudder at the thought of such a crime, remember that the improbability of its having been committed is in direct proportion to its enormity ; and that the strength and clearness of the evidence, which should be required for the conviction of the accused, should be in the same proportion.

I am fully aware of the peculiar and painful embarrassments, under which the prisoner comes before you. It is now almost two years, since he was first arrested and committed to prison, upon this charge, a thousand injurious reports were instantly in circulation against him. and popular prejudice pronounced him guilty. During this state of public excitement, he was brought to trial, and condemned by a jury of his country. He was afterwards carried in chains to the capital of your state, and exhibited to thousands, as a convicted felon. In a word, he has been pronounced a cold blooded murderer, " till with his tainted name the winds grow sick."

You have been reminded by the learned counsel for the people, that there is an all seeing Providence, that drags the guilty to punishment, even in this world. Gentlemen, it is truly so ; and it has been justly remarked by my learned friend and associate counsel, that that same Providence shields and protects the innocent. Yes, it is that Providence, that refused a seal to the conviction of this man ; saved him from the verdict of the former jury, and now allows him to hope for deliverance and joy at your hands.

Gentlemen, you will not participate in the public prejudice against the prisoner. You will try him upon the evidence alone, which you have now heard. It has been said by a celebrated writer, that every criminal prosecution may be considered the war of a nation against an individual. You will take care that you guard with watchful jealousy the rights of this man ; you will not deliver him over to the vengeance of the law, until the people shall produce the most indisputable proof in support of their accusation. You have heard the sentiments of Sir Edward Coke. They are such as might have been expected from that great and learned judge. In favor of life, he exhorts jurors not to give their verdict against a prisoner, without plain, direct and manifest proof of his guilt. And it is a maxim, holden sacred in all our courts of justice, that no one shall ever be condemned, so long as a reasonable doubt of his guilt can be entertained.

I come before you the advocate of one who has always trodden the humble walks of life ; one who has neither riches nor power. I rejoice, therefore, in the confident belief, that you look upon the whole race of man, as belonging to one great family, and that the very face of a human being in distress cannot fail of being a passport to your hearts. You will not believe, that because this man is poor, and of humble condition, he has no heart-strings to quiver at the touch of distress ; nor will you

believe, that his existence is of no importance in his own view. "As in looking upward, each beholder thinks himself the centre of the sky, so nature has formed her individuals, that each must think himself the centre of being."—And who stands alone, in this world? Who shall go down to infamy and despair, and drag not with him others, who are indissolubly bound to him by "the link of nature"? You see crowding around this unhappy man his affectionate kindred, waiting, with throbbing hearts, your all-decisive verdict. I rejoice that his conduct in life has been such, as to endear him to them; and that those who know him best cannot believe him guilty of the foul crime, which is charged upon him, but cling to him at this critical and awful hour. I rejoice in the hope, that your verdict will soon give him back to those who love him.

Gentlemen, the great and important question, which you are first to decide, is whether the deceased came to her death by poison. If you shall have any doubts on this point, if you shall not consider the evidence perfectly clear, and irresistibly conclusive, you will be bound by your oaths, and by all the sacred principles of humanity, to acquit the prisoner.

It is true, that the physicians, who have testified on behalf of the prosecution, have pronounced a decided opinion, that the death of the deceased was caused by arsenic. And they declare that they ground their opinion upon the experiments, which they made upon the contents of the stomach, and the matter found on the liver; upon the symptoms, which attended the disease; and upon the appearances of the body, after death.

It will be necessary to consider the several grounds of their opinion.

I deny that the tests used by these physicians, even if tried with the utmost skill and precaution, could afford any conclusive evidence of the presence of arsenic. And I assert, that the experiments were made in a very unskilful and defective manner.

In their first experiment, they endeavored to use the test recommended by Doct. Hume, of London. This test is, undoubtedly, an ingenious one, and may, in the hands of skilful men, to use the language of Doct. Cooper, be a very valuable mean, among others, for the detection of arsenic. But it has been found that the yellow precipitate, on which the inventor of the test relied, as certain proof of the presence of arsenic, may be produced by other substances, as well as by that poison. And this test has been examined by some of the most learned chemists of the age, and pronounced to be fallible and unsatisfactory.

I will consider the first experiment, as it has been stated by the physicians. To use their own language, one grain of sal soda was put into four ounces of cold water, a small quantity of the suspected matter, taken from the external surface of the liver, was added, to which was put a small quantity of the nitrate of silver A bright yellow precipitate appeared.

I acknowledge that it struck me quite ludicrously, that they should have gone to the liver, to look for arsenic, which was taken into the stomach. They have, however, attempted an explanation. How well they have succeeded, will be for you to determine. They say the lower part of the stomach was much

corroded, and had many holes in it, and they think the arsenic must have passed through these holes, and fallen upon the liver. Unfortunately for the cause of truth, these gentlemen adopted the notion that arsenic operates on animal matter, as a caustic. They began the examination of the body expecting to find poison. The moment they found the inner coats of the stomach destroyed, and the outer one perforated, they took it for granted that these were the effects of arsenic, and when they discovered the matter on the liver, why, of course, it was that accursed poison for which they were looking, and which had eaten its way through the stomach. Now, I have shewn you from the highest authority, that arsenic does not act as a caustic on animal matter, and that it could not have perforated the stomach, in the manner described. Undoubtedly, these appearances of the stomach were produced by the natural process of dissolution, the deceased having been dead eight days. From the testimony of Dr. Noyes, it must be manifest to you, that he does not believe that any arsenic was found upon the liver. He thinks it possible that it was the phosphate of lime, which was found there.

There are many objections to this experiment. Instead of sal soda, the alkalies of potash, or ammonia, should have been used. This improvement was discovered by Dr. Marcet, and was long since adopted and recommended by Hume himself. It was either not known to these witnesses, or they were extremely careless and neglectful, in not using it. There is no evidence that the sal soda and the nitrate of silver, which were used, were not impure. Dr. Noyes says that they ought to have been tested, and their purity ascertained ; and he informs you, that the fluid suspected to contain arsenic should have been filtered, before the test was applied. But these precautions were wholly omitted. You learn from Doctor Patchen, that the composition, which they boiled, was not suffered to stand until it was *cold*, before the nitrate of silver was applied. This witness says, it was allowed to stand a few minutes, and was *cool*, but not *cold*. Now, Hume directs that care should be taken to have it *quite cold*.

But a still more gross and dangerous departure from the instructions of Hume is manifested in their not making use of distilled water. It is considered indispensibly necessary that the water should be pure, and perfectly free from all coloring matter ; and it is, therefore recommended, not only by Hume, but by all good chemists, that the water should be distilled. Yet these witnesses, in a case of the highest importance, could be satisfied with water, which was taken from a cistern, with all the impurities, which would be washed from the roof of the building, and which might get into it in many other ways.

Can it be possible that these men can expect, or wish, that you should have any confidence in this experiment ? Are they not conscious that they have committed errors ? And do they not know that a single error might prove fatal to an innocent man ?

But what result was produced by this experiment ? They tell you that a bright yellow precipitate appeared. I deny that this can afford any clear evidence of the agency of arsenic, since there are other substances, that may produce a like result. It

has already been shewn to you from Doctor Cooper's publication, that phosphate of soda will produce the same colored precipitate, as will be made by arsenic; and you find it asserted by high authority, that this substance is always to be found in greater or less quantities, in the human stomach. Doctor Noyes is of opinion that not only phosphate of soda, but phosphoric acid, and most of the alkaline and earthy phosphates, might be found in the stomach; and he tells you that these substances are considered capable of producing a precipitate strongly resembling that which is effected by arsenic; and that the shades of color might be varied by coloring matter in the stomach. It also appears from the statement of this witness, that the gastric juice, even when taken from the stomach of a healthy person, and separated from all other substances, will precipitate the nitrate of silver. And who can say that a precipitate, so formed, might not, in the case we are considering, have received a bright yellow color from the impurity of the water used in the experiment, or from some coloring medicine, food, drink, or other matter taken into the stomach of the deceased, or formed there?

You will bear in mind, that in these experiments with Hume's test, different shades of yellow were exhibited. If the test is infallible, and the experiments were properly made, how came these differences?

You are told that in the two next experiments, the matter taken from the internal surface of the stomach, and from the œsophagus, or windpipe, was tried, and that a *dead* yellow precipitate appeared. Why a *dead* yellow? Do these physicians wish you to understand that so much of the arsenic had escaped from the stomach, and lodged on the liver, that there was not enough left to produce a *bright* yellow precipitate? They think the matter they found on the liver was arsenic in substance. It is well known, that where that poison is taken in substance, it is found adhering to the coats of the stomach; and it is idle to suppose, that if enough had been given to the deceased to produce death, there would not be sufficient left in the stomach for a full and fair experiment. Doctor Hume thinks that a mere atom of arsenic, the very fraction of a grain, would be a valuable acquisition for evidence. Gentlemen, I think the different shades of color, which have been mentioned by these physicians, cannot fail to satisfy you of the fallibility of the test they used, or of the experiments they made; and they must forcibly remind you of the declaration of Doctor M'Neven, which I have read to you, that in a capital case, he would not like to convict upon a shade of color.

Gentlemen, I will dwell no longer on these experiments. I will not doubt that you are fully convinced of their insufficiency. I will hasten to the two which remain, and which were made where the sulphate of copper was used as a test. We need consider only one of them, for we are informed that both produced the same result.

The physicians state, that a small quantity of the suspected matter was added to a solution of sal soda, to which was added a solution of sulphate of copper, and that a beautiful green was produced. They inform you that the composition to which the

test was applied, was not boiled, but that cold water was used. I take their written and certified statement.

If the test be fallacious, the experiments, however accurately made, can prove nothing. And what confidence can you have in this test, when you find that the same result, which is produced by arsenic, may be produced by other substances? Doctor M'Neven declares that he took the expressed juice of onions, and added to it a solution of the sulphate of copper, and that immediately the whole was turned to a beautiful green, not to be distinguished in appearance from that of Scheele's green. And Doctor Noyes testifies that the sulphate of copper added to a solution of the phosphate of soda, produced a color, which the inexperienced might mistake for Scheele's green; and that a little laudanum being added, the resemblance was much increased. You will remember that laudanum was frequently given to the deceased during her illness, and that it is said that the phosphate of soda is always to be found in the stomach. And who can tell how many other substances may be taken into the stomach, or be formed there, which might produce a like appearance? I think you will find no difficulty in coming to the conclusion that this test is an unsafe one, and cannot afford you any satisfactory evidence. But objections do not end here. The experiments were not made in a manner proper to obtain Scheele's green. The materials were not all weighed, and proportioned, and Dr. Noyes informs you that the shades of green would vary with the different quantities of materials used. Potash should have been used, instead of sal soda. The water was not distilled. The composition was not boiled before the test was applied to it; and it was not filtered; and I do not recollect that any attempt was made to free it from coloring matters. The sulphate of copper was not proved to be pure. But these witnesses say they obtained a *beautiful* green. The question is not, how *beautiful* it was, but whether it was Scheele's green. And how could they determine that question? They had never before made any experiment with this test, nor had they seen any made.

You are further told by the physicians, that they tried both tests on real arsenic, as well as on the solutions of the matter taken from the stomach and liver, and that the same results were produced.

Granting this to be strictly a fact, and that the witnesses were not deceived from their want of experience, still it gives you no evidence on which you will dare to rely, when you shall recollect that there are several known substances which, with these tests, will exhibit the same results as would be produced by real arsenic; and when you shall also consider that there is no evidence of the purity of the materials, which were used.

Gentlemen, the latter part of Dr. Patchen's testimony is worthy of special notice. Being asked whether, in a like case with that of the deceased, he would now be content with making only such experiments as those we have been considering, he tells you, that although he should be entirely satisfied himself, yet for the satisfaction of a jury, and of the public, he would now go further—he would endeavor to procure the sublimed metal, the

garlic smell, and the white stain upon copper. This is exactly what he ought to have done, before he should have dared to utter the confident opinion, which you have heard him express.

This witness admits that there is a difference of opinion among learned men, respecting the tests which were used in this case. Certainly, then, this is enough to shew you that implicit confidence in their proceedings would be improper and dangerous. Who shall decide when doctors disagree? You will never give your verdict against the prisoner upon doubtful evidence.

A single fact, stated by Dr. Patchen, is quite sufficient to prove the indiscreet and precipitate manner in which these physicians proceeded. He acknowledges that they had copper plates prepared to try the suspected matter, but tells you they were so perfectly satisfied with the experiments they had made, that they thought it useless to go any further.

It is not a matter of the greatest surprise, that these men should have formed a hasty and ill grounded conclusion; it was in some degree to be expected from their want of experience and learning at the time they made the investigation. But I cannot refrain from expressing my astonishment, that after the opportunity they have now had for examining the subject, they should continue to declare that they have no doubt of the correctness of the opinion which they first formed. I have the consolation, however, of knowing that you, and not they, are to decide the fate of my client.

Let us now attend to the symptoms of that disease, which proved fatal to the deceased, and see if they afford any substantial evidence in support of this prosecution. I do not deny that some of them are such as would ordinarily attend the case of a person poisoned by arsenic. I assert, however, that none of them belong exclusively to such a case, and that they are all common to other diseases: and I assert still further, that several of the symptoms, which are considered as almost inseperable from sickness occasioned by arsenical poison, were absent in this case.

The witnesses say that when she was first attacked, she complained of violent pain in the stomach; that during her sickness, principally in the fore part of it, she puked several times; that she often appeared to be thirsty, and seemed to have a fever, and was frequently quite restless. Mrs. Barnard says that on Tuesday morning, the day of her death, she appeared to be blind, deaf, speechless and deranged. And that before death, she discovered dark red spots on her hands and shoulders. Miss Leonard tells you that on Tuesday afternoon, she noticed large bluish spots on the face and arms of the deceased, and thinks she saw some on her legs, and says her hands were very blue. Dr. Cook saw the patient about two hours before her death. He testifies that he found her speechless; that her extremities were cold to the body; that she was in a cold sweat; that her tongue was somewhat swollen; that she was restless, and manifested a prostration of muscular strength; that her countenance was very ghastly, and her fingers had a dark livid appearance, such as he thinks is usual at dissolution.

If my recollection be correct, these are all the symptoms, of any importance, which have been mentioned by the witnesses.

Gentlemen, I will frankly acknowledge, that my heart has failed within me, when I have seen you, after listening to the story of this woman's distress, turn your eyes upon my unhappy client. I knew that you could not but be overwhelmed by a torrent of feeling, and I feared that the first impulse of your nature might hurry you into indignation against the accused, without your even waiting for evidence of his guilt. But my strength and confidence returned, when I considered that your verdict would be the result of cool and deliberate judgment; that you would reflect that pain and death are the lot of humanity, and that while you should feel for the sufferings of the deceased, you would take care to demand the most unquestionable evidence of the guilt of the accused, before you would add to the sum of human misery, by giving him over to infamy and death. Yes, the lot of this woman is the lot of all! Where now are many of those whom you have loved? Gone, through the agonies of death, to the repose of the grave. Like the visions of enchantment, they have passed away; like the clouds of the air, they have gone by you, and will be seen no more.

Pardon this digression. I will return to the point which I was considering, and will endeavor to show you that the symptoms which have been mentioned, can afford nothing like satisfactory proof that the deceased was poisoned.

A prominent symptom, which attended the case of the deceased, was severe pain in the stomach. It is undoubtedly true, that this might be the effect of arsenic; and it is equally certain, that it might spring from many other causes. It would be found in violent cases of bilious and hysteric cholic, in cholera morbus, and other diseases. But it appears that the deceased was always afflicted with severe pain in the stomach, when she was assailed by that disease, which she and the family usually denominated bilious cholic; and I think that this single fact must be amply sufficient to shew you that no reliance can be placed upon this symptom, as proving the agency of arsenic.

And what evidence of the action of this poison is afforded by the symptom of puking? This is laid down by medical writers as ordinarily attending severe cases of cholic, and a diversity of other complaints. It may arise, says Dr. Noyes, from fear, anxiety, pain, and a great variety of causes. And your own observation must satisfy you of the truth of this remark. I do not deny that vomiting would almost certainly be produced by arsenic taken into the stomach. Dr. Noyes tells you that violent and continued puking is produced by this poison; and Dr. Cooper's publication informs you that the action of mineral poisons induces incessant vomiting. But far different was the case of the deceased. She vomited but rarely; and, if I have understood the witnesses, not more than five or six instances were seen during the whole of her sickness. Mrs. Barnard went to the house on Sunday evening, and remained with the deceased until after breakfast on Monday morning, and does not recollect more than one instance during that time. When you consider that this symptom did not appear with the frequency

and violence always to be expected where arsenic is the cause; and that it is common to a variety of diseases, surely you will not allow it any weight on a trial where life depends upon your verdict.

It is said that thirst and restlessness were manifested by the deceased. And who has not often witnessed these symptoms in others? Gentlemen, I strongly suspect that there are very few, if any of you, who have not, in the course of your lives, experienced these distressing sensations. They are the inseparable attendants of fevers, and various diseases. You will recollect that Betsey Leonard says, that the deceased could not be satisfied with warm drinks, and that she appeared to have a fever. And medical authors mention thirst, as a symptom of bilious cholic.

Mrs. Barnard says, that when she went to the house on Tuesday morning, the deceased appeared to be just dying; that she was blind, deaf, speechless, and deranged. How the witness discovered that a person, who was blind, deaf, and speechless, was also deranged, I will not stop to inquire. But I will remind you that this was the day on which the deceased actually died, and I will appeal to you whether it could be any thing extraordinary, if all those symptoms appeared at a time so near the dissolution of the patient. I cannot find that either blindness, deafness, or loss of speech, is considered as a characteristic effect of arsenic; and Dr. Noyes tells you, that they are not symptoms of that poison. But Dr. Male expressly declares, and the declaration is sanctioned by the authority of Dr. Cooper, that delirium, or loss of reason, is seldom a consequence of the action of arsenic, and that the unfortunate person is conscious until a few moments before the termination of his existence.

Mrs. Barnard says, that before the death of the deceased, she discovered dark red spots on her hands and shoulders; and Betsey Leonard says she saw, on Tuesday afternoon, bluish spots on her face and arms, and that her hands were very blue.

It does not appear that these witnesses were surprised at what they saw. And well they might not be. They knew that the patient was at the point of death, and it is to be presumed that their former observations had taught them that similar appearances are sometimes noticed before dissolution. But certainly these spots or appearances are entitled to no consequence on this trial, for they are not mentioned by medical writers among the symptoms of diseases occasioned by arsenic.

Gentlemen, as I have already remarked to you, Dr. Cook did not see the patient until about two hours before her death. He considered her then dying, and thought it unavailing to administer any medicine. The coldness of the extremities, the cold sweat, the prostration of muscular strength, the ghastly countenance, and the livid appearance of the fingers, which he mentions, are such as you and all of us see in almost every instance of death which we witness. They are the harbingers of death: but they are not the peculiar effects of any particular disease.

This witness says that the tongue was somewhat swollen. I do not deny that this may be an effect of arsenic. It is certain, however, that it is seen in many cases where no kind of poison

has any agency. And where this appearance is produced by arsenic, you may expect to find the face and the extremities of the body swollen; but these symptoms did not appear in the case of the deceased.

Before I leave the testimony of this witness, I think it my duty to take some special notice of a part of his statement, to which I have not yet alluded. He has told you that when he first saw the deceased, hs thought there was something extraordinary in her appearance, and concluded that M'Kay had given her poison, by mistake. He says he asked him, (to use his own language,) what the devil he had given his wife; and that after some hesitation he replied that he had given her pills, the chief ingredient of which the witness understood to be the extract of butternut.

The great discovery, which the doctor made, is still a secret, and probably will for ever remain so; for he has not named a single symptom, or appearance, peculiar to any case of poison, or which may not be seen in many ordinary cases of dying persons. But I think I discover something quite extraordinary in the statement, which he now makes. Being asked whether he testified on the former trial any thing about his suspicion, which he now mentions, he says he does not recollect that he did; and you may be assured that he did not—for had he done it, the counsel for the people would have taken good care to show you the fact. It seems, then, that on the first trial, this matter was of so little consequence in the doctor's mind, that it was wholly forgotten, or was thought not worth mentioning.

Being further asked, to whom he ever communicated his suspicion before this day, after taking some time to recollect, he can name only Dr. Luther, and admits that he never mentioned it to any of the physicians who are now attending this trial. It is certainly somewhat singular, that he should have divulged this matter only to Dr. Luther, who does not live near the witness, and who happens now to be absent; and that he never should have conversed on the subject with any of the physicians who live in his own town, and are his neighbors, who assisted him in dissecting and examining the body, and making the experiments, and who are now present!

We have now, gentlemen, considered the symptoms, which form one ground upon which the physicians, who have been called by the prosecutor, have hazarded an opinion that the deceased came to her death by arsenic. Have they reflected, that many of the acknowledged symptoms of that poison were wholly absent in this case? Has it occurred to them, that there was no swelling of the abdomen, nor of the face, nor of the extremities, no convulsions, no hiccups, no cathartic effects, except what was produced by the butternut physic, no faintings? One would think that the absence of these symptoms, and the reflection that there was not one present, which has not been found in other diseases, would have filled their minds with hesitation and doubt.

But still more feeble and unsatisfactory is the evidence drawn from the appearances after death.

Dr. Patchen informs you that the deceased had been dead

eight days when the body was examined by the physicians. And you will recollect that she died in the month of August. I have read to you the opinion of the celebrated Dr. Hunter, that it is impossible to investigate the cause of death in such a state of general putrefaction, as must take place in so long a time, especially in that hot season of the year; and Dr. Noyes is clearly of the same opinion. You have heard the declaration of Dr. Dease, as published by Dr. Cooper, that unless all the different viscera are examined, it is doubtful how far surgical evidence is admissible. And the same writer says we should be careful not to give an opinion that a person has been poisoned, without being able to produce irrefragable proof of the fact. There is no pretence that in this case there was any attempt critically to examine any thing more than the stomach. There they expected to find the fatal poison, and there they discovered appearances, which satisfied them they need not proceed any further. Dr. Patchen tells you that the stomach appeared to be of a dark color, owing as he supposes, to the time the deceased had been dead. He says, that on opening it, all the coats in the upper part, excepting the innermost one, remained entire, but that in the lower part, all the coats excepting the outer one, were found to be wholly destroyed, and gone; and that the outer coat was perforated, and had holes in it in many places. Dr. Faulkner tells you it had twenty or thirty holes, and looked like net work. These appearances the examining physicians took to be the effects of arsenic. Never was an opinion founded in grosser error. It undoubtedly originated in the wild notion that arsenic acts as a caustic on animal matter. They took it for granted that poison had eaten up all the inner coats of the stomach, and had begun to devour the outer one. Now, we have shewn you by the highest written authority, and by the testimony of Dr. Noyes, which I consider equally high, that this destruction of the stomach could not have been effected by arsenic. And I trust you are satisfied that the appearances, which these physicians saw, were nothing more than the effects of the natural process of dissolution, which, in this case, must have been very rapid, owing to the season of the year, the short duration of the sickness, and the length of time after death. It is a fact well known to those who are accustomed to dissections, and is established by what I have read to you, and by the testimony of Dr. Noyes, that the stomachs of those who die of short illness exhibit, immediately after death, evidence of mortification and putrefaction. The gastric juice, which is given us for the digestion of our food, becomes a powerful solvent after death, and commences the destruction of the stomach. This juice would necessarily be accumulated in the lower part of the stomach, where other offensive matter would be collected, which gives you a sufficient reason why the work of dissolution should commence in that part.

But why should I dwell on this part of the case? Even Dr. Patchen admits that very little reliance can be placed on these appearances after death; and I trust you are convinced that you ought to allow them no influence in determining your verdict.

Gentlemen, we have now seen and examined the several grounds upon which these physicians have pronounced a most confident opinion that the deceased was poisoned by arsenic.

It has always been remarked that the learned and scientific, in their search after truth, proceed with jealousy and great caution, and are unwilling to rest satisfied with any thing short of demonstration; while the unlearned and inexperienced hurry to conclusions, and are satisfied with slight and inconclusive evidence. I cannot hesitate to say, that I think the opinion advanced by the physicians in this case is a strong confirmation of the truth of this remark. Do not understand me to intimate a doubt of the integrity of these men, or to question their respectable standing in community, as physicians, or as gentlemen. But you may understand me as distinctly saying, that I think they were not qualified to make the examination and experiments, which they undertook. They admit that they are almost wholly destitute of a knowledge of chemistry. And it is evident that they have no intimate acquaintance with dissections, and that they know quite as little of the tests necessary to be used, to detect with certainty the presence of arsenic. I aver that without the qualifications to which I have alluded, however accomplished they may be in other parts of their professions, they are wholly unfit to pronounce an opinion, which can with any degree of safety be relied upon in this case. And I venture to predict, that the time will come, when reading and reflection will convince them of the truth and justice of these remarks, and will make them regret the opinion which they have this day given.

You find from what I have read to you, that some of the most learned medical chemists in Europe, after examining the tests which have been relied upon in this case, have condemned them as fallacious and incapable of affording certain evidence of the presence of arsenic; and have pronounced an unequivocal opinion, that nothing ought to be considered satisfactory, short of the exhibition of the arsenic itself, sublimed in its metallic form. I have also shewn you from what I have read, that professors of chemistry in the colleges of your own country fully agree with this opinion. You had the satisfaction to hear Dr. Noyes deliver his own testimony; and you have had the pleasure of hearing his character from the honorable judge on the bench, who has declared him to be a most learned chemist and physician, and a man sustaining one of the most spotless characters, that a human being can possess. Who would not be proud of such a character, from such a man? This learned witness has attended this trial from its commencement. He has listened to all the relations which have been given of the symptoms of the disease, of the experiments made by the physicians, and of the appearances of the body after death, and being asked whether, from all he has heard, he is of the opinion that the life of the deceased was destroyed by arsenic, he tells you distinctly that he should not dare to pronounce such an opinion. He assures you that he has not seen any thing in the symptoms, or in the discoveries made by dissection, which can induce such a belief; and he tells you that he should consider it dangerous to rely upon the tests used in

this case, even in the most skillful and experienced hands; and he has no hesitation in saying that he thinks the experiments were unskillfully and defectively made.

Can you, then, say upon your oaths, that it is clearly and unquestionably proved that the death of this woman was caused by arsenic? No, gentlemen, I cannot believe it possible that you will dare to come to that conclusion. And if the evidence on this point of the case has not forced every reasonable doubt from your minds, the prosecution must fail.

I trust that when you shall have fully considered the evidence which you have heard, you will be satisfied that the same disease, which had often, for many years past, afflicted the deceased, finally caused her death. I do think there are unanswerable arguments in favor of that opinion. It appears that she had been frequently attacked by this complaint in a very violent manner, and that her life had been considered in danger. The witnesses tell you that always when it came upon her, so severe were her pains, that she would scream aloud, and otherwise manifest extreme suffering. She had been twice assailed in this manner within two months before her last sickness, and once not more than three or four weeks before that time. In all probability, this last attack was brought upon her by extreme anxiety of mind, and the excessive fatigue which she endured in traversing the woods in search of her son. You find that she herself considered this nothing more than a return of her old complaint. When she was lying on the chest in distress, and was asked what ailed her, she replied that she thought she was going to have one of her *turns* of cholic, and sent for the prisoner to give her some medicine; and it is an important fact, that he did give her the same kind of medicine, which he had been accustomed to administer to her, when she was afflicted with what she considered the cholic. All the family believed she had her habitual complaint, and through the whole of her sickness never entained a doubt of it. Dr. Luther, who saw her on Tuesday morning, must have had the same belief, for it appears that the medicines he left for her were such as are proper to be given in a case of cholic. And the prisoner, when he spoke of her sickness, uniformly mentioned it as the disease to which she had been accustomed, and gave her caster and butternut pills, as he had always done on former occasions.

It may be asked, if she had survived such repeated attacks, why should she fall a victim to this? Gentlemen, it is a fair presumption that the disease came upon her with increased violence and malignity in consequence of her exposure to the damps of the woods, and of her distress of mind, and extreme labor, while looking for her son. But why need I assign any special cause? Who shall always survive the assaults of disease? "The great wheel of destiny irresistibly rolls on; what mortal might shall grasp the spoke?" The day shall come to us all, when there shall be no physician, no balm in Gilead, to save us. That fated day had come to her. The sun of life was rapidly descending. O, who could arrest its progress, who could stay its course, that it should sink not beneath the horizon! Take care,

gentlemen, that you charge not to the account of my client, that which has been done by a just and overruling Providence.

Let me now go to the other great and interesting question in this case. Granting that the deceased was actually poisoned by arsenic, what evidence is there that that poison was administered by the prisoner? I enter upon the examination of this part of the case with perfect confidence that nothing will be found, that can fix even the slightest degree of guilt upon my client.

In most of the cases, which have come to my knowledge, where convictions have taken place on accusations like this, the prosecutor has been able to shew that the accused had the poison in his possession, at or near the time, when it was supposed to have been administered. But no attempt has been made on this trial to prove that the prisoner had any arsenic in his possession, at any time within twelve months before the last sickness of his wife. And it is extremely doubtful from the evidence whether he ever had any, or even knew what it was.

Dr. Clark tells you that he has a strong impression that he has sold the prisoner arsenic two or three times. He thinks he remembers that the prisoner once mentioned a cancer, and that he said he wanted the arsenic to cure that disease. He knows that the prisoner once bought corrosive sublimate at his store, but thinks it was a considerable time before the prisoner bought the other medicines, which the witness is now inclined to believe were arsenic.

On being cross examined this witness very candidly acknowledges, that he cannot distinctly recollect that he ever sold the prisoner any arsenic; he says it might have been corrosive sublimate. He tells you that the medicine, of which he speaks, must have been bought in eighteen hundred and seventeen, or eighteen.

Now, gentlemen, the account rendered by Clark and Brockway against the prisoner, charges him with corrosive sublimate delivered in March, eighteen hundred and seventeen, which is the time the prisoner had Mr. Doty's horse in keeping, and was endeavoring to cure him of a pole-evil. I do not doubt that the prisoner went to the store of Clark and Brockway after medicine. For it appears that he told one of the witnesses, when speaking of the medicine which he had used to cure a horse of a pole-evil, that he went there once or twice himself, and also sent his son. And you will recollect that Orange M'Kay says he went twice by his father's orders, and got corrosive sublimate, and saw him put it on the sore on Doty's horse. And Mr. Doty himself testifies that at the time the prisoner was attending to his horse, he told the witness that he used nothing but corrosive sublimate. This was long before the last sickness of his wife, and when he could have had no motive to tell any thing but the plain truth.

How strong, then, is the presumption, that the impressions of Dr. Clark are erroneous, and that the articles, which he sold to the prisoner, were in fact not arsenic, but corrosive sublimate!

I will now pass to the testimony of Dr. Brockway. He says that he once saw the prisoner at his store, in eighteen hundred

and seventeen, or eighteen; and is quite confident that he inquired for both corrosive sublimate and arsenic. He admits that he cannot recollect that he then sold arsenic to the prisoner; and thinks he did not purchase any.

I feel no disposition to question, in the slightest degree, the moral integrity of this witness. But I must doubt the accuracy of his recollections. The shortest date, which he has named for the time when he saw the prisoner at his store, is three years ago, and according to his testimony it may be four years. What man, who has not more than human memory, can now with safety swear, that he recollects the identical words used in a conversation, which took place three or four year ago, especially when he had no interest in the subject matter of that conversation? If it be said that his attention was drawn to the word arsenic, on account of its being wanted to cure a cancer, surely that affords no reason why he should, with equal certainty, recollect that corrosive sublimate was also mentioned. You will bear in mind, gentlemen, that this witness was an apothecary, and must have been constantly hearing inquiries made for all descriptions of medicine. How strange is it, then, that he should recollect particularly the uninteresting inquiries made so long ago by the prisoner. It is not the least extraordinary circumstance attending the testimony of this witness, that when he testified on the former trial of this case, he did not mention a word of any inquiries made by the prisoner for either arsenic or corrosive sublimate; and I must say I have heard no sufficient explanation of this apparently strange omission.

Let me now bring to your recollection the testimony of Mr. Gansevoort. He states that in October, eighteen hundred and nineteen, at the time the indictment was found, which you are now trying, he was walking near the gaol door, when the prisoner, to whom he was then an entire stranger, accosted him, and wished to know whether he knew Dr. Clark, adding that he understood that the doctor was going to swear that he, the prisoner, had bought arsenic of him more than three times, and that if he did so swear, he would perjure himself, for he did not get it more than three times—he got it once himself, and sent his son twice for it.

On reflection, this witness says he cannot be confident that the prisoner said he sent his son twice for arsenic; he might have said that he went twice for it himself.

This witness further says, that the prisoner, during this conversation, said something about a pole-evil on a horse, but he cannot distinctly recollect what was said on that subject. On being asked whether he could positively swear that the prisoner did not speak of corrosive sublimate, instead of arsenic, he says he thinks it was arsenic, but cannot be confident.

Gentlemen, I rejoiced to see this witness start back from the position, which he first took. I rejoiced to see him, on being particularly questioned, growing less and less confident that it was arsenic, which the prisoner mentioned. For there is the strongest reason for believing that most of his testimony is founded in gross mistake; that he misunderstood, or does not now correctly recollect, what the prisoner said. Can you for one

moment doubt, that when the prisoner mentioned to Mr. Gansevoort the pole-evil on a horse, he was speaking of the Doty horse? and how forcible is the presumption, that when he mentioned the medicines, which he said he got only three times at Dr Clark's he was talking of the corrosive sublimate, which it is clearly proved he did get to cure that horse! Augustus Partridge has been called as a witness for the people. He was in the room with the prisoner at the time Gansevoort says he had the conversation with M'Kay, and, most unluckily for the prosecution, he declares to you that he never heard the prisoner tell any person that he got arsenic at Dr. Clark's, but that on the contrary, he always said that he did get corrosive sublimate there, and that he did not know arsenic. And sheriff Willson, who was also called by the prosecutor, and who has been the keeper of the gaol, during the whole of the prisoner's confinement, tells you that the prisoner has constantly said that he did not know arsenic.

You will recollect the situation of the prisoner at the time Mr. Gansevoort had the conversation with him. He was then confined in a dungeon, upon the very charge which you are now trying; the body of his wife had been taken from the grave; the physicians had pronounced her poisoned by arsenic; the court of general sessions of the peace had convened; and the grand jury were then investigating this most interesting case. And yet you are now called upon to believe, that under such critical and awful circumstances, the prisoner even sought an opportunity to declare to Mr. Gansevoort that he had gotten arsenic three times at Dr Clark's—the fatal drug, with which, as he well knew, he was accused of poisoning his wife! And this confession made, after he had declared to Dr. Rich, at the time the body was raised for examination, that he never had any arsenic, and did not know what it was; and after he had repeatedly made the same declarations to Mr. Gregory, who was his keeper, and to many others in the hearing of Gregory, at the time the physicians were at Dansville examining the contents of the stomach. Never until the prosecutor will shew me that human nature is treading buckward, will I believe the story of this witness. I will not doubt his integrity, but I will doubt his memory, and I will lament that he laid the scene of his testimony at the prison door of an unfortunate and miserable man.

Mr. Sutliff, a brother of the deceased, has testified that when the prisoner was endeavoring to cure the Doty horse, he told the witness that he had formerly made use of arsenic, to cure pole-evils on horses, but that he had found a better way to manage that disease.

According to the statement of this witness, this conversation must have taken place more than four years ago. How extremely dangerous would it be to rely upon the recollection of a witness respecting a conversation which happened at so distant a period, especially when he can assign no particular reason for its making so lasting an impression on his mind. You will, however, readily perceive, that if full credence be given to the story of Mr. Sutliff, it will greatly discredit the testimony of Mr. Gansevoort; for it is clear that the medicine which the

prisoner said he got at Dr. Clark's and which Mr. Gansevoort understood to be arsenic, was obtained for the purpose of healing the Doty horse ; and yet Sutliff says that at the very time the accused was administering medicine to that horse, he told the witness that he had formerly used arsenic to cure pole-evils, and gave him distinctly to understand that he had abandoned that medicine, having discovered a better one.

There is only one witness more, who has testified on this point of the case ; and it cannot be denied that he has told his story with most disgusting levity. You will easily perceive that I allude to Andrew Wickham.

Being asked what he knew respecting this accusation, in the hurry and flutter of a school boy anxious for his turn to repeat his lesson, he began—I saw the prisoner at the gaol—he told me he never had any arsenic, excepting some he got at Dr. Clark's, at Dansville, to cure a horse—no, (said the witnes) I mistake, he did not mention Dr. Clark—he only said he got it to cure a pole-evil. Gentlemen, what tempted the witness to say that the prisoner told him he got the arsenic at Dr. Clark's, an assertion, which he was obliged the next moment to retract ? What, but an eagerness to testify to something important, no matter what !

This is the man, who told you that the prisoner was dancing at the gaol door, leaving you to conclude, that regardless of the death of his wife, and of the awful accusation resting upon him, and in contempt of all moral decency, he was amusing himself by dancing at the prison door. And yet, on close examination, it appeared that this unfortunate man, chilled with the damps of his dungeon, was merely using bodily exertions, to make himself warm.

Such is the evidence, which has been offered to shew the prisoner's knowledge and possession of arsenic. I appeal to you, gentlemen, whether I was not fully justified in asserting, that there was not a shadow of proof that he had any in his possession, at any time within twelve months before the last sickness of his wife ; and that it was extremely doubtful from the evidence, whether he ever had any, or even knew what it was.

Here let me ask, what evidence is there, that the prisoner administered to the deceased any medicines, or drugs on Sunday, before she was violently sick ? And what medicines, or drugs, were given by him to her during her sickness ? These are important inquiries ; and I will venture to say, that if the testimony on these points be analyzed and carefully considered, it will be found that there is scarcely sufficient to cast a shade of suspicion upon my client. It will be seen that there is no proof of his giving her any thing more than castor, the extract of butternut, peppermint, laudanum, and bilious pills. And it cannot be matter of surprise, that he should administer those medicines, and should be even officious in giving them ; for it is proved that he had long professed to be something of a physician himself ; that he had been in the habit of keeping in his house castor, and the extract of butternut, and by giving those very medicines to his wife, when she was attacked by cholic ; and it appears that peppermint and bilious pills, among other medicines,

were left by Dr. Luther in the charge of the prisoner, to be given to the deceased; and that laudanum was procured at Mr. Miller's after the sickness of the deceased commenced, and was kept for her use.

Gentlemen, I do contend, that it may be assumed as a safe position, and one beyond all reasonable doubt, that if poison was not administered to this woman before she was seen by the family, lying on the chest, in great pain and distress, she never was poisoned, but died a natural death. For it is clearly manifest, that the same disease by which she was first attacked, accompanied by the same symptoms, with only such variations, as the progress of the disease would necessarily produce, pursued her to the grave.

Allow me, then, to state to you a plain history of this part of the case, as it has already been detailed to you by the witnesses.

On Sunday forenoon, the day on which her fatal sickness commenced, the deceased, fearing that her son had perished in the woods, went with Daniel M'Kay to search for him. At the same time, the prisoner went with Casey M'Kay, in another direction, to look for the same boy. The prisoner, learning that the boy was safe at a neighboring house, returned home with his son, who had accompanied him; and soon afterwards the deceased returned with Daniel M'Kay. This was about the middle of the day. A short time after the deceased returned, three men came to the house, to do business with the prisoner. Dinner being now prepared, Casey M'Kay and his two brothers went up stairs, leaving Lucy M'Kay below with the deceased. In a few minutes, Mrs. M'Kay followed. She did not complain of any pain, but appeared to be extremely fatigued. She urged the young men to go down, and take dinner, saying she should not take any herself. They pressed her to dine, but she refused. They then went down stairs, and the family took dinner, the deceased remaining in the chamber. Some time afterwards, while the prisoner was out doors conversing with the three men, who were engaged in business with him, Mrs. M'Kay came down stairs, and throwing herself on a chest, appeared to be in great distress Being asked by Lucy M'Kay what was the matter with her, she said she was afraid she was going to have one of her *turns* of cholic. Casey M'Kay was then standing on the door steps. She spoke to him, and requested him to tell his father to come and give her some medicine. This witness says she mentioned castor. The other witnesses, who were in the the house, do not say that castor was named, but all testify that she sent for the prisoner to give her some kind of medicine. The prisoner being notified of the request of his wife, immediately came into the house, took some castor in substance, shaved off a dose, and gave it to the deceased. This was done in open day, in the presence of three witnesses, who saw him take the castor, saw him prepare the dose, and saw him give it to his wife. All the witnesses in the house say that this was the first medicine, or drug, that they saw the deceased take; that they had heard no mention of any before that time; and are confident that none had been given.

What is there to contradict or impeach, in the slightest degree, the statement of these witnesses? Nothing, unless it be the story of William Bailey. Let us, then, examine the testimony of this man, and see if it will not soon vanish into thin air.

He states that at the time the body of the deceased was taken from the grave, he had a conversation with the prisoner, in which the prisoner told him that he had been in the habit of keeping *tincture* of castor, for the purpose of giving it to his wife, when she had the cholic; that after she had been looking for the boy, and returned home, he fixed a dose, and gave it to her, to prevent her having the cholic; that she went up stairs, and remained until after the family took dinner; that after dinner, three men came to do business with him; that he was out doors conversing with those men, when his son came and told him his wife had the cholic; that he went into the house, and found it was actually so; that he then prepared another dose and gave her, but it did not operate as the other had done.

Gentlemen, I well remember some remarks which I lately heard made by a most learned judge, who has long adorned the bench of this state, and who would shed a lustre on the judicial character of any country. I speak of the present chief justice. In charging the jury, in a case infinitely less important than the present one, he warned them against placing too much reliance upon the statement of a witness, who had been testifying as to a conversation, which he said he had heard. He declared that he had scarcely ever known an instance of several witnesses being called to relate a conversation, which they had heard, where they did not disagree in their statements; and this he said might spring from their hearing different parts, and not the whole of the conversation; from their not correctly understanding what they heard; or from their want of accurate recollection at the time of testifying. And the humane and learned Beccaria, in his treatise on crimes and punishments, does not hesitate to say that the credibility of a witness is *null*, when the question relates to the words of a criminal.

How striking an illustration of the correctness of this doctrine is afforded by this William Bailey! He says the prisoner told him he was in the habit of keeping *tincture* of castor, to give to his wife, and that he prepared a dose of it on her return to the house, and gave it to her. Now, it is clearly proved by four witnesses, that the prisoner did not keep the tincture in the house, but kept castor in substance; and from the evidence it is clear, that from that substance he made the first dose, which he gave the deceased. How strong, then, is the probability that this witness misunderstood, or now misstates, what the prisoner said! It is to be presumed that he has fallen into this error by hearing the physicians mention on this trial the tincture of castor. I acknowledge that this circumstance is not important in any point of view, only as it goes to show the fallibility of this man's memory, and, of course, the danger of believing him on more important points.

Bailey further states, that the prisoner told him that the three men, who have been repeatedly mentioned, came to his house

after dinner. Here, again, it is almost certain that he must labor under another mistake; for it is a fact, established by the positive oath of several witnesses, that these men came to the house sometime before dinner; and this fact must have been well known to M'Kay, for they came to do business with him. The prisoner could have no inducement to misstate the fact; and there is, therefore, no probability that he told the witness that these men came to the house after dinner.

There is another part of Bailey's story, which deserves particular attention. He tells you that he understood the prisoner to say, that he gave the deceased a dose of the tincture of castor before dinner, and before she went up stairs. Gentlemen, if human testimony can establish any fact, it would seem to be sufficiently proved, that the prisoner did not give a dose, of any kind, to the deceased, until she came down from the chamber, after dinner. Lucy M'Kay has sworn that she was present with the deceased from the time she returned from the woods, until she went up stairs, and that she saw nothing given her by the prisoner, and is confident that nothing was offered. If any thing had been given, can it be doubted that this witness would have seen it? There was but one lower room in the house, and she was in that room with the deceased during the time I have named; and two sons of M'Kay were also present with the deceased, excepting a short time that they were in the chamber before she followed them there, and they declare that they saw no medicine or drug given, and heard none mentioned, until she sent for the prisoner to come and give her something for the cholic.

When you reflect that the conversation, of which Bailey has undertaken to testify, took place about two years ago, you cannot be surprised that his memory should fail him. And you will not forget that Dr. Faulkner, who was present at this same conversation, has frankly told you that his recollections on the subject are so very indistinct, that he dare not undertake to testify to any thing that was said. This is the declaration of a cautious and candid witness.

The question which I now put, I presume has already been anticipated by all of you. If the deceased, before she felt distress at her stomach, had been prevailed on by the prisoner to consent to take medicine, under the hope of preventing sickness, and what she had taken, instead of preventing pain, had brought upon her the severe distress, which she manifested when she came down stairs, is it possible that she would have sent for the prisoner to give her another potion, without complaining of, or even mentioning, the effects of that which she had already taken? No—the supposition is wholly absurd. She must have been confident, or at least suspicious, that what the prisoner had given her was the cause of her distress; and that impression must have remained on her mind through the whole of her sickness. And yet no intimation of such a belief, or suspicion, ever dropt from her lips.

Gentlemen, I do think that upon every sound principle of evidence you are bound to conclude, that no medicine, or drug, was administered to the deceased by the prisoner, until after she

was attacked with severe pain, and declared that she thought she was about to have the cholic.

And now let us see what medicines, or drugs, were given by the prisoner to his wife during her sickness, and after the dose of castor, which has been already mentioned. There can be no doubt from the evidence, that the next dose given was butternut pills, and that they were administered a short time before Mrs. Barnard went to the house. She says she went to see her sister on Sunday evening; that soon after she went to the house, the prisoner, while he was preparing some of the extract of butternut to give to his wife, remarked that he had given her a potion before, adding, that he did not know that he had a dose left; but on stirring up the scrapings of the cup, he observed that he believed there was another dose. The witness says she understood the prisoner that the dose, which he mentioned as having been given before that time, was the same kind of medicine, as that which he was then preparing. This statement of the prisoner was undoubtedly true; for Orange M'Kay declares, that on Monday evening he saw the prisoner make three pills from the extract of butternut, which he scraped out of a cup; and it is his impression that the prisoner gave them to the deceased in pudding, or something like it, and that the prisoner at the same time remarked, that he was afraid there was not enough to operate. Lucy M'Kay testifies, that she saw the pills made from the extract of butternut in the cup, and saw the prisoner have no other ingredient, and she heard him say that he was afraid there was not enough for a dose.

It appears that soon after Mrs. Barnard went to the prisoner's house, he gave his wife a second potion of butternut physic. In the presence of Mrs. Barnard and several other witnesses, he poured warm water into the cup containing that medicine, and stirring up the contents, said he believed there was enough for a dose, and gave it to his wife. Mrs. Barnard says she did not see the prisoner give any more medicine that night.

I come now to a part of the evidence, to which the counsel for the people seems to attach considerable importance.

Betsey Leonard says, that she went to the prisoner's house on Monday morning, at sunrise; that the prisoner was up stairs; that he soon came down, and stopped a short time at the table, which stood behind the door, at the foot of the stairs; that he then came to the bed, with something in a spoon, and gave it to his wife; that it put her in distress, and set her a puking. The witness says she was standing by the bed at this time; that she asked the prisoner what it was, and that he replied that it was peppermint drops. She says she looked at the spoon, that it was a table spoon, and appeared to be about full; that there appeared to be nothing but drops in the spoon, but she cannot name the color of the drops; it did not appear to her to be water, but she thought the prisoner was giving some medicine which Dr. Luther had left. She says the sons of the prisoner were in the chamber at this time, and thinks Lucy M'Kay and Mrs. Barnard were out doors. The witness thinks the prisoner saw her when he came down stairs; she is sure he might have seen her. She tells you that after this dose was given she went to the ta-

ble, and saw a phial on it, or on the window near the table; and she declares that she had no thought that the prisoner was giving any thing to his wife with an intention to injure her.

Where is the circumstance in this statement, that can operate against my client? The prisoner told the witness that he had peppermint drops in the spoon, and she declares that she thought at the time that he was giving her something that Dr. Luther had left. Now it is proved, that Dr. Luther had left peppermint in the care of the prisoner, for the deceased. What reason is there, then, to doubt that this was really peppermint? It may be said that what the prisoner gave his wife distressed her, and caused her to vomit. Will this be urged as a suspicious circumstance? If it should be, you will recollect that even the laudanum, which was procured at Mr. Miller's, and given to the deceased on Sunday evening, increased her distress, and made her vomit, although it was not given by the prisoner. And it appears that long before this time, when the deceased had one of her accustomed attacks of the cholic, as she was returning from meeting, she vomited, when no medicine had been taken. Gentlemen, I will appeal to your own observation. Is there one of you, who has not, in various diseases, seen the patient vomit on taking medicine? Is it at all extraordinary or remarkable, that this woman, suffering under such severe distress in the stomach, as afflicted her at this time, should vomit? Surely not: and it would be cruel in the extreme to allow this circumstance any weight against the accused.

Is there any thing mysterious in the prisoner's stopping at the foot of the stairs? There stood the phial on the window, or the table; and that phial, in all probability, contained the drops which he gave; and there he must have found the spoon, which he used, for there is no evidence that he brought one out of the chamber. It does not appear that there was any attempt on the part of the prisoner at secrecy or concealment. He must have presumed that he was seen by Miss Leonard, when he came down stairs, and he gave the medicine openly in presence of that witness, who had a fair opportunity to see the contents of the spoon, and who tells you that she had no suspicion that he was doing any thing wrong. Gentlemen, Lucy M'Kay tells you, that at the time mentioned by Miss Leonard, a phial, which had been left by Dr. Luther, did stand in the window at the foot of the stairs; that there was peppermint in the house; and that a cup with medicine in it, usually stood in the window, or on the table. How strong, then, is the presumption, that the prisoner took from the window or the table the medicine, which he gave to his wife, and that that medicine was the peppermint which Dr. Luther had left! And yet, feeble as is this testimony against the accused, it is considered a strong ground on the part of the prosecution. It is the foundation stone on which the gallows for my client is to be erected.

The sons of the prisoner speak of some rennet, which he said he was going to give to his wife. I will not dwell on this point. There is no evidence that he gave it to her; and if he did, it was the last substance in the world with which he would attempt to mix arsenic. I presume, gentlemen, that many, if not all of you,

know that rennet is sometimes used in families in cases of cholic. It would, therefore, be nothing extraordinary, if it was given by the prisoner.

Mrs. Barnard says, that on Monday evening she saw the prisoner offer something to his wife, which she believes she took. The witness saw the medicine, and concluded it was the pills which Dr. Luther had left. You will recollect, gentlemen, that Dr. Luther did leave bilious pills in the care of the prisoner, to be given to his wife.

This same witness declares, that the prisoner told her, that on Monday night he gave his wife fifteen drops of the medicine, which was brought from Mr. Miller's. It appears that that medicine was laudanum, and that it was given to the deceased by others, as well as by the prisoner.

The witnesses have been particularly questioned whether the prisoner did not frequently give cold water to his wife. I readily admit that he did; but I utterly deny that it could have been injurious to her, or that it was given with any unkind intention. It has been proved that warm drinks could not satisfy her, and that frequently, when she was much distressed, she would anxiously call for cold water. You find that Dr. Luther allowed cold water to be given to her. It is true, he recommended it to be given in small quantities. But you have heard a most satisfactory reason for M'Kay's giving it more copiously. When an objection was made to his giving cold water to his wife, he replied that it was good for her; that his mother was subject to the cholic, and used to find relief in drinking cold water in abundance. And it has been proved that this statement, which he made in relation to his mother, was strictly true. But how is this matter to be urged against my client? Will it be contended that every time he gave cold water to his wife, he put arsenic into it? This would be rather too preposterous—and yet what other ground can be taken? I rejoice to see that such circumstances are pressed against my client; it shows the want of sound matter; it indicates the feeble state of the prosecution.

As to the watermelon, which was given by the prisoner to his wife, surely nothing can be more absurd, than an intimation that it was given with any improper view. There was no secrecy used about it; it was given in the presence of Dr. Luther and of many others; and it was undoubtedly as harmless to the deceased, as the testimony in relation to it will be to the prisoner.

The only remaining testimony respecting the point which I am now considering, comes from Dr. Cook and Dr. Faulkner, and is of very little consequence. Dr. Cook testifies that while he was on his way to visit the deceased, the prisoner told him that he had given his wife his usual medicines. He told the doctor the truth; for it is abundantly proved that his usual medicines were castor and butternut pills, and that they had actually been administered by him. Both of these physicians state, that in answer to inquiries addressed to the prisoner, they heard him say that he had given his wife pills, and that they understood from what he said, that the extract of butternut was one ingredient of the pills, among others. Whether they understood him

correctly, I cannot say; I presume, however, that they then misunderstood, or now misrecollect, what he said. The probability is that he told them, what was true, that he had given his wife butternut pills among other medicines. But be this as it may, before you can believe that the prisoner meant to intimate, or in the slightest degree acknowledge, that there was any poisonous ingredient in the pills, you must make up your minds that he was a most accomplished fool himself, or that he thought he was talking to fools.

I have thus taken, as I think, a full and candid view of the testimony respecting the medicines and drugs given by the prisoner to his wife, from the time of her return to the house, after searching for the boy, to the time of her death. And I now confidently ask you, is there enough to cast a reasonable suspicion upon my client? I trust you will say there is not. But even if you should think there is sufficient to raise suspicions against the prisoner, remember that you are not to take the life of this man without plain, direct, and manifest proof of his guilt; and remember, that a thousand suspicions do not form one proof.

Let me now call your attention to the conduct of the prisoner towards his wife, in several instances, and see if it does not repel the cruel charge now urged against him. Mark him at the time she was afflicted at the supposed loss of her son. Was he regardless of the distress of his wife? Was he unmoved by the throbbing agony of the mother? No, he manifested the most tender concern for her. Knowing that she had resolved to go in search of her son, and being informed that she had not taken breakfast, he advised her to take something to eat, telling her that he feared she would make herself sick. But such was her distress of mind, that she could not eat. When she left home for the woods, he sent one of his sons with her, and taking another with himself, he went also to look for the boy. On their return to the house, finding her excessively fatigued, he again, with others of the family, solicited her to eat. She still, however, declined. On Sunday night, perceiving that the disease was growing more alarming, the prisoner was the first to mention the necessity of calling a physician, and actually went himself, and brought Dr. Luther. On Tuesday, his wife continuing to decline, he sent his son for Dr. Shull; but growing fearful that the physician would not come in season, he went himself for that doctor, and not finding him, returned with Dr. Cook. When this physician told him that he considered the case of his wife hopeless, and was about to depart without administering any medicine, the prisoner urged him not to leave her, and begged him to stay, and afford her all the relief in his power. Surely this is not the conduct of a cold blooded murderer. You can find here no indication of a heart regardless of social duty, and fatally bent on mischief.

During the whole of his wife's sickness, he made no attempt to conceal her situation from the neighbors, or any other person. No one was refused admittance. On Sunday night Mrs. Barnard was sent for, and remained with her sister much of the time, until her death. Two physicians were brought by the prisoner; one in the early stage of the disease, and the other on

the day of the death of his wife. If he had administered poison to her, and saw its fatal operation, would he not have endeavored to keep her, as much as possible, out of the view of others? Above all, would he have brought the physicians, to be witnesses of his guilt? No, he must have presumed that they would know the symptoms of poison, and must have dreaded detection. He who attempts the commission of so foul and damnable a crime, endeavors to fling darkness on all his footsteps. He may, indeed, believe that there is no omniscient eye upon him; he may flatter himself that there is no day of retribution in a world to come; but he will tremble at the thought of a human tribunal, and shudder at the expected vengeance of man.

From what has transpired on this trial, we can readily anticipate some of the circumstances, which will be urged as grounds of presumption against the prisoner.

You will be told that the prisoner and his wife lived unhappily together. It is true that they sometimes had unhappy differences; but I deny that there is the slightest evidence of any thing like settled malice on the part of the prisoner against his wife. Most of the contentions, which have been mentioned by the witnesses, happened at least two or three years before the death of the deceased. And I think your good sense will instantly decide, that it would be dangerous to raise any presumption against the accused from what took place so long ago. But let us see what violence he has ever done, or offered to his wife.

It appears that something like three years ago, when she was scolding, he took a chair and struck over her head against the door; and that at another time, when they were in contention, he struck the mantle-piece near her, with a chair. There can be no pretence that in either of these cases he intended to injure her; she was within his reach, and he did not touch her. He undoubtedly told the truth to Mrs. Barnard, when he said that his intention was merely to frighten her, and stop her scolding.

Horace Morse, a son of the deceased, says, that in another dispute between the prisoner and the deceased, which must have happened about three years ago, the prisoner took hold of her either by the throat or the mouth, and he can't say which; that she fell upon the floor, and appeared to be faint. Now it is not even hinted, that he left any marks of violence upon her; and two other witnesses, who were present, swear that he did not take hold of her throat, but merely put his hand on her mouth, to stop her scolding; and it is clear from their testimony, that it was not the strength of the prisoner, but the violence of her own passions, that threw her on the floor. Gentlemen, I lament that these contentions should ever have taken place; and I am far from undertaking to say that my client was blameless; but I must say, that if you were to hang every scolding wife in this county, and every husband who should be obliged to put his hand on his wife's mouth to stop her scolding, I strongly suspect that you would greatly thin the population of Allegany.

David Morse, another son of the deceased, says, that he once heard the prisoner tell his wife that he would dash her brains out. He says, however, that he had no weapon in his hands at the time; and he candidly tells you that the prisoner was very

apt, when he was in a passion, to use expressions without heed, and without intending what he said.

You are told by Mrs. Barnard, that since the prisoner has been confined in gaol, he declared to her that he and his wife had not slept together for a week before she was taken sick. I could never entertain any great respect for these gaol-door witnesses. They generally come with some story that is either contradicted by itself, or by other witnesses. Now Lucy M'Kay swears, that the prisoner and his wife had not slept a week apart, and that she never, in any instance, knew them sleep separately more than two nights in succession. She cannot mistake on this subject, for it is proved that when the deceased did not sleep with the prisoner, she slept in this witness' bed. And she declares that she knew of no quarrel which was existing between the prisoner and his wife, at the time her sickness commenced; But she admits, that a short time before that, they had a misunderstanding. This testimony of Lucy M'Kay is strongly confirmed by that of two other witnesses. Daniel M'Kay says that he knows the prisoner and his wife had some difference not long before her decease, and he recollects that they slept apart one night. He says it cannot be true that they had not slept together for a week before her last sickness. And Orange M'Kay swears, that he knew of no quarrel between them the week preceding her death. Surely the conduct of the prisoner towards his wife, on the day they were searching for the boy, wholly forbids the belief that they then had any misunderstanding.

It is a striking fact that this same Mrs. Barnard, who comes here to testify about the quarrels of the prisoner and his wife, had herself a very unlucky quarrel with the deceased, which, according to the best account she can render, was not settled until the deceased was on her death-bed. And that settlement, if any was made, must have been a private one. Suppose she had been accused of this alleged murder, and were now on trial, in place of the prisoner. It would be proved that she had a quarrel with the deceased, and that she had a convenient opportunity to administer poison to her; and how many suspicious circumstances would jealousy and imagination conjure up against her! I do not make these remarks to intimate a suspicion against this witness; such an intimation, even in case it had been proved that the deceased was actually poisoned, would be, in my opinion, extremely cruel. And I feel confident, that you will not allow the evidence you have heard of the misunderstandings of the prisoner and the deceased to create the slightest presumption in your minds, that he is the cold-blooded murderer of his wife.

In the course of this trial, an attempt has been made to shew that the prisoner designedly lingered on the way, when he went for the physicians; and it has been intimated that he did not wish them to see his wife in season to afford her relief. Nothing can be more groundless and unjust, than this suggestion. He was the first who mentioned the propriety of sending for a physician. He was more solicitous than Mrs. Barnard, the sister of the deceased, to obtain medical assistance. When he spoke, on Sunday night, of having Dr. Luther called, she advis-

ed him, as Daniel M'Kay tells you, to wait a while longer. He waited half an hour, and then went himself, leaving home about midnight, and returning before daylight with Dr. Luther, who lived three miles from the prisoner's. It is true that he might have gone that distance and returned sooner; but you will recollect that he went from home at a latehour of the night, and it is no more than charitable to presume that he was in some way delayed by the physician.

About day-break, on Tuesday morning, Casey M'Kay left home on his way for Dansville. He was directed by his father to call on Dr. Shull, of that village, and to send him immediately to visit the deceased. At sun-rise, the women, who were at the prisoner's house, knowing that Casey M'Kay was not expected to return that day from Dansville, and expressing their fears that Dr. Shull might not come, the prisoner concluded to go himself for the doctor. He left his house at sun-rise, and returned in the afternoon, the sun being about two hours high, bringing with him Dr. Cook. It is said to be twelve miles from the prisoner's house to Dansville. This delay is charged upon the prisoner as intentional. Let us see if the accusation is merited.

Casey M'Kay testifies, that he arrived at Shull's house at eight o'clock in the morning, and was informed that the doctor was absent, and was not expected at home before noon; that his father came to him at Dansville, about ten o'clock in the forenoon, and inquired of the witness if he had seen Shull, and that on being informed that the doctor was gone from home, and was not expected to return until the middle of the day, the prisoner said he should go to Shull's house, and if he should not be at home, he would go after some other physician. The witness says that his father then left him, and that about two o'clock in the afternoon, he saw him with Dr. Cook, on his way home. Now, gentlemen, take the testimony of John Kersner. He tells you the prisoner came to his shop about ten o'clock in the forenoon, and said he wished to have his horse shod immediately, as his wife was sick, and he was in haste. The prisoner told the witness that he had been waiting for Shull. The witness being much engaged in business, told him he must wait two hours before he could have his horse shod, and that by that time Shull would be at home. The prisoner left the shop, and was gone about half at hour, and then returned. As Shull had not yet been found, Kersner advised him to call on some other physician, and named Dr. Cook. The prisoner said he was not acquainted with Cook, and asked if he was skillful, and receiving a favorable answer, he took his horse, which had been shod, and went away. It is evident that he must have gone directly to Cook's, for that physician informs you that he came to his house at one or two o'clock, in the afternoon, and requested him to visit his wife. The witness says he understood from what the prisoner said, that his wife was not very sick, but had the hysteric cholic; and he says the prisoner told him that he was not in very great haste, but wished him to see the patient, as soon as he conveniently could. It appears that they left Dr. Cook's in fifteen or twenty minutes after the prisoner arrived there. When

they first started, the prisoner, for some distance, went ahead of the doctor, and having passed Shull's house, rode back to inform Mrs. Shull that he had found a physician, and soon overtook the doctor. On the road, passing through a piece of woods, he left his horse, and spent from ten to twenty minutes in gathering roots, a part of which he gave to the witness, keeping the residue for his own use. They arrived at the prisoner's house, as has already been said, the sun about two hours high.

I hope, gentlemen, that this plain statement of facts is sufficient to satisfy you that the prisoner was not guilty of intentional delay, and had no design to keep medical assistance from his wife.

But some importance seem to be attached, on the part of the prosecution, to certain language used by the prisoner to Dr. Cook, while they were on the road together. The prisoner, having spoken of his wife's sickness, observed to the witness that he professed to be something of a doctor himself; and that, people called him a root, or Indian, doctor. He said he had given his wife his usual medicines, but they had not had their usual effects; adding, and you know if I were ever so good a doctor myself, if she should die under my care, people would talk about it.

I cannot see any thing in these declarations, which is not consistent with a perfect consciousness of innocence. It is proved that he had in fact long professed to be something of a doctor; that he had been in the habit of administering medicines to his wife when afflicted with the cholic, and that he had actually given her in her then present sickness, the medicines which he usually gave her. When he saw that they did not prevail and that the disease was increasing in violence, how proper and commendable was it for him to feel the danger of trusting any longer to his own knowledge and exertions, and to expect severe censure, in case he should not call some regular physician!

Betsey Leonard has stated, that when M'Kay returned home with Dr. Cook, he inquired how his wife was, and said he did not think she would be alive. If I may judge from illusions, which have been made to this part of the testimony, it is deemed important on the part of the prosecution.

Allowing the recollection of the witness to be perfectly correct, as to the language which she says she heard about two years ago, what inference is to be drawn against my client? Surely if he had given poison to his wife, and expected it would produce her death before his return, he never could have made the declaration imputed to him. Instead of declaring his expectation that she would die before he could reach home, he would have endeavored to carry on the work of deception by expressing astonishment at finding her so much worse than he expected. And when Dr. Cook proposed going away without administering any medicine, why, if the prisoner did not wish his wife should have medical assistance, did he beg the doctor to stay, and do every thing he could, for her relief? And if he was conscious that she was then dying of poison, would he have urged a physician to remain with her, who would watch her symptoms, and might discover the cause of death? Such could not

have been his conduct, if he was a guilty man, and possessed common sense.

An expression of the prisoner, mentioned by Lucy M'Kay, has already been noticed in a manner, that gives me reason to think it will be again called up by the counsel for the people. The witness says, that soon after the death of Mrs. M'Kay, the prisoner, speaking of her decease, made use of this expression, I hope I shall now live better than I have done.

It may urged that this was an intimation of his joy at the death of his wife, and of his expectations that he should live more happily because she was out of the way. But can you believe that he ment to convey any such idea? If he was base enough to entertain such feelings, would he be fool enough to express them? No, gentlemen, this could not be the language of a conscious murderer. Instead of declaring his joy, he would be constantly endeavoring to convince every one of his sorrow and grief—But it could be the language of an afflicted husband, who had committed to the dust the wife of his bosom. Returning from the grave to the house now rendered lonely by the absence of one whom he should see no more on earth, who would not be forcibly reminded of his own mortality, of the uncertainty of life, and the evanescence of all earthly joys? Who would not feel, and who might not say, I hope I shall now live better than I have done?

Much stress seems to be laid on conversations, which some of the witnesses say they had with the prisoner, on the day the body was to be raised for examination. How his language on this occasion can be tortured into evidence of his guilt, I cannot conceive.

Dr. Faulkner says, that speaking of the examination, which was to be made, the prisoner said, he did not know but they would find poison in the body, but if they should, he did not put it there. Dr. Clark was present, and heard this conversation. The witnesses do not pretend to state the words used by the prisoner, but only the substance of them. There were at this time assembled at the grave as many as seventy persons; Dr. Faulkner had questioned M'Kay as to the medicines, which he had given his wife, and had informed him of the suspicions that she was poisoned. Under such circumstances, surely it would have been very material and proper for any person, conscious of entire innocence, to remark, I do not know but you will find poison, I can only say I have administered none.

It appears by the testimony of Dr. Faulkner that the prisoner told him that if it should prove that his wife was poisoned, he should suspect Mrs. Barnard, as she and the deceased had been at variance.—It is an undisputed fact, that Mrs. Barnard had had an unlucky quarrel with the deceased, which, according to her own statement, was not settled until after the deceased was on her death-bed. And there is the strongest reason to presume that the settlement, if any was made, was wholly unknown to the prisoner. It is also true that Mrs. Barnard visited the deceased the first night of her sickness, and remained with her much of the time until her death, giving her, at various times,

drinks and medicines, and having an ample opportunity to administer poison to her. These circumstances might form the ground of M'Kay's suspicions; but far be it from me to mention them with an intention to cast any imputation on this woman.

William Bailey says that the prisoner observed to him, that he was not without his fears that there was poison in the body, but the query would be who put it there. The witness says he asked the prisoner if that did not comfort him, and that he replied that it did.

Granting that the language was exactly as it is related, what evidence does it afford against the prisoner? The words do not import any acknowledgment of guilt, and the circumstances under which they were spoken, forbid all rational belief, that he intended to hint, or in the slightest degree admit, that he had poisoned his wife. He knew that the physicians were then about to dissect the body, to endeavor to discover the cause of death, and it is not pretended that Bailey was a confidential friend of the prisoner. It is, therefore preposterous to suppose, even if he were the murderer of his wife, that he would insinuate his guilt to Bailey, unless he had made up his mind that this witness was fool enough not to understand his hints, or wicked enough to keep his foul secrets. I must say that I have very little confidence in the testimony of this witness. I think I have heretofore pointed out to you sufficient absurdities in other parts of his story, to satisfy you that he swears rashly, and with very little consideration. This is the man, who asserts that he now clearly recollects, and that he has told you the very words used by the prisoner two years ago. Until he shall shew his patent right for recollection I will not believe that assertion.

A most striking proof of the danger of placing much reliance on the testimony of witnesses, who undertake to relate conversations, which they have heard, has been exhibited by William Sharp, a witness whose honesty I do not dispute. He first told you that on the day the body was raised for dissection, the prisoner said to him, I dont say they wont find arsenic—I have enemies enough—I did not put it there. Being particularly questioned, whether the prisoner might not have used the poison, instead of arsenic, he readily and very frankly replied. He might have said arsenic, he might have said poison. I put it both ways, to be certain. Suppose this witness had strictly adhered to his first statement, how important might have been his testimony against the prisoner! And yet, with the explanation he has given, it cannot have the weight of a feather.

Gentlemen, you find that when the prisoner was told by Dr. Faulkner that suspicions were entertained that his wife had been poisoned, he at once observed, that the body ought to be taken from the grave for examination, and continued throughout to express an entire willingness that it should be done. It does appear to me that this conduct of the prisoner cannot comport with a consciousness of guilt, but that it speaks an unshaken reliance on his own integrity and innocence.

But you have been repeatedly told by the witnesses, and with strong emphasis, that when the prisoner first saw the body of his wife, after it was raised from the grave, he trembled, and

was greatly agitated. Will this be pressed against my client by the learned counsel for the people? No, I know his head and his heart, and I admire them both. It would be cruel, and he will not do it.—But if, when the prisoner saw the pale tenant of the grave, when he saw the remains of one whom he had once loved, and had expected to see no more on earth, (such has more than once been my lot,) I say, if he had not trembled, and been agitated, cold, indeed, must have been his heart; yes, colder than the icy marble standing amidst the storms of winter over the grave of the dead. Then should I have expected to see a storm of indignation poured upon his head by my learned friend. Then would he have been justly pointed to you as a wretch devoid of feeling, and capable of murder.

Gentlemen, I have done with the evidence in this case. If in the course of this trial, I have made any remark, that has injured the feelings of any person, it was because I thought imperious duty required it. I wish not to wound the heart-strings of any one. I come to defend, and not to accuse. This is at best, a world of wretchedness, a vale of tears. And enviable is the lot of him, who has the privilege of lessening in any degree the sum of human misery. Does any one accuse me of being governed too much by feeling; of acting with too much zeal in defence of this humble individual, this wretched man? I answer in the language of Burke.—In every circumstance that may happen to me through life, in pain, in sickness, in sorrow and depression, I will call to mind this accusation, and be comforted.

Gentlemen, the destiny of my client is now in your hands. It is for you to decide whether he may live, or whether he shall die. A single word from your lips may doom him to the gallows and the grave. Surely never were human beings clothed with more tremendous power, than that which you now possess. Many of the most enlightened, as well as humane men of this world, shuddering at the thought that such power should be given to man, have warmly contended that no government on earth can possess the right to inflict on any subject the punishment of death; that it belongs alone to the great Creator of all men to execute that dreadful sentence which he himself pronounced, dust thou art, and unto dust thou shalt return. I do not make these remarks with any intention to question your right, should the evidence authorise it, to plunge this unhappy man into another world; the laws of my country have settled that point, and whatever may be my opinion or feelings, I must here bow to their decision. But, gentlemen, when the life of a human being depends upon your verdict, surely you cannot be too strongly reminded of the awful responsibility that rests upon you: of the danger you are in of condemning the innocent; and of the great caution with which you are bound to proceed. There is but one tribunal that cannot err, and that tribunal is not on earth. There is but one eye that searches the hearts of men, and that is the eye of Omniscience. You, gentlemen, like the judges, and all who surround you, are no more than erring mortals. You try this case with the film of mortality upon your eyes. The thought that you may condemn the guiltless, must be enough to chill the blood at you hearts. Remember the interesting cases

read to you by my learned friend and associate counsel. And he might have read from the same book a still more afflicting case, which was tried in Scotland, where a father was charged with the murder of his own daughter, and upon presumptive evidence condemned by the jury, and hung in chains. It was afterwards discovered that he was wholly innocent of her death, and that she had voluntarily destroyed her own life. The magistracy of Edinburgh, afflicted by the cruel injustice which had been done him, ordered his body to be taken from the gibbet, and delivered to his family for interment; and as the only reparation to his memory, and the honor of his surviving relations, they caused a pair of colors to be waved over his grave, in token of his innocence. Feeble were these efforts to make reparation even to the living; but O, how useless and unavailing to the injured dead! Alas, he saw not the emblems of purity that waved over his grave, he heard not the proclamations of his innocence; for "deep is the sleep of the dead, and low their pillow of dust."

Gentlemen, I demand of you in the name of justice, I conjure you by all the sacred principles of humanity, I charge you, as you value your own peace and contentment of mind, that you take not the life of this man, upon this doubtful, this circumstantial, and feeble evidence! Can you make up your minds to cut him off from this world? Pronounce, then, your fatal verdict. And while he, dragged from the light of heaven, shall lie in chains upon his dungeon floor, waiting the death which he shall receive at your hands, go to the bosom of your families; go, lay your heads upon your pillows, and sleep—if you can!

Mr. COLLIER, *(on behalf of the people) commenced by requesting to be indulged in a few preliminary remarks.*

He observed that the opposite counsel had said much about the disadvantages under which the prisoner labored, in consequence of public prejudices, and the prejudices of the witnesses. He thought the point had been urged further than was warranted by the case. He thought the cause of their fears in a great measure, or altogether, imaginary—that the witnesses, upon both sides, had testified with great candour and caution, and he was confident, not a single man had gone into the jury box with any improper bias or prejudice against the prisoner. It has been urged (said he,) that the trial, at such a distant period from the commission of the supposed crime, is a circumstance unfavourable to the prisoner. To this circumstance I particularly alluded, in my opening remarks, as highly favourable to the prisoner, as it had afforded him an opportunity of preparing, with the aid of his friends and counsel, to oppose the prosecution by explaining and disproving every fact and circumstance relied upon to prove his guilt. Time had been afforded for public prejudice, if any ever existed against the prisoner, to subside. It has been said also that he is poor, and unable to defend himself.

We have seen, gentlemen, that he is not so poor but that he has been able to procure the attendance of distant witnesses, and to call to his aid the ablest counsel that the country affords. It is said that he has been deprived of his liberty and immured, for a great length of time, within the walls of a prison—he has, however, been treated with all the lenity that the laws would permit, and every facility has been afforded him to prove his innocence, before a jury of his country, and show his imprisonment to be unmerited. As it respects his former trial, you will recollect I stated to you when I first addressed you, that we claimed nothing from the verdict of the former jury, but that you must here decide the case for yourselves. With these preliminary observations, I shall proceed to the consideration of the case, in the order which naturally presents itself, and shall first enquire whether the deceased came to her death by poison; for if we are unable to satisfy your minds upon this point, it will be your duty to acquit the prisoner. And upon this part of the subject, before I proceed to the discussion of this point, I must beg leave to make one further observation. It has been supposed by the prisoner's counsel, that we are to oppose the knowledge and wisdom of a learned professor of chemistry, by the opinion of some five or six country physicians. I will endeavor to save the learned professor the mortification from which his learned friend appears so anxious to shield him, and in the view I shall take of the subject, will go no farther than I think I can be supported by such authority as will not be questioned. If I find it necessary to controvert his theory or reasoning at all, and oppose the opinion of a *learned man*, it shall only be by the opinions of *learned men*. But it is not my intention to derogate in any manner from the professor's testimony; although I will not promise always to be satisfied with the justice and correctness of his conclusions. In every other particular, and perhaps in all, I shall, in the course of my remarks, assume every thing said by him to be literally true.

In determining the question whether this woman died by poison, it will be necessary in the first place to examine the symptoms attending her sickness, and compare them with the opinions of men of medical science—of men whose study and business it has been to understand the subject, and afterwards to examine the nature and result of the tests and experiments made by the physicians, upon the contents of the stomach and compare them is the same way. Let us first see then the opinion of Dr. Noyes upon this subject. He tells us, that the usual symptoms attending poison by arsenic, are *violent puking, pain in the stomach and bowels, thirst, impossibility of retaining any thing upon the stomach, deafness, blindness, indistinctness of articulation.* There are other symptoms sometimes attending such cases, but these are such as most usually and naturally follow from such a cause. I will also beg leave to read a few extracts upon this subject from authors of approved merit.

[The counsel here cited and read from Thacher's Modern Practice, 484. Cooper's Med. Jurisprudence, 149. 2 Medical Museum, 347—and a case of poison by arsenic from 9 vol. New-England Journal, p. 240.]

I could read from other authorities, but no further reference will be necessary. Now let us see whether these symptoms did not attend this case. There has been no symptom mentioned which was not witnessed in the deceased, except the swelling of the face and extremities, and you will recollect that Dr. Noyes tells us that these do not always appear. Pain in the stomach and bowels, thirst, blindness, deafness, indistinctness of articulation, &c.—All these are proved to have existed in the case we are now considering. It is said by the counsel for the prisoner that the appearances after death, are not conclusive or satisfactory. This I will not controvert—all that I contend for is, that in the appearances after death in this case, there is nothing inconsistent with the fact that her death was produced by arsenic, and that arsenic would probably produce these appearances, but I concede that these effects, not being peculiar to such a cause, are not at all conclusive and are not to be relied upon. Dr. Noyes tells you that although arsenic is corrosive, yet he thinks it doubtful whether it would have produced these appearances on the stomach, although it might have done so. We find, then, the symptoms and appearances correspond with the rule laid down by medical writers, and with the opinion also of Dr. Noyes, upon which the counsel for the prisoner seem so much to rely. I will not urge to you, however, that it would be at all safe to conclude, from these symptoms and appearances, that the deceased came to her death by poison; nor are we compelled to rely in this case, upon this testimony alone. We have many corroborating circumstances to be taken into consideration, together with the tests to which I am now going to call your attention. I will in the first place give you, from approved authors, the opinion of men of science, how far these tests may be relied on with safety. (Mr. Collier here cited the following authorities upon the subject of Hume's and Bergman's tests, to detect the presence of arsenic.—1 vol. New-England Journal of Medicine and Surgery, p. 208. 12 Med. Repository, p. 208. 13th *ibid*, p. 115. Formulae Selectae, p. 156. Cooper's Med. Journal, 157. Thomas's Practice, p. He also read the following extract from 7 vol. New-England Journal Med. and Sur. p. 310. "When suspected matter is found in the stomach or its vomited contents in the *solid form*, I believe Mr. Hume's test may be applied with the *utmost confidence*. But where arsenic is dissolved in the liquid contents of the stomach, it may be doubted, whether the same accurate results will ensue."

Also Henry's Epitome of Chemistry, p. 363, 364. Where, after mentioning Hume's test, he adds: "To identify the arsenic with still *greater certainty*, it may be proper, at the time of making the experiments on a suspected substance, to perform similar ones, as a standard of comparison, on what is actually known to be arsenic."

Here then we find all these writers agreeing in the opinion that they are very delicate tests, that they will detect the presence of arsenic, and it seems, would be sufficient to satisfy their minds. These two tests and experiments were tried by the physicians, introduced as witnesses on behalf of the people, and were repeated until there could be no possible mistake. They

were tried upon the suspected matter in the "*solid form*" found in the stomach, and at the same time upon real arsenic with precisely similar results. Although, there does exist such a variety of shades of color, that it may, as has been objected, be difficult to describe and distinguish them by words, yet the slightest difference might be detected by the eye. When we see then the attending symptoms in this case, the appearances after death, the result of these two different tests, recommended as they are by so many learned and scientific men, and tried, as they were, upon the solid substance found in the stomach—When we see that these experiments were tried at the same time upon real arsenic, and their accuracy thus tested as they went along; when we add to all this the decided and confident opinion of those who saw and made these experiments, does it leave a shadow of doubt in your minds that the decease came to her death by poison, and that the poison was arsenic? But Dr. Noyes has given us his opinion that these tests are not conclusive. He says the symptoms are not conclusive—they are not at all peculiar to the case of poison by arsenic—that the appearances after death are not satisfactory, although, they would seem to indicate the presence of arsenic—which he says would produce these effects.—That Hume's, although a very *delicate test*, does not amount to demonstration; but he considers its application and the result as a *strong circumstance*. I will now, gentlemen, take up the testimony of Dr. Noyes, not in detail, but I will give you certain inferences and results, drawn from his testimony, and see whether his opinions instead of being at variance with, and destroying the testimony and opinions of the other physicians, does not, in truth, strengthen and confirm them.

If we were opposed, in this case, by the opinion of so learned and distinguished a man as Dr. Noyes, it would not, perhaps, be safe to convict the prisoner. It would have produced such a reasonable doubt, that you would no longer hesitate to acquit. But such is not the fact. We have given you, gentlemen, the opinion, the decided and positive opinion, of the best judges which this part of the country affords. I have shown that they are supported in that opinion, by the most approved and learned authors—and we will now see how far they are supported by Dr. Noyes himself. I have already said that he considered Hume's a very delicate test—that the symptoms, although such as are usual, are not peculiar to the case of poison by arsenic—that the appearances after death are not to be relied upon, although they are strong circumstances. He says further, that although arsenic is corrosive, he thinks arsenic, alone, would not have produced the perforations in the coats of the stomach. He says the experiment to produce Scheele's green is not conclusive, because it does not amount to *demonstration*, and although he should consider it a *strong circumstance*, yet he would not be satisfied, "because the experiment has not been tried upon *all substances*." I would remark, that Dr. Noyes speaks of this subject like a chymist and philosopher, both when he speaks of demonstration, and when he requires the experiment to be tried upon all other substances. Every thing is to be demonstrated like a problem in Euclid, to satisfy his philosophical mind. But

yet he tells us, that the experiment of subliming the metal, he should consider as *infallible.* I submit the question, however, whether the learned professor will not, upon his principles, find himself, at last, arguing in a circle, and whether new experiments would not be required to *demonstrate* what this substance is that is thus supposed to be reproduced, and whether, even then, he will not be met with the objection, that his "infallible" experiment "had not been tried upon all substances"! Again—Dr. Noyes objects to the experiment resorted to to produce Scheele's green, that it might have been discolored by the fluid in the stomach. But when the physicians tell us that they took the substance found in a solid form, or in powder, upon the liver, and that the same experiments were tried upon this substance, with the same result, it would seem that the reason of his objection to this test, ceases to exist. But, gentlemen, we find that even the learned Dr. Noyes knows of no substance, resembling arsenic in appearance, and no substance in the form of a white powder, that, with the same experiments, will produce the same results. Now, then, when we look at the symptoms in this case, the appearances after death, and the corresponding symptoms and appearances, in cases of poison by arsenic, given to us by medical writers—when we see the repeated trials both of Bergman's and Hume's tests, so highly recommended by the ablest chymists and standard scientific works, and approved as they are by Dr. Noyes—when we see the same experiments tried upon what was known to be real arsenic, about which there could be no mistake—when we find that Dr. Noyes, who has devoted so much of his time to the subject, knows of no other substance, or at all events, none resembling the substance which was found in this case, which will produce the same results, except arsenic—is there a reasonable doubt remaining that the death of the deceased was produced by arsenic? Is it, and ought it not to be, perfectly satisfactory and conclusive? Have they opposed us by a single writer or a single witness? They have, in my humble estimation, fallen very far short of it. In these remarks, I have taken the opinion of Dr. Noyes as to the usual symptoms and appearances after death. Upon the principal question, whether the deceased was poisoned with arsenic, he has forborne to express any opinion: and since he has expressed no *different* opinion, and nothing is shown on behalf of the prisoner to controvert it, I must think it safest to rely upon the opinion of six intelligent physicians, who have spoken understandingly and with great confidence upon the subject. But, gentlemen, it has been objected that we did not use distilled water, nor did we try Marcet's improvement of Hume's test. The purity of the *water* was, however, tried with the nitrate of silver, and Marcet's is no otherwise an improvement of Hume's test, than that it serves to detect a more minute quantity of arsenic. If I have viewed this subject correctly, I need not detain you longer upon this point. You are not required, in this case, to be convinced beyond all possibility of mistake; but, as I observed to you while on another part of the subject, you are to require such evidence as will not leave a rational doubt existing in your minds.

If then you are compelled to conclude that the deceased came to her death by the administering of arsenic, the next inquiry is, whether the poison was administered by the prisoner at the bar. Upon this part of the subject, you have been told by the learned counsel, that it will not do to rely upon circumstantial testimony, and they have introduced some authorities to support this opinion. It is not to be supposed that we can, on such occasions, always produce witnesses who were present and saw the very act. You must be sensible that it would be impossible and preposterous, and that so rigid a rule would subvert all civil government. There would be neither safety nor security for the citizen, and the most abandoned and notorious offenders would scarcely ever be brought to justice, if the public prosecutor was held to such strict proof. But, gentlemen, such is not the rule of law. Positive proof is not indispensable, but such only as would justify the jury in concluding, beyond a reasonable doubt, that the crime has been perpetrated. The counsel who first addressed you has said, that it was necessary to produce a train of circumstances going to establish the same result. Let us examine the prisoner's case by this rule, and see whether there is any escape for him. Nor will it be necessary for me to recapitulate the testimony of each witness separately, but I shall content myself with taking one general view of the subject, touching upon the leading facts of the case, as presented on behalf of the people, and inquiring, as we go along, what has been proved or urged in his favor that ought to have any material influence upon our minds.

It seems that on Sunday the 7th of August, 1819, about four o'clock in the afternoon, the deceased was taken suddenly ill. Bailey testifies that the prisoner told him, when he was keeper over him, that he gave her medicine, before she was attacked, as a preventative, lest she should be taken sick—and in this the witness does not stand alone. Dr. Rich testifies to nearly the same thing—that he had given her medicine, which he had prepared before she was taken sick. There was nothing unusual in her first attack. She was subject to the cholic, and seemed to suppose it a return of her old complaint. It has been proved, and the prisoner's counsel have labored to establish the point, that the symptoms are very similar to those produced by taking arsenic. It is not at all surprising, therefore, that she should suppose, at first, that her's was a case of the cholic. During the afternoon of Sunday, she took medicine—and, before I proceed further, I would observe, that supposing it sufficiently appears that the deceased came to her death by poison, it becomes us to look about her and see who was in a situation, and what opportunity was afforded them to administer it. It appears that immediately after she was taken, she took medicine from M'Kay. Mr. Matthews has said, that it is in evidence that young M'Kay saw the pills administered. The counsel, who last addressed you, tells us that the fact of the prisoner's giving the pills was proved only by Mrs. Barnard. I must beg leave to correct the gentlemen on both these points. Young M'Kay testifies, that the rinsings of the cup were given in the evening—that he saw the prisoner preparing the pills in the afternoon for the deceas-

ed, and that when the rinsing of the cup were given, the prisoner spoke of having given her pills or medicine before. Not a single witness who has testified, actually saw the medicine first given by M'Kay administered. It may be proper here to observe, that the prisoner's counsel have undertaken to prove that no medicine was given before she was taken ill, by showing that some of the family were constantly present and in a situation to know it if it had been done, and no one saw it. But if these pills were administered in the course of the afternoon, as one of the counsel, at least, has admitted, and none of these witnesses saw it, I think it proves to us that any other medicine might have been administered without their observing it. What this medicine was, or what was the composition of these pills, does not appear, either on behalf of the people or of the prisoner. We find, gentlemen, at all events, that after taking this medicine she continued to grow worse. Mrs. Barnard says she came there about nine o'clock in the evening, and found her in great distress—greater than was common in her attacks of the cholic—she spoke of it as something unusual. That immediately after taking this medicine, whatever it was, violent puking followed—that the deceased complained of great thirst, and that water was given freely by M'Kay. I will, in this part of the case, make a few remarks relative to the testimony of Mrs. Barnard. The counsel have seized upon the observation which she says she made to her sister, when she first saw her, that she was worse than common, as something highly improbable, and from that have taken occasion to say, that she must have fabricated this part of the story. We have been told that she had transferred the hatred of her sister to the prisoner—that she has colored her testimony and misrepresented the facts. I submit it to you, gentlemen, whether all the serious imputations they have attempted to cast upon this woman, are not rash, ungenerous and unjust? Is there any fact or circumstance which has been disclosed—any thing in her appearance, or the manner of her testifying, to induce us for a moment to believe that she would misrepresent, or wished to give a false coloring to the facts, or that any part of her story is a fabrication? Gentlemen, what earthly object could she have in misrepresenting the facts? You have been pressed by the counsel to acquit the prisoner, because it is impossible he should be so hardened and depraved as to commit the crime of which he is charged: and yet you are called upon to believe that Mrs. Barnard, under the solemnity of an oath, has testified to facts which had no existence, and given a false coloring to others—and for what? Why, for the purpose of taking away the life of the prisoner! The prisoner is to be acquitted, regardless of all the proofs in the case, because the story is incredible that he should be so depraved: but Mrs. Barnard, without the slightest ground of suspicion, is, upon the mere suggestion of counsel, to be presumed capable of swearing away the life of a human being, and thus committing the double crime of perjury and murder! I owe it to the witnesses who have been compelled to appear here on behalf of the people, to shield them from improper imputations. But is not Mrs. Barnard supported, and every part of her story fortified, by the tes-

timony of other witnesses? You have been told that she has misstated the time when she was first called to visit the deceased I impute no improper motives to those witnesses on their side, who have disagreed with Mrs. Barnard as to the time: but you will recollect that she is supported by the younger M'Kay, who testified that he thought it was even earlier than nine o'clock—though he told you he did not know the precise time. This pretended misstatement of Mrs. Barnard's has been seized upon and magnified by the opposite counsel, into a matter of consequence—though you will recollect that she spoke cautiously as to the time, and gave it as mere matter of opinion. You have been told also, that she misrepresented the time when the prisoner started for Dr. Luther—but in this also she is supported by the younger M'Kay, who says that it did not exceed an hour after the time he went for Mrs. Barnard, before he went to bed, and that they were then about sending for Dr. Luther, or at any rate, it was then the subject of conversation.—So that it seems it could not have been later than ten or eleven o'clock.

A circumstance has here been mentioned as being extremely favorable to the prisoner—that is his proposing to go for a physician. This has been strongly pressed upon you as a proof of his tenderness and affection towards his wife, and with this additional observation, that Mrs. Barnard objected to it! Why did she not conceal this fact, if she wished to give a false coloring to the testimony? Nor do I view this circumstance as proving any thing for the prisoner; for it seems that it was very unusual for him to call a physician, and that in her ordinary attacks of the cholic he prescribed for her himself. Neither do I urge it as affording any particular presumption unfavorable to him. All that I claim to have established in this part of the case, thus far, is, that the medicine taken by her, whatever it was, was given her by the prisoner—that the symptoms following the taking of the medicine, though not peculiar to the case of poison by arsenic, were such as are usual in such cases—that she did not improve, but continued to grow worse, and that the prisoner was constantly present. We find that on Monday morning he gave her more medicine. It seems no one witnessed this but Miss Leonard. Mrs. Lucy M'Kay says, that if it was given at all, she thinks it must have been done when she was out of the room. The medicine was in a liquid form; was prepared and given by the prisoner, and under circumstances certainly somewhat suspicious—and was followed by the same symptoms we have observed before. You have no reason, gentlemen, to discredit the testimony of Miss Leonard. On the contrary, her appearance, the candid and dispassionate manner in which her story was related, and the intrinsic marks of truth in the story itself, entitle her to perfect credit, and carry conviction with them.

But let us pass on to consider her case on Monday night and Tuesday, immediately preceding her death. On Monday evening, we find that she grew worse—her pain was extremely violent—she was in perfect agony—could not rest easy in any situation—she complained of thirst, and cold water was given very freely by the prisoner. But the proof of this latter fact, it is said, rests upon the testimony of Mrs. Barnard, and that she is

not supported by the testimony of any other witness. But she is supported by the testimony of Lucy M'Kay, who could not be actuated by any such motives as the counsel have chosen to impute to Mrs. Barnard. What does she say upon this subject? She recollects that some one remonstrated against giving her so much cold water, and that M'Kay said it would not hurt her. This proves that water was given so freely that it had excited the observation and fears of some one present—although Mrs. M'Kay does not recollect of its being given so frequently—yet that it was given, and more than once, she well remembers. Does not this go to corroborate and confirm all that Mrs. Barnard has said upon this part of the subject? Mrs. Barnard testifies, that when the prisoner gave the deceased any medicine, she immediately grew worse; that it was so uniformly followed by such violent pain, she was satisfied no good was produced by his medicine; and that the deceased remonstrated, and asked why he could not let her alone when she was easy—observing, that every thing he gave her hurt her. When Mrs. Barnard advised her not to take any more of his medicine, her answer was, that he would be mad if she refused. You will recollect that he came again when she was eating, and offered her more medicine. She objected, and he came afterwards the third time and pressed it upon her, and she took it. You cannot expect us to show expressly that this was arsenic, or that arsenic was mixed with it. If such was the fact, it must be perfectly accidental if it could be proved, as no witness would be permitted to see the deadly potion prepared.

You have heard a history of the case on Sunday and Monday —let us now see what took place on Tuesday, the day of her death. Mrs. Barnard was sent for early on Tuesday morning. She met M'Kay some distance from his house, who told her his wife was worse, and was just gone; and that Casey had gone to Dansville after a physician. She went into the house, and, from the appearance of the deceased, thought her dying. Lucy M'Kay testified, that the prisoner came to the bed before her husband was up, and requested him to go as quick as possible for Dr. Shull. In this she was probably mistaken; for her husband testified that he was not called up, but was up and going out of the door when the request was made. When the sun was about half or three quarters of an hour high, and before Casey M'Kay could have reached Dansville, the prisoner himself started for Dr. Shull. With a perfect knowledge of the critical situation of his wife, he permits his son to start on foot, and then without waiting until his return, or the arrival of the physician might reasonably be expected, he starts himself on horseback. He leaves home fully persuaded that his wife was a dying woman, and that, at all events, her death was inevitable, unless medical aid was immediately procured. We find that his journey to Dansville, though a distance of only twelve miles, occupied almost the whole day. When he reaches Dansville, he inquires for Dr. Shull, and then goes to get his horse shod, altho' his horse had shoes on, which it appears, however, wanted setting. He tells the blacksmith, that if he could have him shod in two hours it would answer. Now, gentlemen, is there not something

mysterious and suspicious in all this? A husband, leaving his wife dying, as he had too much reason to suppose, and starting in such haste for a physician, proceeding so slowly to Dansville, and then stopping to get his horse shod, which he is satisfied to have done in two hours. Does it not require explanation, and has any satisfactory explanation been given? But let us hear what account he gives the blacksmith of his wife's illness. He tells him that he had left his wife sick with the bilious cholic, and when inquired of what kind of complaint this was, his answer was, that it produced vomiting. Frequent vomiting, he mentions as the particular characteristic of the complaint. Now it appears that it was not usual, if it had ever happened, that the deceased was affected in that way by the cholic—but in this instance it appears that she had vomited so much, that the impression was left upon M'Kay's mind, and it is mentioned as the only peculiarity in the complaint with which she was attacked. He tells the witness that she was taken the night before about midnight. Was this a true statement of the case? She had been sick part of Sunday, and all of Monday and Monday night. We must look into the minute parts of this case; we must examine the subject with a scrutinizing eye, and afterwards combine the several parts in one general view.

The prisoner next calls upon Dr. Cook He asks Dr. Cook whether he will take a ride with him. Dr. Cook inquired whether it was a case that required haste. The prisoner answered, he was not in great haste, but should like to have him go as soon as it was convenient. The doctor got up his horse in fifteen or twenty minutes, and they started upon a pretty good jog at first, but soon slackened their pace; and Dr. Cook then inquired more particularly as to her case. He tells Dr. Cook that his wife was not very sick, but had a turn of the *hysteric* cholic, to which she was subject. He observed further, that he was something of a doctor himself, but thought it prudent to call a physician, because, if she should happen to die, people would talk about it. Shortly afterwards he stops by the way, and spends some ten or twenty minutes in gathering roots, not for the purpose of applying them in this case, but for the future use of himself and Dr. Cook. Now then, gentlemen, is there not something very extraordinary in the history of this short journey? He leaves his wife, in the morning, evidently a dying woman—of whom he himself observed to Mrs. Barnard, that she was just gone. He tells contradictory stories about her complaint; states the time of her first attack untruly; stops unnecessarily by the way, and consumes almost the whole day in going to Dansville and returning—and checks the doctor's pace by the remark, that his wife was not very sick! Is there not something very suspicious in the remark he made to Dr. Cook, as to the observations which might be made if he should undertake to prescribe for her himself? But let us observe his conduct when they reach the house. He goes to the bed side of his dying wife for a single moment, and passes immediately out at the back door, without waiting for the examination of her case by the doctor, or making a single inquiry concerning her. He was followed directly by Dr. Cook, who, struck with her ap-

pearance, and discovering that she was beyond the reach of medical aid, asked him what he had been giving her. The prisoner at first avoided an answer, but on being pressed, replied, that he had given her a pill, the particular composition of which the doctor does not recollect, but which he considered perfectly harmless.

There is another circumstance to which I will call your attention. The prisoner says, after his return, in the hearing of Betsey Leonard, that he did not expect to have found his wife alive. This goes further to show, that before he started for Dansville, he considered her case hopeless.

But let us observe further the conduct of this man, who, you have been told, loved his wife, and was willing to do every thing for her comfort. At the very moment of her dissolution, when the things of this world were fast fading from before her eyes, and she was already sinking into the grave, we see him come into the room, and instead of offering comfort or consolation, or bidding her a final farewell, he asks for his dinner, and with savage indifference sits down to eat it. Is this the tender husband, who is to be held up as a model for our imitation? Are these the proofs of his conjugal affection which entitle him to the praise of my learned friend? Gentlemen, would such be your feelings and conduct towards the partner of your bosom, if you should be called to witness the termination of her earthly pilgrimage, and to see her close her eyes in death?

But to proceed. The woman died. Two or three days after her death, the prisoner observed to Lucy M'Kay, that he hoped now he should live better. If by this he did indeed mean only as the learned counsel would wish us to believe—to live, for the future, a reformed life—he ought to have credit, perhaps, for his resolution. But if he intended to be understood that he should enjoy life the better since his wife was out of the way, it would present a very different aspect. What he in truth intended, or how he is to be understood, is a question for your consideration.

Let us now, gentlemen, examine the subsequent facts and circumstances of the case, and see whether we do not find further grounds of suspicion against the prisoner, and further proofs of his guilt. Shortly after her death, suspicions were afloat and entertained in the neighborhood, that the deceased had been poisoned, and it was determined to dig her up. After some of the neighbors had assembled for that purpose, he remarked that he thought it probable they would find poison in her, but if they should, he did not put it there. Upon this point we do not rely upon the testimony or recollection of a single witness, but the fact is fully established by several—Dr. Cook, Dr. Clark, Dr. Faulkner, and others. To one of the witnesses he observed, that he did not doubt they would find poison, but the query would be who put it there: and when asked whether that was any comfort to him, he answered that it was. The counsel have said that Drs. Clark and Faulkner had different impressions as to what M'Kay said on this occasion. But Dr. Faulkner tells you that no one was present at the time he alludes to—that M'Kay had taken him aside to request the privilege of going up to touch the body, and that they were alone; so that Dr. Clark evidently refers to a different conversation.

The testimony of William Sharp is still stronger—he says M'Kay observed to him that he would not say they would not find arsenic in her.—He might, possibly, have said poison, but he is pretty confident he said arsenic. This expression, you will bear in mind, was before the body was opened or the experiments tried, and before any opinion had been expressed as to the kind of poison which had been given. Why these remarks, unless the prisoner had reason to suppose her death was produced by poison, and why is arsenic designated as the very poison which would probably be found ? As to my enquiries relative to the prisoner's touching the body, after it was disinterred, the gentleman entirely mistook my object, if he supposed it was for the purpose of showing his agitation upon that occasion. My only object in introducing it at all was, to identify the body of the deceased, and thus to prevent all cavilling upon that point. His trembling, agitation, &c. are circumstances upon which I place no reliance. But what further ? We have proved to you, gentlemen, that when it became necessary, or in the estimation of the prisoner, expedient, he totally denies all knowledge of arsenic, and perseveres in the declaration that he never saw it, and knows nothing about it. Let us see whether he tells the truth in this particular. In the first place, we have the testimony of Mr. Sutliff, that the prisoner told him he formerly used arsenic to cure the pole-evil, but had since found a better remedy.

We have next the testimony of John R. Gansevoort, against whom, I regret to say, the opposite counsel have indulged themselves in remarks of unnecessary and unmerited severity. I must think it illiberal to treat witnesses thus rudely, unless there is just cause for it. They are compelled to appear and testify, and are certainly entitled to protection. In this case, Mr. Gansevoort is represented by the counsel, as going to the prison door for the purpose of leading the prisoner into a conversation, and drawing some confession or unfavorable declaration from him, and then volunteering as a witness against him. Is all this justly to be inferred from the proof in this case, or is it only assumed by the counsel without any proof whatever ? Those who know Mr. Gansevoort will agree with me in saying, that he is incapable of such an act, or of the motives which the counsel have thought proper to ascribe to him. He has told us a perfectly candid and inconsistent story where he could have no possible object in misrepresenting the facts, and I doubt not, you will give entire credit to his testimony. He was walking in the hall, when M'Kay came to the door and spoke to him—and enquired whether Dr. Clark was in town. He said if Clark swore that he ever purchased arsenic more than three times, he would perjure himself. That he had never bought there but three times—once in person and twice by his son or twice himself, and once by his son—Mr Gansevoort does not recollect which. You will recollect, gentlemen, that this was at October term, the term at which the prisoner was indicted—when his case was the subject of conversation, and therefore, we can very readily presume, that whatever M'Kay said, having any bearing upon the question, would be impressed upon the mind and

remembered. But we are told that he has volunteered his testimony. Mr. Gansevoort has explained to us how it happened that the public have the benefit of his testimony. He mentioned the circumstance to Mr. Cruger, who resides in the same village with him, on their return home. Mr. Cruger afterwards officiated as district attorney, and Mr. Gansevoort is compelled to appear here by virtue of a subpœna, very much against his wishes, and to testify whatever he knows in relation to this case. I remind you of this circumstance merely for the purpose of shielding Mr. Gansevoort from the imputations cast upon him by the counsel for the prisoner. But if confirmation was necessary, we have it in the testimony of Doct. Clark who, though he speaks with becoming caution, gives us his decided opinion that the prisoner has purchased arsenic of him more than once. He recollects, upon one occasion, that M'Kay told him he was going to apply it to cure a cancer. Mr. Brockway, another witness, who also comes in for his share of the reproof of my learned friend, testifies that the prisoner enquired at the store in Dansville for arsenic. Whether he purchased or not, the witness is not able to say with certainty, nor is it very material, in the point of view we are now considering it, for it equally proves that he was not as ignorant of arsenic as he professes to be. Why enquire for it, if he knew nothing about it? Mr. Brockway also recollects what M'Kay said about the application of arsenic to cure a cancer.

The counsel seem to think it very extraordinary, that a circumstance, so trifling and unimportant in itself, should have made so lasting an impression upon the minds of these two witnesses, and he puts the question to you, whether you would probably recollect so trifling an occurrence for such a period of time. Perhaps neither of us would do so, and it may appear very singular to my learned friend, who is a lawyer, that such a circumstance should be recollected by any body. But we must recollect that these gentlemen were physicians, hearing from a quack, as they esteemed him, of the application of arsenic, to cure a cancer, and would certainly be more likely to recollect it than either of us. Perhaps if some pettyfogger had advanced some opinion upon a question of law equally novel and grating to the ears of the learned counsel, they would have recollected it at an equally distant period.

We have next the testimony of Mr. Wickham that M'Kay told him he had purchased arsenic at Dansville. His testimony has called forth remarks of still greater freedom and severity from the counsel on the other side. Under all the circumstances, I would not press his testimony upon you, if he stood alone and unsupported—But he does not; nor is there any thing in his story which appears unnatural or unreasonable. After M'Kay's arrest and confinement, it is not at all surprising, either, that any remark or observation which fell from him which had a bearing upon the question of his guilt, should be remembered. But putting his testimony entirely out of view, and ample proof remains, that in this important particular, as to his total ignorance of arsenic, the prisoner has stated, and persists in stating, what is not true in point of fact.

I have thus given you, gentlemen, a view of the facts and circumstances, so far as I have been able to recollect them, which have any material bearing upon the two points to which your attention was invited. It has been said, however, that this prisoner could have no motive to commit this act, and the learned counsel, arguing from the purity of their own hearts, would persuade us, that because no good motive can be found, we are bound to conclude that the crime has not been perpetrated. To virtuous men—to tender and affectionate husbands, it may, indeed, appear most strange and unnatural. But, gentlemen, we must search for motives in the depravity of the human heart. Sad experience teaches us that sufficient motives may be found there, and that crimes even thus cruel and unnatural, are sometimes perpetrated. We have shewn that the prisoner was not restrained by any love or respect for his wife—that they lived unhappily together—that he was perfectly cold and indifferent towards her, and that conjugal affection was a stranger to his bosom.

The gentlemen opposed to me have told you it is their serious impression—nay, their decided opinion, that we have failed in supporting either of the points we have been considering. I will not oppose to this my individual opinion, or attempt to influence your verdict by pressing upon you the result of my own reflections. I wish you, carefully and seriously to examine the facts and circumstances which have been spread before you, and determine for yourselves. I ask you to take a review of this case, and put the question to your own consciences, whether there does not appear such a train of convincing and convicting circumstances, all going to establish the prisoner's guilt, as no longer leaves a reasonable doubt upon your minds? Has not every fact and circumstance, and every part of the prisoner's conduct appeared unfavorable and suspicious? As the witnesses have been called to the stand, have not your hearts responded guilty, at the close of each mournful story. Has not the grave itself yielded up its victim to add its solemn testimony against him! But, gentlemen, an attempt has been made to enlist your feelings on the side of the prisoner. You have been told by the counsel who last addressed you, of the horrors of that dungeon, to which the laws of his country consigned the prisoner—of the friends and relatives who are hanging to his skirts and looking with trembling anxiety to the result of your deliberations. Under these circumstances you are called upon, and the appeal is enforced by all the powers of eloquence, to extend mercy to him, as if he had indeed something to fear from your justice. But, gentlemen, it is not your province to dispence—and if you had the pardoning power, putting it upon the ground that his guilt is sufficiently manifest, few indeed are the prisoner's claims to your mercy.—His life is justly forfeited, and he deserves to be cut off as a cumberer of the ground. You are bound to examine and determine his case, regardless of all other considerations, with a single eye to the question of innocence or guilt.

I am sensible how much more enviable is the situation of him who comes before you the advocate for mercy, than of him who

comes to ask stern justice at you hands. I am fully sensible also, that I do not possess those happy talents for which my learned friends are so justly distinguished, and which enable them always to please, and sometimes to dazzle and mislead a jury; and even did I possess them, this is not a case where I should wish to call them to my aid. I appeal only to your sober judgment. I ask you to take a deliberate and serious view of the case, and then, uninfluenced by passion or prejudice, or any mistaken notions of mercy, without regard to the consequences resulting from your verdict, fearlessly to pronounce whether the prisoner is guilty or not guilty of the crime of which he stands charged. With these remarks I commit this case and the prisoner's fate to your hands.

JUDGE VAN NESS's CHARGE.

Gentlemen of the Jury,

I rejoice, that your labours are drawing to a close. The duty which you have had to perform, has been painful, but the most important part still remains to be discharged. You have heard the testimony, and the remarks made by the counsel on both sides; you are now to hear such remarks as I shall make on the subject, and then retire to your room, and determine in your wisdom, whether this man shall live, or die. This last consideration has been called to your view very often in the course of the discussion; because, in every case, where a man's existance is in jeopardy, it should be urged as a caution on every step you take towards the result of your deliberations. But, gentlemen, the great question is, whether, he is or is not guilty? And in making up your minds on this, it is not the punishment which you inflict, it is that of the law. Suppose for a moment, this man has actually murdered his wife, when she was sick, when he was bound to protect her by every means in his power; and then take a view of the situation in which he is placed. He stands here charged with the diabolical crime, of terminating the life of his own wife! In such a case as this, is it possible you can say, this man shall be permitted to live among you? The law of God, and man proclaim, that he who sheds *man's blood;* by man shall *his blood* be shed.

It has been suggested by some, that no earthly tribunal has a right to take life: there are some who entertain this belief at the present day; but there are many who formerly believed it, that have become satisfied from experience, that it is sometimes necessary, to lop off a bad member, to preserve the life and liberty of others. In every christian country, the murderer has been punished with death, and here our law has settled that point; although, you may entertain a different opinion, it is not to screen this man. You are bound to administer justice according to the law, and so am I. If this man is guilty, he not only deserves, but must receive punishment. There is a de-

gree of firmness, which a jury is to exercise, which seems not to be required, in ordinary occurrences. There is not any good man on earth, but would rather acquit, than convict; the tendency of all our good feelings is that way, and when we have a case like this, every sympathy of the heart is excited, and the mind is apt to be led from one degree of pity to another, till it fixes upon the side of mercy. You are to meet this thing with firmness. Your duty must be performed, otherwise you are to suffer the stings and remorse of a guilty conscience. These are remarks which I have thought it a duty to make on this occasion. As this is a crime which is not frequent, it is indespensible that it should not be neglected by the jury whose duty it is to administer justice. In your situation, however, you are bound to administer justice with mercy.

The prisoner is accused of wilfully administering poison to his wife. Has this charge been substantiated by the witnesses? The first question, and the most important one in this case, is, whether the woman came to her death by poison; no matter whether it was arsenic or corrosive sublimate. In this case, it is alledged to be arsenic. If any poison was found in her, there is no doubt it was arsenic. On a subject of this kind, courts and juries must necessarily depend, for their opinions, on the opinions of others, who are more competent to judge whether a person has been poisoned or not. It is impossible for judges, who have not made it their study, to determine whether this is poison or that is poison. It is, therefore, a necessary consequence, that they must call into court such men as have studied the subject, and are prepared to judge. When physicians are called into court, if they are men of learning, men of experience, and above all, men of integrity and veracity, you are bound to place confidence in their testimony. If such men swear that they found poison in the body of a person deceased, and that the poison produced the death of that person, it must necessarily be satisfactory to a human tribunal; until something is shewn, to controvert that assertion. It is necessary for the preservation of human society, notwithstanding evidence is fallible, notwithstanding there may be a probability of judging erroneously, that this should not always amount to an acquittal. If, after all you have heard on this subject, you believe the prisoner to be guilty, so that you have not a lingering doubt in your minds, although it is possible you may be under a mistake, it is your duty to convict him.—There is but one tribunal that never errs. We must proceed by human means, to arrive at as much certainty, as human means will admit. In order to which it is necessary to view the subject in its progress, from the commencement of that part, to which the first question belongs. It appears that after this woman had been dead eight days, for some reasons the body was taken up. The stomach of this unfortunate woman was examined by the physicians who have been sworn before you. It is not my intention, to express a belief on this subject; for I am aware, that I know but very little more about it than you do. I stand equally in need of the opinion of others, for I do not pretend to understand it scientifically myself. These physicians say, they took the contents of the stomach, and went through with certain experiments upon it—they went so far that

they did not think it worth while to go any further; because, they were satisfied, that they found arsenic in the stomach and upon the liver. The substance which they found upon the liver, resembled a white powder, and was very particularly described by them. They took this substance, and submitted it to the same experiments, as they had done the matter which was taken from the stomach, and found the result satisfactorily the same. How this substance came upon the liver we cannot tell, but the fact that it was there, is sworn to, by all the physicians who made the experiments.

Dr. Noyes cannot account for the manner in which this substance came upon the liver; still I do not know that we are authorised in disbelieving the testimony of the physicians, who swear positively, that it was there. They state in addition to this, that they had real arsenic with them; and in order that they might not depend altogether on their eye sight, when they had tried an experiment upon this substance, they proceeded to try the same experiments upon the real arsenic. The one test was by a chemical process to produce a yellow precipitate, or sediment at the bottom of the vessel. In one of the experiments upon this substance the precipitate was not quite so bright, as that produced from real arsenic; but generally the result was the same. They then went on to try another experiment, called Burgman's test; by this experiment is produced a green precipitate, which likewise falls to the bottom of the vessel and is called Scheele's green, from the name of the physician who first made that test. They say that in this test, the results were invariably the same, without any distinction, always producing the green precipitate, without any variety in the shade of color, as in the yellow. They then go on to try the same upon real arsenic, and they tell you that they could discover no difference. From the result of all these experiments, both with Hume's test and Bergman's, they express a confident opinion that there was arsenic in the stomach of this woman, enough to kill half a dozen persons. On being asked further, they say, that when they combine other circumstances attending this case, together with the symptoms of this woman, notwithstanding the absence of certain symptoms, they have no doubt that she died from the effects of the poison. They say the symptoms may vary according to the quantity of arsenic taken, and that there are other diseases, in which the symptoms might resemble those of arsenic: still, I think there can be no doubt, if the testimony of these physicians and other witnesses be fully credited, that almost every symptom, laid down as resulting from the administration of arsenic, was experienced by this woman—at all events, the leading and most prominent symptoms were evidently witnessed in this case. But this is less to be relied on than the tests made by the physicians. You have heard what has been read on this subject, and the opinion of the physicians respecting the appearance of the coats of the stomach, which was taken into the estimate by some of them in forming their general opinion. For my own part I do not think it safe, to rely upon appearances so long after death. We know there is a fluid in the stomach, which dissolves or decomposes all the animal food which we eat; but while a person is living, the stomach is capable of resisting the effects of

this fluid, which is called the gastric juice. When life ceases and the stomach becomes empty, we are told that it then begins to operate upon the coats of the stomach, as it does upon the animal food which we eat. On the whole, I think no correct inference can be drawn from these appearances eight days after death. If there was no other testimony than that to which we have just alluded, it might require a different course of investigation; otherwise punishment would never be inflicted, unless the party openly confess his guilt.

Notwithstanding these tests have had the sanction of the wisest and best men, still we see new opinions have succeeded each other: old ones have been considered fallacious and the new ones supported in their stead; and again we see these laid aside and the old ones resorted to. Thus we see the test of the garlic smell, at one time in high esteem, at another time rejected; but here considered highly important. Bergman's test was relied on for some time; till it was found that other substances would produce the same appearances, with the same experiments. Then came on Hume's test, to produce a yellow precipitate, which has been spoken of as a very delicate test, and when properly applied, as one leading to unerring certainty—in this case, however, they are all doubted. It is said by Dr. Noyes, that the only true and satisfactory test is the reproducing this arsenic in its metalic state; by submitting it to an intense heat, in a glass tube, as he has related. With respect to Dr. Noyes, you have seen and heard him—he is a professor of chemistry, and has been selected for his worth and uncommon knowledge, in this department of science. You have heard him express his opinion on this subject; and he says he is not altogether satisfied whether it was, or was not arsenic, which was found in the stomach. I asked him this question. What should you think of these experiments, had the matter been taken from the stomach in a state of considerable purity, and the experiments tried as the physicians have related; first upon the suspected matter, and then upon real arsenic with a similar result? He said it would be a strong circumstance, and afford grounds for a probability that the stomach did contain arsenic, and still after all that he had heard from these physicians he could not say that it amounted to evidence of the fact in his mind. I have no doubt he judges correctly from what he has read on the subject, and the experience which he has had, still there may be this consideration: these men were present and saw for themselves, although, they may not be so scientific as this professor—had he been there, he might have seen that which would have lead his mind to a different conclusion.

I have thus been through with the principal points in this part of the subject. If you are not entirely satisfied that the stomach did contain arsenic, it will be your duty to acquit. If by taking the strong testomony of all these physicians, you are irresistably led to the conclusion that arsenic was found in the stomach, as they swear was the case, and that arsenic, instead of the cholic, terminated the existence of this woman, your duty will next lead you to inquire how it came there. If arsenic was in the stomach of this woman, it could not have got there without hands; of course it must have been administered by the pris-

oner, or some one else; and from the circumstances of the case, it is difficult to imagine how it came there without the instrumentality of the prisoner at the bar. Suppose a man is seen to go into a room, where your wife is in bed, which fact is proved; and it is likewise proved that no other human being had been in the room—you hear the report of a pistol, rush into the room, and find your wife a corpse. Could any one doubt, that this man was the murderer? I do not mean to say, this is as strong a case as that just stated; but unless there can be some explanation given, it will be reasonable to conclude, he is the man who administered the poison, if any was administered. There does appear to be such a combination of circumstances, as would seem very naturally to lead the mind to that conclusion.

In order to come to a correct decision, it will be necessary to persue the chain of events, from the first moment of her illness down to the close of the experiments made by the physicians. It has been suggested, that he might have given her some medicine, or poison, before she went up stairs; from a remark which he made to a witness respecting his keeping and administering the tincture of castor, on similar occasions. With respect to the confessions of the prisoner at the bar, you are to put upon them such construction as you shall think proper, making reasonable allowance for the circumstances under which he made them, and the frailty of human memory to retain them. I pass by this part of the subject, relating to his administering any thing before she went up stairs. When she came down stairs, he was sent for by her request; she stated that she was seized with the cholic; he came in and gave her some castor, as he had been in the habit of doing for the same disorder.

It is deserving of some consideration, that when he was called into the house he prepared some castor, which, according to the evidence, is the first thing he administered to her. This did not seem to relieve her, for she continued to grow worse. We have no positive proof that any other medicine was administered, till after Mrs. Barnard came in. She informs us, that he admitted he had given her butternut pills; and he was seen by other witnesses preparing pills from a tin tumbler; but no one saw him administer them. Of what materials these pills were composed, we do not learn. Mrs. Barnard has related the symptoms of this woman at the time she arrived; these symptoms strongly resemble those resulting from the administration of arsenic. While she was in this situation, he (M'Kay) went to her bed for the purpose of giving her more medicine. Mrs. Barnard says that he poured some water into this tin cup, and rinsed it round, observing that he did not know as there was enough for a dose; but after scraping the cup, he concluded there was sufficient. There were some objections made by her, (the deceased) to taking it; but it appears he gave it to her; and it will be recollected, that thirst was among the first symptoms of which she complained. Whether there was arsenic in this cup or not, I do not know. Mrs. Barnard says, she had no sooner taken it, than she began to grow worse, and complained of great distress and burning heat at the stomach, and vomited constantly. This symptom, it does not appear had ever occurred, in her turns of bilious cholic, except at one time.

I do not think myself, gentlemen, there is much reason for imputing improper motives to Mrs. Barnard. I think in the main facts she has been supported by other witnesses: altho' there may be slight shades of difference in the testimony of these females, still, taking it together, I know of nothing to impeach the credit of her testimony; it gives me great pleasure to say, that I never in my life have seen a family of children testify with more candor, than those of the prisonnr at the bar. I think they have discovered a regard to truth, which appears a circumstance favorable to him; because, it is difficult to imagine that these children could have behaved so well as they have, had not pains been taken in their education. This is probably due to the prisoner at the bar. The symptoms of the deceased during the night of Sunday, have been described by Mrs. Barnard, who says the deceased was in the greatest possible distress till about two o'clock, when she fell into a doze for a short time. Now with respect to the time that M'Kay started for the doctor, Mrs. Barnard thinks it was about ten o'clock, and from this circumstance, that it was considered about nine when she went over, and she thinks she had been there about an hour when he started—but does not swear positively. Even suppose it was as late as twelve o'clock, one thing is certain, that he was gone a great while to ride six miles, had he met with no unusual delays, which we do not learn was the fact. This may probably be taken as a ground of inference against the prisoner. It is said by some of the witnesses, that Dr. Luther left some peppermint and camphor; which fact is not to be forgotten.

I now come to a part of this case, deserving more attention. If arsenic was in reality found in the stomach, it probably must have been administered in the rinsings of the cup, or after Dr. Luther was gone, when B. Leonard saw him (prisoner) administer the medicine from a spoon. This witness says she was in the room with Mrs. M'Kay, and no other one present; as Mrs. Barnard had just stepped out. M'Kay came down stairs, made a halt behind the door for a short time, and then came to the bed with a spoon nearly full of some kind of liquid; the witness held up the head of the deceased, and the prisoner administered the contents of this spoon, which he said was peppermint. Witness did not see distinctly the colour of this liquid, nor did she smell any thing like peppermint. It would have been almost impossible to have this so near her, without her knowing it. The whole of this transaction was conducted under such circumstances, as appear to require a more satisfactory explanation. It appears that when he was up stairs in the presence of his sons, he took down some runnet and shaved it off, observing that he was going to give it to his wife. He went down stairs, and that was the last that was seen of the runnet. This runnet was not in the spoon, or Betsey Leonard would have seen it. This young woman likewise says, that immediately after receiving this stuff from the spoon, her symptoms returned upon her with great violence, and continued to be worse after that time. I ought to mention that at another time, in the night, he was seen to have something in his hand which he proposed giving her; but whether he did or did not administer it, the witness cannot tell. I am not at present aware of his having administered any thing more to

her. You have, however, heard the testimony and the remarks of counsel, which are probably fresh in your memory. On Monday she appeared to be easier: whether this was on account of the arsenic, which might have destroyed her sensibility, I cannot tell. She continued to have this restlessness and distressing thirst, down to the moment that Dr. Cook arrived. Even when she was past speaking, she expressed by her looks and gestures, an anxiety for something to allay this distressed burning and thirst. On Tuesday morning very early, he (the prisoner) told his son, who was about to start for Dansville, to send Dr. Shull: and long before the doctor could have arrived, and when he saw that his wife was a dying woman, he started off himself. If you are satisfied with respect to this journey, that there was great and unnecessary delay, at Dansville; that he misstated the situation of his wife, and lingered on his return unnecessarily, they will afford strong grounds of inference against the prisoner. You have heard the facts related by the witnesses: if you think his conduct suspicious, and that he acted strangely in conversation with Dr. Cook, as far as it affords inference of his guilt, so far you are to go in imputing the administration of this arsenic to the deceased, if arsenic was the cause of her death. There is something in the conduct of the prisoner through the course of this day, which I will venture to say, will not be easily reconciled; but this I leave wholly to your consideration.

I now proceed to another era in the course of this transaction, which I think important. Suspicions arose as to the cause of this woman's death; the physicians very properly determined to have the body examined. When the time arrived, the prisoner was present; and he made use of this expression to a number of witnesses: "They may find poison there; but if they do, I did not put it there." He stated it in such a manner as not to criminate himself; but as it came from the prisoner, it may be considered worthy of some attention. One witness testifies in this way: "He (prisoner) said he was not without his fears that they might find arsenic there; but if they did, he did not put it there." The witness does not swear positively as to the term arsenic; but is strongly impressed with the belief that he used the word arsenic. He (prisoner) goes still further, and says, "I have enemies who may have put it there." He further insinuated that Mrs. Barnard might be the person, as she had been in a quarrel with her sister, the deceased. If you cannot give an explanation, consistently, which will go to prove his innocence, but are satisfied that these expressions proceeded from an alarmed conscience; that they were the artifices of a guilty man, who was willing to screen himself by charging the crime to his enemies, or his wife's sister, and that they were but the effusions of a disturbed and troubled soul, you will consider them as evidence of his guilt.

I have thus gone through with the essential parts of the testimony: you are now to weigh it and determine for yourselves, agreeable to your consciences and judgment.

[The jury retired to their room about 10 o'clock at night, and returned very early in the morning with a verdict of NOT GUILTY: Whereupon the prisoner was released from his confinement, having lain in prison about two years.]

APPENDIX.

TEST FOR ARSENIC,

From professor Silliman's Journal, published, 1821.—EDITOR.

It is a question very interesting to medical jurisprudence, whether there is any test for arsenic which can be implicitly relied on, to such an extent as to justify on that ground alone, the condemnation of an accused person. Some experience in such cases, has produced in us an increasing impression, that nothing short of the actual production of the metalic arsenic can be safely relied on for the above purpose, although various tests may serve, more or less perfectly, to guide the enquiries, and to influence the opinion of the practical chemist.

Dr. T. D. Porter, now a member of the faculty of the University of South Carolina, in his inaugural dissertation, states that he finds, on repeating some of the popular experiments, with onion juice, which were some time since published in the newspapers, that the onion juice with the solution of sulphate of copper, (blue vitriol) but without the carbonate of potash, produces in a weak arsenical solution "a shade like Scheele's green," but if carbonate of potash be added, the effect is completely different. Considering Scheele's green as a test that has been much relied on, for the discovery of arsenic, Dr. Porter formed it in the usual way with sulphate of copper, and sub-carbonate of potash; in one experiment, a decided precipitate was produced from a *stronger*, and in another, a scarcely perceptible one from a *weaker* arsenical solution. Coffee was then added to the solution of copper, and of carbonate of potash, but *without arsenic*, and the effect resembled that of the stronger arsenical solution more than this last was resembled by that of the weaker.

But the most important facts mentioned by Dr. Porter remain still to be stated. He found that in the production of Scheele's green by arsenic, sulphate of copper and carb. potash—*chromate of potash* might be substituted for arsenic; and that it produced a precipitate not to be distinguished by the eye from Scheele's green. He ascertained also, that even Hume's celebrated test, nitrate of silver, (as modified in its application by Dr. Marcet) gave with chromate of potash a yellow precipitate, which when placed side by side with one produced by arsenic could not be distinguished by their color and appearance. Dr. Porter's experiments appear then to throw still greater suspicion on the infallibility of tests for arsenic, and are worthy of being repeated.

[*Depositions omitted by mistake in page* 41.]

LEVI DOTY sworn.

Question by prisoner's counsel. Did the prisoner cure a horse for you? No, he did not cure it, but he undertook to do it. I asked him what medicine he used, and he said corrosive-sublimate.

Cross examination. Did you see M'Kay when he went after Dr. Cook? I did—he rode up where I was—he said his wife was very sick, and he was going to meet Dr. Shull.

Jury. Did you ever hear the prisoner say that he had used any thing but corrosive sublimate in curing horses? I never did.

Dr. DOOK called again.

When you went to see Mrs. M'Kay, what was your motive in asking M'Kay, what the devil he had been giving his wife? My impressions were at that time, that he had by mistake given her some-

thing which had poisoned her. What did you found that opinion on? I founded it on the symptoms, which were related to me. I was told that she was taken with a violent pain in the stomach, great thirst, &c. &c. Do not these symptoms occur in other diseases? They do frequently, when the stomach is much inflamed. Did you believe, at that time, that Mrs. M'Kay was poisoned? I did believe at that time that Mr. M'Kay had given her something, through ignorance, which was of a poisonous nature. Was it your impression at that time, that she was really poisoned, or only that she had taken something which had made her very sick? I believed that she was dying from the effects of poison. Have you not said to the contrary? I have not. What did you tell Gen. Haight on the subject? I told him that M'Kay pretended to be a kind of horse doctor; and I thought at that time, he might have given her something which had produced that effect, through ignorance. I mentioned my opinion to Dr. Luther. Where is Dr. Luther? He is in Ohio. Did you examine her face or throat, to see whether they were swollen? I did not particularly; but I think they were not much swollen—but her tongue was. Did Dr. Luther live at Dansville? He did not. How did it happen that you mentioned this affair to him first? He called at my house.

Dr. Elisha W. Brockway called and sworn.

Stated, that M'Kay came into the store of Clark and Brockway, (in which witness was a partner,) and inquired whether they had any arsenic and corrosive-sublimate. Witness does not recollect whether this was in 1817 or 1818; but remembers the fact of his asking for these articles, from the circumstance of his stating that he was something of a doctor, and wanted the arsenic to cure a cancer. Witness did not know that he purchased any arsenic then, but knew that they had it in the store at that time. He inquired for the medicine before he told what he wanted it for. (Here a number of words passed between the witness and the counsel for the prisoner, on the subject of his recollecting some facts so clearly, at the same time he could not recollect the time when they occurred.) Witness finally concluded that the prisoner did not purchase any medicine at that time, but inquired for them as articles that he should probably want at some future period. After prisoner had withdrawn from the store, Mr. Clark said, there is another cancer curing quack. Do you not recollect that you were called on to testify at the former trial of the prisoner at the bar? I do; and was ordered to step aside, as my testimony was not necessary.

Daniel M'Kay called.

What did your father say respecting a quart of cold water? He said that cold water was good in the cholic; his mother used to use it in large quantities, for the same complaint. Did your father ever send you after arsenic? He never did: I do not know what it is only by hear say.

M'Kay, brother to the prisoner, called and sworn.

Stated as follows: My mother was for many years subject to a complaint called the cholic. For some years, towards the last of the time, she found that cold water was the best remedy she could resort to. When she was taken with a turn of the cholic, she would take a pail of cold water from the well and drink freely from it. Indeed that was the only way that she could find relief.